



MINISTRY OF INDUSTRY, FOREIGN TRADE AND SERVICES
SECRETARIAT OF FOREIGN TRADE

ORDINANCE No. 41, DATED JULY 31, 2018

Provides for the necessary information to qualify the national production of a particular product as fragmented industry for purposes of trade defense, according to Decree No. 9.107, dated July 26, 2017.

THE SECRETARY OF FOREIGN TRADE OF THE MINISTRY OF INDUSTRY, FOREIGN TRADE AND SERVICES, in the exercise of the duties conferred by article 18, sub-paragraph II of the Annex I of Decree No. 9.260, dated 29 December 2017, and taking into account the provisions of Decree No. 9.107, dated 26 July 2017, resolves as follows:

CHAPTER I
GENERAL INFORMATION

Article 1. The Department of Trade Remedies – DECOM will determine whether the national production of a particular product qualifies as fragmented industry, subject to the provisions of this Ordinance.

Paragraph 1. It is considered a fragmented industry one which involves a large number of domestic producers.

Paragraph 2. The determination foreseen in paragraph 1 shall consider, among other factors, the degree of pulverization of the national production of the product concerned and the distribution by size of national producers.

Article 2. The qualification procedure referred to in article 1 shall be concluded before the submission of the application of the trade remedy investigation.

Paragraph 1. The qualification as fragmented industry shall be requested by:

I- domestic producers of the like product or their representative trade associations, in cases of dumping investigation or actionable subsidies; or

II- domestic producers of the like product or directly competitive products or their representative trade associations, in cases of investigation with a view to the imposition of safeguard measures.

Paragraph 2. The request referred to in this article shall be prepared in accordance with the provisions of Chapter III of this Ordinance.

Article 3. Requests for qualification that do not comply with the requirements of this Ordinance or that require significant corrections, adjustments or supplementary information which cannot be presented under the terms of the paragraph 2 of article 11, may be denied.

Article 4. All information submitted shall be accompanied by relevant evidence, justification and sources and methodologies used.

Paragraph 1. DECOM may use information contained in governmental entities or public records or databases to establish its final decision.

Paragraph 2. On-the-spot investigation may be conducted by DECOM to confirm the information submitted to justify the request for qualification of the national production of a particular product as fragmented industry.

Article 5. One confidential version and one non-confidential version of the request shall be filed simultaneously.

Article 6. Filed documents not labeled “confidential” or “restricted” shall be regarded as public documents.

Article 7. The qualification of the national production of a particular product as fragmented industry will remain valid until otherwise decided by DECOM.

Article 8. The request for qualification as fragmented industry shall be filed with the General Protocol of the Ministry of Industry, Foreign Trade and Services, located in “Esplanada dos Ministérios, Bloco J, andar térreo, Brasília – DF, CEP 70.053-900”.

Article 9. Questions and clarification requests shall be sent to DECOM at e-mail address decom@mdic.gov.br.

CHAPTER II QUALIFICATION PROCEDURE

Article 10. The date of initiation of the qualification procedure as fragmented industry shall be the protocol date of its request.

Article 11. The request for qualification as fragmented industry shall be examined within a period of fifteen days from its protocol date.

Paragraph 1. Where the request is properly documented and does not require supplementary information, at the end of the period of examination referred to in the **chapeau**, the applicant shall be notified of DECOM’s decision and its reasoning.

Paragraph 2. Supplementary information may be requested to the applicant, who shall present them within a period of five days from the date of acknowledgment of the request, period which may be extended for further five days, upon request and when duly justified.

Paragraph 3. Supplementary information shall be examined within a period of ten days from the date of the receipt thereof.

Paragraph 4. At the end of the period established in paragraph 3, the applicant shall be notified of DECOM's decision and its reasoning within a period of two business days.

Paragraph 5. Once the qualification as a fragmented industry is granted, the application for trade remedy investigation shall be filed within the period of time defined by DECOM in the notification referred to in paragraphs 1 and 4 of this article, period which shall never exceed ten months of the end of the period of investigation referred to in article 17 of this Ordinance.

Paragraph 6. If the application for trade remedy investigation is not filed within the time limit defined by DECOM, as provided in paragraph 5 of this article, a new request for qualification of the national production of a particular product as fragmented industry shall be filed.

Paragraph 7. Where the qualification as a fragmented industry is denied, the application for trade remedy investigation shall be prepared exclusively using the format required by SECEX in the acts that regulate the trade remedies procedures for non-fragmented industries.

Article 12. Upon initiation of the trade remedy investigation, interested parties may submit their comments on DECOM's decision to qualify the national production of the product concerned as fragmented industry within the period of thirty days from the date of publication of the SECEX notice which publicly announces the initiation of the investigation.

Paragraph 1. All information submitted shall be accompanied by relevant evidence, justification and sources and methodologies used.

Paragraph 2. The domestic industry, whose production of the product subject to trade remedy investigation has been qualified as a fragmented industry, may submit its comments within a period of up to fifteen days from the end of the period referred to in the **chapeau**.

