

ENGLISH VERSION

(FOR REFERENCE ONLY)

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Disposes on the special procedure of non-preferential origin verification in applying the provisions of article 33 of Law 12,546, of December 14th, 2011.

THE SECRETARY OF FOREIGN TRADE OF THE MINISTRY OF DEVELOPMENT, INDUSTRY AND FOREIGN TRADE, in compliance with the responsibilities provided in Article 15 of Annex 1, Decree nº 7.096, dated February 4th, 2010, and in view of the article 45 of Law 12.546, dated December 14th, 2011, and the dispositions in the Agreement on Rules of Origin of the World Trade Organization – WTO, promulgated by Decree nº 1.355, dated December 30th, 1994, decides:

Art. 1º The Secretariat of Foreign Trade (SECEX), through the Department of International Negotiations (DEINT), promotes the non-preferential origin verification under the aspects of authenticity, veracity and compliance with the rules laid down in Law No. 12,546, of December 14th, 2011.

CHAPTER I

IMPORT LICENSES SUBJECTED TO A SPECIAL PROCEDURE OF NON-PREFERENTIAL ORIGIN VERIFICATION

Art. 2º Imports under license, for purposes of implementing non-preferential commercial policy instruments, especially those of trade defense, may be the object of a special procedure of non-preferential origin verification regulated by this Ordinance.

§ 1º The non-preferential origin verification will be carried out by complaint or letter, during the import licensing stage and will be instructed by its own special procedure, according to the rules set forth in this Ordinance.

§ 2º DEINT will select, through a risk analysis, which license applicants will be subject to the special procedure of non-preferential origin verification, considering among other factors:

I - history of Brazilian imports of the good mentioned on the application for the import license;

II - history of Brazilian imports related to the producer and the exporter listed in the application for the import license;

III - history of operations carried out by the importer;

IV - history of the good exports held by the country of declared origin shown on the application of the import license; and

V - founded denounces submitted to SECEX in the form of Chapter II of this Ordinance.

§ 3° The selection of the application for import license for a non-preferential origin verification shall be informed to the importer through the Integrated Foreign Trade System (SISCOMEX).

Art. 3° The application for import license of the good subject to the verification will only be granted after the conclusion of the special procedure to prove the origin declared.

Art. 4° The lack of confirmation of the declared origin implies the rejection of the import license applications referred to in art. 2.

Sole paragraph. After the rejection of the application for import license for a given good, SECEX will extend the measure to the imports of identical goods from the same producer until it is demonstrated compliance with the rules of origin.

Art. 5° The non-preferential origin verification referred to in the art. 2° may, at the discretion of DEINT, be extended to other producers of the good, as long as they have the same declared origin.

Sole paragraph. The non-preferential origin verification of the caput shall observe, when applicable, the provisions of this Ordinance.

CHAPTER II

PRESENTATION OF DENOUNCES

Art. 6° Denounces regarding non-compliance with the non-preferential rules of origin on the import of goods subject to trade defense measures, or other non-preferential trade policy instruments must be directed to DEINT.

Sole paragraph. The denouncement shall be submitted in accordance with art. 52, in writing and in the vernacular and should be accompanied with the following information:

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

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

III – good’s classification on the Mercosur Common Nomenclature (NCM);

IV - detailed description of the good, containing main characteristics and destination of use, accompanied by catalogs, when necessary;

V - detailed description of the facts underlying the denouncement, stating the country of origin concerned;

VI - detailed description of the production processes of the good, stating especially the inputs used and their classification in NCM;

VII - changes in Brazilian import flows of goods by country of origin, especially those occurring after the beginning of the procedure leading to the implementation of non-preferential

commercial policy instruments, including the application or the last extension of trade defense measures;

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

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

Art. 7° The denouncement will undergo a preliminary examination in order to verify whether it is appropriate or if further information is required.

§ 1° The denouncement may be filed when not provided as instructed in the sole paragraph of art. 6° or when the additional information required is not submitted within the stipulated time.

§ 2° The deadline for the provision of the additional information will be set by DEINT depending on the nature of such information and shall not be less than ten days from the date of request.

§ 3° If the complainant considers that there is confidential information, it shall file both a confidential version and a restricted version of the denouncement.

§ 4° Documents filed without the "confidential" sign will be treated as restricted documents to interested parties.

§ 5° The complainant will be informed of the results of the preliminary examination within twenty days from the receipt of the denouncement or additional information on the SECEX protocol.

Art. 8. The complainant will not be subject to any penalty due to the denouncement, except in the case of proven bad faith, in which case the civil and criminal consequences provided by law shall apply.

