The Antidumping Law of Argentina

Argentine producers filed 185 antidumping petitions between 1995 and 2004. During this period, more than 80 percent of the antidumping determinations by the Argentine government resulted in the imposition of antidumping duties. The number of antidumping petitions filed in Argentina increased significantly after passage of the Uruguay Round in 1999, but has been significantly lower since 2001 as illustrated in Figure 1.

Figure 1

Legal Procedures

The authorities charged with implementing Argentina’s antidumping law include:

- the Ministry of the Economy, which makes the final decision on whether to impose, and the level of, provisional and definitive antidumping measures;
- the Secretariat for Trade of the Ministry of the Economy, which recommends to the Ministry of the Economy whether to impose, and the level of, antidumping measures;
- the Undersecretariat for Foreign Trade Management, a unit of the Secretariat for Trade of the Ministry of the Economy, which directs the investigation and determines whether foreign products are imported at a price lower than the normal value; and,
- the National Commission for Foreign Trade, a decentralized agency under the Secretariat for Trade of the Ministry of the Economy, which determines whether dumped imports are causing or threatening to cause material injury to the domestic industry, or whether the establishment of an industry has been or is being materially retarded by dumped imports.

Any interested party may file an antidumping petition with the Secretariat for Trade on behalf of the domestic industry. The Secretariat for Trade forwards the petition to the Undersecretariat
and the Commission. After examining the accuracy and adequacy of the evidence in the petition, the Undersecretariat and the Commission give their opinion on whether there is sufficient evidence to initiate an investigation to the Secretariat. Depending on the results of this initial inquiry, the Secretariat may then initiate an investigation. In special circumstance, the Secretariat may self-initiate an investigation without having received an antidumping petition if it has sufficient evidence of dumping, injury and a causal link between the two, after consulting with the Undersecretariat and the Commission. The Secretariat’s decision is published in the Official Gazette.

To determine whether the foreign products are imported at a price lower than normal value, the Undersecretariat calculates the dumping margin as the difference between a weighted average normal value and a weighted average export price to Argentina, or the difference between individual normal values and individual export prices on a transaction-to-transaction basis over the period of investigation. The period of investigation is normally a period of twelve months immediately prior to the initiation of the investigation.

The Undersecretariat determines the normal value using one of the four methods. Whenever possible, the normal value is calculated using the sales price in the exporting country’s home market. The Undersecretariat may exclude the price of sales that are made below the cost of production. If there are no sales in the exporting country’s domestic market, or the sales volume is insignificant, the Undersecretariat calculates the normal value using one of the two alternative methods. The Undersecretariat may calculate a “constructed” normal value using the exporting country’s cost of production plus a reasonable amount for selling, general and administrative costs and profits. Alternatively, the Undersecretariat may use the prices of sales from the exporting country to a selected third country. For non-market economy countries, the Undersecretariat determines the normal value using either constructed value in a selected market economy country or the price from a selected market economy country to a selected third country, which may include Argentina. If neither method is possible, the Undersecretariat may calculate the normal value for a non-market economy using the adjusted sales price of the like product in Argentina, or on any other reasonable basis.

The Undersecretariat normally calculates a separate antidumping margin for each supplier. If, however, any interested party fails to provide authentic, necessary information within the time limit, or it is difficult to verify the provided information, the Undersecretariat may make its determination on the basis of “best information available,” which includes the information submitted in the petition or submitted by interested parties. When the number of suppliers, products or transactions is too large, the Undersecretariat or the Commission may select a sample for the investigation using statistical sampling on the basis of the information available at the time of the selection.

When determining whether the foreign imports are causing or threatening to cause material injury to the domestic industry, or materially retarding the establishment of an industry, the Commission considers the volume of dumped imports, the effect of the dumped imports on prices of the like products in Argentine market, and the consequent effect of the dumped imports

1 The Undersecretariat may also exclude the price of exports made below the firm’s cost of production in this “third-country” method.
on domestic producers of such products. The Commission specifically considers the production
capacity in the exporting country, the margin of dumping and its impact on the actual and
potential decline in sales, profits, output, market share, productivity, return on investments,
employment, and wages in the domestic industry.

