

Internal rules (Resolution # 12)

RESOLUTION # 12 OF MARCH 31, 1998

(OFFICIAL GAZETTE OF THE FEDERAL EXECUTIVE,
APRIL 23, 1998)

*Approves the Internal Rules of the Administrative
Council for Economic Defense — CADE*

The Board of the Administrative Council for Economic Defense — CADE, exercising the powers bestowed thereon pursuant to article 7, XIX of Law # 8884 of June 11, 1994, hereby resolves as follows:

PART I PURPOSE AND STRUCTURE

Article 1. The Administrative Council for Economic Defense — CADE is a decision-making agency reporting to the Ministry of Justice and governed by Law #. 8884 of June 11, 1994, with main offices in the Federal District and jurisdiction throughout the Brazilian territory, and the purpose of which is to prevent and curb any practices in violation of economic policies.

Article 2. The CADE Board shall be composed of the President and six (6) Council members.

PART II PROCEDURES

SECTION I CADE OPERATIONS

Article 3. Cases shall be registered or entered at the CADE clerk office on the same date of their receipt, and the term for respective judgment shall run as from such date.

Article 4. Cases under the CADE authority shall be distributed per type—Administrative Proceedings, Preliminary Investigation, Concentration Act, Inquiry, and Voluntary Appeal—each of which bearing a distinct case number.

Article 5. Cases shall be distributed by the President, by drawing of lots, on an equitable basis, in public sessions held on Thursdays, at 10:00 a.m., and extraordinarily on Tuesdays, at 2:30 p.m.

Article 6. The CADE Board shall meet ordinarily on Wednesdays, in public sessions opening at 2:00 p.m. and expected to close at 6:00 p.m., from January 15 through December 19, and extraordinarily at the call of the CADE President or upon request from a majority of the CADE Board members.

Sole Paragraph. The CADE Board shall be in recess from December 20 through January 15, during which the procedural terms shall be stayed.

Article 7. In the event of impairment or disqualification of:

I — the Reporting Member, the case shall be redistributed in the session thereafter, pursuant to article 5 hereof;

II — any other Board member, such impaired or disqualified member shall have no right to vote.

Article 8. In the events of sick leave, vacation or justified absence, the Council member who is the next in the line of vote shall replace the Reporting Member, exclusively for the adoption of any diligence that is indispensable to the case development.

SECTION II *CONFIDENTIALITY*

Article 9. CADE shall make the case records available to the respondents, claimants or inquirers, or their respective lawyers, for review on the CADE premises.

Paragraph 1. Third interested parties may be afforded access to the case records for review on the CADE premises, provided that a substantiated request to this effect is submitted to the Reporting Member, which request shall be attached to the respective records. Access to the documents and information identified as confidential pursuant to article 10 of these Rules is hereby prohibited.

Paragraph 2. In the cases for which no Reporting Member has been appointed, or on which a conclusive decision has already been issued by the CADE Board, the request set forth in paragraph 1 above shall be forwarded to the President.

Paragraph 3. Certificates and copies of the proceedings shall be supplied to the respondents, claimants and inquirers, or their lawyers, as well as to third interested parties, duly authorized by the Reporting Member or, in the

event of paragraph 2 above, by the President, upon refund of the corresponding costs.

Paragraph 4. The Reporting Member or, in the event of paragraph 2 above, the President, shall deny, through a circumstantiated order, any request for review of the case records, whenever there are sound reasons therefor.

Paragraph 5. No CADE official shall disclose any information contained on the case records, unless with the prior express consent of the Reporting Member or, in the cases set out in paragraph 2 above, the President, on pain of liability for undue disclosure.

Article 10. To the extent required by law or in the public interest, the Reporting Member shall declare certain documents and information confidential, to be entered on separate records.

Paragraph 1. The respondent, claimant or inquirer, or the respective lawyers, shall place a request for confidentiality to the Reporting Member, based on substantiated reasons therefor.

Paragraph 2. The request dealt with above shall specify the persons who may be given access to the confidential documents and information, coupled with a non-confidential summary of the data contained therein. Whenever this summary report cannot be released, the respondent, claimant or inquirer, or the respective lawyers, shall make written justification thereof.

Paragraph 3. The Reporting Member shall deny the request dealt with above, through a circumstantiated order, whenever there are sound reasons therefor; a Voluntary Appeal against this denial may be filed to the CADE Board within five (5) days after notice thereof, the respective confidentiality being assured throughout the appellate period.

Paragraph 4. If an appeal is filed, the confidentiality status shall be in full force and effect until judgment thereon is rendered by the CADE Board in a closed session.

