

**Committee on Anti-Dumping Practices  
Committee on Subsidies and Countervailing Measures**

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS UNDER  
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

**BRAZIL**

**Supplement**

The following communication, dated 11 April 2011, is being circulated at the request of the Delegation of Brazil.

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**THE MINISTRY OF DEVELOPMENT, INDUSTRY AND FOREIGN TRADE  
THE SECRETARY OF FOREIGN TRADE**

Directive 21 OF 18 OCTOBER 2010  
(published in the Official Gazette of 20 October 2010)  
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THE SECRETARY OF FOREIGN TRADE OF THE MINISTRY OF DEVELOPMENT, INDUSTRY, AND FOREIGN TRADE, in the exercise of the duties and powers conferred by article 15, subsection VII, of Annex I to Decree 7096 of 4 February 2010, and taking into consideration article 6 of the Resolution 63 of the Brazilian Chamber of Foreign Trade (Câmara de Comércio Exterior – CAMEX) of 17 August 2010, published in the Official Gazette of 18 August 2010, makes the following known:

**Art. 1.** The broadening of the scope of the anti-dumping measure provided for in article 10-A of Law 9019 of 30 March 1995, enacted through Law 11786 of 25 September 2008, to the importation of goods from third countries, as well as parts, pieces, and components for any good subject to the anti-dumping measure currently in force, shall adhere to the provisions of Resolution 63 of the Brazilian Chamber of Foreign Trade (Câmara de Comércio Exterior – CAMEX) of 17 August 2010, when harmful circumvention practices designed to thwart the application of the anti-dumping measure currently in force are identified.

Sole Paragraph. Pursuant to article 3 of CAMEX Resolution 63 of 2010, the investigation of circumvention practices shall be initiated and conducted as per this Directive.

**Art. 2.** Pursuant to article 5 of CAMEX Resolution 63 of 2010, CAMEX shall have the duty and authority to decide on the extension of the anti-dumping measure currently in force based on the opinion issued by the Brazilian Trade Defense Department (Departamento de Defesa Comercial – DECOM), a component of this Secretariat, in accordance with article 18, subsection VI, of the Annex I to Decree 7096 of 4 February 2010.

## **CHAPTER I**

### **DETERMINATION OF CIRCUMVENTION**

**Art. 3.** The broadening of the scope of anti-dumping measures may encompass:

I goods which are identical to the good subject to the anti-dumping measure in all aspects or any other good with very similar, even if not identical, characteristics to those of the good subject to the anti-dumping measure; and

II parts, pieces, and components of the good under subsection I, including raw materials, intermediate products, and any other inputs employed in the manufacture of said good.

**Art. 4.** For purposes of this Directive and pursuant to article 2 of CAMEX Resolution 63 of 2010, the following shall be considered circumvention:

I the introduction into the national territory of parts, pieces, and components for the purpose of the manufacture of a good resembling the good subject to the anti-dumping measure or of another product with characteristics that although not identical are very similar to those of the good subject to the anti-dumping measure;

II the introduction into the national territory of a good manufactured in third countries using parts, pieces, or components originating in or from the country subject to the anti-dumping measure;

III the introduction into the national territory of a good with minor modifications that do not affect such good's end use or purpose; or

IV any other practice designed to thwart the effective application of anti-dumping measures.

**Art. 5.** Investigations to determine the existence of circumvention practices shall be initiated at the request of the interested party in the original investigation or, in the event of the extension of the anti-dumping measure following the most recent review of the anti-dumping measure in question, as provided for in article 21, paragraph 3, of Decree 1602 of 23 August 1995, through a written petition or, exceptionally, by this Secretariat.

Paragraph 1. For the purposes of this Directive, the following are considered interested parties in the investigation of circumvention practices:

I the applicant for the investigation of alleged circumvention practices;

II Brazilian manufacturers of goods resembling the good subject to the anti-dumping measure;

III the government of the exporting country of the good subject to the investigation of circumvention practices;

IV the manufacturers or exporters of the good subject to the investigation of circumvention practices;

V Brazilian importers of the good subject to the investigation of circumvention practices;

VI the companies responsible for the manufacture of the imported parts, pieces, or components;

VII other parties as determined by DECOM.

