



URÍA MENÉNDEZ  
Latin American Network

Antidumping guide  
A Latin American overview  
for Chinese exporters



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## Important note

This Guide is a collective work. It draws upon the collective experience of our group of leading independent law firms advising foreign direct investors in Latin America and represents the tangible result of numerous collective seminars and training programmes for our clients and associates and the common know-how developed by our Sino-Latin American Multilateral Practice Group, which is reflected in a number of publications and briefings that our firms regularly prepare for Chinese clients and contacts. The preparation of this Guide was facilitated by our shared pool of knowledge and resources, as well as by contributions from Uría Menéndez's Asian, European and Latin American offices (Buenos Aires, Chile, São Paulo, Lima and Mexico City) and from the group's leading independent firms in Argentina (Marval, O'Farrell & Mairal), Brazil (Dias Carneiro Advogados), Chile (Philippi, Yrarrázaval, Pulido & Brunner), Colombia (Brigard & Urrutia Abogados and prietocarrizosa), Ecuador (Pérez, Bustamante & Ponce Abogados), Mexico (Galicia Abogados), Peru (Payet, Rey, Cauvi Abogados) and Uruguay (Guyer & Regules) who dedicated valuable time and useful opinions in reviewing, updating and improving the Guide. This Guide is intended for information purposes only and does not constitute legal advice. If any further clarifications are required, any of the contributing firms are available to be contacted for further details.

This Guide is current as of August 2012 except for Brazil, that has been updated as of December 2013 to reflect recent changes to its antidumping legislation.





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## Author's presentation

### URÍA MENÉNDEZ

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Uría Menéndez is a 500-lawyer firm widely recognized as a **leading European legal service provider** (Legal Week 2010), particularly in Spain and Portugal, where it has been consistently acknowledged as the leading law firm (Who's Who Legal 2014, IFLR 2013, Chambers Europe 2011, Legal Alliance Summit 2011, The Lawyer 2010, PLC Which Lawyer? 2009).

Uría Menéndez provides legal advice in **all areas of law**, and is the only law firm in Spain that ranks as a top tier firm in all practice areas (Chambers Global and The Legal 500 2013, Spain).

The firm has **15 offices in Europe, Asia and the Americas**. Along with its unmatched reputation in Spain and Portugal, with five offices in the largest Latin American economies (Argentina, Brazil, Chile, Mexico and Peru), Uría Menéndez has the ability to provide some of the broadest legal coverage in the region and has been acknowledged as the "go to" law firm for complex corporate and financial matters in Latin America (Harvard Business School, 2008).

### URÍA MENÉNDEZ'S LATIN AMERICAN NETWORK

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#### Who we are

Uría Menéndez's Latin American Network consists of a group of over 1,400 lawyers recognized as the world's best network in the region (PLC Which Lawyer Awards 2009).

We provide clients a team of lawyers that operates seamlessly as a single law firm through:

- **shared experience** (we have worked together in the main FDI transactions in Latin America and Europe);
- **shared quality** (we are the leading firms in each of our respective jurisdictions);  
and
- **shared operational platform** (we operate joint offices throughout Latin America, cross-secondment programs, annual training for our associates and multilateral practice groups for our partners).

### What we do

We focus on investment work, particularly assisting Chinese entities with their outbound projects in Spain, Portugal and Latin America. Over the years, both individually and as a group, we have developed a number of initiatives with the Chinese business community, the government and academia.

- As from April 2009, the **China Council for the Promotion of International Trade** (CCPIT) relies on our group to support their 70,000 members on their investments in Spain, Portugal and Latin America.
- On behalf of the **All China Lawyers Association** (ACLA), and with the approval of the Ministry of Justice of the People's Republic of China (PRC), we operated for five years the sole legal training program entrusted to a private organization by Chinese authorities, under which Chinese lawyers join our Latin American and European teams to gain exposure to cross border work involving China.
- Uría forms part of the consortium that operates the **China EU School of Law** (CESL), the only private law school in China established under the auspices of the

European Commission and the Chinese government, and runs an educational program for CESL directed to Chinese lawyers on overseas investment in Europe.

In response to our increased involvement in China, we set up our **Beijing office** in October 2009 to assist Chinese outbound investors in their cross border ventures. To that end, and depending on the complexity of the deal and client preference, we put together an integrated team of lawyers in Beijing and Latin America or Europe to work from their respective jurisdictions.

- **From Beijing**, Latin American and other international lawyers contribute first-hand experience in China related work and overcome the challenges of having to liaise, coordinate and supervise a transaction in multiple time zones, languages and cultural environments.
- **In Latin America and Europe**, legal professionals with unparalleled expertise, influence, and track record advising foreign direct investors provide seamless execution capabilities in the target jurisdiction.

#### What it means for the client

The dominant position we enjoy in our respective markets has allowed us to maintain independence. That independence affords our clients:

- **flexibility**: we have no incentive to involve offices or lawyers other than those that are strictly necessary;
- **efficiency**: if a member of the group has a conflict of interest, we simply replace the firm without affecting our relationship with the client; and
- **value for money**: each member has its own fee structure, unlike many global firms that charge identical rates for all their lawyers regardless of location.