Paragraph 5. The reserved nature of confidential information shall be warranted in every oral or written statement made by the Attorney General and CADE Board members.

Paragraph 6. The confidential information and documents dealt with in this Section II, supplied by the respondents, claimants or inquirers, or their respective lawyers, cannot be made available to third parties.

SECTION III

EVIDENTIARY PROCEDURES

Article 11. At any time throughout the evidentiary stage regarding any case distributed to him, the Reporting Member may require copies of documents or information from SDE, SEAE or other evidentiary agency, with a view to following up on the development of evidentiary procedures.

Article 12. Evidentiary hearings shall be open to the public and presided over by the Reporting Member; minutes of the respective hearings shall be attached to the records.

Paragraph 1. At the request of the Reporting Member, the President may invite the respondent, claimant or inquirer, or the respective lawyers, to render clarifications to the CADE Board.

Paragraph 2. The Reporting Member may hold evidentiary hearings in closed session, whenever the evidence to be submitted thereat has a confidential nature.

Paragraph 3. Notice of evidentiary hearings shall be served by the Reporting Member on the respondents, claimants or inquirers, their legally appointed lawyers, as well as the Attorney General Office and CADE Board members, at least five (5) business days in advance.

Article 13. Every hearing instated by the Attorney General or CADE Board members to the respondents, claimants or inquirers, or their lawyers, shall be duly recorded, indicating the date, time and attendees thereof.

SECTION IV

JUDGMENT

Article 14. On receipt of the case records, the Reporting Member shall make them promptly available to the Attorney General Office for its opinion thereon.

Paragraph 1. The period of twenty (20) days referred to in article 42 of Law # 8884/94 shall start running as from receipt of the case records by the Attorney General Office.

Paragraph 2. Upon expiration of the period dealt with in the preceding paragraph, and if the supporting evidence is deemed satisfactory to the Reporting Member, he may enter the case at the judgment docket.

Paragraph 3. If the Attorney General Office has not rendered an opinion on the case within the period dealt with in paragraph 1 above, the Attorney General shall hand down such opinion orally at the judgment session, unless he

deems such pronouncement insufficient; in this case, the Reporting Member shall be informed thereof in a timely manner.

Paragraph 4. Should the provisions of paragraph 3 above occur and to the extent deemed expressly indispensable for defense purposes, the respondent, claimant or inquirer, or their lawyers as well as interested third parties, may petition for a stay of judgment for review of the technical opinion handed down by the Attorney General Office.

Paragraph 5. The stay dealt with in the preceding paragraph for review of the oral opinion shall not exceed five (5) business days as from publication of the minutes of the judgment session.

Article 15. The Report shall be distributed to the CADE Board members, the Attorney General, and the respondents, claimants or inquirers, or their lawyers, at least five (5) business days prior to the judgment session, during which the reading of such Report shall be dispensed with.

Paragraph 1. With due regard for the provisions of article 10 hereof, the report shall contain a summary of the facts and events occurring in the case development.

Paragraph 2. Except for *ex officio* appeals in a Preliminary Investigation, the report shall be open to public scrutiny one (1) hour before instatement of the judgment session.

Article 16. At the judgment session, the Reporting Member shall make a summary statement of the material factual aspects contained in his previously distributed report; thereafter, the Attorney General and the respondent, or its lawyer, shall have fifteen (15) minutes to make their respective oral statements.

Article 17. The CADE President shall take the vote of the Reporting Member, and then from the other Board members in decreasing order of seniority, and on equal conditions of age; the President shall be the last to declare his vote.

Paragraph 1. The Reporting Member may order an adjournment of the judgment session, whereas the other Board members and the President may ask for a review of the case, which shall be returned on or before the second ordinary session thereafter.

Paragraph 2. If any Board member asks for a review of the case, the judgment session shall be reinstated after his vote upon return of the case, even if this may entail a change in the order of votes.

Paragraph 3. A request for review posed by one or more Board members shall not prevent the other qualified members from delivering their respective vote.

Paragraph 4. Until a final decision is declared by the President, the Council members may change their respective votes.

Article 18. At the request of any CADE Board member or the Attorney General, and after casting of vote by the Reporting Member, the President may declare the session open for oral discussions during a period of fifteen (15) minutes, whenever deemed required to clarify certain factual or legal aspects on which a learned decision of the Board members shall rely.

Paragraph 1. Only in the discussion period may the President allow to any Board member the opportunity to bring forth objections or answers.