Paragraph 2. The application set forth in the heading of this article shall include evidence of circumvention practices, as provided for in article 2, paragraphs 1, 2, and 3, of CAMEX Resolution 63 of 2010, namely:

I the qualification of the applicant, including indication of the representative before DECOM;

II a detailed description of the alleged circumvention practice, indicating the exporting country of the good in question or of the imported parts, pieces, or components and, where possible, of the related manufacturers or exporters, the importers, and/or processors;

III detailed description of the imported good and, in the case of article 4, item III, of this Directive:

- (a) information on possible differences between the imported good and the good subject to the anti-dumping measure;
- (b) information on small changes introduced in the imported product, as compared with the product object of the anti-dumping measure;
- (c) information on the end use and purpose of the modified good;
- (d) estimated additional cost for the minor modification, where applicable;

IV information on the distribution channels for the good in question;

V evidence that the value of the parts, pieces, or components originating in or from the country subject to the anti-dumping measure represents sixty per cent (60%) or more than the total value of the good's parts, pieces, or components;

VI information on a shift in trade flows occurring after initiation of the procedure that gave rise to the application or to the most recent extension of the anti-dumping measure, taking into account the twelve most recent months to the date of the application. In exceptional and duly justified circumstance, the period set forth above may be less than twelve months but never less than six months, including:

- (a) Brazilian imports of the good subject to the alleged circumvention practice;
- (b) Brazilian imports of parts, pieces, and components originating in or from the country subject to the anti-dumping measure;
- (c) imports by third countries of parts, pieces, or components originating in or from the country subject to the anti-dumping measure;

- (d) where possible, information on the existence of installed capacity or production volumes for the good subject to the alleged circumvention practice which are incompatible with the volume exported to Brazil;

VII evidence of practices aimed at neutralizing the corrective effects of the anti-dumping measure in force, including data on the average volume and price of the good subject to the alleged circumvention practice or of the parts, pieces, or components, taking into account, to this end, the twelve most recent months prior to receipt of the application. In exceptional and duly justified circumstances, the period above may be less than twelve months but never less than six months; and

VIII evidence that the good in question is being exported to Brazil or sold on the Brazilian market at a price below the regular price determined in the original investigation or during the most recent review of the anti-dumping measure;

Paragraph 3. Applications containing confidential information shall be subject to the provision of article 28 of Decree 1602 of 1995.

Paragraph 4. The application and supplementary information, including schedules, shall be submitted in hard copy and optical format. The corresponding electronic files must be compatible with the system employed by DECOM:

I preferably, the electronic files should not be compressed; however, in case the compression of the electronic files is necessary the Department must be consulted.

II two authentic copies of each file shall be submitted in optical format, a protected and unprotected file, respectively, with an accompanying completed and signed "Status Report" for each optical format file submitted to DECOM, as per the model report attached to this Directive.

**Art. 6.** The application shall be submitted to a preliminary analysis for the purpose of determining whether the petition is duly documented or whether additional information is required. The applicant shall be notified of the result of the analysis fifteen days from formal receipt of the application.

Paragraph 1. In the event additional information is requested, a new analysis shall be performed to determine if the application is duly documented.

Paragraph 2. The applicant shall have fifteen days from issuance of the request for additional information to submit the requested information to DECOM.

Paragraph 3. The applicant shall be notified in a period of fifteen days of the supplementary information in the event the application is deemed without merit.

Paragraph 4. In the event the deadline in paragraph 2 is not met, the application shall be deemed without merit.

## **CHAPTER II INVESTIGATION**

### **Section I Launch**

**Art. 7.** The accuracy and adequacy of the information set forth in the application shall be analyzed, with a view to determining whether sufficient evidence exists to warrant launch of an investigation. To this end, information from other readily available sources may be considered.

**Art. 8.** The applicant shall be notified of the authorization or denial of the investigation within a period of thirty days from formal receipt of the application or, where applicable, of the additional information.

Paragraph 1. The application shall be denied and the case set aside where:

I the applicant is not the interested party, as per the heading of article 5 of this Directive, and/or if the representation has not been brought into compliance;

II the application includes information of a confidential nature and/or in a foreign language, in violation of the provisions of article 28, paragraph 1, and/or article 63, paragraph 2, of Decree 1602 of 1995; or

III the application does not include sufficient evidence of the circumvention of the anti-dumping order in force.

Paragraph 2. In the event the application is deemed to contain sufficient evidence of circumvention practices, the investigation shall be launched and the Order published in the Official Gazette. A period of twenty days from publication of the Order authorizing launch of the investigation shall be granted for purposes of submitting comments and requesting hearings.

Paragraph 3. The investigation into circumvention practices shall commence on the date the Order is published in the Official Gazette.

Paragraph 4. Parties may use facsimile data and image transmission systems or other similar equipment to meet the deadline in paragraph 2 of this article. The formal procedure that started the investigation of circumvention practices shall include the email address and fax number used for this purpose.

Paragraph 5. The interested party is responsible for assuring receipt of the transmitted information by DECOM. Only information received by 7:00 p.m. on the date of the deadline established in paragraph 2 shall be considered.