Applying this formula, we have built up a remarkable track record on Chinese financing and investments in Europe and Latin America, ranking fifth worldwide for value of deals in Latin America (Thomson Reuters, Mergers and Acquisitions, Legal Advisors, 2013) and ninth among worldwide legal advisors on Chinese transactional work (Bloomberg, Mergers and Acquisitions Legal Advisory League Tables, 2013).

# Antidumping Guide

## 1. INTRODUCTION

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This Guide provides a general overview of the antidumping legal frameworks in the most important jurisdictions in Latin American. As large economies continue to emerge in the 21st Century, antidumping duties undoubtedly operate as disguised restrictions on international trade in pursuit of protecting domestic markets. As such, the importance of understanding the basic rules and procedures of antidumping proceedings in Latin America is undeniable for Chinese exporters with an interest in Latin American markets.

This Guide provides an overview of the basic elements of the national antidumping regimes of Argentina, Brazil, Colombia, Chile, Ecuador, Mexico, Peru and Uruguay.

We also address procedural aspects of antidumping systems, such as the institutional framework, the maximum length of proceedings, the manner in which importers, exporters, producers and governments participate in investigations, time limits for procedural acts, the classification of information supplied and reviewed by investigating authorities, the duration and possibility of retroactive collection of duties, the possibility of administrative review and re-imposition of measures and judicial review<sup>1</sup>.

As China and all the countries analysed in this Guide are members of the World Trade Organization (the “**WTO**”), substantial issues are addressed from the WTO’s Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the “**AD Agreement**”), including the use of available facts methodology,

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1.- Unless otherwise expressly stated, the terms or time limits established in days within this Guide refer to “business days”.

the specific regulations for non-market economies and economies in transition, and the procedures and effects of price undertakings by the subjects under investigation.

Finally, other questions of considerable importance are addressed in this Guide including a "Public Interest Test" before any antidumping measure is imposed, the existence of a "Lesser Duty Rule" for the investigating authorities, the existence of anti-circumvention procedures and the potential application of the zeroing methodology, which is currently used by the antidumping authorities of the United States.



# General Analysis

## 2. TRADE REMEDY MEASURES

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The use of antidumping and anti-circumvention measures has spread rapidly in recent decades. Globalisation and economic integration have boosted international trade and weakened the ability of domestic borders to act as trade barriers. Trade remedy measures can only be used to counteract underpriced imports cause or threaten to cause material injury or hinder the development of a domestic industry. In other words, antidumping and anti- circumvention measures are only utilised to protect a domestic industry from foreign trade practices that are considered unfair.

The AD Agreement governs the application of antidumping measures by WTO members. It sets forth detailed procedural rules governing dumping investigations, such as rules related to complaints by domestic producers and the establishment of transparency provisions on investigation and decision-making by the corresponding authorities. The AD Agreement also contains substantive rules regarding the application of specific methodologies to assess and measure dumping margins, determine the existence of injury and the finding of a causal link between the dumping and the injury.

According to the AD Agreement, a product is dumped if the export price is lower than the comparable price, in the ordinary course of trade, for an equivalent product when destined for consumption within the exporting country. A WTO member cannot impose antidumping measures unless it determines, pursuant to an investigation conducted in conformity with the provisions of the AD Agreement, that: (i) there are dumped imports; (ii) the domestic industry has been materially injured or is facing imminent material injury, or that the development of a domestic industry is being materially compromised; and (iii) there is a causal link between the dumped imports and the injury.

The AD Agreement states that the only action that WTO members can take against dumping is the application of antidumping measures. The antidumping measures established in the AD Agreement are: (i) provisional measures; (ii) definitive antidumping duties; and (iii) price undertakings.

- (i) **Provisional measures:** The duration of these measures is limited to the shortest period of time possible and involve either provisional antidumping duties or, preferably, security equal to the amount of the antidumping duty, which must be estimated provisionally.
- (ii) **Definitive antidumping duties:** Antidumping duties are fees charged on products imported at dumping prices that effectively eliminate the dumping margin and therefore neutralise the damage or potential damage to the domestic industry.
- (iii) **Price undertakings:** These are voluntary commitments undertaken by the exporting party to modify the prices of the goods or to cease exportation to the corresponding area. The antidumping authorities must be satisfied that the damage or potential damage caused to the domestic market is eliminated.

When establishing trade remedy measures, the AD Agreement creates a “Lesser Duty Rule”. Article 9.1 of the AD Agreement establishes that *“It is desirable that (...) the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.”* Article 9.3 states that *“The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2”.* The latter principle is created to avoid, to the extent possible, disruptions to fair trade and legitimate competition within WTO member states.