Paragraph 2. The President shall order the closing of oral discussions and the reopening of votes.

Article 19. The President shall declare the final decision handed down by CADE, to be reduced in writing by the Reporting Member.

Paragraph 1. If the Reporting Member has issued a dissenting opinion, the CADE member who has first rendered a concurring opinion shall be appointed to report on the CADE decision.

Paragraph 2. CADE decisions shall contain reference to the notes taken during the judgment session, which shall become an integral part thereof.

Paragraph 3. The CADE decision shall be signed by the President and the Reporting Member, or the CADE member who has prepared it.

Paragraph 4. The CADE decision shall be published in the Official Gazette of the Federal Executive within fifteen (15) business days of publication thereof.

Article 20. Minutes of every Board session shall be submitted to the next session for approval.

SECTION V SPECIAL JUDGMENTS

Article 21. The judgment on *ex officio* appeals in Preliminary Investigations shall be held in a closed session, at which only the Attorney General and the respondent or its lawyer shall attend.

Article 22. If the Attorney General Office's opinion is unfavorable to an *ex officio* appeal in Preliminary Investigations, the Reporting Member may order the shelving thereof, *ad referendum* of the CADE Board.

Paragraph 1. Every month, the decisions referred to in the main section of this article shall be taken to the CADE Board sessions by addressing only the case number and the names of the parties involved.

Paragraph 2. If there is any request for review of a case, the respondents, claimants or inquirers, or their respective lawyers, as well as the Attorney General, shall be entitled to take the floor for a period not exceeding fifteen (15) minutes, during the session in which the case reenters the CADE Board docket for judgment purposes.

Paragraph 3. At the end of the oral statements dealt with in paragraph 2 of this article, the procedural order of votes starting by the Reporting Member shall be resumed.

PART III ENFORCEMENT

Article 23. Enforcement of the CADE decisions shall be inspected by an agency reporting directly to the President of CADE Chairmanship, to which the cases shall be forwarded as soon as a conclusive decision is handed down by the CADE Board.

Paragraph 1. In the event of imposition of a fine or noncompliance with a decision, the CADE Board, through its President, shall order that the Attorney General Office take the action required for judicial enforcement thereof.

Paragraph 2. Any incident during the enforcement of the CADE decision shall be submitted to the CADE Board, by its President, for review.

Article 24. The Reporting Member may apply to the President for assistance of the CADE administrative bodies in supervising compliance with the cease-and-desist orders ("consent decrees") and performance commitments.

Article 25. CADE shall check compliance with any decision for the performance of actions intended to eliminate the damaging effects of any act or practice on economic policies.

PART IV GENERAL PROVISIONS

Article 26. The CADE Board shall resolve on the rules and procedures related to the items listed below, among others:

I — the definition of supplementary rules on the CADE operations and judgment docket;

II — inquiries to CADE on matters under its authority;

- III — instatement of administrative proceedings;
- IV — collection of the fines dealt with in Law # 8884/94;
- V — the rules of ethical conduct to be followed by the CADE officials;
- VI — the acts dealt with in article 54 of Law # 8884/94;
- VII — the voluntary appeals against preventive measures taken by the Reporting Member or by SDE; and
- VIII — the CADE participation in the judicial proceedings set forth in Law # 8884/94.

Article 27. The President, the Council members, and the Attorney General shall jointly render to the CADE Board an annual account of their activities, which shall contemplate, respectively:

- I — the activities performed in representation of CADE as well as for enforcement of its decisions;
- II — case reporting activities; and
- III — legal counsel as well as administrative actions taken in the administrative and judicial spheres.

Article 28. Any proposed amendment to the CADE Internal Rules shall be submitted by a Board member in an ordinary session, and shall remain open for suggestions in three consecutive ordinary sessions thereafter, whereupon the matter shall be discussed on and put to a vote.

Article 29. Any amendment to these Rules shall be conditional on the favorable vote of at least five (5) Council members in an ordinary session.

Article 30. CADE publications are as follows:

- I — Judgment Docket;
- II — Minutes of Board and distribution sessions, summary dockets, decisions, and orders;
- III — CADE Newsletter;
- IV — Annual Report;
- V — CADE: Texts for Discussion; and
- VI — Minutes of the Meetings of the Permanent Forum on Competition Issues.

Article 31. The cases not dealt with herein, as well as any doubts arising out of these Rules, shall be settled by the President, after hearing the Board members.

Article 32. These Rules shall come into force on the date of their publication; all provisions to the contrary are hereby repealed.

GESNER OLIVEIRA
President of CADE