Art. 9. If, after the preliminary examination, DEINT finds that the denouncement offers clues pointing to relevant risks of non-compliance with rules of origin described in arts. 31 and 32 of Law No. 12,546, 2011, the information contained in the denouncement will be used for risk analysis referred to in § 2 of art. 2 of this Ordinance, aiming to identify applications for import licenses that may be subject to the application of special procedure of non-preferential origin verification.

CHAPTER III

SPECIAL PROCEDURE OF NON-PREFERENTIAL ORIGIN VERIFICATION

Section I

Initial Procedure

Art. 10. The special procedure of non-preferential origin verification will be started upon notification to the parties concerned, based on information contained in the application for import license and the Declaration of Origin.

Sole paragraph. The notification shall be sent directly to the person concerned or their legal representatives.

Art. 11. For purposes of this Ordinance, stakeholders are considered:

I - the complainant;

II - the importer;

III - the exporter;

IV - the foreign producer;

V - the government of the country of origin; and

VI - other parts, domestic or foreign, considered by DEINT to be concerned in view of the particular case.

§ 1 For the purposes of compliance with the obligations set forth in this Ordinance, the official communications with the country of origin will be sent to their official representation in Brazil.

§ 2 If there is no official representation in Brazil, the official communications with the country of origin rule will be sent to their official representation in another country.

Section II

Procedure Instruction

Art. 12°. It is DEINT's responsibility to instruct the special procedure of non-preferential origin verification as described in this Chapter.

Art. 13°. The instruction activities designed to ascertain and certify the origin of the goods will be carried out based on information supplied by interested parties, documentary evidence, technical visits to establishments of domestic producers of similar goods to the object that is subject to the non-preferential origin verification, on-the-spot verification in the production plant and the producer's office, in addition to other actions that may be necessary.

Sole paragraph. Stakeholders will have ample opportunity to defend their interests.

Art.14°. DEINT will send a questionnaire to both the producer and the exporter through which are requested the necessary information for the verification of manufacturing in the country of declared origin, according to the origin criteria established by Brazilian law.

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

I - the production establishment location;

II - the manufacturing process;

III - plant layout;

IV - constituent raw materials of the good, as well as their origin and utilization rates;

V - History of purchasing operations of raw materials used in the production of the good; and

VI - operational capacity and volume of the good production.

§ 2° DEINT will transmit copies of the questionnaire to the importer, to his knowledge.

§ 3° The questionnaire must be fully completed and filed, as provided in art. 52, within twenty days from the date of its acknowledgement, accompanied by the suitable documentation to confirm the information provided.

§ 4° The period referred to in § 3 may be extended up to ten days, counting from the end of the original term, on duly justified request, submitted before the expiration of the original term.

§ 5° Additional information to those contained in the responses to questionnaires may be requested by granting the period of ten days to reply, from the acknowledgement of the request, extendable upon request and when duly justified, for up to ten days.

Art. 15° During this initial phase, interested parties may provide the information judged relevant to the non-preferential origin verification.

Art. 16° Interested parties are responsible for cooperating with the verification of origin and providing all the information requested, duly accompanied by supporting evidence, bearing any consequences of its omission.

§ 1° If any interested party refuses access to the requested information, does not meet the deadlines, fill out the questionnaire in an incomplete or unsatisfactory way, does not authorize the on-the-spot verification or create any other obstacles to the non-preferential origin verification, DEINT may prepare its conclusions based on the facts and information available, including those contained in the denounce.

§ 2° The importer is jointly responsible for the information presented by the producer and exporter company regarding goods it has imported.

Art. 17° All documents submitted by interested parties shall be joined to the respective case file, in chronological order, except those received unexpectedly or in violation of the applicable rules.

§ 1° The non-acceptance by DEINT of untimely or disagreeing with the applicable rules information shall be recorded in the file and notified to the interested parties, along with the reason for refusal.

§ 2° The documents submitted out of time or in violation of the rules will not be considered for purposes of the non-preferential origin verification and, if not removed by its responsible within the deadline determined by DEINT, will be destroyed.

Section III

On-the-Spot verification

Art. 18° DEINT shall notify the producing company the intention to carry out on-the-spot verification in their establishment whenever it seems necessary to examine the processes and facilities used in the manufacturing of the good, and prove, through official documents of the company, the information provided during the non-preferential origin verification.

Art. 19° The on-the-spot verification at the establishment of the producing company will depend on its express consent and notification to the home country government.

Art. 20° The notification which refers the art. 18 will be formalized in writing, with suggested date for a visit.

Sole paragraph. In case of failure on the part of the production company to authorize the on-the-spot verification on the suggested date another date will be set in agreement with the DEINT.

Art. 21° The production company should express in writing their express consent for conducting the verification on site within five days from the acknowledgement of communication.

