Brazilian producers filed 147 antidumping petitions between 1994 and 2003. Of the 140 antidumping determinations by the Brazilian government during this period, about 60 percent resulted in the imposition of antidumping duties. The number of antidumping petitions filed in Brazil had been relatively stable, though it peaked in 1999 since passage of the Uruguay Round and declined significantly in the following year, as illustrated in Figure 1.

**Figure 1**

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Year | Number of Cases Filed
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 94   | 10
 95   | 5
 96   | 15
 97   | 15
 98   | 15
 99   | 25
 00   | 10
 01   | 20
 02   | 15
 03   | 15
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**Legal Procedures**

Any interested party may file an antidumping petition with the Secretariat of Foreign Trade (SECEX) of the Ministry of Industry, Commerce and Tourism (MICT) on behalf of the domestic industry.¹ By examining the accuracy and adequacy of the evidence in the petition, the SECEX undertakes an investigation into whether foreign products are imported at a price lower than the normal value, whether those imports are causing or threatening to cause material injury to the domestic industry, and whether there is a causal link between them. In special circumstance, the Federal Government may self-initiate an investigation without having received any antidumping petition if it has sufficient evidence of dumping, injury and a causal link between the two.

After initiating the investigation, the SECEX notifies the Federal Revenue Secretariat of the Ministry of Finance, which makes provisions regarding the payment of provisional or definitive

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¹ An antidumping investigation may be initiated if domestic producers who support the petition account for at least 25 percent of total domestic production of the like product and have collective output of more than 50 percent of the total production of such products produced by those producers who either support or oppose the petition.
antidumping measures if dumping is determined. Based on the findings of SECEX, the Minister of Finance and the Minister of Industry, Commerce and Tourism jointly make the decision to impose provisional or definitive antidumping measures or to approve price undertakings. All decisions must be published in the “Diario Oficial” (Official Gazette).

To determine whether the foreign products are imported at a price lower than normal value, the SECEX calculates the dumping margin as the difference between a weighted average normal value and a weighted average export price to Brazil, or the difference between individual normal values and individual export prices on a transaction-to-transaction basis over the period of investigation, normally a period of twelve months immediately prior to the initiation of the investigation. In special circumstances, the SECEX may compare a weighted average normal value to prices of individual export transactions to Brazil.

The SECEX 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. However, when there are no sales in the exporting country’s domestic market, or the sales volume is low, the SECEX calculates the normal value using one of the two alternative methods. The SECEX may calculate a “constructed” normal value using the exporting country’s cost of production plus a reasonable amount for administrative and selling costs and profits, or use the prices of sales from the exporting country to a selected third country. The SECEX may exclude the sales if the weighted average sales price is below the weighted average unit cost, or the volume of sales below unit cost during the investigation period is more than 20 percent of total sales being used to determine normal value. For non-market economy countries, the SECEX determines the normal value using either sales price or constructed value in a selected market economy country, or the price from a selected market economy country to a selected third country excluding Brazil. If these methods are not possible, the SECEX may calculate the normal value for a non-market economy using the adjusted sales price of the like product in Brazil, or on any other reasonable basis.

The SECEX generally calculates a separate antidumping margin for each supplier. However, if any interested party fails to provide authentic, necessary information within the time limit, or it is difficult to verify the provided information, the SECEX 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 SECEX may select a sample for the investigation using statistical sampling methods on the basis of the information available at the time of the selection or by choosing those suppliers or products with the largest import volumes. The SECEX calculates the dumping margin for those firms not in the sample using a weighted average of the dumping margins calculated for those suppliers selected for the investigation.