The AD agreement also establishes the general principle that imposition of antidumping duties is optional for national antidumping authorities, even if all requirements have

been met. This principle is enshrined in article 9, which states that *“The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member”*. Although trade remedies generally reflect the protection of public interests, as they are intended protect domestic markets from “unfair” practices, antidumping duties may sometimes have an overall negative effect on the overall economy of the importing country. Therefore, it is advisable that local antidumping authorities carry out a “Public Interest Test”, where dumping duties should only be imposed if they would benefit the overall domestic market (*i.e.* taking into consideration consumers and downstream industries). In that sense, the “Public Interest Test” refers to the fundamental principle of proportionality to ensure that trade remedy measures adopted by the antidumping authorities have a net benefit on the economy. Furthermore, the “Public Interest Test” may be influenced by possible diplomatic issues between the countries involved.

### 3. ANTIDUMPING VS. SAFEGUARDS

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Although this Guide focuses on the antidumping measures which may be enforced by Latin American countries and does not address the concept of safeguards, we find it useful to explain the fundamental differences between antidumping measures and safeguard measures, as the difference between both is not always apparent.

According to article 2.1 of the WTO Agreement on Safeguards, *“A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such*

*conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products".* Therefore, the application of a safeguard does not depend on "unfair" trade actions, as is the case with antidumping measures. Safeguards, consisting of temporary restrictions or quotas on imports of a certain product, are generally adopted when there is a significant "surge" in the volume of imports of a specific product that affects or may affect the domestic industry.

The determination of the existence of a dumping margin is unnecessary when applying safeguards. However, as previously discussed, the determination of the existence of a dumping margin is required to impose antidumping duties. Nevertheless, when considering either the imposition of safeguards or antidumping measures, it is necessary to determine the existence of an injury or a threat of injury that is "*a significant overall impairment in the position of a domestic industry*".

#### 4. THE USE OF "ZEROING" IN LATIN AMERICA

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The calculation of the dumping margin is essential for finding the existence of dumping as well as for the determination of the value of the antidumping duties should the authorities determine that dumping exists. Antidumping authorities usually determine the dumping margin by calculating the weighted-average of the difference in the export prices of a product and the prices of the same (or a similar) product in the home or exporting market. The comparison provides the average dumping margin for a given product.

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2.- Article 4, 1 (a) of the WTO Agreement on Safeguards.

In contrast, the practice of “zeroing” utilised by some countries to calculate the dumping margin bases the calculation on a “minor” variation. When the price of a product in the exporting country is higher than the domestic price, the difference is treated as the dumping amount for that sale or that comparison in the same manner as indicated above. However, if the domestic price for that product is higher, the dumping amount is set at zero, rather than by reference to the negative value. The dumping amounts are averaged to calculate the overall dumping margin. As “zeroing” excludes negative values it can artificially calculate dumping margins for a given product.

The application of “zeroing” has given rise to constant overestimation of dumping margins, invariably leading to magnified antidumping duties. Although rulings by both the WTO’s dispute panel and its appellate body have declared “zeroing” unacceptable under the AD Agreement, the method continues to be used by some countries, most notably the United States.

Latin American antidumping authorities analyse transactions on an individual basis in order to determine whether or not antidumping rights are needed. As such, negative values must be respected when determining the antidumping duties to apply. Therefore, although not expressly prohibited by law in Latin American countries, antidumping authorities do not apply the “zeroing” method.

It is important to mention that according to the Appellate Body’s report circulated on 18 April 2006, regarding *Dispute DS294 United States — Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)*, the zeroing practice is inconsistent with article 9.3 of the Antidumping Agreement and article VI.2 of the GATT, and therefore should not be used in the determination of the antidumping margin.

## 5. ANTIDUMPING INVESTIGATIONS IN LATIN AMERICA

Latin America plays an important role in global trade, and the importance and potential of its markets continue to grow. However, according to the WTO Annual Report for 2010, Latin American countries were considered amongst the largest users of trade remedy measures, particularly antidumping duties and anti-circumvention measures. The number of antidumping cases in the countries analysed by this Guide is significant. The following table indicates the involvement of Latin American countries and China in antidumping proceedings since 1995 up to 2011.

COUNTRY	AS REPORTING PARTY CLAIMANT	AS EXPORTING PARTY RESPONDENT
Argentina	291	35
Brazil	232	114
Chile	20	29
China	191	853
Colombia	54	5
Ecuador	3	3
Mexico	105	55
Peru	70	4
Uruguay	6	4

Source: World Trade Organization (2012)

These figures demonstrate that Latin American countries are much more active than China in implementing antidumping measures, rather than being subject to measures

pursued by other countries. Additionally, the zeal with which Latin American countries protect their markets has shifted its focus to China. *"From 2005 through 2008, (...) the LAC [Latin America and the Caribbean] countries filed 156 cases (20 percent of all global AD cases), almost half of these against China<sup>3</sup>".*

Given the statistics revealing that Chinese products have been among the Latin American authorities' more recurrent targets for antidumping and anti-circumvention investigations, it is invariably in the interest of Chinese companies to be aware of the associated risks.