Art. 22° The lack of timely response or the refusal to the on-the-spot verification by the production company may give rise to the application of § 1 of art. 16.

Art. 23° The on-the-spot verification should be carried out by at least two servers of SECEX, which may request the participation of previously identified experts to provide technical assistance, duly authorized by the production company.

Art. 24° Except as provided in art. 26, changes in the information will not be allowed after submission of the notification referred to art. 18.

Art. 25° DEINT shall send, within ten days before the date of the on-the-spot verification, the tour itinerary containing clarifications on the information that will be requested and analyzed, as well the documents that will be requested during the on-the-spot verification.

Art. 26. At the beginning of the on-the-spot verification, the responsible team will offer the company the opportunity to provide clarification regarding the information previously submitted under the special procedure of non-preferential origin verification.

Art. 27. The DEINT analysis of the clarifications provided will be part of the on-the-spot verification report, which will be separately available to the interested party within fifteen days from the date of the verification team server's departure from the country.

Art. 28 Additional information requests may be made during the visit, as a result of information obtained on the on-the-spot verification.

Art. 29. If the on-the-spot verification is at course in more than one company, the period referred to in art. 27 above shall be increased by ten days.

Art. 30. The on-the-spot verification report will be joined to the case file.

Art. 31. The realization of the on-the-spot verification referred to in the caput may be extended to the exporter, applying, as appropriate, the Articles of this Section.

Art. 32. DEINT may request the provision of technical assistance organizations and recognized experts, as well as technical visits to the establishment of domestic producers in order to obtain information on the composition and production process of similar goods to the ones subject to the non-preferential origin verification.

Section IV

Preliminary report

Art. 33. DEINT shall prepare a report with preliminary findings about the essential facts contained in the administrative procedure which instructed the special procedure of non-preferential origin verification.

Sole paragraph. The preliminary report must contain the essential facts which form the basis for completion of DEINT and should clearly indicate whether the good subject to the non-preferential origin verification complies with the rules set forth in articles 31 and 32 of Law No. 12,546, 2011.

Art. 34. DEINT shall notify the stakeholders of the preliminary result of the non-preferential origin verification, granting them a period of ten days from the acknowledgement of the notification to present their final manifestations in writing.

§ 1 The demonstration of stakeholders should be limited to the contents of the preliminary report.

§ 2 The evidence submitted by interested parties after the preliminary report will not be joined to the case file and shall receive treatment provisions of art. 17, paragraph 2.

Section V

Final report

Art. 35. Once the period for the manifestation of the interested parties, pursuant to art. 34, caput, is over, DEINT shall prepare the final report on the facts and evidence motivated the special procedure of non-preferential origin verification and conclusions about the compliance with the rules described in articles 31 and 32 of Law No. 12,546, 2011.

Section VI

Reasons for Termination

Art. 36. SECEX shall, through Ordinance, publish the final result of the non-preferential origin verification, stating:

- I - description and classification in NCM of the good subject to verification;
- II - company declared as the producer of the good subject to verification;

III - country declared as the source of the good subject to verification;

IV - if the good meets the non-preferential rules of origin provided in arts. 31 and 32 of Law No. 12,546, 2011; and

V - on the approval or rejection of import license applications.

Art. 37. The final results will be published and the special procedure of non-preferential origin verification shall be terminated within one hundred and fifty days from the date of commencement.

Sole paragraph. The term of forth in the caput may be extended for up to thirty days by decision of DEINT which shall be communicated to interested parties.

Art. 38. DEINT may, by reasoned decision, terminate the special procedure of non-preferential origin verification earlier.

§ 1. If the special procedure of non-preferential origin verification is terminated, the case file will be archived and the licensing request may be granted.

§ 2. The closure of the procedure shall take place within communication to interested parties without the need for publication of an Ordinance, as referred to in art. 36.

CHAPTER IV

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

Art. 39. The parties referred to in art. 11 may, pursuant to art. 52, request by petition a review of the outcome of the special procedure of non-preferential origin verification, after a period of one year after its publication.

§ 1. The petition for review of the origin of the good must be substantiated and accompanied by all the information that the petitioner afford for this purpose, which will be preliminarily examined in order to verify whether the request is justified and if complementary information is needed.

§ 2. In exceptional cases, a review may be initiated in a lesser period than that referred to above, if it is duly justified.

Art. 40. The review procedure shall follow the rules laid down in Chapter III of this Ordinance, as applicable.

Art. 41. DEINT will notify the stakeholders in the beginning of the review under the protection of this Chapter.

Art. 42. The interested parties will have ample opportunity to present in writing all evidence considered relevant to the review.

Art. 43. The deadline of the review will observe the provisions of art. 37.

Art. 44. SECEX will publish, by Ordinance, the outcome of the review procedure.

