Dumping on Agriculture:
A Compendium of Global Antidumping Regulations

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Introduction

Antidumping regulation has a long history in the General Agreement on Tariffs and Trade (GATT), going back to the original GATT Agreement of 1947. The first Antidumping Agreement was completed in 1967 as part of the Kennedy Round of trade negotiations. The Antidumping Agreement was significantly revised in 1979 under the Tokyo Round of trade negotiations, and again in 1994 under the Uruguay Round of trade negotiations.

Under the current Antidumping Agreement, countries may protect their domestic industries by imposing additional import duties on specific products if the country finds these products have been dumped, or sold below a "normal" value. The normal value is typically defined as the price set by the foreign producer in its domestic market, although the agreement allows countries to exclude any prices made below the producer's average cost of production in this calculation of normal value. Thus, antidumping regulations target both predatory pricing and price discrimination.

According to WTO statistics, WTO members initiated 2,436 antidumping investigations between 1995 and 2003. These same members imposed antidumping protection in 1,522 investigations during this time period, suggesting that slightly over 60 percent of all antidumping investigations eventually result in the imposition of duties.


The twelve WTO members included in this compendium, including Argentina, Australia, Brazil, Canada, China, the European Union, India, Korea, Mexico, New Zealand, Peru,
and the United States, accounted for over three-quarters of the total number of investigations by WTO members between 1995 and 2003. As illustrated in the figure above, the use of antidumping, and the percentage of investigations resulting in the imposition of protection, varies significantly across these countries.

Before imposing antidumping duties, the country must undertake an investigation to (1) prove that dumping is taking place and calculate the extent of this dumping and (2) prove that the dumping is causing or threatening to cause "material injury" to the domestic industry. As can be inferred by the repetitiveness of many of the antidumping regulations described in this document, all signatories to the Antidumping Agreement have agreed to adhere to the same basic set of rules.

However, under the Agreement countries still have a great deal of latitude in how they decide whether or not to impose antidumping duties. For example, while countries like the European Union and Australia rely upon a single agency to determine both the dumping and injury determination, others like the United States and Canada assign these decisions to two separate agencies. Antidumping regulations in some countries like the European Union require government officials to consider the impact of duties on end-users of the product under investigation prior to imposing duties; other countries have no such provisions. This document attempts to explain the most important idiosyncratic antidumping regulations across twelve of the most prevalent users of antidumping protection within the World Trade Organization (WTO).

Within each chapter, we also describe disputes that have arisen over each country's antidumping regulations since formation of the WTO. The increasing number of trade disputes that have arisen over antidumping duties suggests that either the Agreement is not applied consistently across countries or countries are interpreting the rules within the Agreement quite differently. Disagreements over antidumping statutes have accounted for over one quarter of the dispute settlement cases initiated at the WTO since 1999.
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](image)

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.\(^1\) 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

\(^1\) The Undersecretariat may also exclude the price of exports made below the firm’s cost of production in
this “third-country” method.
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 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.

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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.
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 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.
Australia

Australian producers filed 63 antidumping petitions between 1997 and 2004. Only 35% of these cases resulted in the imposition of antidumping duties. As illustrated in Figure 1, the number of petitions filed by Australian producers has decreased significantly since 2000; Australian producers filed 49 cases between 1997 and 2001 compared to only 14 cases between 2002 and 2004.

Figure 1

I. Legal Procedures

Australian industries requesting the imposition of antidumping duties must file a petition with the Australian Customs Service (Customs). Customs must determine whether there is reasonable evidence to commence an investigation within 20 days of the receipt of the petition. To make this determination, Customs analyzes the applicant’s claims, conducts industry verification visits, and collects information from Australian importers about the export prices of the foreign firms subject to the investigation.

Once Customs decides to initiate an investigation, it has 155 days to complete the investigation and submit a report to the Minister of Customs. Customs first contacts all known interested parties, including Australian importers, foreign exporters subject to the investigation and domestic producers, and invites them to respond to the claims made in the application. Responses are due within 40 days of the start of the investigation.

3 Industries may seek advice from the Dumping Liaison Unit of Customs about the antidumping investigation process and the information that needs to be included in petitions prior to filing their request.
4 If Customs instead rejects the petition, the applicants may appeal the decision to the Trade Measures Review Officer, an independent statutory appeal body.
5 All submissions must be accompanied by a non-confidential summary of information contained in the submission. The non-confidential version of the submission and non-confidential version of the application
Customs verifies some of the information contained in these submissions by conducting visits to foreign exporters, for example.

As specified in the Antidumping Agreement of the World Trade Organization (WTO), Customs must (1) determine whether dumping is taking place and calculate the extent of this dumping and (2) determine whether this dumping is causing or threatening to cause material injury to the domestic industry.

Calculation of the Dumping Margin

In general, Customs calculates the margin of dumping as the difference between the foreign firm’s export price and the “normal value” of the product during the period of investigation. Customs will generally define the investigation period as the 12 months preceding the initiation date and the ending of the most recently completed quarter or month. However, the investigation period may cover a longer period to ensure that it includes a full financial accounting period. Australia’s antidumping legislation describes a number of methods by which dumping margins may be calculated. Customs may:

- compare the weighted average export price with the weighted average normal value over the investigation period;
- compare the export prices from individual transactions over the investigation period with corresponding normal values in the same period;
- combine the weighted average with the transaction to transaction method; or
- compare the weighted average normal value with individual transaction export prices.

The legislation specifies that Customs should use the weighted average method to determine the dumping margin except in the exceptional circumstances. The transaction to transaction method should be used only in less usual circumstances, such as if the normal value varies significantly from shipment to shipment, there are few domestic and export sales of the goods, or the specific type of product varies significantly by transaction. The weighted average normal value should be compared to transaction specific export prices only in rare circumstances. The normal value is based on the price payable for like goods sold in the domestic market of the country of export either by the exporter or by other sellers of the goods. In order to have an acceptable normal value, the sale needs to be at arms length and in the ordinary course of trade.

Typically, there are a number of different types/models/grades of the product under investigation. In this situation, Australian antidumping legislation requires a fair comparison, which leads to the determination of margins of dumping for each type or model. In assessing whether or not there is dumping at the product level, customs aggregates across the various types in order to determine the single product margin. In other words, the “product margin” measures the margin of dumping for the product by aggregating the margins of dumping for the discrete types or models.

are included in the public file. Non-confidential summaries of submissions should be sufficiently detailed to allow for a reasonable understanding of the submission.
Customs tries to compute a dumping margin for each exporter targeted in the investigation. If the number of exporters is so large that it is not practical to ascertain a dumping margin for each firm then Customs may calculate firm-specific dumping margins for only a subset of the foreign firms. This subset must be either a statistically valid random sample of firms or include the firms accounting for the largest volume of exports to Australia that can reasonably be investigated.\(^6\)

Exporters outside of the sample are assigned the “all others” margin, typically a weighted average of the dumping margins of firms within the sample. If an exporter outside of the sample submits the necessary information, Customs must calculate a dumping margin for this exporter unless to do so would prevent the timely completion of the investigation.

If the margin of dumping for any individual exporter is \textit{de minimis}, or less than two percent, the investigation against that particular exporter is automatically terminated without the imposition of dumping duties.

\textit{Material Injury Determination}

The injury is assessed across the total Australian industry and not on a company specific basis. Injury is demonstrated in several ways but is generally categorized into loss of sales volume, loss of market share, and/or reduction in profits. Additionally, investigations may consider a range of other injury indicators such as employment and wages, production levels, capacity utilization, forward orders, return on investment, cash flow, ability to raise capital, investment, and increased inventory holdings (stock levels) caused by decreased sales volumes and pricing pressures. Moreover, Customs must consider the size of the dumping margin in their injury investigation. If imports from several countries are cumulated when determining whether the dumped imports have caused injury, the average margin of dumping for each country cumulated must be greater than two percent.

\textit{Imposition of Duties}

Customs may impose provisional antidumping measures after 60 days if it makes a preliminary determination that dumped imports have caused material injury to the domestic industry. Regardless of whether provisional measures are imposed, Customs must publish a detailed statement of the essential facts on which it proposes to base its report to the Minister within 110 days. Interested parties then have 20 days to submit a response to this statement.\(^7\)

During the final 25 days of the investigation, Customs reviews the issues raised in these submissions and prepares its final report and recommendations to the Minister. After

\(^6\) Customs must consult with and obtain the consent of the exporters/producers involved to form this sub-sample.

\(^7\) The Minister may extend Custom’s deadline to publish the essential facts about the case and its final report, as well as the amount of time interested parties have to respond to the essential facts.
receiving Custom’s recommendations, the Minister makes a final determination regarding whether or not to impose antidumping measures. The antidumping duties imposed by the Minister cannot exceed the dumping margin for the product calculated by Customs.

