INTERNATIONAL TRADE / WTO

CLIENT ALERT

JANUARY/2020

NEW ORDINANCE MODIFIES PUBLIC INTEREST RULES ON TRADE REMEDY PROCEEDINGS

On January 30, 2020, SECEX Ordinance nº 13 was published, modifying rules of public interest proceedings on trade remedy investigations and review on topics such as timing of the proceeding, participation of foreign producers/exporters, confidentiality and suspension of measures applied.

The new Ordinance substitutes the also recent SECINT Ordinance nº 8 from April 2019, published last year to reformulate public interest examinations and bring about changes such as the mandatory simultaneous analysis of public interest and original investigations or sunset reviews.

The new Ordinance brought several changes with respect to the previous one and also in relation to Decree nº 8.058/2013, which regulates anti-dumping proceedings.

The first change relates to the possibility of initiation of a public interest evaluation, in exceptional circumstances, at a period other than the initiation of the original investigation or the sunset review (art. 7). Ordinance nº 8/2019 limited the initiation of public interest proceedings to the moment of the initiation of original investigations and sunset reviews, preventing the analysis of public interest cases at other moments.

Another relevant change relates to the participation of foreign producers/exporters in the public interest evaluation. The new Ordinance determines that an investigation will not be initiated exclusively based on the response of a foreign producer/exporter or of foreign governments that do not collaborate with the sunset review (§7, art. 6), thus forcing the participation of the foreign producer/exporter in the trade remedy investigation.

The new Ordinance also indicates that those that are considered interested parties in the anti-dumping and countervailing investigations will automatically be considered interested parties in the public interest investigation (§2 from art. 8) and, upon request, those that may be affected by the application of the trade remedy measure might also be considered interested parties (caption, art. 8).

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The previous Ordinance only considered interested parties those that were considered interested parties in the trade remedy proceedings.

There have also been significant changes related to the suspension of measures, increasing the procedures for revoking or extending it. The act that provides for the suspension of the measure may establish, after the end of the suspension period, the automatic application of the anti-dumping measure or not. If the automatic application is expressly established, requests for extension of the suspension may be submitted (art. 17). On the other hand, if automatic application after suspension is not established, requests to reapply the measure may be submitted (art. 15). Both requests involve the filing of questionnaires and statements from other interested parties. Based on that information, SDCOM will prepare its recommendation and the Executive Committee of CAMEX will issue its decision.

Thus, the analysis to revoke the suspension is now longer than originally envisioned in the Decree.

The Ordinance also contains different provisions on confidentiality when compared to Decree nº 8.058/2013. While the Decree identifies that production volume, domestic sales, exports, imports, inventories and financial statements will not be considered confidential information (art. 51), the new Ordinance identifies that, among others, the value and quantity of sales and the financial statements may be considered confidential. (art. 9).

The new Ordinance applies to ongoing investigations on the date of its publication (art. 28). In other words, all public interest evaluations, even ongoing proceedings, will be subject to the provisions of the new Ordinance.

Click here for a new consolidated public interest and trade remedy guide published by the Ministry of Economy (in Portuguese).

We remain at your disposal should you have any questions or need any further assistance.

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