Paragraph 6. The deadline specified in paragraph 2 shall be deemed fulfilled only if the identical document to that transmitted via a facsimile data and image transmission system or similar system is registered within five working days following the deadline in paragraph 2 at the address specified in the formal procedure that started the investigation of circumvention practices.

Paragraph 7. Authorization requests from other parties claiming an interest in the case in question must be accompanied by documentation demonstrating such interest and indicate the respective legal representatives, as prescribed in the applicable law. Requests must be presented

within twenty days from publication of the formal procedure that started the investigation of circumvention practices.

Paragraph 8. Notwithstanding the right to establish all confidentiality requirements as deemed necessary, the full text of the application for launch of the investigation may be made available in electronic format to the interested parties through a written request to the email address specified in the formal procedure that started the investigation of circumvention practices.

Paragraph 9. Following launch of the investigation, DECOM shall notify the Brazilian Revenue Department, a component of the Finance Ministry, to adopt any and all measures as necessary, to which end it shall indicate the CAMEX Order authorizing the application or extension of the anti-dumping measure and present, concomitantly, a copy of formal procedure that started the investigation of circumvention practices.

## **Section II Proceedings**

**Art. 9.** The investigation into the alleged circumvention practice shall encompass the most recent possible twelve month period prior to official receipt of the application. In exceptional and duly justified circumstances, the mandatory period may be less than twelve months but never less than six months.

Paragraph 1. DECOM decisions may take into account the information included in the opinion on which the final determination regarding the original investigation or the last review of the anti-dumping measure, or any other readily available reviews, was based.

## **Section III Information**

**Art. 10.** Interested parties shall be granted ample opportunity to submit any written evidence deemed pertinent for the investigation.

**Art. 11.** DECOM may issue a questionnaire to all interested parties, with the exception of the governments of the exporting countries, regarding the provisions of article 5, paragraph 1, of this Directive. Interested parties shall have thirty days from issuance to submit the completed forms.

Paragraph 1. Requests for an extension of the deadline for submission of the completed questionnaires shall be considered. Where the need for an extension is demonstrated, an additional period of up to ten days may be granted, taking into account the respective investigations periods.

Paragraph 2. With a view to ensuring compliance with the deadline established in this article, the provisions of article 8, paragraphs 4, 5, and 6, of this Directive shall apply *mutatis mutandis*.

Paragraph 3. In the event any of the interested parties refuses to grant access to required information, fails to provide such information within the established timeframe, or, further, in any way impedes the investigation, the formal opinion underlying DECOM's final determination shall be prepared based on the best information available, in accordance with article 66 of Decree 1602 of 1995.

Paragraph 4. Interested parties shall be notified upon issuance of the questionnaires of the intention to conduct on-site investigations, pursuant to article 12 of this Directive.

**Art. 12.** In the course of the investigation, efforts shall be made to verify the accuracy of the information provided by the interested parties.

Paragraph 1. Investigations may be conducted within the territorial boundaries of other countries, provided authorization is granted by the pertinent companies, the government representatives of the country in question are notified, and such representatives do not raise objections to the investigation. The procedures described in article 65 of Decree 1602 of 1995 shall be applied to the investigations conducted in other countries.

Paragraph 2. Investigations may be conducted in establishments of interested parties located in the national territory following prior authorization from such parties.

Paragraph 3. The results of the investigations conducted pursuant to paragraphs 1 and 2 shall be attached to the Case File, without prejudice to the right of confidentiality.

**Art. 13.** Information deemed confidential by its very nature, that is, which is provided confidentially by a party to an investigation, shall, if well founded, be treated as confidential and shall not be disclosed without the express authorization of the providing party. Information classified as confidential shall be subject to a separate procedure.

Paragraph 1. Confidential information shall be separated from the main Case File, at which time a non-confidential justification and summary offering a reasonable understanding of the confidential information shall be submitted. In cases in which a summary cannot be provided, a written justification must be presented on the date the confidential information is submitted.

Paragraph 2. Information submissions classified as confidential which are not demonstrated to be of a confidential nature and which the providing party refuses to disclose, whether in full or summarized form, may be disregarded, except where the appropriate source convincingly shows the accuracy of such information.

Paragraph 3. The term CONFIDENTIAL shall be labeled at the center top and bottom of each page, preferably in a color different from that used throughout the document, including, additionally, the page number and total number of pages making up the document.

#### **Section IV Defense**

**Art. 14.** Throughout the investigation, interested parties shall be granted ample opportunity to defend their interests. To this end, parties may submit a written request for all case information, which shall be made available immediately to the requesting parties, with the exception of confidential information and internal government documents. The parties shall be provided with the opportunity to defend their interests through written submissions based on the disclosed information.