Interested parties have 30 days to appeal the Minister’s decision with the Trade Measures Review Office (Review Office), a specialized independent appeal body in the Attorney-General’s Department. If the appeal is accepted, the Review Office has 60 days to conduct a review of the issues raised in the appeal. The Review Office can recommend to the Minister that the case be remitted to Customs for further investigation if it determines that the appeal has warrant. The Review Office does not, however, have power to overturn a decision of the Minister.

Duties and undertakings are imposed for five years, unless revoked earlier. Provisions do exist to consider whether extension of measures for a period beyond five years is necessary. If after a comprehensive review, the Minister accepts Custom's recommendation that measures should continue, measures may remain in force for an additional period of five years.

Importers, exporters or the Australian industry may request that the Minister revoke antidumping or countervailing measures if they have grounds to believe the measures are no longer appropriate. Such an application can be made at any time after the Minister's decision has been published. This provision has only been used to revoke antidumping duties in exceptional circumstances – such as the demise of the Australian industry or the cessation of a subsidy.

II. Compliance with the WTO Antidumping Agreement

On February 20, 1998, Switzerland filed a dispute with the World Trade Organization (WTO) contending that Australia failed to comply with the WTO’s Antidumping Agreement when it imposed provisional antidumping measures on Swiss imports of coated wood-free paper. Switzerland contended that the investigation was not in conformity with Australia’s commitments under Articles 3 (about Determination of Injury) and 5 (about Initiation and Subsequent Investigation) of the Anti-Dumping Agreement.

Australia terminated the coated wood-free paper sheet investigation on March 25, 1998, thus removing the provisional antidumping measures. Switzerland notified the WTO that the two countries had reached an agreement, thus the WTO’s Dispute Settlement Body never reviewed Switzerland’s allegations.
Brazil

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

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. 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.

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

9 The unit cost is defined as production costs plus selling, general and administrative costs.
the like products in Brazil, and the consequent effect of the dumped imports on domestic 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

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10 “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.
and Tourism and the Minister of Finance must take the “national interest” into consideration when making its final decision.

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.
Canada

According to the Global Antidumping Database, Canadian producers filed 37 antidumping petitions between 1997 and 2004; 80 percent of these cases resulted in the imposition of antidumping duties. As illustrated in Figure 1, excluding the year 2000 Canadian producers filed an average of four petitions per year between 1997 and 2004; antidumping activity in Canada peaked in 2000 when producers filed eight cases.

Figure 1

Legal Procedures

The Special Import Measures Act (SIMA) protects Canadian industries from injury caused by the dumping and subsidizing of imported goods. Canada’s antidumping regime includes a two-track antidumping determination system. The Canada Border Services Agency (CBSA) and Canadian International Trade Tribunal (Tribunal) are jointly responsible for administering SIMA and have separate, complementary duties in the antidumping investigation.

A Canadian producer or association of producers may file a written complaint with the CBSA charging that imports from a particular country have been dumped, or sold at a below normal value, and these imports are causing or threatening to cause material injury.\(^{11}\) Within 30 days of receiving the written complaint, the CBSA must determine whether there are (1) sufficient grounds to initiate a dumping investigation and (2)

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\(^{11}\) The producer must produce goods that are identical or similar to the competing imported products.
sufficient support by the Canadian industry for the investigation. In rare circumstances, the government may self-initiate an investigation if there is a reasonable indication that dumping has caused or is threatening to cause injury.

If the CBSA determines that an investigation should be initiated, the CBSA is charged with investigating whether imported products have been dumped on the Canadian market and the Tribunal is charged with determining whether the dumped imports have caused or threatened to cause material injury to the domestic industry. Although the two inquiries are conducted separately, both are carried out during the same time period. The entire investigation process takes approximately seven months.

Following the initiation of the investigation, the CBSA sends a copy of the complaint to the Tribunal so that it can begin its injury inquiry. The Tribunal has 60 days to collect data and make a preliminary injury decision, while CBSA has 90 days (135 days in complex cases) to collect information from all parties involved and make a preliminary dumping decision. In order for an investigation to continue, both the Tribunal and CBSA must make affirmative preliminary determinations of injury and dumping, respectively. If either the Tribunal or CBSA makes a negative preliminary determination, the investigation is terminated.

Calculation of the Dumping Margin

Following its preliminary dumping determination, the CBSA has an additional 90 days to make its final dumping determination. The CBSA makes its dumping determination based in part on information contained in questionnaires that are sent to both exporters and importers of the product in question.

The CBSA calculates the dumping margin as the difference between normal value and the export price of the good. The Commission determines the normal value using one of several possible methods. Whenever possible, the normal value is calculated using the sales price in the exporting country’s domestic market. This sales price is adjusted to account for differences in terms of sales and taxation, as well as other factors. Note that all sales made below unit cost are defined to be outside of the normal course of trade and, thus, excluded from this calculation of normal value.

If there is an insufficient quantity of sales made in the exporting country’s domestic market, the CBSA may calculate the normal value using an alternative method. For example, the CBSA may use the use the prices of sales from the exporting country to a selected third country. Alternatively, the CBSA may calculate a constructed normal value using the exporting country’s cost of production plus amounts for selling, general, and administrative costs and profits. For non-market economy countries, the CBSA determines the normal value using either the sales price or constructed value in a selected market economy country.

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12 Producers supporting the complaint must represent at least 25 percent of total Canadian production and 50 percent of the production of the producers that support and oppose the petition.
13 The unit cost is defined as production costs plus selling, general and administrative costs.
If the CBSA determines that sufficient information is not available to enable the calculation of normal value, the normal value may be determined using any information available, including information submitted in the petition or submitted by other interested parties.

An investigation is terminated if the CBSA finds that the dumping margin is insignificant, or less than two percent. The CBSA normally calculates a separate antidumping margin for each supplier. If the number of suppliers, products or transactions is too large, the CBSA may select a sample for the investigation. The CBSA calculates the dumping margin for those firms not included in the examination using a weighted average margin of dumping established for those suppliers selected in the sample.

**Material Injury Determination**

The Tribunal typically makes its preliminary determination using information from the CBSA and written submissions by the parties involved. The Tribunal may also request additional clarification from the parties involved during the preliminary investigation phase. Following the CBSA's preliminary dumping determination, the Tribunal has an additional 120 days to make its final injury determination. The Tribunal must hold public hearings within 90 days; at these public hearings, interested parties, including Canadian producers, importers, and foreign exporters, are allowed to present their arguments and question witnesses. The Tribunal must make a final injury determination within 30 days of the public hearings.

As directed by SIMA, Tribunal authorities must consider significant increases in dumped imports as well as evidence of price undercutting and price depression as factors indicating injury during both the preliminary and final investigations. Other important factors that the Tribunal examines include the impact of dumped imports on output, sales, market share, profits, capacity utilization, inventories and employment. In making a finding, the Tribunal cannot attribute injury caused by other factors to the dumped or subsidized imports. The Tribunal is required to terminate the investigation if the volume of dumped imports is found to be negligible.

SIMA includes provisions that allow the Tribunal to define the domestic industry on a regional basis. It also includes to provisions to allow the Tribunal to cumulatively assess the impact of imports from multiple countries under investigation if market conditions warrant such treatment.

**Imposition of Duties**

Following affirmative preliminary decisions by the Tribunal and CBSA, the government imposes provisional duties on imports of dumped goods in an amount equal to the difference between the preliminary normal value determination and the export price.
Alternatively, the provisional duty may be assessed as a flat percentage of the export price.

The government may also negotiate a price undertaking following affirmative preliminary determinations. An undertaking is an agreement with the exporters or foreign governments under investigation to change their pricing practices to eliminate the harm to Canadian industry. Although these agreements result in a suspension of the CBSA and Tribunal's investigations, antidumping duties may later be imposed if the parties in question are found to have violated the undertaking agreement.

A final affirmative decision by both the Tribunal and CBSA leads to the imposition of antidumping duties on the targeted imports, while a negative decision by either agency results in the reimbursement of the provisional duties. Canada typically imposes a final dumping duty equal to the final dumping margin determination by the CBSA. However, the Tribunal may initiate a public interest inquiry at the request of an interested party or on its own initiative if it suspects that the dumping duties will harm the public interest. This inquiry can take up to 90 days and result in a reduction of the dumping duties.

Reviews

The CBSA typically conducts "re-investigations" every year to update normal values and export prices, and to establish dumping margins for new exporters or products. The Tribunal may also review its findings because of a change in circumstances, such as a change in normal price, either on its own initiative or at the request of the Deputy Minister, interested parties or any other person or government. In addition, the Minister of Finance may ask the Tribunal to review a finding in light of a recommendation or ruling of the WTO dispute settlement body.