It is also important for exporters subject to antidumping or anti-circumvention investigations to be aware of what to expect and how to react. The best defence against the imposition of antidumping or anti-circumvention duties is of course to prevent the initiation of investigations. However, once an investigation has been initiated, the exporter will be forced to make important decisions such as whether or not to cooperate with the investigating authorities or to obtain legal counsel.

## 6. THE IMPORTANCE OF COOPERATION

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Under most circumstances, cooperation leads to more favourable results. Although cooperating in antidumping or anti-circumvention investigations may be expensive and time-consuming, there are various reasons why it is generally the most advisable approach.

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3.- Feinberg, Robert M., "Antidumping and the global financial crisis: the impact on Latin America and the Caribbean", Studies and Perspectives series, No. 9. Washington D.C., United Nations Economic Commission for Latin America and the Caribbean (ECLAC), December 2010, pg.14.

First, if the investigating authorities consider protective trade measures to be necessary, duties will be imposed on all identical products originating from the exporting country. Statistically, an exporter's failure to cooperate will normally lead to the imposition of higher duties than on those who actively cooperated.

Second, the exporter's failure to cooperate, whether by refusing to cooperate or by submitting false or misleading information to the investigating authorities, allows the authorities to base their decision on the facts available in their records, which often include data provided by the party submitting the complaint. Unsurprisingly, that information tends to exaggerate the level of dumping and the magnitude of the injury suffered by the domestic industry.

Third, cooperation affords exporters a measure of control over the investigation's outcome. Cooperating and ensuring that any duties imposed are based on accurate data is the most effective means of mitigating or avoiding antidumping duties.

Finally, when considering the costs associated with cooperating in any investigation, an individual Chinese business should consider the amount and value of its exports to the country in which antidumping duties may be imposed and the potential for future exports, as well as the possibility of gaining market share. If the market in question is a strategic market for the Chinese exporter, the costs associated with cooperating are considerably less than the economic advantages of maintaining reasonable access to a Latin American market.

## 7. THE IMPORTANCE OF LEGAL COUNSEL

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As with all administrative procedures, antidumping and anti-circumvention investigations are complex and burdensome. Although both procedures are created through WTO agreements, the application of the legal provisions involves local aspects



and retaining experienced local legal counsel will help the Chinese exporter obtain the most favourable outcome.

In general, antidumping and anti-circumvention procedures involve massive amounts of data, which must be generated by foreign respondents and presented in a form required by the investigating authorities within an extremely limited period of time. In particular, antidumping and anti-circumvention investigations launched in Latin America place a heavy burden on foreign respondents. As such, the foreign respondents will find it increasingly difficult to fully comply with the investigators' requests without the assistance of experienced local legal counsel.

Not only must questionnaires be filled out in the native language of the country overseeing the investigation (*i.e.* in Spanish or Portuguese), but all data must be submitted quickly and in a computer-readable format (which may differ from the accounting conventions used by Chinese exporters). The complexity resulting from increasingly lengthy antidumping questionnaires adds difficulty to an already complicated process.

In combination, these factors can sometimes be overwhelming for Chinese exporters, causing them to be unable to comply with the investigating authorities' requirements.

Finally, as previously indicated, investigators have discretion to use the facts available in their own records to reach a decision if the information provided by an exporter is considered inaccurate or cannot be verified independently.

In conclusion, our experience is that the timely involvement of local legal counsel can be of vital importance for correctly structuring responses to questionnaire and helping submit the requested data according to the practices and formats customarily required by the investigating authorities.



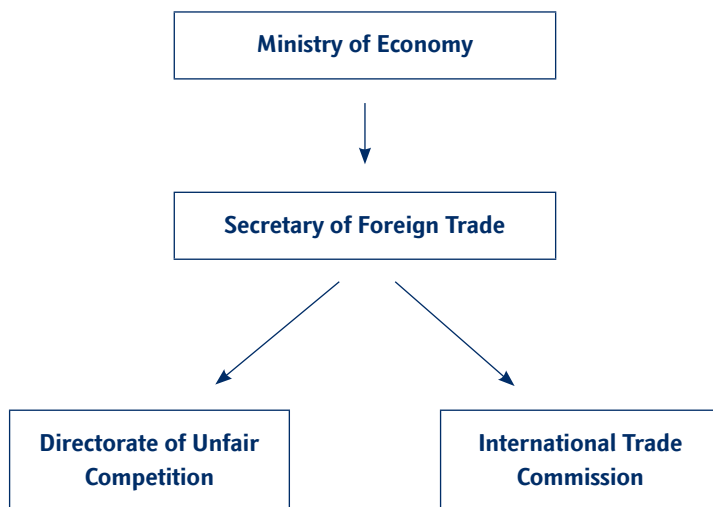
## Analysis of Individual Jurisdictions

### 8. ARGENTINA

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#### I. Institutional Framework

The institutions that create and enforce antidumping regulations in Argentina are the following:



In Argentina, the investigation process is divided between two independent administrative entities: the Directorate of Unfair Competition (the “Directorate”) and the International Trade Commission (the “Commission”). Each entity is responsible for a specific decision in the investigation process. The Directorate is responsible for determining whether dumping has occurred. The Commission determines whether the domestic industry was injured and whether there exists a causal link between the dumping and the injury.