Within the 60 days from the initiation of the investigation, the Undersecretariat makes a
preliminary determination on the existence of dumping and submits a copy of its report to the
Commission and the Secretariat. The Commission, within the 65 days from the initiation of the
investigation, makes a preliminary determination on whether dumped imports from the country
under investigation have caused injury to the domestic industry and whether there is a causal link
between the dumped imports and injury, and submits a copy of its report to the Undersecretariat
and the Secretariat. After receiving the Commission’s report, the Undersecretariat makes its
recommendation to the Secretariat on whether or not to apply provisional measures. The
Secretariat then submits its recommendation to the Ministry of the Economy concerning the
provisional measures. If the Ministry of the Economy makes an affirmative decision, provisional
antidumping duties not exceeding the margin of dumping may be imposed to prevent injury to
domestic producers. If, however, the Undersecretariat or the Commission finds no sufficient
evidence of dumping or injury, or that the margin of dumping or the volume of imports is
negligible, the Secretary must terminate the investigation immediately. All decisions are
published in the Official Gazette.

In making its determination, the Ministry of Economy takes into consideration both Argentina’s
foreign trade policy and the public interest, including consumers, users and buyers of the
imported products. In other words, Ministry of Economy must decide whether the benefits of the
antidumping measures to domestic producers outweigh the potential costs of the measures to
domestic consumers and users of the product under investigation.

If an exporter promises to revise its price immediately and stop exporting at the “dumped” prices,
the Ministry of the Economy may suspend or terminate the antidumping investigation without
applying provisional antidumping measures, after consulting the Undersecretariat and the
Commission’s respective reports. If the exporter fails to uphold the undertaking agreement, the
Ministry may immediately impose a provisional or definitive duty based on the best information
available.

After the preliminary determination and prior to the final determination, the Undersecretariat and
the Commission may convene a public hearing to allow interested parties to present their opinion
and discuss the issues arising during the investigation. Before the final determination, the
Undersecretariat and the Commission must inform all interested parties of the essential facts
under consideration which will likely form the basis of the decision. Respondents then have five
working days to defend their interests.

Within 180 days from the initiation of the investigation, the Undersecretariat makes a final
determination of dumping and communicates its findings to the Commission and the Secretariat.
The Commission, within 200 days from the initiation of the investigation, makes a final

2 “Like products” are defined as goods that are identical or alike in all respects to the goods under investigation or
which have characteristics closely resembling those goods.
determination of injury to the domestic industry and a causal link between dumping and injury, and submits a copy of its report to the Undersecretariat and the Secretariat. Upon the receipt of the Commission’s report on injury and causality, the Undersecretariat submits to the Ministry of the Economy through the Secretariat, recommending whether or not to apply antidumping duties, with an assessment of the other circumstances relating to foreign trade policy and the public interest. Finally, the Ministry of the Economy issues a final decision on antidumping duties and publishes it in the Official Gazette. The investigation is normally completed within one year from the date of initiation but can be extended to a maximum of 18 months.

The antidumping duty or undertaking agreement is usually lifted after five years. The Undersecretariat and the Commission may review the antidumping duty or undertaking after the one year anniversary of imposition of the definitive measures or the approval of the undertaking. The request for a review is normally made in the anniversary month of the final determination by interested parties, or on the Secretariat’s own initiative. During the first half of the final year of the five year period, the Ministry of the Economy must publish a notice announcing the expiration of the antidumping measures in the Official Gazette. The request for an expiry review needs to be made to the Secretariat by or on behalf of domestic producers no later than three months before the end of the five year period. The Undersecretariat and the Commission then carry out an investigation and submit their recommendation on whether to abolish or continue the imposition of antidumping duties to the Ministry of the Economy through the Secretariat.

**Compliance with the WTO Antidumping Agreement**

Antidumping procedures in Argentina have been challenged at the World Trade Organization on three separate occasions. The disputes are summarized below.