Dumping duties are typically removed after a sunset period of five years unless the Tribunal makes the decision following an expiry review that injury due to dumped imports will persist if the duties are removed. The Tribunal must notify all interested parties eight months prior to the date that the expiry review must be initiated. In the notice, interested parties are asked to make submissions explaining why the expiry review needs to be held or why the dumping duties should simply be allowed to expire. The Tribunal only initiates a review if it determines that it is warranted.

The expiry review is similar to the original injury inquiry described above. The Tribunal issues a notice, obtains information through questionnaires, calls for submissions and schedules a public hearing. Time limits are also similar to those in the original injury inquiry. Upon completing the review, the Tribunal issues its finding. If the finding is rescinded, antidumping are no longer collected on imports. The Tribunal may also continue a finding or amend it to exclude a product, country or specific exporter. If a review results in a decision to continue an injury finding, antidumping duties may be collected for an additional five years, or until the order is reviewed and rescinded.
Compliance with the WTO Antidumping Agreement

On March 17, 2006, the United States requested consultations with Canada concerning the imposition of provisional antidumping and countervailing duties on unprocessed grain corn from the United States in December 2005. In the same notice, the United States also requested consultations with Canada regarding certain provisions of Canada’s Special Import Measures Act.

The United States asserted that the provisional duties were inconsistent with Canada’s obligations under provisions of the GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Duties (SCM) because:

- the Statement of Reasons published by the Tribunal on November 30, 2005 in support of its preliminary determination of injury did not address or refer to mandatory factors in injury analyses such as the volume of imports, the price of imports, and the impact of imports on the domestic industry;
- the Tribunal specifically decided not to analyze the evidence before it with respect to causation, including evidence with respect to the causal link between imports and injury, and with respect to injury caused by factors other than imports;
- the Tribunal based its preliminary finding of injury solely on a supposed correlation between past injury to the Canadian domestic industry and an alleged decline in the U.S. domestic price of unprocessed grain corn rather than on the mandatory injury factors identified in the provisions of the Antidumping Agreement and SCM Agreement;
- the evidence supporting the alleged decline in U.S. domestic price of unprocessed grain corn used by the Tribunal was a projection of future grain corn prices, and therefore could not have been correlated with past injury to the domestic industry as the Tribunal found even if such correlation were relevant to an injury determination; and
- due to reasons listed above, the Tribunal failed to base its preliminary injury finding on "positive evidence" and an "objective examination" of that evidence.

The United States never requested that a dispute panel be formed in this case. The Tribunal made a final negative finding of injury on April 18, 2006, thus the preliminary dumping duties imposed on U.S. grain corn were refunded.
China

According to the Global Antidumping Database, Chinese producers filed 136 antidumping petitions between 1997 and 2005. Of the 126 antidumping determinations by the Chinese government during this time, over 95 percent resulted in the imposition of antidumping duties. As illustrated in Figure 1, the number of petitions filed by Chinese producers has increased significantly since 2001; Chinese producers filed 119 cases between 2001 and 2005 compared to only 16 cases between 1997 and 2000.

Figure 1

Legal Procedures

Any interested party may file an antidumping petition on behalf of the domestic industry. Prior to 2004, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) received the petition and was responsible for calculating the extent of the dumping margin, while the State Economic and Trade Commission (SETC) was responsible for determining whether the dumping was causing or threatening to cause injury to the domestic industry. If an antidumping investigation involved agricultural products, the injury to a domestic industry was jointly determined by SETC and the Ministry of Agriculture.

In the spring of 2003, MOFTEC and SETC were reorganized into a new agency, the Ministry of Commerce (MOFCOM). Since that time, MOFCOM has been responsible for the investigation and determination of both dumping and injury. If agricultural products are involved, the injury investigation is still conducted by both MOFCOM and the Ministry of Agriculture.

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14 An antidumping investigation may be initiated if domestic producers who support the petition account for more than 25 percent of total production of the like domestic product and have collective output of more than 50 percent of the total production produced by those producers who either support or oppose the petition.
MOFCOM must decide whether or not to initiate an investigation within 60 days of receiving the petition. In exceptional circumstances, MOFCOM may self-initiate an investigation even if it has not received an antidumping petition from the domestic industry if it has sufficient evidence of dumping, injury and a causal link between the two.

MOFCOM calculates the dumping margin by comparing either a weighted average of import prices to a weighted average of “normal values” over the period of investigation, or by comparing the normal values and import prices on a transaction-to-transaction basis. In special circumstances, MOFCOM may compare a weighted average normal value with prices of individual import transactions to calculate the dumping margin. Typically the period of investigation is the 12 months prior to the initiation of the investigation.

Normal value is typically determined by one of the three methods. Whenever possible, the normal value is calculated using the price of sales in the exporting country’s home market, unless the sales are made at prices below the country’s average cost of production. If the prices of such sales are all below the cost of production or the quantity sold is inadequate to calculate the normal value, the normal value can be determined using either the exporting country’s price of sales in an appropriate third-country market or the exporting country’s cost of production plus a reasonable amount for expenses and for profits. If any interested party fails to provide authentic information and relevant evidence within a reasonable time limit, MOFCOM may make its determination on the basis of the “facts already known” or “the best information available,” which includes the information submitted in the petition or submitted by interested parties.

MOFCOM normally determines a separate dumping margin for each individual responding exporter or producer. However, when the number of exporters, producers, types of products or transactions is too large, MOFCOM may select a sample of firms for the investigation by using either a statistical sampling method or by choosing those firms with the largest export volume. For exporters or producers who are not selected in the sample, MOFCOM calculates the dumping margin as the weighted average dumping margin determined for the sampled exporters and producers.

In the determination of injury, MOFCOM considers a number of factors, including the volume of dumped imports, the effects of dumped imports on prices and on other indices of the domestic industry, the production or export capacity of the exporting country, and inventories of the product under investigation.

Following its preliminary investigation, MOFCOM makes a preliminary determination and publishes its findings on dumping and injury, as well as the causal link between the two. After a affirmative preliminary determination of dumping and injury has been made, provisional antidumping measures such as duties, deposits, bonds or other forms of security may be imposed. If an exporting firm chooses to increase its price to a level suggested by MOFCOM, or stop exporting at the “dumped” prices, MOFCOM may decide to suspend or terminate the antidumping investigation without applying provisional antidumping measures. In this case, MOFCOM may resume the antidumping investigation at a later date if necessary.
If the preliminary determination is affirmative, the MOFCOM investigation continues and the Ministry makes a final determination on the margin of dumping and injury. An antidumping investigation usually concludes within 12 months from the publication date of the decision to initiate the investigation.

If the Ministry makes an affirmative final determination, antidumping duties equal to the margin of dumping are imposed on products imported after the date of publication of the final determination. As required by the World Trade Organization (WTO), MOFCOM reviews the need for the continuance of antidumping orders every five years. In addition, during the period that antidumping measures are effective, MOFCOM may initiate an interim review upon application or on its own initiative to review whether to continue these measures under the original form and at the original level. Interested parties need to file an application for an interim review within 30 days from the date after each single year has passed following the antidumping measures entering into force.

**Compliance with the WTO Antidumping Agreement**

China's antidumping procedures have never been challenged at the World Trade Organization.
European Communities

Producers in the European Communities (EC) filed 352 antidumping petitions between 1994 and 2004. By 2005, the European Commission had made final determinations on 260 of these petitions, imposing duties in slightly more than 70 percent of these cases. The number of antidumping petitions filed in the EC since passage of the Uruguay Round peaked in 1999, and has been significantly lower since, as illustrated in Figure 1.

Figure 1

Legal Procedures

Any interested party may file an antidumping petition with the European Commission on behalf of the Community industry, either directly or through its national government. After considering the evidence on dumping and injury contained in the petition, the Commission must decide whether or not to initiate an investigation within 45 days of receiving the petition and publish a notice in the Official Journal of the European Communities. In special circumstance,

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15 An antidumping investigation may be initiated if Community producers who support the petition account for at least 25 percent of total Community 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. The “like product” is defined as a product that is akin to the product under investigation in all aspects or a product with closely resembling characteristics.

16 The Commission is comprised of one representative from each member state of the European Union. The European Council nominates a Commission President, which then must be approved by the European Parliament. Commission representatives are chosen by the Commission President from lists of nominees provided by the member states.
with cooperation of the Member States, the Commission may self-initiate an investigation without having received any complaint from the Community industry if it has sufficient evidence of dumping, injury and a causal link between the two.

After initiating an investigation, the Commission conducts simultaneous investigations into (1) whether foreign products are imported at a price lower than the normal value and (2) whether those imports are causing or threatening to cause material injury to the Community industry. The dumping and injury investigations are undertaken by different case handlers within the Trade Directorate of the Commission.