## II. Investigation proceedings

The following table describes the stages of investigation proceedings carried out by the Argentinean antidumping authorities:

	STAGE	REQUEST
1	Initiation of the proceedings	<ul style="list-style-type: none"> <li>The domestic industry is affected (there is evidence of dumping, injury or threat thereof, and there is a causal relationship between both).</li> <li>Initiated by either the companies of an affected industry, a Chamber of Commerce representing the Argentinean producers or by the Argentinean antidumping authorities <i>ex officio</i>.</li> </ul>
2	Initiation of the investigation	<ul style="list-style-type: none"> <li>The Directorate will issue its preliminary report on the existence of dumping within 100 days of opening an investigation.</li> <li>The Commission will issue its preliminary report on the existence (or threat) of injury to the domestic industry and the causal link between the dumping and the injury within 110 days of the opening of the proceedings.</li> <li>If the preliminary reports of the Directorate and the Commission determine the existence of dumping, injury (or threat thereof), and a causal relationship between the two, the Ministry of Economy is authorised to impose provisional antidumping duties.</li> </ul>

	STAGE	REQUEST
3	Participation of interested parties	Pursuant to domestic legislation, importers and the foreign government are deemed interested parties and are therefore entitled to participate in the antidumping investigation.
4	Preliminary resolution	Before the evidentiary stage is closed, and generally 6 months after the initiation of the investigation, the Directorate and the Commission will prepare their preliminary reports on which the Argentinean antidumping authorities will base their decision regarding whether or not to impose preliminary antidumping measures.
5	Additional information	The Directorate and the Commission may request further evidence, information or relevant data from the interested parties.
6	Final resolution	<ul style="list-style-type: none"> <li>• Once the reports on the relevant facts have been issued by the Directorate and the Commission, the parties must file closing statements within ten business days.</li> <li>• The Directorate will issue a final report on the existence of dumping within 220 days of the opening of the investigation.</li> <li>• Within 250 days of the opening of the investigation, the Commission will issue its final report on the existence (or threat) of injury to the domestic industry and the causal relationship between the injury and dumping.</li> <li>• The Ministry of Economy may impose antidumping duties if the final reports of the Directorate and the Commission determine the existence of dumping, injury (or threat thereof) and a causal relationship between both.</li> </ul>

The antidumping investigation must be completed within ten months of its initiation, although that period may be extended by eight months.

If the interested party refuses to grant the authorities access, fails to provide the required information within a reasonable period of time or significantly frustrates the investigation in any other manner, preliminary and final affirmative or negative determinations may be made on the basis of the facts available to the authorities.

The Argentinean antidumping authorities recommend the imposition of (or a recommendation to not impose) antidumping duties taking into consideration the country's general international trade policy and public interest.

Provisional and final measures and decisions that suspend, revoke, reject or terminate investigations are subject to review by Argentinean courts. Federal Administrative Courts have jurisdiction over these claims.

Antidumping authorities will also review the situation two years following the imposition of a definitive antidumping duty in order to determine if it remains necessary.

### III. Confidentiality

The parties may request that any information they submit for the authorities' consideration be treated as confidential. The Argentinean antidumping authorities will only grant confidentiality if the parties reasonably justify the request and file a public summary of the confidential information.

### IV. Non-Market Economy

Argentina has specific regulations for non-market economies. In such cases, the normal value of a product may be calculated based on the marketed price of the product in a third country with a market economy.

## V. Price Undertakings

The exporters of the investigated products (or the government of the country of origin) may offer price undertakings to the antidumping authorities. If the authorities are satisfied with the price undertakings, they may suspend or end the investigation.

## VI. Circumvention

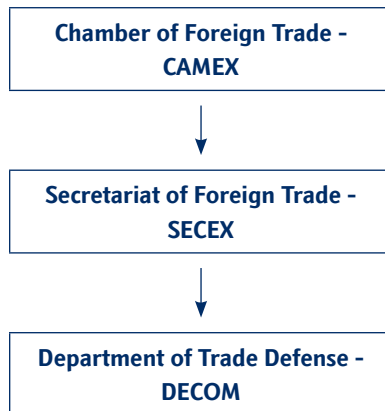
Domestic law establishes that the investigation of circumvention practices to avoid the application of dumping duties will be carried out upon the request of an interested party or by the authorities *ex officio*.

## 9. BRAZIL

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### I. Institutional Framework

The institutions that create and enforce antidumping regulations in Brazil are the following:



The Chamber of Foreign Trade (“**CAMEX**”) is composed of representatives from: (i) the Ministry of Development, Industry and Foreign Trade, (ii) the Ministry of the Chief of Staff, (iii) the Ministry of Foreign Affairs, (iv) the Ministry of Economy, (v) the Ministry of Agriculture, Cattle and Supply, (vi) the Ministry of Planning, Budget and Public Management, and (vii) the Ministry of the Development of Agriculture.

