Peruvian producers filed 99 antidumping petitions between 1994 and 2002. Of the 89 antidumping determinations by the Peruvian government during this period, about 62 percent resulted in the imposition of antidumping duties. The number of antidumping petitions filed in Peru fluctuated during this period; it peaked in 1996 and again in 1999, as illustrated in Figure 1.

![Figure 1](chart.png)

**Legal Procedures**

Any interested party may file an antidumping petition with the Dumping and Subsidies Commission (the Commission) of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) on behalf of the domestic industry.\(^1\) After considering the accuracy and adequacy of the evidence contained in the petition, the Commission must decide whether or not to initiate an investigation within 30 days of receiving the petition and publish a notice in the Official Journal, *El Peruano*. In special circumstance, the Commission 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.

Within 10 days of initiating the investigation, the Technical Secretariat of the Commission distributes questionnaires to all interested parties. The Commission then undertakes an investigation into whether foreign products are imported at a price lower than the normal value,

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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 whether those imports are causing or threatening to cause material injury to the domestic industry.

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

The Commission 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 Commission calculates the normal value using one of the two alternative methods. The Commission 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 Commission may exclude the sales if the weighted average sales price is below the weighted average unit cost for more than six months, or the volume of sales below unit cost during the investigation period is 20 percent or more of total sales volume being used to determine normal value.2 For non-market economy countries, the Commission determines the normal value using sales prices in a selected market economy country, or using any other reasonable basis.

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 Peru, and the consequent effect of the dumped imports on domestic producers of such products.3 To examine the impact of the dumped imports on domestic industry, the Commission 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, cash flow, inventories, employments, wages, and growth in the domestic industry. The Commission 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 restrictive practices, competition between foreign and domestic producers, developments in technology, and the export performance and productivity of domestic producers.

All evidence or arguments must be submitted within six months from initiation of an investigation, which is called the “evidentiary period.” The Commission may extend the evidentiary period by a maximum of three additional months. If there are disputed points from parties’ claims, the Commission may convene a hearing to allow parties to support their arguments. 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 Commission may make its determination on the

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2 The unit cost is defined as production costs plus selling, general and administrative costs.
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.
basis of the “facts available,” which includes the information submitted in the petition or submitted by interested parties, or information gathered by the investigating authorities. The Commission may also impose a fine on parties for presentation of false information or failure to provide documents within the deadline.

Following its preliminary investigation, the Commission makes a preliminary determination on dumping and injury and issues a public notice in this regard. If an affirmative preliminary determination is made, the Commission may impose provisional antidumping measures not exceeding the margin of dumping. If, however, there is no sufficient evidence of dumping or injury, or that the margin of dumping or the volume of imports is negligible, the Commission must terminate the investigation immediately. Provisional antidumping duties may be paid in cash or security and usually remain in force for a period of no more than four months; in some cases, they can be extended by the Commission by six months.

During the course of an investigation, if an exporter promises to revise its price immediately and stop exporting at the “dumped” prices, the Commission may suspend or terminate the antidumping investigation without applying provisional or definitive antidumping measures after consulting interested parties. If the exporter fails to uphold the undertaking agreement, the Commission may immediately impose a provisional duty based on the best information available, and resume the antidumping investigation.

Within 30 days of the conclusion of the evidentiary period, the Commission informs all interested parties of the essential facts under consideration which will likely form the basis of its final determination and allows them to defend their interests within 10 days. The Commission may also convene a final hearing at the request of the parties to discuss the issues relating to the essential facts notified. Within nine months, or in exceptional circumstances twelve months, following the initiation of the investigation the Commission must make a final determination and publish a notice in the Official Journal, El Peruano. Definitive duties may not exceed the determined margin of dumping and must be paid in cash.

Antidumping duties are usually lifted after five years. After the one year anniversary of imposition of the definitive measures, the Commission may initiate a review to examine whether the definitive antidumping duties need to be maintained or modified at the request of interested parties or on its own initiative. If there are new firms in the exporting country which did not export during the original period of investigation, the Commission calculates individual dumping margins for them during the review. 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 an additional five years.

An appeal of the antidumping determination or review may be filed with the Commission within 15 working days. If the Commission approves the application for reconsideration, files are transmitted to the Court for the Defense of Competition and the Protection of Intellectual Property of the INDECOPI. The Court usually makes a decision on appeals within a period of six months, which can be extended by a maximum of two additional months. If the appeal involves the collection of antidumping duties that have been incorrectly applied by Customs, it can be filed with the INDECOPI. In such cases, the Commission makes an initial decision
within 30 days, and the INDECOPI issues its second and definitive administrative decisions in the next 30 days.

**Compliance with the WTO Antidumping Agreement**

On October 21, 2002, Argentina filed a complaint with the World Trade Organization’s (WTO) dispute settlement body (DSB), charging that Peru’s antidumping investigation and the imposition of provisional antidumping duties on sunflower and soja vegetable oils and their mixtures from Argentina failed to comply with the WTO’s Antidumping Agreement. Specifically, Argentina argued that:

- the antidumping petition did not include evidence of dumping, injury or a causal link;
- the Peruvian investigating authority did not examine the accuracy and adequacy of the evidence in the petition before initiating the investigation;
- the domestic industry was improperly defined;
- the Peruvian investigating authority failed to use information from a secondary source to determine the normal value;
- the Peruvian investigating authority incorrectly determined the normal value;
- the Peruvian investigating authority failed to make a fair comparison between the normal value and the export price;
- the preliminary determination of injury was not unbiased or objective: without the evidence of a significant increase in Argentine imports, without evaluating all relevant economic factors, and without demonstrating a causal link between the dumped imports and the injury; and
- the public notice of the preliminary determination did not set forth in sufficient detail all the findings and conclusions.

There has yet to be a panel established in this case.