To determine whether the foreign products are imported at a price lower than normal value, the Commission calculates the dumping margin as the difference between a weighted average normal value and a weighted average export price to the Community, 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 not less than six months immediately prior to the initiation of the investigation. In special circumstances, the Commission may compare a weighted average normal value to prices of all individual export transactions to the Community.

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 domestic market. However, if there is an insufficient quantity of sales in the exporting country’s domestic market, the weighted average sales price is below the weighted average unit cost, or the volume of sales below unit cost during the investigation percent is more than 20 percent of the total sales being used to determine normal value, 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 selling, general and administrative costs and profits, or use the prices of sales from the exporting country to a selected third country. For non-market economy countries, the Commission determines the normal value using either the 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 which may include the Community. The Commission may also calculate the normal value for a non-market economy country using the adjusted sales price of the like product in the Community, or on any other reasonable basis, if necessary.

The Commission 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 Commission may make its determination on the basis of “facts 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 Commission may select a sample for the investigation using statistical sampling methods or by choosing those suppliers or products with the largest volume of production, sales or exports on the basis of the information available at the time of the selection. The Commission calculates the dumping margin for those firms not included in the examination using a weighted average margin of dumping established for those suppliers selected in the sample.

17 The unit cost is defined as production costs plus selling, general and administrative costs.
To determine whether the foreign imports are causing or threatening to cause material injury to the Community industry, the Commission considers the volume of the dumped imports, the effect of the dumped imports on prices of the like product in the Community market, and the consequent impact of those imports on the Community industry. The Commission specifically considers 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. To ensure that the injury to the Community industry is caused by the dumped imports, the Commission also examines other factors that may be causing injury such as the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the consumption patterns, competition between third country and Community producers, developments in technology, and export performance and productivity of the Community industry.

The Commission should consult with the Antidumping Advisory Committee, which is chaired by a member of the Commission and includes representatives from each member state, prior to making a decision about whether to impose provisional antidumping duties. If the Commission makes a provisional affirmative determination of that dumped imports from the country under investigation have caused injury to the Community industry, provisional antidumping duties not exceeding the margin of dumping may be imposed. Provisional duties are imposed in the “Community interest” to prevent further injury to the Community industry.

Note that the Commission defines “Community interest” as the interests of both the Community industry and the end-users or consumers of the product under investigation. In other words, Commission must decide whether the benefits of the antidumping measures to Community producers outweigh the potential costs of the measures to Community consumers of the product under investigation. If the Commission concludes that the imposition of the antidumping measures is not in the “Community interest,” the case is terminated without imposing antidumping duties.

Following a provisional affirmative determination, the Commission continues its investigation on the margin of dumping and injury. If the Commission makes an affirmative final determination, it may impose definitive antidumping measures if the investigation involves coal or steel products. For all other products, the Commission simply recommends that the Council of European Union pass regulations imposing definitive antidumping duties. The Council makes the final decision after consulting with the Antidumping Advisory Committee. As described

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18 Provisional duties are either imposed for a period of either six or nine months. Provisional duties imposed for six months may be extended for an additional three months later in the investigation.
19 For example, in February 2006 the Commission found that imports of leather shoes from China and Vietnam were being sold at prices below normal value and causing material injury to the Community industry. The Trade Commissioner, however, recommended that children’s shoes be excluded from the antidumping measures because a duty on children’s shoes would disproportionately affect families with young children and would not be in the public interest.
20 The Council of the European Union includes ministers of the governments of each of the European Community’s member states. The Council has 321 total votes, which are distributed to member countries through a weighting system in place since 2004. The Council must approve the imposition of antidumping duties by a simple majority of
above, the Council must take the “Community interest” into consideration when making its final determination. Antidumping duties cannot exceed the margin of dumping calculated by the Commission during its investigation. Both provisional and definitive antidumping duties are collected by all Member States. All decisions must be published in the Official Journal of the European Communities.

If an exporter promises to revise its prices and stop exporting at “dumped” prices in an undertaking agreement, the Commission may terminate the antidumping investigation without imposing provisional or definitive antidumping duties. If the exporter fails to uphold the undertaking agreement or withdraws from the undertaking agreement, the Commission may impose a provisional or definitive duty based on the best information available.

Antidumping measures may be suspended by the Commission for a period of nine months to one year, if after consulting the Advisory Committee the Commission determines that injury to the Community industry would be unlikely to resume as a result of the suspension. In this case, the Commission may resume the antidumping measures at a later date if necessary.

The Commission may undertake an interim review after the one year anniversary of imposition of the definitive measures upon request. 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 after consulting with the Advisory Committee. In addition, antidumping duties may be extended to imports of like products from third countries during these reviews if there is a change in the pattern of trade between third counties and the Community.

Antidumping duties are usually lifted after five years. During the final year of the five year period, the Commission must publish a notice announcing the expiration of the antidumping measures in the Official Journal of the European Communities. The Commission must initiate an expiry review upon request or on its own initiative to examine whether the removal of the antidumping measures would be likely to result in the continuation or recurrence of dumping and injury. The request for an expiry review needs to be made by or on behalf of Community producers no later than three months before the end of the five year period.

In December 2006, the European Commission launched a review of their antidumping procedures. Press reports indicate that the European Union wants to change its rules to make it harder to impose antidumping duties in order to lessen foreign complaints over Europe's antidumping practices. The Commission is expected to publish recommendations for change in the Summer of 2007.

**Compliance with the WTO Antidumping Agreement**

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

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these votes; since 2004, abstentions have been counted as a vote to impose duties. If the Council fails to take action, then no duties are imposed.
Cotton-Type Bed Linen from India

On August 3, 1998, India filed a complaint with the World Trade Organization’s (WTO) dispute settlement body (DSB), claiming that the EC’s antidumping investigation and the imposition of antidumping duties on imports of cotton-type bed-linen from India failed to comply with the WTO’s Antidumping Agreement. Specifically, India argued that:

- the EC’s initiation, determination of dumping and injury, and explanation of the findings were inconsistent with the WTO law;
- the EC’s establishment of the facts was not proper and the evaluation of the facts was not unbiased and objective; and
- the EC authority had not taken into consideration the fact that India is a developing country.

The DSB published its finding on October 30, 2000. Although the panel rejected many of the specific complaints filed by India, it found that the EC had violated the WTO’s antidumping agreement when it failed to properly evaluate all relevant factors impacting the state of the domestic industry and included the financial status of firms not in the domestic industry in the injury analysis. The panel also confirmed that the EC failed to explore other possibilities of constructive remedies before applying antidumping duties, as the WTO Agreement specifies should happen when investigations involve developing countries. Finally, the panel ruled that the EC violated the WTO agreement when it engaged in the practice of zeroing when calculating dumping margins during the investigations.21

On March 1, 2001, the Appellate Body agreed that the EC had violated the WTO’s Antidumping Agreement during the course of the investigation as described above. The Appellate Body also found that the EC incorrectly applied administrative, selling and general costs and profits in the calculation of the constructed normal value during the investigation. The DSB adopted both the Appellate Body report and the Panel report, as modified by the Appellate Body report.

On April 5, 2001, the EC accepted the DSB’s recommendations, but noted that it would need a reasonable period of time to implement them. On April 26, 2001, India and the EC informed the DSB that the EC would implement the panel’s recommendations by August 14, 2001. The EC amended the imposition of definitive antidumping duties on imports of cotton-type bed linen from Egypt, India and Pakistan and suspended its application regarding imports originating in India by the deadline. India was not satisfied that the EC’s amended measures brought its antidumping practices into full compliance with the DSB’s rulings and therefore decided to continue to press its claims. On May 7, 2002, India requested the establishment of a compliance panel, and the DSB referred the issue to the original panel on May 22, 2002. On November 29, 2002, the panel ruled that the EC was now in full compliance with its earlier rulings and those of the Appellate Body and dismissed India’s complaint.

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21 “Zeroing” is a calculation methodology that ignores the cases of “negative” dumping (or those cases in which the export price is higher than the normal value) when calculating a weighted average dumping margin. The practice of zeroing increases the dumping margin and therefore inflates antidumping duties.
Malleable Cast Iron Tube or Pipe Fittings from Brazil

On December 21, 2000, Brazil filed a complaint with the WTO’s dispute settlement body, claiming that the imposition of definitive antidumping duties concerning imports of malleable cast iron tube or pipe fittings from Brazil failed to comply with the WTO’s Antidumping Agreement. Specifically, Brazil argued that:

- the EC’s establishment of the facts was not proper and its evaluation of these facts was not unbiased and objective in both the provisional and definitive determination; and
- the EC’s evaluation and findings made in relation to the “community interest” was not proper.