Art. 45. The Executive Ordinance which made public the final results towards no proof of the declared origin will be reviewed in case of suspension or termination of the non-preferential instrument of trade policy, including trade protection measures that justified the mentioned procedure of non-preferential origin verification.

CHAPTER V

CONFIDENTIALITY OF INFORMATION

Art. 46. The information provided on a confidential basis must be accompanied by justification and shall not be disclosed without specific permission of the party which supplied them.

§ 1. The statement of confidentiality of the documents is responsibility of the party which supplied them and must be contained in every page, centralized at the top and bottom of each page, in red.

§ 2. Interested parties providing confidential information shall submit simultaneously a restricted summary that allows the comprehension of the information provided, under penalty of being disregarded.

§ 3. In the cases when the presentation of restricted summary is not possible, the parties shall present in writing such a circumstance.

§ 4 The justifications mentioned in the caput and § 3 shall not constitute confidential information.

§ 5 Will not be considered confidential documents, data and information, among others:

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

II - concerning:

a) the ownership structure and its driver identification;

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

c) the description of inputs, as well as their origins;

d) any contracts celebrated by public deed or filed with a public notary or commercial registry, in Brazil or abroad; and

e) the equity, financial and business statements of a public company; similar to a public company; or companies controlled by public companies, including foreign ones, and its wholly owned subsidiaries, which must be published or disclosed by virtue of corporate law or the securities market.

§ 6 The restricted summary concerning confidential numerical information should be presented in numeric format, in the form of index numbers, among others.

§ 7 At the discretion of DEINT, shall not be considered information provided on a confidential basis, when the confidential treatment can result in the curtailment of the right of defense and the contradictory of other stakeholders.

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

§ 9 If DEINT considers the request for confidentiality unjustified and the interested party who provided the information refuses to adapt it to filing to the restricted case, the information may be disregarded.

CHAPTER VI

DEADLINES

Art. 47° The time limits provided in this Ordinance shall be accounted racing form, including the due date.

Sole paragraph. The deadline will be considered extended until the next working day if the due date falls on a day when there is no work or it is terminated before the normal time.

Art. 48° It is assumed that stakeholders domiciled abroad will have knowledge of the questionnaire and correspondence provided by DEINT ten days after the date of dispatch, as interested parties domiciled in Brazil will have knowledge of the correspondence by five days after the date of dispatch.

Art. 49° The counting begins on the first business day following the date of acknowledgment of stakeholders.

Art. 50° Requests for extension, when admitted, can only be known if submitted before the expiration of the original term and the first day of the extended period will be the following day to the expiration of the original term.

Art. 51° The extension of time adds to the original, and the total resulting time shall be counted without interruption from the beginning of the original term.

CHAPTER VII

GENERAL PROVISIONS

Art. 52° The denounces, questionnaires, additional information, letters, documents, petitions and other expedients directed to DEINT by virtue of the provisions of this Ordinance shall be delivered on a physical mean to SECEX Protocol of the Ministry of Development, Industry and Foreign Trade, located in EQN 102/103, Lote 1 - CEP 70722-400 - Brasília - DF, properly identified and addressed to DEINT until the expiration of the term.

§ 1 The deadline extension requests and the manifestation of consent for conducting the on-the-spot verification may be made by e-mail addressed to DEINT.

§ 2 The communications to DEINT may be published in the official languages of the World Trade Organization (WTO) being incorporated into the file in this condition.

§ 3. Whenever deemed necessary, DEINT may request an official translation of certain documents.

§ 4 In the case of documents prepared in foreign languages for which there is no public translator in Brazil, will be accepted translations into Portuguese made by the official representation of the country of origin of the object, as long as accompanied by official communication confirming the translation authorship.

Art. 53° It will be provided to all interested parties the right to view the file and obtain reprographic copies of data and documents that are part of the procedure, except for confidential information and documents.

§ 1 The request may be made by e-mail addressed to DEINT.

Art. 54° Whenever it deems necessary, DEINT shall request proof of power of representation of the parties.

CHAPTER VIII

FINAL PROVISIONS

Art. 55° To all the administrative procedures set out in this Ordinance applies Law no. 9,784 of January 29th, 1999, and the CAMEX Resolution No. 80 of November 9th, 2010.

Art. 56° All non-preferential origin verifications that have started before the entry into force of this Ordinance continue to be governed by the SECEX Ordinance No. 39 of November 11th, 2011.

Art. 57° DEINT may extend, for once and for the same period, the time limits provided in this Ordinance, except those in which the extension or the ban are already provided.

Art. 58° This Ordinance shall enter into force on the date of its publication.

Art. 59° It is hereby revoked the SECEX Ordinance No. 39 of November 11th, 2011.

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