

# Case Study on “Threat of Material Injury”: Brazil



**SDCOM**

SUBSECRETARIA DE DEFESA COMERCIAL  
E INTERESSE PÚBLICO

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# Overview

- 1. Definition of “threat of material injury”**
- 2. Decision to initiate a threat of material injury analysis**
- 3. Information requested from interested parties**
- 4. Analysis carried out by SDCOM**



## Overview

# 1. Definition of “threat of material injury”

1.1. Anti-Dumping Agreement

1.2. Brazilian legislation: Decree N. 8,058 of 2013



# 1. Definition of “threat of material injury”

## 1.1. Anti-Dumping Agreement

ADA, Footnote 9

Under this Agreement the term “injury” shall, unless otherwise specified, be taken to mean material injury to a domestic industry, **threat of material injury to a domestic industry** or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.



# 1. Definition of “threat of material injury”

## 1.1. Anti-Dumping Agreement

### ADA, Article 3.7

A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.

### Footnote 10

One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.



# 1. Definition of “threat of material injury”

## 1.2. Brazilian legislation: Decree N. 8,058 of 2013

### Reinforces the provisions foreseen in ADA

- The determination of a threat of material injury shall be based on the possibility of occurrence of **clearly foreseeable and imminent facts**;
- 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**;



# 1. Definition of “threat of material injury”

## 1.2. Brazilian legislation: Decree N. 8,058 of 2013

### Reinforces the provisions foreseen in ADA

- Factors to be considered when assessing the effect of further dumped imports on the domestic industry:
  - 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;
  - 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;



# 1. Definition of “threat of material injury”

## 1.2. Brazilian legislation: Decree N. 8,058 of 2013

### Reinforces the provisions foreseen in ADA

- Factors to be considered when assessing the effect of further dumped imports on the domestic industry: (cont.)
  - imports 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
  - the existence of inventories of the product under investigation.





# 1. Definition of “threat of material injury”

## 1.2. Brazilian legislation: Decree N. 8,058 of 2013

Reinforces the provisions foreseen in ADA

Obs: determination must be based on the consideration of the **totality of the aforementioned factors**, with no one of the factors by itself being able to necessarily give decisive guidance.



# 1. Definition of “threat of material injury”

## 1.2. Brazilian legislation: Decree N. 8,058 of 2013

### Includes WTO Plus provisions

#### Egypt – Steel Rebar (DS211)

Decree No. 8058, of 2013 - Paragraph 2 of Article 33:

The future events (...) must be **capable of changing the circumstances**, thus creating a situation in which **material injury** to the domestic industry **would result from additional dumped imports.**”

#### Mexico – Corn Syrup (DS132)

Decree No. 8058, of 2013 - Paragraph 3 of Article 33:

“The **assessment of the material injury** provided for in paragraph 2 shall be based on the **criteria** established [for the evaluation of all relevant factors and indices having a bearing on the state of the concerned industry].”



# 1. Definition of “threat of material injury”

## 1.2. Brazilian legislation: Decree N. 8,058 of 2013

Provides for 3 (three) types of injury

- **material injury** to the domestic industry;
- **threat of material injury** to the domestic industry;  
or
- **material retardation** of the establishment of the domestic industry



## Overview

# 2. Decision to initiate a threat of material injury analysis

2.1. Is there a pre-established moment for this decision?

2.2. Does SDCOM's decision depend on a formal request or submission by interested parties?



## 2. Decision to initiate a threat of material injury analysis

### 2.1. Is there a pre-established moment for this decision?

- There is not a specific moment in the investigation until which SDCOM must decide between an analysis of material injury or of threat of material injury to the domestic industry.
- Such decision will depend on the information submitted by interested parties and, although unusual, may change throughout the investigation.
- **Generally, it is done by the initiation of the process.**



## 2. Decision to initiate a threat of material injury analysis

### 2.2. Does SDCOM's decision depend on a formal request or submission by interested parties?

When presenting an application to initiate an investigation, petitioners must decide between a case of material injury or of threat of material injury to the domestic industry.

- if there is sufficient evidence related to the petitioner's hypothesis, the investigation will be initiated based on the petitioner's choice.

Once the investigation is initiated, if other domestic producers present their answers to the questionnaires sent by SDCOM, the data presented might lead the investigating authority to change the injury hypothesis presented by the petitioner.



## Overview

# 3. Information requested from interested parties

- 3.1. Information requested in the application
- 3.2. Information requested in questionnaires
- 3.3. Period of injury determination in the case of  
threat of material injury



## 3. Information requested from interested parties

### 3.1. Information requested in the application:

- If the petitioner opts for a case of threat of material injury: in addition to the information requested for applications for AD investigations, the following data must be provided:

- I – **production capacity** in the exporting country/countries;
- II – **forecasts of increase in the production capacity** in the exporting country/countries;
- III – **idle capacity** in the exporting country/countries, indicating the respective production volumes;
- IV – **inventories** in the exporting country/countries; (cont.)





## 3. Information requested from interested parties

### 3.1. Information requested in the application:

- If the petitioner opts for a case of threat of material injury: in addition to the information requested for applications for AD investigations, the following data must be provided: (cont.)

V – **restrictive measures applied by other countries**, including anti-dumping rights capable of justifying the diversion of trade flows;

VI – the **reasons to believe that Brazilian imports will increase**, considering the existence of other potential import markets;

VII – the **evolution of exports from the exporting country/countries**; and

VIII – the **effective or potential production capacity from the exporting country/countries to Brazil**.



## **3. Information requested from interested parties**

### **3.2. Information requested in the questionnaires:**

- In case of existence of other domestic producers other than the petitioners, SDCOM sends them questionnaires requesting for additional information regarding threat of material injury.



## 3. Information requested from interested parties

### 3.3. Period of investigation of threat of material injury

- As a rule: same period of injury analysis
  - (5 years)
- Ordinance SECEX N. 41, of 2013:
  - asks for information regarding this period and provides no exception when it comes to threat of injury.



# Overview

## 4. Analysis carried out by SDCOM

4.1. Criteria for analysis

4.2. Elements to be assessed



## 4. Determination of threat of material injury

### 4.1. Criteria for analysis

- **Decree N. 8,058, of 2013**

- i. It must be demonstrated:

- Likelihood of occurrence of clearly foreseeable and imminent facts capable of changing the current circumstances;
- Likelihood of additional dumped imports and its conditions; and
- Potential of these additional imports to cause material injury to the domestic industry.

- ii. It must not be based on allegation, conjecture or remote possibility.



## 4. Determination of threat of material injury

### 4.2. Elements to be assessed

- Material injury that would result from additional dumped imports:
  - Evaluation of all relevant economic factors and indices, 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.



## 4. Determination of threat of material injury

### 4.2. Elements to be assessed

- Material injury that would result from additional dumped imports:
  - Evaluation of all relevant economic factors and indices, including:
    - 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.



## 4. Determination of threat of material injury

### 4.2. Elements to be assessed

- Factors to be considered when assessing the effect of further dumped imports on the domestic industry:
  - I. Significant rate of increase of dumped imports 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;
  - 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.





## 4. Determination of threat of material injury

### 4.2. Elements to be assessed

- Factors to be considered when assessing the effect of further dumped imports on the domestic industry:

“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 aforementioned, with no one of the factors by itself being able to necessarily give decisive guidance.”



## 4. Determination of threat of material injury

### 4.2. Elements to be assessed

- In the analysis of the effect of further dumped imports on the domestic industry:
  - I. the existence of other markets able to absorb any potential increase of exports shall be considered;
  - II. 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 be considered.



## **Final remarks**

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**Thank you!**



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