On March 7, 2003, a WTO dispute settlement panel found that the EC acted inconsistently with the antidumping agreement in “zeroing” negative dumping margins in its dumping determination. The panel also ruled that the EC did not clearly address or explain the lack of significance of certain injury facts in the published provisional or definitive determination. However, the panel found that the EC did not violate the antidumping agreement regarding Brazil’s other claims.

On July 22, 2003, the Appellate Body upheld most of the panel’s findings but reversed its finding with respect to one issue. In contrast to the panel, the Appellate Body found that the EC failed to disclose to interested parties certain information related to the evaluation of the state of the domestic industry during the antidumping investigation, which was inconsistent with the antidumping agreement. The DSB adopted both the Appellate Body report and the Panel report, as modified by the Appellate Body report.

The EC accepted these recommendations and agreed to implement them by March 19, 2004. On March 17, 2004, the EC informed the DSB that it had fully complied with the recommendations and rulings of the DSB in this dispute within the deadline.

Flat Rolled Iron or Non-Alloy Steel Products from India

On July 5, 2004, India filed a complaint with the WTO’s dispute settlement body concerning the imposition of definitive anti-dumping measures on imports of certain flat rolled products of iron or non-alloy steel (“HR Coils”) from India. India argued that the EC did not collect antidumping duties on a non-discriminatory basis on imports from all sources found to be dumped and causing injury. While antidumping measures were in force against imports of HR Coils from India, no measures were taken against imports of the same product from Egypt, Slovakia and Turkey, although the Commission determined that the products imported from the latter three countries were also dumped and causing injury to the Community industry.

On October 22, 2004, India and the EC reached an agreement and informed the DSB that the EC would terminate the measures against imports of HR Coils from India.
India

Indian producers filed 369 antidumping petitions between 1994 and 2004. Of the 360 antidumping determinations by the Indian government during this period, about 90 percent resulted in the imposition of antidumping duties. The number of antidumping petitions filed in India increased until 2002, but has been significantly lower since, as illustrated in Figure 1.

Figure 1

![Graph showing the number of antidumping cases filed in India from 1994 to 2004.](image)

Legal Procedures

Any interested party may file an antidumping petition with the Ministry of Commerce\textsuperscript{22} on behalf of the domestic industry.\textsuperscript{23} After examining the accuracy and adequacy of the evidence in the petition, 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. In special circumstance, the Ministry 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. The Central Government imposes antidumping duties on the basis of the findings by the Ministry.

\textsuperscript{22} Although the Central Government is officially charged with administering India’s antidumping law, current regulations give the Central Government the authority to designate this responsibility to a specific government official. Currently, the Ministry of Commerce is charged with administering India’s antidumping law. The task is specifically handled by the Directorate General of Antidumping and Allied Duties within the Ministry of Commerce.

\textsuperscript{23} 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.
To determine whether the foreign products are imported at a price lower than normal value, the Ministry calculates the dumping margin as the difference between a weighted average normal value and a weighted average export price to India, 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 Ministry may compare a weighted average normal value to prices of individual export transactions to India.

The Ministry determines the normal value using one of four methods. Whenever possible, the normal value is calculated using the sales price in the exporting country’s home market. However, if there is an insufficient quantity of sales in the exporting country’s domestic market, 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 the total sales being used to determine normal value, 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 selling, general and administrative costs and profits, or use the prices of sales from the exporting country to a selected third country. For non-market economy countries, the Ministry determines the normal value using either the 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 which may include India. If none of these methods are possible, the Ministry may calculate the normal value for a non-market economy using the adjusted sales price of the like product in India, or using any other reasonable basis.

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 “facts available,” which includes the information submitted in the petition or submitted by interested parties. When the number of suppliers or products involved in the investigation is too large, the Ministry may select a sample of suppliers or products for the investigation using statistical sampling methods based on information available at the time of selection or by choosing those suppliers or products with the largest import volumes. The Ministry 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 Ministry considers the volume of dumped imports, the effect of the dumped imports on prices of the like product in India’s market, and the consequent effect of the dumped imports on domestic

24 The unit cost is defined as production costs plus selling, general and administrative costs.
25 Non-market economy countries include Albania, Armenia, Azerbaijan, Belarus, People’s Republic of China, Georgia, Kazakstan, North Korea, Kyrgyzstanz, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. Due to the changing economic conditions in Russia and in the People’s Republic of China, if there is sufficient evidence that market conditions prevail for any firm under investigation, normal values for these firms are calculated on the basis of the principles set out for market economies.
26 “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.
producers. To examine the impact of the dumped imports on domestic industry, the Ministry evaluates the magnitude of the margin of dumping and all relevant economic factors and indices including natural and potential decline in sales, profits, output, market share, productivity, return on investments, inventories, employments, wages, and growth in the domestic industry. The Ministry also examines the other factors to ensure that the injury caused by these other factors is not attributed to the dumped imports. These factors include the volume of goods imported at a “normal value,” contraction in demand or changes in the pattern of consumption, competition between foreign and domestic producers, developments in technology, and the export performance and productivity of domestic producers.

Following its preliminary investigation, the Ministry makes a preliminary determination on dumping and injury and issues a public notice. The Central Government then imposes a provisional duty not exceeding the margin of dumping on the basis of preliminary determination by the Ministry. Provisional antidumping duties usually remain in force for a period of no more than six months; in some cases, they may be extended by the Central Government for up to nine months.

If an exporter promises to revise its price immediately and stop exporting at the “dumped” prices, the Ministry may suspend or terminate the antidumping investigation without applying provisional antidumping measures. The Ministry must also inform the Central Government of the acceptance of an undertaking and issue a public notice. If the exporter fails to uphold the undertaking agreement, the Ministry must inform the Central Government of such violation and recommend imposition of provisional duties.

Following a provisional affirmative determination, the Ministry continues its investigation on the margin of dumping and injury. Before giving its final findings, the Ministry informs all interested parties of the essential facts under consideration which will likely form the basis of its decision. Within one year from the date of initiation of the investigation, or in exceptional circumstances eighteen months, the Ministry must make a final determination regarding injury and the value of antidumping duties, submit its final findings to the Central Government, and issue a public notice on its finding. Within three months of the date of publication of final determination by the Ministry, the Central Government may publish a notification in the Official Gazette imposing antidumping duties not exceeding the margin of dumping determined by the Ministry.

The antidumping duty or undertaking agreement is usually lifted after five years unless revoked earlier. Upon request received from interested parties or on its own initiative, the Ministry periodically reviews the need for continuance of antidumping duty or undertaking and determines individual dumping margins for new suppliers in the exporting country who did not export the product to India during the original period of investigation. 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 Central Government may extend the period of imposition of antidumping duty for a further period of five years.

An appeal against the order of antidumping determination or review can be filed with the Appellate Tribunal within ninety days. Every appeal must be heard by a Special Bench
consisting of the President of the Appellate Tribunal and no less than two other members, which must include one judicial member and one technical member. A Bench can exercise and discharge the powers and functions of the Appellate Tribunal. If the members of the Bench differ in opinion of any issue, the decision is made according to the opinion of the majority; if the members are equally divided, the President can either give an opinion himself or refer the case to one or more of the other members of the Appellate Tribunal and the decision is based on the opinion of the majority of those members.

**Compliance with the WTO Antidumping Agreement**

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

**Imports of 27 Products from the European Communities**

On December 8, 2003, the European Communities (EC) filed a complaint with the World Trade Organization’s (WTO) dispute settlement body (DSB), claiming that the India’s antidumping investigation and the imposition of antidumping duties on imports of 27 products from the EC or EC member states failed to comply with the WTO’s Antidumping Agreement. Specifically, the EC argued that:

- the determination of the effect of the dumped imports on prices was not based on positive evidence or on an objective examination;
- the Indian authority did not demonstrate that the dumped imports were causing the alleged injury, and failed to examine other known factors and ensure that injury caused by those other factors was not attributed to the dumped imports;
- the Indian authority did not provide interested parties sufficient time to defend their interests when it informed them of the essential facts under consideration which formed the basis for its final decision;
- the Indian authority did not properly explain the reasons why it rejected the evidence or information that interested parties submitted within the investigation procedure; and
- the public notice of final determination did not contain all relevant information, including facts, law and reasons, which led to the imposition of the antidumping duties.

No panel was ever established in this case. However, by July 2005 sixteen of the 27 antidumping measures had been revoked by the Indian government.

