### THE ANTIDUMPING LAW OF MEXICO

Mexican producers filed 76 antidumping petitions between 1994 and 2003. Of the 71 antidumping determinations by the Mexican government during this period, about 70 percent resulted in the imposition of antidumping duties. The number of antidumping petitions filed in Mexico since passage of the Uruguay Round peaked in 1999, and has been significantly lower since, as illustrated in Figure 1.

![Figure 1](image)

#### Legal Procedures

Any interested party may file an antidumping petition with the Ministry of the Economy\(^1\) (the Ministry) on behalf of the domestic industry.\(^2\) After considering the evidence of dumping and injury contained in the petition, the Ministry must decide whether or not to initiate an investigation within 25 days of receiving the petition and publish a notice in the Diario Oficial de la Federación. In special circumstance, the Ministry 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.

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\(^1\) The Ministry of the Economy was formerly called the Ministry of Commerce and Industrial Development (SECOFI) prior to December 1, 2000.

\(^2\) 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.
After initiating an investigation, the Ministry undertakes an investigation into whether foreign products are imported at a price lower than the normal value, and whether those imports are causing or threatening to cause material injury to the domestic industry. The Foreign Trade Commission (the Commission) gives the Ministry its opinion before the Ministry makes the decision to impose definitive antidumping measures, to approve price undertakings, or to modify antidumping measures.³

To determine whether the foreign products are imported at a price lower than normal value, the Ministry normally calculates the dumping margin as the difference between a weighted average normal value and a weighted average export price to Mexico over the period of investigation, normally a period of at least six months immediately prior to the initiation of the investigation.

The Ministry 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 Ministry calculates the normal value using one of the two alternative methods. The Ministry may calculate a “constructed” normal value using the exporting country’s cost of production plus a reasonable amount for general costs and profits, or use the prices of sales from the exporting country to a selected third country. The Ministry may exclude the sales prices of transactions that are made below the cost of production and general costs for an extensive period of time. For non-market economy countries, the Ministry 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 Mexico.

The Ministry 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 Ministry may make its determination on the basis of the highest dumping margin obtained from the “facts available,” which includes the information submitted in the petition or submitted by interested parties, or information gathered by the investigating authorities. Presentation of false information or failure to provide documents within the deadline may also be punished by a fine. When the number of suppliers, products or transactions is too large, the Ministry 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.

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 Ministry considers the volume of dumped imports, the effect of the dumped imports on prices of the like products in the domestic market, and the consequent effect of the dumped imports on domestic producers of such products.⁴ To examine the impact of the dumped imports on domestic industry, the Ministry evaluates the magnitude of the margin of dumping and its impact

³ The Foreign Trade Commission is an auxiliary commission that serves as a consulting organ of all the agencies of the Mexican federal government. The Commission has the power to issue opinions, make revisions, and have public hearings on all matters relating to foreign trade.
⁴ “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.
on actual and potential decline in sales, profits, output, market share, productivity, return on investments, cash flow, inventories, employment, wages, and growth in the domestic industry. When a product is simultaneously imported from more than one country, the Ministry may cumulatively assess the volume and effects of such imports to determine injury. The Ministry 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.

Within 90 days after initiating the investigation, the Ministry makes a preliminary determination on dumping, injury and the causal link between the two and publishes a notice in the Diario Oficial de la Federación. If an affirmative preliminary determination is made, the Ministry may impose provisional antidumping measures not exceeding the margin of dumping which are collected by the Ministry of Finance and Public Credit. Within five days following the publication of the preliminary determination in the Diario Oficial de la Federación, the Ministry may hold technical information meetings upon request to explain the method used in determining the margin of dumping, injury, or the arguments concerning causality. If an exporter promises to revise its prices and stop exporting at “dumped” prices in an undertaking agreement, the Ministry may suspend or terminate the antidumping investigation without imposing antidumping duties. If the exporter fails to uphold the undertaking agreement, the Ministry may immediately impose an antidumping duty based on the best information available and continue the investigation.

After the preliminary determination and prior to the final determination, the Ministry 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 Ministry submits its report to the Commission for its opinion. Within 210 days from the initiation of the investigation, the Ministry must publish its final determination in the Diario Oficial de la Federación. Antidumping duties are usually lifted after five years. The Ministry may initiate a review of the antidumping duty each year at the request of interested parties, which is normally made in the anniversary month of the final determination. The Ministry may also initiate a review on its own initiative at any time. Within 220 days following the initiation of the review, the Ministry must issue a final determination. If it is concluded in a 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 duty may be extended for a further period of five years. If, however, it is determined that there is no evidence of dumping, the Ministry annuls the previous definitive antidumping duty and will review the matter each year for the following three years in the same month.

An appeal against the antidumping determination or review can be filed with the Ministry of Finance and Public Credit. The appeal must be first handled and resolved in accordance with the provisions of the Federal Tax Code; in special circumstances, it can be referred to the Federal Tax and Administrative Court. If the appeal results a different resolution, the Ministry may
initiate a summary proceeding upon request or on its own initiative to determine whether the final resolution issued as a result of the appeal is relevant to the other interested parties.

**Compliance with the WTO Antidumping Agreement**

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

*High-Fructose Corn Syrup (HFCS) from the United States*

On May 8, 1998, the United States filed a complaint with the World Trade Organization’s (WTO) dispute settlement body (DSB), claiming that the antidumping investigation and the imposition of antidumping duties on imports of HFCS from the United States failed to comply with the WTO’s Antidumping Agreement. Specifically, the United States argued that the Mexican investigating authority:

- initiated an investigation without sufficient evidence of dumping, injury and causal link between the two;
- failed to notify the exporters and the U.S. Government after the investigation was initiated;
- inadequately determined the threat of injury in the final resolution;
- improperly imposed provisional antidumping measures on imports of HFCS from the United States in excess of six months;
- improperly imposed final antidumping duties during the period of application of provisional measures; and
- failed to set forth in detail the findings and conclusions in the final determination.