### II. Investigation proceedings

The following table describes the stages of investigation proceedings carried out by the Brazilian antidumping authorities:



	STAGE	REQUEST
1	Initiation of the proceedings	<ul style="list-style-type: none"> <li>• DECOM may initiate a proceeding either in response to a complaint by the companies of an affected industry or <i>ex officio</i> (where there is evidence of dumping, damage, and a causal relationship between both).</li> <li>• DECOM may request the petitioner to provide further information prior to its decision as to whether to initiate the investigation, who will have 5 days to submit it. The analysis of the additional information shall be completed within 10 days.</li> </ul>
2	Initiation of the investigation	<ul style="list-style-type: none"> <li>• SECEX will initiate the investigation immediately when the proceeding is <i>ex officio</i>, or within 15 days from the receipt of sufficient information from the petitioner.</li> <li>• DECOM will issue a Notice of Initiation (“NI”) and SECEX will publish it in the Official Gazette.</li> </ul>
3	Participation of interested parties	<ul style="list-style-type: none"> <li>• The exporters, foreign producers, importers and the diplomatic or consular representatives of the country of origin of the investigated products will be considered to be interested parties.</li> <li>• SECEX and DECOM will send questionnaires to the interested parties who must submit their answers within 30 days from the acknowledgement of receipt. This term may be extended, upon proper justification, for an additional term of 30 days.</li> <li>• Any third party that has not been originally selected by the authorities to actively participate in the proceedings as an interested party will have 20 days from the publication of the NI in the Official Gazette to request accreditation.</li> <li>• Any interested party may request a public hearing to discuss controversial issues within 5 months from the initiation of the investigation.</li> </ul>

	STAGE	REQUEST
4	Dumping Investigation Period	<ul style="list-style-type: none"> <li>• SECEX and DECOM will investigate the existence of dumping generally over a period of 12 months (or 6 months, upon proper justification).</li> <li>• The petitioner may submit its complaint within four months from the end of the Investigation Period.</li> </ul>
5	Preliminary determination	The preliminary determination on the existence of dumping, injury to the domestic industry, and causal link between the dumped imports and the alleged injury, shall be completed within a period of up to 120 days, but not less than 60 days, from the date of initiation of the investigation. Exceptionally, the period may be extended to up to 200 days.
6	Additional information	<ul style="list-style-type: none"> <li>• During the Investigation Period, the antidumping authorities will gather all evidence submitted by the interested parties and any other information they consider necessary over a period of 60 days.</li> <li>• SECEX and DECOM may request additional information related to questionnaire to the interested parties who must submit it within 10 days. This term may be extended, upon proper justification, for an additional term of 10 days.</li> <li>• DECOM may proceed with an <i>in situ</i> verification of the information provided.</li> </ul>

	STAGE	REQUEST
7	Final resolution	<ul style="list-style-type: none"> <li>• The period for submitting evidences will end within 120 days from the date of publication of the preliminary determination. After such period, the interested parties will have 20 days to submit their considerations.</li> <li>• Within 30 days from the end of the term for the Interested Parties to submit their considerations, DECOM will issue a technical note with the facts that are under analysis.</li> <li>• From the issuance of the technical note, the interested parties will have 20 days to submit their final considerations.</li> <li>• After the final considerations, within 20 days DECOM will issue a final report with its findings and a formal suggestion regarding whether or not applying antidumping measures.</li> <li>• SECEX will review and validate DECOM's final suggestion.</li> <li>• CAMEX will decide, based on SECEX and DECOM's technical opinion and based on the public interest rule, whether or not to apply the suggested antidumping measures.</li> </ul>
8	End of the Investigation	The investigation will be concluded within 10 months from the date of initiation of the investigation. Exceptionally, the period may be extended to up to 18 months.

### III. Confidentiality

The parties may request that any information submitted to the Brazilian antidumping authorities be treated as confidential. The authorities will only grant confidentiality if the parties reasonably justify the request and file a public summary of the confidential information.

#### IV. Non-Market Economy

Brazil has specific regulations for non-market economies. In such cases, the normal value of a product may be calculated based on the market price or export price of the product in a third country with a market economy, or be calculated by the authorities on the basis of production costs, plus added value, taking into account administrative costs, sales costs and profit margin.

#### V. Price Undertakings

Any party may propose, including the authorities ex officio, price undertakings to the interested parties. CAMEX may suspend or terminate the investigation without imposing antidumping duties.

#### VI. Circumvention

Pursuant to domestic Brazilian law, the existence of circumvention practices allows the authorities to extend the antidumping duty to the imports of like products or their parts originating from third countries or from the investigated country. There is a specific procedure to evaluate the existence of circumvention practices in Brazil.

## 10. CHILE

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### I. Institutional Framework

The institutions that create and enforce antidumping regulations in Chile are the following:



#### **Composed of:**

- National Economic Prosecutor (President of the Commission)
- National Customs Director
- One representative from the Ministry of Economy
- One representative from the Ministry of Foreign Affairs
- One representative from the Ministry of Agriculture
- Two representatives from the Central Bank
- One representative from the Ministry of Treasury

The Chilean antidumping authority is the National Commission for the Investigation of Price Distortion in Imported Goods (the “**Commission**”).