**Lead Acid Batteries from Bangladesh**

On January 28, 2004, Bangladesh filed a complaint with the WTO’s dispute settlement body, claiming that the imposition of definitive antidumping duties concerning imports of lead acid batteries from Bangladesh failed to comply with the WTO’s Antidumping Agreement.²⁷ Specifically, Bangladesh argued that:

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²⁷ This was the first dispute involving a least-developed country member as a principal party to a dispute.
the Indian authority initiated an investigation with unsubstantiated claims made “by or on behalf of the domestic industry” and failed to immediately terminate the investigation, notwithstanding the negligible volume of imports from Bangladesh;

- the normal value, export price, and margin of dumping were not properly determined;

- the injury and causation were not properly determined; and

- the Indian authority failed to consider all information submitted by the interested parties from Bangladesh and failed to disclose to the interested parties the essential facts under consideration which formed the basis of the final determination and other relevant information.

On October 26, 2004, the Indian Ministry of Commerce published the findings of its review and concluded that (1) there were no exports from Bangladesh during the period of investigation and hence the dumping margin could not be established and (2) the domestic industry had not suffered material injury due to dumped imports. Thus, India withdrew the antidumping duties before Bangladesh proceeded to the panel stage of the dispute settlement process. On February 20, 2006, Bangladesh and India informed the DSB that they had reached a mutually satisfactory solution to the issues raised by Bangladesh.

Imports of Seven Products from Chinese Taipei

On October 28, 2004, Chinese Taipei filed a complaint with the WTO’s dispute settlement body concerning the provisional and definitive antidumping measures imposed by India on imports of seven products, including acrylic fibers, analgin, potassium permanganate, paracetamol, sodium nitrite, caustic soda, and green veneer tape. Specifically, Chinese Taipei argued that:

- the Indian authority rejected the information submitted by Chinese Taipei exporters without providing reasons;

- the Indian authority initiated an investigation without sufficient evidence of dumping and injury in the petition;

- the normal value and export price were not properly determined;

- the Indian authority did not determine injury or threat of material injury based on positive evidence or on an objective examination, and failed to examine all injury factors in the antidumping agreement;

- the Indian authority did not sufficiently demonstrate that the dumped imports were causing the alleged injury, and failed to examine other factors and ensure that injury caused by other factors was not attributed to the dumped imports;

- the Indian authority did not provide interested parties with full opportunity to defend their interests before making final determination;

- provisional measures were imposed for more than the period of time allowed under the antidumping agreement; and

- the public notice of final determination did not contain all relevant information which led to the imposition of the antidumping duties.

A panel was never established in this case. Antidumping duties have since been revoked for three of the seven products.
Korea

Korean producers filed 55 antidumping petitions between 1994 and 2004. Of the 41 antidumping determinations by the Korean government during this period, 71 percent resulted in the imposition of antidumping duties. The number of Korean antidumping petitions has declined significantly since 1998; Korean producers filed only 12 cases between 1999 and 2004 compared to 43 cases between 1996 and 1998.

Legal Procedures

Any interested party may file an antidumping petition with the Trade Commission (the Commission) on behalf of the domestic industry. The Commission then 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 Minister of Finance and Economy determines whether or not to impose antidumping measures based on the results of the Commission’s investigation.

The Commission calculates the dumping margin as the difference between the weighted average normal value and the weighted average import price over the period of investigation. The Commission determines the normal value using one of the four methods. Whenever possible, the Commission defines the normal value as the exporting country’s sales price in its domestic market. However, if more than 20 percent of the exporting country’s domestic sales are made at prices below their average cost of production, or the value of exporting country’s domestic sales are less than five percent of the value of Korean imports from the exporting country, the Commission may calculate the normal value using one of two alternative methods. First, the Commission may use the price of sales from the exporting country to selected third countries. Alternatively, the Commission can calculate a “constructed” normal value from the exporting country’s cost of production plus a reasonable amount for administrative and selling costs and profits. If the exporting country is a state-controlled economy without a market economy system, the Commission calculates the normal value as either the price of the product in selected market economy countries other than Korea, the export price from a selected market economy country to selected third countries including Korea, or the constructed value. If the exporting country is in transition to a market economy system, the normal value may be determined using the same methods as employed with a market economy country.

The Commission generally calculates a separate antidumping margin for each supplier or supplying country; however, if it is difficult to conduct an investigation or verify information, a single antidumping duty may be imposed upon all firms within an exporting country or upon all countries targeted in the antidumping investigation. When the number of suppliers or products is too large, the Commission may select a sample of suppliers or products for the investigation using statistical sampling methods or by choosing those suppliers or products with the largest

28 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 product same in kind and quality or the similar 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.
import volumes. The Commission 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.

If any firm within the exporting country fails to provide requested information within a reasonable time limit, the Minister of Finance and Economy or the Commission may decide whether or not to take antidumping measures on the basis of the “facts available.” However, even though an interested party has provided material, if he refuses to make the material public or submit a non-confidential summary without a justifiable reason, the Minister of Finance and Economy and the Commission may choose not to use information and evidence submitted by the interested parties unless the accuracy of the material has been sufficiently demonstrated.

When determining whether the foreign imports are causing or threatening to cause material injury to the domestic industry, the Commission considers a number of factors including the volume and price of the dumped products, the degree of the dumping margin, the exporting country’s production and export capacity, and the domestic industry’s output, market share, prices, profits, productivity, and employment.

The Commission must submit a preliminary report to the Minister of Finance and Economy within three months of the initiation of the investigation. The Minister of Finance and Economy then determines whether or not to impose provisional antidumping measures. Korean antidumping measures take one of two forms. If the fixed rate method is used, Korea imposes a firm-specific, ad valorem antidumping duty of not more than the calculated dumping margin over the period of investigation. Alternatively, Korea may impose a specific dumping duty equal to the difference between a defined base import price and the customs value of the unit. The base import price is typically defined by the average adjusted normal value of the product plus import-related expenses over the period of investigation.

If an exporter promises to revise its price immediately and stop exporting at the “dumped” prices within six months in an “undertaking” agreement, the Minister of Finance and Economy may suspend or terminate the antidumping investigation without applying provisional antidumping measures. If the exporter fails to uphold the undertaking agreement, the Minister of Finance and Economy may impose provisional antidumping measures immediately based on the best information available.

If the preliminary determination is affirmative, the Commission initiates a final investigation and makes a final determination within three months. Based on the Commission’s report on the results of final investigation, the Minister of Finance and Economy decides whether or not to impose more permanent antidumping measures.

The antidumping duty or undertaking agreement is usually lifted after five years. The Minister of Finance and Economy may review the need to modify the measures after the one year anniversary of imposition of the measures upon request. A review is also undertaken six months before the expiration of the antidumping duties or the undertaking. The Commission carries out all reviews, determining whether the imposition of the antidumping measures is still warranted and calculating a dumping margin for all exporting firms involved in the review. The modified
antidumping measure or undertaking agreement that is imposed as a result of the review is effective for five years from the date of the modification, unless the imposition period is determined independently.

**Compliance with the WTO Antidumping Agreement**

On June 4, 2004, Indonesia filed a complaint with the World Trade Organization’s (WTO) dispute settlement body, charging that Korea’s antidumping investigation and the imposition of definitive antidumping duties on certain paper from Indonesia failed to comply with the WTO’s Antidumping Agreement. Specifically, Indonesia argued that Korea:

- initiated an investigation without sufficient and adequate evidence in the petition of dumping, injury and a causal link between the two;
- did not provide any information on what evidence the injury determination was based upon in the Notice of Initiation;
- improperly granted confidential treatment; and
- failed to properly conduct certain aspects of the investigation such as the definition of like product, the calculation of the constructed value, the calculation of individual dumping margins, the use of best information available, the denial of access to information, the treatment of certain firms as a single exporter, and the assessment of the impact of dumped imports in the preliminary and final determination.

On October 28, 2005, a WTO dispute settlement panel found that the Korean Trade Commission acted inconsistently with the antidumping agreement in determining the dumping margin for one Indonesian company. For two Indonesian companies, the Commission failed to provide proper disclosure of the verification results and the detailed calculation of the constructed values, and neglected to properly utilize secondary information in these calculations. The panel also found that the Trade Commission failed to properly treat confidential information and correctly assess the impact of dumped imports on the domestic industry. However, the panel also concluded that the Trade Commission did not violate the antidumping agreement when it rejected the domestic sales data submitted by these two companies and resorted to facts available to calculate the constructed value. It was also appropriate for the Commission to treat three Indonesian companies as a single exporter and assign a single dumping margin to them.

Korea accepted these recommendations, but noted that it would need a reasonable period of time to implement them. On February 10, 2006, Indonesia and Korea informed the Dispute Settlement Body that Korea would implement the WTO ruling by July 28, 2006.
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

![Chart showing number of antidumping cases filed by year](chart.png)

**Legal Procedures**

Any interested party may file an antidumping petition with the Ministry of the Economy (the Ministry) on behalf of the domestic industry. 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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29 The Ministry of the Economy was formerly called the Ministry of Commerce and Industrial Development (SECOFI) prior to December 1, 2000.