#### **Section V Final Proceedings**

**Art. 15.** Prior to drafting of the final decision, DECOM shall notify the interested parties of the essential facts under review on which the final opinion is based, while establishing, further, a period of ten days from issuance of the notice for the submission of comments to the final opinion.

Paragraph 1. With a view to assuring fulfillment of the deadline set forth in the heading, the provisions of article 8, paragraphs 4, 5, and 6, of this Directive shall apply mutatis mutandis.

Paragraph 2. Following expiry of the deadline established in the heading, the proceedings shall be deemed concluded and any information received subsequently shall be disregarded for purposes of the final opinion.

## **Section VI**

### **Conclusion of the Investigation**

**Art. 16.** DECOM shall conclude its investigation within six months of the publication of the Order authorizing launch of the investigation, except in exceptional circumstances, in which case the investigation may run nine months.

**Art. 17.** The investigation shall be concluded without a recommendation for extension of the anti-dumping measures in question where:

I        there is insufficient evidence of circumvention practices;

II       the value of the parts, pieces, or components originating in or from the country subject to the anti-dumping measure represents less than 60 per cent of the value of the parts, pieces, or components of the good; or

III      the total value-added of the production process is greater than 25 per cent of the manufacturing cost.

Sole Paragraph. For the purpose of this Directive, the manufacturing costs include all variable and fixed production costs, except depreciation and packaging expenses.

**Art. 18.** The investigation shall be concluded with a recommendation for extension of the anti-dumping measure in force where DECOM arrives at a positive determination as to the existence of circumvention practices.

**Art. 19.** Positive determination as to the existence of circumvention practices constitutes a breach of price commitments subject to the provisions of article 38 and article 43, paragraph 2, of Decree 1602 of 1995.

## **CHAPTER III**

### **PROCEDURAL ACTS AND TERMS**

**Art. 20.** Procedural acts and terms are not contingent on a special format, such that interested parties must observe the instructions set forth in this Directive for preparation of all pertinent general applications and documents. Applications and documents not prepared as established herein shall not be attached to the Case File.

Paragraph 1. All procedural acts and terms shall be submitted in writing and all hearings reduced to writing in Portuguese, to which end the inclusion of any documents in the Case File originally written in a foreign language shall require a certified translation.

Paragraph 2. All procedural acts are public and the right to consult the Case File and request the status of the investigation is restricted to the interested parties and their legal representatives, with the exception of confidential information and internal government documents.



## **CHAPTER IV GENERAL PROVISIONS**

**Art. 21.** The time period established in this Directive shall commence on the date of issuance of the respective correspondence. Running of such time periods shall not include the date of commencement but shall include the date of expiry.

Paragraph 1. Running of the time period shall commence on the first business day following issuance of the respective correspondence.

Paragraph 2. All responses and information requested by DECOM shall be registered at the General Protocol Desk of the Ministry of Development, Industry, and Foreign Trade through the date of expiry. The time period shall be extended to the following business day where the date of expiry falls on a non-business day or the respective business day ends before the conclusion of normal business hours.

Paragraph 3. The time periods expressed in days shall be counted continuously. The deadlines established in months or years shall run from beginning date to end date. In the event the month of expiry does not have an equivalent day to that of the month of commencement, the date of expiry shall be the last day of the month of expiry.

Paragraph 4. Extension requests permitted under this Directive shall only be received if submitted prior to the original deadline.

**Art. 22.** The time periods in this Directive may be extended one time for the same period, except for those cases for which the extension has already been established.

**Art. 23.** This Directive shall enter into force on the date of its publication.

**WELBER BARRAL**

ANNEX

STATUS REPORT							
INTERESTED PARTY: CORPORATE TAXPAYER NO. NAME OF OPTICAL FORMAT DATE RECORDED SUMMARY DESCRIPTION OF CONTENT					<div style="border: 1px solid black; padding: 10px; min-height: 150px;"> Signatures   <div style="text-align: center; margin-top: 20px;">Responsible Technician</div> <div style="text-align: center; margin-top: 20px;">Legal Representative</div> </div>		
Annex	Name of corresponding file	Size of compressed file (bytes)	Size of compressed file (bytes)	Employee responsible for the information	Signature	Technician responsible for recording the file	Signature

**PHYSICAL FORMAT:** ( ) CD ( ) DVD ( ) OTHER (specify\_\_\_\_\_)

<b>I certify that the attached physical format contains a protected and unprotected copy of the above described files, in a confidential and non-confidential version, respectively.</b>	
Location and date	
Legal Representative:	Legal Representative:
Name:	Name:
Individual Taxpayer No:	Individual Taxpayer No:
Telephone:	Telephone:
Fax:	Fax:
Email:	Email:

**(\*) Republished due to non-publication of Annex in the Official Gazette of 20 October 2010**

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