The Commission is in charge of carrying out investigations involving distortions in the price of imported goods. As such, its responsible for investigating conduct that might constitute dumping, and will submit a recommendation to the President, through the Ministry of the Treasury, regarding whether or not to adopt definitive trade remedies.

## II. Investigation Proceedings

The following table describes the stages of investigation proceedings carried out by the Chilean antidumping authorities:

	STAGE	REQUEST
1	Initiation of the proceedings	The Commission may initiate an investigation either in response to a complaint by a “domestic industry” or <i>ex officio</i> if justified by the factual background.
2	Initiation of the investigation	<ul style="list-style-type: none"> <li>• The Commission publicly notifies the terms of the dispute within five days of receiving a complaint, beginning the investigation process.</li> <li>• Within 30 days of the notification the parties, or any third party, will submit the evidence they deem relevant to prove the existence of dumping.</li> </ul>

	STAGE	REQUEST
3	Participation of interested parties	<ul style="list-style-type: none"> <li>• During the investigation the parties:               <ul style="list-style-type: none"> <li>(i) May submit written evidence; and</li> <li>(ii) Must submit the information requested and answer the questionnaires provided by the Commission.</li> </ul> </li> <li>• Before making the decision, the Commission will notify the relevant facts to the parties. Within 15 days the parties may submit any comments or observations on the relevant facts.</li> </ul>
4	Preliminary resolution	Within 60 days of the beginning of the investigation, the Commission may request that the President adopt provisional measures.
5	Additional information	The Commission concludes the investigation based on the submitted facts and merits.
6	Final resolution	<ul style="list-style-type: none"> <li>• The Commission submits its findings to the President.</li> <li>• The President issues a final resolution and adopts trade remedy measures if considered necessary.</li> </ul>

If the Commission finds that dumping exists and that it harms or could potentially harm the domestic industry, the Commission will recommend the application of surcharges, antidumping remedies or countervailing remedies.

The sanctions resulting from the above framework may not last more than one year. If necessary, surcharges can be imposed for one further year, depending on the circumstances of the case.

Under domestic Chilean law, the Commission has 90 days as from the publication date of the initiation of the investigation to make its finding and submit a recommendation to the President on the potential imposition of definitive remedies.

Chilean law does not establish any judicial or arbitral proceeding to review the final measures adopted by the President within the framework of a dumping investigation.

The antidumping authorities can, at any time, request the President that the remedies in force at that time be modified or eliminated. In order to make that request, the antidumping authorities must possess information justifying the recommendation. Interested parties must be given the possibility to express whatever they consider appropriate in relation to the modification or elimination of the remedies.

### III. Confidentiality

According to domestic legislation, the parties may request that any information they submit for the Commission's consideration be treated as confidential. In this case, the party that delivers the confidential information must provide non-confidential public summaries of its content.

### IV. Non-Market Economy

Domestic law does not establish specific regulations for non-market economies or economies in transition.

### V. Price Undertakings

Chilean law does not establish any specific procedure for price undertakings. Nevertheless, the Commission applies the AD Agreement and the General Agreement on Tariffs and Trade as part of its legal framework.



## VI. Circumvention

Chilean law does not address circumvention.

## 11. COLOMBIA

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### I. Institutional and legal framework

The institutions that create and enforce antidumping regulations in Colombia are the following:



In Colombia, the antidumping authorities that issue a final ruling on whether or not there is sufficient evidence of dumping falls under the umbrella of the Ministry of Trade, Industry and Tourism, as does the International Trade Office.

The antidumping investigation by the International Trade Office is, in practice, carried out by the Secretariat of Trade Practices, a sub-organ answering to the latter.

## II. Investigation proceedings

The following table describes the stages of investigation proceedings carried out by the Colombian antidumping authorities:

	STAGE	REQUEST
1	Initiation of the proceedings	<ul style="list-style-type: none"> <li>The affected domestic industry may request an antidumping investigation.</li> <li>Within five days of the filing of the complaint, the Colombian antidumping authorities will review it in order to establish whether the complaint meets all the formal requirements established in the Colombian antidumping regulations (<i>i.e.</i> Decree 2550/2010).</li> <li>If the formal requirements are met, the antidumping authorities will inform the submitting party that the complaint meets the requirements.</li> </ul>
2	Initiation of the investigation	<ul style="list-style-type: none"> <li>Within 20 days of such communication, the antidumping authorities must determine whether: (i) the complaint is valid, (ii) it comes from or is on behalf of a domestic industry; and (iii) it provides <i>prima facie</i> evidence that exporting producers from one or more countries are dumping a particular product into Colombia and causing injury to the domestic industry concerned. In the event these elements are fulfilled, an investigation period of two months will be initiated by issuing a Notice of Initiation (“NI”).</li> <li>If requested by the parties or by the antidumping authorities themselves, this term may be extended for an additional period of 20 days.</li> </ul>