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 SECEX considers the volume of dumped imports, the effect of the dumped imports on prices of the like products in Brazil, and the consequent effect of the dumped imports on domestic

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2 The unit cost is defined as production costs plus selling, general and administrative costs.
producers of such products. To examine the impact of the dumped imports on domestic industry, the SECEX evaluates the magnitude of the margin of dumping and its impact on natural and potential decline in sales, profits, output, market share, productivity, return on investments, inventories, employments, wages, and growth in the domestic industry. The SECEX also determines the causal link between the dumped imports and the injury to the domestic industry by examining the volume of goods imported at a “normal value”, contraction in demand or changes in the pattern of consumption, the impact of trade liberalization or trade restrictive practices, competition between foreign and domestic producers, developments in technology, and the export performance and productivity of domestic producers.

Following its preliminary investigation, the SECEX makes a preliminary determination on dumping, injury, and the causal link between the two. If an affirmative preliminary determination is made, the Minister of Industry, Commerce and Tourism and the Minister of Finance may impose provisional antidumping measures not exceeding the margin of dumping to prevent injury to domestic producers. Provisional antidumping measures may take the form of either an antidumping duty or a security, which is a deposit or bank bond; the Federal Revenue Secretariat specifies the form of bond payment. Under exceptional circumstances, the Minister of Industry, Commerce and Tourism and the Minister of Finance may act in the “national interest” to suspend the imposition of antidumping measures or impose a different amount than the one SECEX determined, even when the evidence of dumping and the resulting injury is found. In other words, they 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 Minister of Industry, Commerce and Tourism and the Minister of Finance may suspend or terminate the antidumping investigation without applying provisional or definitive antidumping measures. If the exporter fails to uphold the undertaking agreement, the Minister of Industry, Commerce and Tourism and the Minister of Finance may immediately impose a provisional or definitive duty based on the best information available, and the antidumping investigation may resume.

Following a provisional affirmative determination, the SECEX continues its investigation on the margin of dumping and injury. Before giving its final determination, the SECEX convenes a meeting and informs all interested parties of the essential facts under consideration which will likely form the basis of its decision and allow them to defend their interests within 15 days. Within one year or in exceptional circumstances eighteen months, from the date of initiation of the investigation, the SECEX must make a final determination on the existence of dumping, injury and the causal link between them and determine the value of antidumping duties. Based on the findings of SECEX, the Minister of Industry, Commerce and Tourism and the Minister of Finance impose antidumping measures not exceeding the margin of dumping and publish a notification in the “Diario Oficial.” As described above, the Minister of Industry, Commerce and Tourism and the Minister of Finance must take the “national interest” into consideration when making its final decision.

3 “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.
The antidumping duty or undertaking agreement is usually lifted after five years. After the one year anniversary of imposition of the definitive measures or the approval of the undertaking, the SECEX may initiate a review of the antidumping duty or price undertaking at the request of interested parties, organs or agencies of the Federal Public Administration, or on the SECEX’s own initiative. If it is concluded in the review that the removal of the antidumping duties would be likely to result in the continuation or recurrence of dumping and injury, the imposition of antidumping duties may be extended for an additional five years. For new suppliers in the exporting country who did not export the product to Brazil during the original period of investigation, the SECEX may conduct an immediate summary review to quickly determine the individual margin of dumping upon request.

**Compliance with the WTO Antidumping Agreement**

On April 9, 2001, India filed a complaint with the World Trade Organization’s (WTO) dispute settlement body (DSB), claiming that Brazil’s antidumping investigation and the imposition of definitive antidumping duties on imports of jute bag from India failed to comply with the WTO’s Antidumping Agreement. Specifically, India argued that:

- the antidumping investigation and the imposition of antidumping duties on jute bags and bags made of jute yarn from India by the Brazilian government were based on forged document for a non-existing Indian company;
- the Brazilian investigating authorities ignored India’s claim about the non-existence of that company and refused to withdraw antidumping duties on Indian jute products; and
- the Brazilian investigating authorities failed to consider the new evidence regarding Indian jute manufacturers’ cost of production, domestic sales prices, export prices, etc., and failed to initiate a review of the decision to impose definitive antidumping duties.

As of October 9, 2006, there was no panel established in this matter.