30 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.\textsuperscript{31}

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.\textsuperscript{32} To examine the impact of the dumped imports on

\textsuperscript{31} 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.

\textsuperscript{32} “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.
domestic industry, the Ministry evaluates the magnitude of the margin of dumping and its impact 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
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 of 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.
New Zealand

New Zealand producers filed 42 antidumping petitions between 1995 and 2005. Of the 22 antidumping determinations by the New Zealand government during this period, 77 percent resulted in the imposition of antidumping duties.

**Legal Procedures**

Any interested party may file an antidumping petition with the Trade Remedies Group (the Group) of the Ministry of Economic Development on behalf of the domestic industry. After initiating an investigation, the Group undertakes simultaneous investigations into (1) whether foreign products are imported at a price lower than the normal value and (2) whether those imports are causing or threatening to cause material injury to the domestic industry, or the establishment of an industry has been or is being materially retarded. The Minister of Commerce (the Minister) determines whether or not to impose antidumping duties based on the results of the Group’s investigation.

The Group normally calculates the dumping margin as the difference between the weighted average normal value and the weighted average import price over the period of investigation. The Group determines the normal value using one of the three methods. Whenever possible, the normal value is calculated using the sales price in the exporting country’s home market. However, if there are an insufficient quantity of sales in the exporting country’s domestic market, the export price is directly or indirectly influenced by the buyer, or another situation arises that does not permit using domestic sales in determining normal value, the Group calculates the normal value using one of two alternative methods. The Group 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 Group may use the prices of sales from the exporting country to a selected third country. If any interested party fails to provide sufficient information within a reasonable time limit, the Group may make its determination on the basis of “all available information,” which includes the information submitted in the petition and by interested parties.

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 Group considers the volume of dumped imports, the effect of the dumped imports on prices of the like products in New Zealand’s market, and the consequent impact of the dumped imports on relevant New Zealand industry. The Group specifically considers the magnitude of the margin of dumping and its impact on actual and potential decline in output, sales, market share, productivity, return on investments, inventories, employments, wages, and growth in the

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33 An antidumping investigation may be initiated if New Zealand producers who support the petition account for at least 25 percent of total New Zealand production of the like goods produced for domestic consumption and have collective output of more than 50 percent of the total production of such goods produced for domestic consumption by those producers who either support or oppose the petition.

34 “Like products” are defined as goods that are identical to the goods under investigation or which have characteristics closely resembling those goods.
domestic industry. To ensure that the injury to the domestic industry is caused by the dumped imports, the Group also examines other factors that may have injured the industry. These factors include the volume of goods imported at a “normal value,” contraction in demand or changes in the pattern of consumption, competition between overseas and domestic producers, developments in technology, and the export performance and productivity of domestic producers.

The Minister may impose provisional antidumping measure if there is sufficient evidence of dumping and material injury to the domestic industry after 60 days passes from date of the initiation of the investigation. Within 150 days of the initiation of the investigation, the Group must inform all interested parties of the essential facts in the investigation and the conclusions that will likely form the basis of a final determination. The Minister must then make a final determination and determine the value of the antidumping duties that will be imposed within 180 days of the initiation of the investigation. Antidumping duties cannot exceed the margin of dumping calculated by the Group during its investigation. If there is insufficient evidence of dumping or material injury to the domestic industry, the Minister terminates the investigation before making a final determination. All decisions must be published in the New Zealand Gazette.

If an exporter promises to revise its prices and stop exporting at “dumped” prices in an undertaking agreement, the Minister may terminate the antidumping investigation without applying any antidumping duties. When the investigation is terminated due to faulty information or the exporter fails to uphold the undertaking agreement, the Minister may reinitiate the investigation and impose provisional antidumping measures.

The antidumping duty or undertaking agreement is usually lifted after five years. The Group may initiate a review of the antidumping duty or undertaking at the request of interested parties, or on its own initiative. The Group may also initiate a reassessment of the value of the antidumping duty when necessary. The modified antidumping measure or undertaking that is imposed as a result of a review or reassessment is effective for five years from the date of the modification. However, the Minister may publish a notice and terminate the imposition of any antidumping duty in whole or in part before the end of five years.

New Zealand’s antidumping regulations afford some countries special treatment. Specifically, Australia and New Zealand have agreed to dispense with all antidumping actions for goods produced in either country. In December 2000, the New Zealand government and the Singapore government signed the New Zealand/Singapore Closer Economic Partnership Agreement in which they agreed that:

(1) cases will be dismissed if the dumping margin is less than de minimus, or five percent of the export price for goods from Singapore compared to two percent for all other countries;

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35 A review involves a re-examination of material injury and the need for the continued imposition of antidumping duties. It must be completed within 180 days of the date the review is initiated.

36 A reassessment is a re-examination of the rate or amount of antidumping duty, including the formula used to calculate such a rate or amount. There is no time limit for completing a reassessment.
(2) cases will be dismissed if the volume of dumped imports from Singapore is negligible, or less than five percent of total imports of like goods into New Zealand compared to three percent for all other countries; and
(3) antidumping duties imposed upon goods from Singapore will be lifted after three years compared to five years for all other countries.

Compliance with the WTO Antidumping Agreement

China's antidumping procedures have never been challenged at the World Trade Organization.
Peru

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](image)

### 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. 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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37 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.38 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.39 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

38 The unit cost is defined as production costs plus selling, general and administrative costs.
39 “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.
United States

According to the Global Antidumping Database, U.S. producers filed 124 antidumping petitions between 1997 and 2005, as illustrated in Figure [1]; eighty percent of these cases eventually resulted in the imposition of antidumping duties. The leading targets of U.S. antidumping actions during this time period included China, Japan and South Korea.

Figure 1

Legal Procedures

Under U.S. antidumping law, any interested party can file an antidumping petition on behalf of a domestic industry requesting the imposition of antidumping duties.\textsuperscript{40} The petition must claim that products are being imported from a particularly foreign country at less than "normal" value, and that these imports are causing or threatening to cause material injury to the domestic industry. If the International Trade Administration (ITA) of the Department of Commerce determines that the petition has been filed on behalf of the domestic industry and includes the required information, then it initiates the antidumping investigation.\textsuperscript{41}

Once initiated, all antidumping investigations are undertaken by two separate agencies. The International Trade Commission (ITC) is charged with determining whether or not the domestic industry is materially injured or threatened with materially injury due to unfair imports. The ITA determines whether or not dumping has occurred by reviewing the price and cost data of foreign firms.

\textsuperscript{40} An antidumping petition is deemed to have been filed on behalf of the domestic industry if domestic producers and workers who support the petition account for (1) 25 percent of the total production of the product and (2) 50 percent of the production of those who both support and oppose the petition.

\textsuperscript{41} The ITA must initiate an investigation or dismiss the petition within 20 days from the day the petition was filed.
Material Injury Determination

The ITC has 45 days from the initiation of the investigation to make a preliminary determination regarding whether or not the domestic industry has been, or is threatened with, material injury due to unfair imports. The ITC makes this determination on the basis of information included in the petition and the questionnaires sent to foreign and domestic producers and U.S. importers. The ITC also takes into account information presented by interested parties in legal briefs and during public hearings.

Under U.S. regulations, the ITC must consider three separate aspects of the market when making their injury determination. First, the ITC must consider the volume of imports of the product under investigation. Specifically, the ITC must decide whether the volume, or increase in volume, of imports under investigation is significant. If the ITC finds that the volume of imports is negligible, or less than three percent of the total volume of imports of the product, then the antidumping investigation is automatically terminated.

Next, the ITC must consider the effect of the imports under investigation on U.S. prices for the domestic "like product." Specifically, the ITC explores (1) whether there has been significant price underselling of the imported merchandise when compared with the price of the domestic product and (2) whether the effect of imports depresses market prices or prevents price increases to a significant degree.

Finally, the ITC must consider the impact of imports on domestic producers. Factors taken under consideration include declines in output, sales, market shares, profits, productivity, the return on investments, and capacity utilization. The ITC also takes into account the negative effect the imports under investigation may have had on cash flow, inventories, employment, wages, growth, the ability to raise capital, and investment.

Calculation of the Dumping Margin

If the ITC makes an affirmative preliminary injury determination, the ITA has 160 days from the date on which the petition was filed to make a preliminary dumping determination. This determination is typically made using price and cost information collected from the questionnaires sent to the foreign producers under investigation. In general, the ITA calculates the level of the dumping margin by calculating the degree to which the export price charged by the producer under investigation is less than the normal value of the product. If the calculated

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42 The ITC may cumulatively assess the impact of imports from all countries under investigation if it determines that these imports compete with each other, and with the domestic like product. To make this determination, the ITC considers whether the imports are sold in the same geographic region and during the same time period, as well as whether the imports have similar characteristics and reach the market through similar channels of distribution.