Paragraph 3. DECOM's decision on the maintenance of the status of the national production of the product subject to trade remedy investigation as a fragmented industry, after considering all the evidence brought by the interested parties, shall be informed within a period of up to sixty days from the end of the period referred to in paragraph 2.

Paragraph 4. If the decision referred to in the **chapeau** is reversed, the trade remedy investigation shall be immediately terminated, without examination on the merits.

Article 13. In accordance with the provisions of article 7 of this Ordinance, the qualification of the national production of a particular product as a fragmented industry may be used for the petitioning of other trade remedies procedures at a later date than the period provided for in paragraph 5 of article 11 of this Ordinance, after consulting DECOM.

Paragraph 1. The consultation referred to in the **chapeau** shall be made by means of a document directed to DECOM and shall contain the decision referred to in the **chapeau** of article 12 and the information mentioned in article 15, in item XII of article 16 and in articles 17 and 18 of this Ordinance.

Paragraph 2. DECOM shall decide on the use of a previous qualification within a period of fifteen days from the date of the consultation filing referred to in the **chapeau**.

Paragraph 3. At the end of the period mentioned in paragraph 2, the applicant will be notified of

DECOM's decision and of the deadline to file its petition.

Article 14. DECOM may initiate a review procedure to decide on the fragmentary status granted, **ex officio** or at the request of any interested party in the trade remedy investigation initiated under the terms of this Ordinance, who submit a written petition containing evidence that the circumstances that justified the qualification of the national production of a particular product as fragmented industry have changed.

CHAPTER III REQUEST CONTENT

Article 15. The request for qualification as fragmented industry shall contain:

I – information concerning the corporate name, complete address, telephone number and e-mail address of the applicant;

II – name, job position, complete address, telephone number and e-mail address of the legal representative at DECOM;

Article 16. The request for qualification as fragmented industry shall contain, in relation to the domestic like product or, in cases of investigation for the imposition of a safeguard measure, to the like product or the directly competitive product, the following information regarding the calendar year prior to the filing of the request, which may, exceptionally and duly justified, be prior to this period:

I – description, in detail, specifying, as applicable: raw material(s); chemical composition; physical characteristics, technical standards and specifications, production processes, uses and applications, interchangeability and channels of distribution;

II - any other characteristic considered relevant to the identification of the product produced by the applicant;

III – indication of the item(s) of the MERCOSUR Common Nomenclature under which the product to be assessed is commonly classified;

IV – number of domestic producers or an estimation;

V – volume of the national production or its estimation;

VI – volume of sales in Brazilian market or its estimation;

VII – distribution of the national producers by size or an estimation, based on sales revenue or number of employees, or based on a commonly adopted criterion in the sector;

VIII – geographical distribution of the national producers or its estimation;

IX – existence of association or class entity of the national producers and the number of associated companies;

X – listing of known domestic producers;

XI – individual production of the known domestic producers referred to in item X of the **chapeau** or, where this is not possible, the individual production of the largest known domestic producers;

XII – indication of the period considered necessary for the filing of the petition referred to in paragraph 5 of article 11 of this Ordinance.

Paragraph 1. The information listed in the **chapeau** do not constitute an exhaustive list, and none of the them on its own or together can necessarily give decisive guidance.

Paragraph 2. The information listed in the **chapeau** shall be accompanied by relevant evidence.

Paragraph 3. Where the information listed in the **chapeau** is presented on estimation basis, the applicant shall comply with the provisions of article 53 of Decree No. 8,058, dated 26 July 2013.

Paragraph 4. If the separate identification of the production of the product is not possible, the information may be submitted on the basis of the production of the narrowest group or range of products, which includes the domestic like product, or, in cases of investigation for the imposition of a safeguard measure, to the like product or the directly competitive product, for which the necessary information can be provided.

Article 17. The request for qualification as a fragmented industry shall indicate the period with which will be documented the petition referred to in the **chapeau** of article 2 of this Ordinance, concerning:

I- investigation of injury and threat of injury, in dumping investigations or countervailable subsidies investigations; or

II- investigation of serious injury or threat of serious injury, in cases of investigation for the imposition of a safeguard measure.

Art. 18. The applicant shall explain, based on the information indicated in article 16 and other information deemed relevant for the examination to be conducted by DECOM, how the fragmentary nature of the industry would make it difficult to file petition for a trade remedy investigation within the time limits set forth in the Brazilian trade defense regulations and in SECEX acts that regulate trade defense procedures for non-fragmented industries.

Paragraph 1. DECOM shall consider the explanation presented by the applicant under the terms of the **chapeau**, in assessing the petition for trade remedy investigation filed pursuant to paragraphs 1 and 4 of article 11 or of article 13 of this Ordinance.

Paragraph 2. Where the factors that motivated the qualification of a given national production as a fragmented industry are not confirmed by DECOM in the assessment referred to in paragraph 1, the petition for trade remedy investigation may be rejected, as well as the qualification of the production as a fragmented industry may be cancelled under the terms of article 7 of this Ordinance.

CAPÍTULO IV FINAL PROVISIONS

Art. 19. This Ordinance shall enter into force on the date of its publishing.

ABRÃO MIGUEL ÁRABE NETO