



The Handbook of Trade Enforcement 2008

Brazil

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Trade Law

Brazil has implemented article VI of the General Agreement on Tariffs and Trade (GATT) by means of Law 9,019/1995, which also establishes the Brazilian system of trade defence. Additionally, Executive Order 1,602/1995 establishes the administrative procedures concerning dumping investigations and imposition of provisional and definitive antidumping duties.

The Agreement on Subsidies and Countervailing Measures has been implemented through Executive Order 1,751/1995, which sets out the administrative procedures concerning imposition and determination of countervailing measures.

Finally, executive orders 1,488/1995 and 1,936/1996 have implemented the Agreement on Safeguards, setting out the criteria for defining serious harm to domestic industry, as well as the limits concerning the duration and scope of provisional or definitive safeguard measures.

The Brazilian system of trade defence

The Chamber of Foreign Commerce (CAMEX), headed by a council of ministers, including the ministers of foreign relations, finance, agriculture, and the minister of development, industry, and foreign commerce, is responsible for imposing, reviewing, suspending and ending provisional or definitive antidumping, countervailing or safeguard measures, as well as sanctioning price undertakings.

CAMEX's decisions are made following judgments by the Department of Trade Defence (DECOM). DECOM, functioning under the Secretariat of Foreign Commerce (SECEX) within the Ministry of Development, Industry, and Foreign Commerce (MDIC), is the agency responsible for initiating investigations and conducting administrative proceedings for determining dumping, identifying actionable subsidies, and serious injury to the domestic industry. Furthermore, DECOM assists Brazilian exporters by following investigations initiated by third-party countries.

The Department for Foreign Commerce Operations (DECEX), which also operates under SECEX, is the agency responsible for issuing import licences regarding operations in atypical or special regimes.

Trade remedies

As of April 2008, 63 definitive antidumping duties have been in force, covering 43 products from 23 different countries and the EU. One third of the duties have been imposed on goods from China. Moreover, DECOM has conducted 21 dumping investigations concerning 11 products from countries ranging from Austria to the United States. Additionally, one investigation concerned India's subsidies.

Judicial review of trade enforcement

In Brazil, all administrative orders and rulings are subject to judicial review pursuant to article 5, XXXV of the federal constitution. Thus, federal courts may review both findings of fact and law and, as a result, vacate, remand or overrule decisions by DECOM, DECEX, SECEX or CAMEX.

It has been a remarkable year for judicial oversight of trade enforcement. In the first antidumping duty determination reviewed by the Supreme Court, a decision by CAMEX's president was set aside on procedural grounds. Following a dumping investigation conducted by DECOM against Danish company Novo Nordisk AS, a major insulin producer, CAMEX's president sanctioned the imposition of a tariff of 76.1 per cent on insulin imports. The Supreme Court held, however, that the determination of antidumping duties must have been, as a matter of law, previously authorised by CAMEX's council of ministers. The process is pending as the administration has filed a petition before the court requesting it to either clarify or reconsider the ruling.

Secondly, the Superior Court of Justice (STJ) ruled that DECEX may lawfully refuse to issue import licences based on summary finding of possible dumping. In a case concerning imports of metallic cables from China, the STJ rejected the importer's contention that a determination of dumping must be preceded by an investigation conducted by DECOM and that, consequently, DECEX's refusal to issue an import licence had violated due process. The administration argued that the initiation of a dumping investigation requires an introduction of the relevant product into internal commerce. Siding with the administration, the court further ruled that, pursuant to Brazilian regulations, DECEX must track export prices and has the power and duty to intervene in order to avoid 'evident unfair trade posing a serious risk to the national economy.'

Thirdly, the Federal Court of Appeals for the 4th Region has confirmed its interpretation according to which antidumping duties are not applicable to products shipped from the exporting country before the publication of the administrative order imposing the measures

in the official gazette. Finally, federal courts reaffirmed the procedural rule according to which actions challenging acts by CAMEX must be filed directly before the Superior Court of Justice, pursuant to interpretation of the federal constitution.

Brazil and the Doha Round

Brazil has shown unequivocal interest in concluding the Doha Round in 2008 and has pressed both WTO members and domestic stakeholders to compromise in order to end the impasse. Brazil has agreed to significantly cut almost half of all import tariffs on industrial goods. In exchange, and as one of the leaders of the group of 20 developing nations, it has demanded a substantial reduction of tariffs, subsidies and export programmes that distort trade on agricultural goods, including ethanol and biodiesel. Moreover, it has demanded a degree of flexibility to safeguard sensitive industries such as its automotive, toys, shoes, and textile industries.

Lanna Peixoto Advogados

Lanna Peixoto Advogados (LP) is a highly specialised firm providing premier and customised legal services in the areas of Brazilian and international trade law, antitrust law, trademarks and unfair competition, and regulation of network industries. LP has advised leading companies and international law firms in investigations of dumping, actionable subsidies, and injury to the Brazilian industry. It has also counseled and represented foreign companies and trade associations in administrative procedures before the Brazilian Department of Trade Defence, the Chamber of Foreign Commerce, the Secretariat of Foreign Commerce, the Department for Foreign Commerce Operations and the Ministry of Development, Industry and Foreign Commerce.

LP is highly recognised for its distinguished expertise and experience in both trade and antitrust complex litigation. The firm's practice is sustained by four pillars: fierce representation of clients, the highest ethical standards, pursuit of excellence through specialization, and creation of value through superior legal services.