43 The ITC is charged with defining the domestic "like product," which is defined as a product that is most similar in characteristics and uses to the imported product, and the domestic industry, which are producers of this product. For example, in the 2002 antidumping investigation into imports of Vietnamese frozen fish fillets, the ITC defined the domestic industry as processors of frozen catfish fillets; catfish farmers were excluded from the definition of the domestic industry.

44 The ITA may also use "facts available," typically information contained in the original petition or from public data sources, if they determine that parties to the investigation have withheld information or provided faulty information or information that cannot be verified.
dumping margin is greater than the de minimis threshold, the ITA makes an affirmative dumping determination.45

The export price charged by the producer under investigation is adjusted for various costs such as insurance, tariffs, and storage fees. The ITA also takes into account such things as the terms of sales of the product and product characteristics.

The ITA can use one of four methods to calculate the normal or fair value. When possible, the agency calculates normal value by collecting the prices associated with sales in the foreign country's home market. It excludes from this calculation all sales found to be below the country's average cost of production. If sales in the home market are deemed inadequate, the ITA calculates the normal value using the prices set by the foreign industry in a third-country market. The ITA also has the option of defining the normal value using a constructed value, or the calculated average cost of production in the foreign market. The agency builds into this constructed value a profit margin of as much as eight percent and other administrative and sales costs. If the country under investigation is a non-market economy such as China or Vietnam, the ITA typically calculates a normal value using prices in a market economy at a similar level of development to the non-market economy.

An antidumping margin is typically calculated for each foreign producer under investigation by calculating the difference between the weighted average normal value and the weighted average export price during the period of investigation—usually the four most recently completed fiscal quarters prior to the month the petition was filed. In exceptional circumstances, the ITA may compare the export price to the normal value on a transaction by transaction basis, or compare the weighted average normal value to individual export prices.

*Imposition of Duties*

If the ITA makes an affirmative preliminary dumping determination, it requires importers to post cash deposits to cover the estimated dumping duty costs. Any producer from the country under investigation not specifically investigated is required to post duties equal to the "all others" margin, typically calculated as the weighted average of the margins of all exporters included in the investigation with dumping margins greater than de minimis.

Regardless of whether the preliminary dumping determination is negative or affirmative, the ITA must make a final dumping determination within 235 days from the date on which the petition was filed. If the ITA makes a negative final dumping determination, the investigation is terminated. If the ITA makes an affirmative final dumping determination, the case returns to the ITC for a final injury determination. The ITC decision must be made within 280 days from the date on which the petition was filed. If the ITC makes a negative injury determination, then the case is terminated and all cash deposits are returned to the importers. An affirmative injury determination results in the collection of antidumping duties in the amount calculated in the final phase of the ITA investigation.

U.S. antidumping law allows the government to negotiate with the foreign exporters or foreign government under investigation a "suspension agreement." These agreements typically require the foreign exporter to cease exporting, eliminate sales at less than fair value, or eliminate the injurious effect of the exports. These agreements also include significant monitoring provisions 45 During the preliminary investigation, the de minimis threshold is set at 0.5 percent; during final investigations this threshold is set at 2 percent.
to ensure that dumping does not reoccur. If the United States reaches a suspension agreement with the foreign exporter or country, then the antidumping investigation is suspended until the ITA determines that the agreement has been violated.

Reviews

The ITA must review the amount of the dumping margins as often as every twelve months at the request of a foreign producer or importer during administrative reviews. New exporters from the targeted country that are assessed the "all others" antidumping rate may request the calculation of a company-specific antidumping margin during a new shipper review.

Since 1995, the United States must review the imposition of antidumping duties every five years in an investigation known as a sunset review. The ITA publishes a notice of the initiation of the review, and requests that interested parties submit statements that they are willing to participate in the review. If no interested parties respond to this request, then the antidumping duty order is lifted. Otherwise, the ITC and ITA conduct full reviews similar to the investigations described above in order to determine whether dumping would likely reoccur absent the antidumping duties, and whether the domestic industry would likely be injured from the reoccurrence of this dumping. Affirmative determinations by both the ITC and ITA result in continuation of the antidumping duties.

Compliance with the WTO Antidumping Agreement

U.S. antidumping law has been challenged 24 times under the World Trade Organization (WTO) dispute settlement system since 1995. Some of the major aspects of U.S. antidumping law challenged in these disputes, as well as the outcomes of the disputes, are highlighted below.

The Byrd Amendment

In 2000, the United States enacted a law commonly referred to as the Byrd Amendment, but more formally known as the Continued Dumping and Subsidy Offset Act (CDSOA). The Byrd Amendment required the U.S. Customs Service to re-distribute the antidumping revenue collected due to successful antidumping petitions to the firms that supported the original petitions requesting the imposition of antidumping protection. More than $500 million was distributed to U.S. firms during the Byrd Amendment's first two years of operation.

In 2002, eleven members of the WTO requested the establishment of a dispute settlement panel regarding the Byrd Amendment. The complainants stated in their request that the law not only violated U.S. obligations under the WTO's Antidumping Agreement, but also violated the WTO's Subsidies and Countervailing Measures provisions. A panel ruled in September 2002 that the Byrd Amendment violated a number of aspects of the antidumping and subsidies agreements. The appellate body upheld many of the panel's initial findings. Specifically, the appellate body found that the Byrd Amendment was a "non-permissible specific action" against dumping. The Byrd Amendment was also found to be inconsistent with a number of articles in the antidumping and subsidies agreements.

Because the United States failed to revise the Byrd Amendment in the required time frame, in 2005 the European Union, Canada and Japan announced that they would suspend concessions on imports of certain products from the United States. The U.S. Congress finally repealed the law in
February 2006, although revenue from antidumping duties will continue to be distributed to U.S. firms through October 2007.

**Zeroing**

The European Union and Japan have brought disputes to the WTO regarding the U.S. practice known as "zeroing." When the ITA calculates the weighted average dumping margin for a company, it historically has assigned a dumping margin of zero to all those transactions in which the export price is higher than the normal value (or when no dumping occurs), rather than the negative dumping margin equal to the difference between the export price and the normal value. This zeroing methodology is not a written law or regulation, but rather a norm used by the ITA during its investigation.

In April 2006, the Appellate Body ruled in the case filed by the European Union that using the zeroing methodology during administrative reviews violated the WTO antidumping agreement. Moreover, the Appellate Body ruled generally that the practice of zeroing could be challenged under the WTO when it was used in U.S. investigations that calculated dumping margins by comparing the weighted average export price to the weighted average normal value. The Appellate Body also upheld the original panel's finding that zeroing by itself is not an impermissible allowance or adjustment to the dumping margin. In response to this ruling, the United States promised to bring its regulations into compliance by April 2007.

In January 2007, the Appellate Body ruled in the case filed by Japan that the United States violates the WTO Antidumping Agreement when it uses zeroing to calculate dumping margins in investigations that compare export prices to normal values on a transaction by transaction basis. The Appellate Body also found that zeroing practices were inconsistent with the Antidumping Agreement when used during periodic reviews, new shipper reviews, and sunset reviews. The United States has yet to comply with this ruling.

**The 1916 Act**

The European Union and Japan both requested consultations under the WTO dispute settlement act regarding the U.S. Antidumping Act of 1916 after a firm filed suit in the U.S. court system under this seldom used law. Under the 1916 law, courts can fine foreign firms that are found to be dumping their product on the U.S. market treble damages, and impose jail term. The 1916 Act requires none of the investigative procedures/safeguards described above prior to imposing these sanctions. The 2000 the Appellate Body upheld all aspects of the original panel report regarding the cases filed by both the European Union and Japan, including the fact that the 1916 Act violated many aspects of the WTO Antidumping Agreement.

In November 2004, the U.S. Congress passed legislation repealing the Antidumping Act of 1916.

**Arms Length Transactions**

In 2001, an Appellate Body found that the United States acted inconsistently with several aspects of the WTO Antidumping Agreement during its investigation into Japanese hot rolled steel products. Specifically, the body found that the United States inconsistently applied the use of

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46 Zeroing has also been a major issue in other disputes brought before the WTO, including a case filed the Canada regarding antidumping duties imposed on softwood lumber.
"facts available" in its calculation of margins for three of the firms under investigation; moreover, the U.S. failed to exclude the margins calculated using facts available from the calculation of the "all others" rate as required under the Antidumping Agreement.

The Appellate Body also requested that the United States revise its regulations regarding the calculation of normal value using the "arms length" test; historically, the United States excluded from the calculation of normal value any sales made by foreign producers to affiliated parties on the basis of a 99.5 percent or arms length test. The United States has since revised the regulations governing this "arms length" test.