On January 28, 2000, a WTO dispute settlement panel found that Mexico did not violate the antidumping agreement regarding the initiation of the antidumping investigation on imports of HFCS from the United States. However, Mexico’s imposition of the definitive antidumping duties on imports of HFCS, grade 42 and 55, from the United States was inconsistent with the antidumping agreement in:

- inadequately considering the impact of dumped imports on the domestic industry and evaluating the likelihood of substantially increased importation and its potential effect;
- determining the threat of material injury on the basis of the production sold in the industrial sector, rather than on the basis of the domestic industry’s production as a whole;
- improperly extending the application period of the provisional measure;
- improperly retroactively levying provisional antidumping duties;
- failing to expeditiously release bond and/or cash deports collected under the provisional measure; and
- failing to set forth findings and conclusions on the issue of the retroactive definitive antidumping measure.

The DSB adopted the panel report. On April 19, 2000, Mexico and the United States informed the DSB that Mexico had agreed to implement the panel’s recommendations by September 22, 2000. On September 26, 2000, Mexico stated that it had issued a new determination to comply
with the DSB’s recommendations. However, the Mexican antidumping authority again concluded that the HFCS imports from the United States threatened the Mexican sugar industry.

In order to establish whether Mexico had correctly implemented the DSB’s recommendations, on October 12, 2000, the United States requested the DSB to refer the matter to the original panel. On June 22, 2001, the panel concluded that Mexico failed to implement DSB’s recommendation of the original panel in its inadequate consideration of the impact of dumped imports on the domestic industry and its inadequate evaluation the likelihood of substantially increased importation and its potential effect. On July 24, 2001, Mexico appealed the panel report and requested the Appellate Body to examine and reverse the panel’s conclusions. However, the Appellate Body upheld the findings of the panel.

**Beef and Rice from the United States**

On June 16, 2003, the United States filed a complaint with the WTO’s dispute settlement body, claiming that the imposition of antidumping duties on imports of beef and long grain white rice from the United States failed to comply with the WTO’s Antidumping Agreement. Specifically, the United States argued that the Mexican investigating authority:

- based its injury and causation analysis on data from only six months of each year and failed to use more recent data;
- inadequately determined the injury and threat of injury to the domestic industry;
- failed to terminate the antidumping investigation after a negative preliminary injury determination;
- failed to exclude certain respondent U.S. exporters from the antidumping measure after negative final determination of dumping;
- failed to give interested parties a full opportunity to present their evidence and defend their interests;
- improperly rejected information submitted by U.S. exporters and applied the “facts available” in the evaluation of injury;
- failed to inform U.S. exporters of the essential facts under consideration that formed the basis of its final determination;
- applied the “facts available” to a respondent rice exporter that had no shipments during the period of investigation;
- failed in the rice final determination to set forth in sufficient detail all the findings and conclusions; and
- levied an antidumping duty greater than the margin of dumping.

The United States later withdrew its request for the establishment of a panel concerning beef products. On June 6, 2005, a WTO dispute settlement panel upheld all of the United States’ claims concerning both the injury and dumping margin determination in the rice investigation. On July 20, 2005, Mexico appealed this panel report and requested the Appellate Body to examine the panel’s conclusions. On November 29, 2005, the Appellate Body concluded that it upheld the panel’s findings in large part. However, the Appellate Body rejected the panel’s findings that Mexico acted inconsistently with the antidumping agreement in failing to provide U.S. exporters sufficient time to present their evidence, and applying “facts available” in determining the dumping margin for U.S. exporters that were not individually investigated. The
DSB adopted both the Appellate Body report and panel report, as modified by the Appellate Body report.

On January 20, 2006, Mexico accepted these recommendations, but noted that it would need a reasonable period of time to implement them. On May 18, 2005, the United States and Mexico informed the DSB that Mexico had agreed to implement some of the recommendations by August 20, 2006 and implement the rest of them by December 20, 2006.

**Steel Pipes and Tubes from Guatemala**

On June 17, 2005, Guatemala filed a complaint with the WTO’s dispute settlement body concerning Mexico’s antidumping investigation and the imposition of definitive antidumping duties on imports of steel pipes and tubes from Guatemala. Specifically, the Guatemala argued that the Mexican investigating authority:

- initiated an investigation without properly determining whether the antidumping petition contained accurate and adequate evidence of dumping, injury and a causal link between them;
- did not use a consistent definition of the “like product” throughout the course of the investigation;
- failed to conduct an unbiased and objective investigation and failed to properly determine dumping, injury and a causal link;
- applied definitive antidumping measure to products that were not covered by the investigation;
- improperly used “facts available” in determination of the margin of dumping;
- failed to explain the problems it had encountered at the on-the-spot investigation or how those problems justified its resort to “facts available;”
- did not properly adjust the export price and the normal value to make a fair comparison;
- based its injury and causation analysis on a period of investigation that ended significantly before the initiation of the investigation, and failed to use data relating to the period immediately preceding the investigation;
- inadequately determined the injury and threat of injury to the domestic industry;
- failed to inform Guatemalan exporters of the essential facts under consideration that formed the basis of its final determination; and
- failed to disclose in sufficient detail the findings and conclusions in its preliminary and final determination.

On May 4, 2006, a WTO dispute settlement panel was formed to consider these issues.