**Drill Bits from Italy**

On January 14, 1998, the European Communities (EC) filed a complaint with the World Trade Organization’s (WTO) dispute settlement body (DSB), claiming that Argentina’s antidumping investigation and the imposition of definitive antidumping duties on imports of drill bits from Italy failed to comply with the WTO’s Antidumping Agreement. Specifically, the EC argued that the investigation was initiated on February 21, 1997 and the definitive antidumping duties were imposed on September 12, 1998. As the investigation exceeded 18 months, it violated the antidumping agreement. No panel was ever established.

**Ceramic Floor Tiles from Italy**

On January 26, 2000, the EC filed a complaint with the WTO’s dispute settlement body, claiming that the imposition of definitive antidumping duties on imports of ceramic floor tiles from Italy failed to comply with the WTO’s Antidumping Agreement. Specifically, the EC argued that the Argentine investigating authority:

- disregarded all information on normal value and export prices provided by the exporters in the sample without justification;
- failed to calculate an individual dumping margin for each exporter selected in the sample;
failed to adjust the physical differences between the products exported to Argentina and those sold in Italy; and
failed to inform the Italian exporters of the essential facts concerning the existence of dumping under consideration which formed the basis for its final decision.

On September 28, 2001, a WTO dispute settlement panel found that Argentina acted inconsistently with the antidumping agreement in all of the EC’s claims. Argentina accepted these recommendations and agreed to implement them by April 5, 2002. On April 24, 2002, the Argentine Ministry of the Economy revoked the antidumping measures on imports of ceramic floor tiles from Italy and fully complied with the recommendations and rulings of the DSB in this dispute.

**Poultry from Brazil**

On November 7, 2001, Brazil filed a complaint with the WTO’s dispute settlement body, claiming that the imposition of definitive antidumping measures by Argentine authorities on imports of poultry from Brazil failed to comply with the WTO’s Antidumping Agreement. Specifically, Brazil argued that the Argentine investigating authorities:

- initiated an investigation without sufficient evidence of dumping, injury and causal link between the two;
- failed to notify the exporters and the Brazilian Government after the investigation was initiated;
- failed to give Brazilian exporters sufficient time to respond to the questionnaires and disregarded most of the information submitted by the these exporters without proper justification;
- failed to explain the relevant economic factors in the final injury determination;
- failed to disclose the essential facts under consideration which formed the basis for the definitive antidumping measures;
- failed to calculate an individual dumping margin for two Brazilian exporters;
- failed to make a fair comparison between normal value and export price; and
- imposed and collected variable antidumping duties as the absolute difference between the Free on Board (FOB) price invoiced in any one shipment and the designated “minimum export price” fixed in FOB terms.

On April 22, 2003, a WTO dispute settlement panel found that Argentina acted inconsistently with the antidumping agreement in:

- initiating an investigation without sufficient evidence of dumping and failing to promptly terminate the investigation;
- failing to properly notify some exporters, interested parties, and Brazilian government once the investigation was initiated;
- failing to give several exporters at least 30 days to respond to the dumping questionnaires;
- disregarding the export price data submitted by certain exporters;
- failing to calculate individual dumping margins for two exporters and inaccurately calculating a dumping margin for two exporters;
not making due allowance for differences in taxation, freight and financial costs in the normal value established for some exporters;
• improperly increasing all exporters’ normal value by 9.09 percent to reflect the physical differences between Argentine and Brazilian poultry; and
• failing to determine injury to domestic industry objectively and accurately.

However, the panel found that Argentina did not violate the antidumping agreement regarding simultaneously considering the evidence of both dumping and injury to initiate the investigation, informing the exporters of the essential facts under consideration before final determination, and collecting variable antidumping duties on the basis of “minimum export prices.” The Panel suggested that Argentina revoke the definitive antidumping measures on eviscerated poultry from Brazil.

On May 19, 2003, the DSB adopted the Panel report. Argentina accepted these recommendations and had fully implemented the recommendations and rulings of the DSB in this dispute.