	STAGE	REQUEST
3	Participation of interested parties	<p>Within the seven days following the NI, the antidumping authorities will send questionnaires to exporters or foreign producers, importers, and the diplomatic or consular representatives of the country of the product's origin. Interested parties must submit the completed questionnaires within one month. This term may be extended for an additional period of ten days, upon the prior request of the interested parties.</p>
4	Preliminary resolution	<ul style="list-style-type: none"> <li>• After two months of the publication of the NI, the antidumping authorities will make provisional findings regarding the investigation and may either impose provisional antidumping duties or close the investigation.</li> <li>• If there are special events which require an extension of this period, this term may be extended for an additional period of 30 days, upon the request of the parties or by an <i>ex officio</i> decision of the antidumping authorities.</li> <li>• The information provided by the parties within the 15 days prior to the end of the term for issuing any decision on provisional findings, may not be considered by the antidumping authorities when issuing the decision. However, all the information provided by the parties will be considered by the antidumping authorities when issuing the final resolution.</li> </ul>

	STAGE	REQUEST
5	Additional information	<ul style="list-style-type: none"> <li>• Within ten days of the issuance of the decision on the provisional findings, the interested parties may request that the antidumping authorities hold a public hearing, where all parties may explain their position regarding the investigation. From the presentation of the request by any of the interested parties, the authorities have five days to call the public hearing, which must take place within the following month.</li> <li>• Once a decision on the provisional findings has been issued, the antidumping authorities will gather all evidence submitted by the parties and any other information that it considers necessary during a period of two months.</li> <li>• During the stage for closing statements, the parties will have the opportunity to present their closing statements to the antidumping authorities after 15 days have passed since the end of the discovery.</li> </ul>

	STAGE	REQUEST
6	Final resolution	<ul style="list-style-type: none"> <li>• Within three months of the issuance of the decision on the provisional findings, the Secretariat of Trade Practices must provide a brief with the findings of the investigation to the Committee of Trade Practices of the Ministry of Trade, Industry and Tourism (the “<b>Committee</b>”). Afterwards, the Committee must issue a provisional opinion on the results of the investigation.</li> <li>• Under special circumstances, the International Trade Office may extend this period for an additional month.</li> <li>• Within the following three days, the Secretariat of Trade Practices may send the interested parties the document containing the essential facts that will serve as a basis in order to determine whether or not the imposition of the antidumping measure is appropriate. The interested parties may submit comments on the antidumping authorities’ provisional decision.</li> <li>• The Committee will submit its final recommendation to the International Trade Office within 15 days of its receipt of comments.</li> <li>• The International Trade Office will issue a final decision to be published and served to all interested parties within the following seven days.</li> </ul>

In cases in which an interested party refuses access to the antidumping authorities, fails to provide all necessary information within a reasonable period of time or otherwise significantly frustrates the investigation, affirmative or negative preliminary and final determinations may be made on the basis of “the facts available” to the authorities.

Pursuant to domestic law, the Colombian antidumping authorities must adopt the decision that is most favourable to the country's interest. As such, a Public Interest Test must be carried out before making any decision on the antidumping measure.

The final decision may only be reviewed judicially by filing a nullity action with the courts.

Moreover, upon the request of an interested party or a request made *ex officio*, the Colombian antidumping authorities may at any time review the imposed antidumping duty, provided that a year has elapsed since its imposition.

### III. Confidentiality

Confidential information provided to the Colombian antidumping authorities may not be disclosed. The interested parties must rely on non-confidential public summaries prepared by the party asserting the confidentiality of the document, which must be delivered to the authorities.

Only under justified and evidenced special circumstances will it not be mandatory to provide the non-confidential summaries.

Finally, should the Colombian antidumping authorities consider that the information is not confidential, it will request that the concerned party disclose the information or justify its confidentiality.

### IV. Non-Market Economy

Domestic Colombian law establishes that, in this situation, the antidumping authorities may apply the third country price methodology (the price of the investigated good in a third country for local consumption or export may be used) or any other that it considers appropriate.

When using the domestic price reference or the export price reference, reference must be made to a market other than Colombia. The similar product must originate in the substituted country.

The following criteria must be taken into account when determining the third country:

- (i) The production process in the third country and in the non-market economy country;
- (ii) The scale of production; and
- (iii) The quality of the products.

These variables should be comparable (or be adjusted) to those in the exporting country being investigated.

## V. Price Undertakings

Any party may propose, including the authorities *ex officio*, price undertakings to the interested parties, subject to the two following restrictions: (i) price undertakings may only be proposed for up to two months after the decision on the provisional findings has been issued; and (ii) the price undertakings cannot be conditional on quantitative restrictions. After the consideration of the proposal, and taking into account the recommendation of the Committee of Trade Practices, the Ministry of Trade, Industry and Tourism will issue a decision either accepting the proposed undertakings, imposing no antidumping duties or, imposing less restrictive antidumping duties than those which could have been imposed in consideration of the existing antidumping margin.



## VI. Circumvention

Pursuant to domestic Colombian law, the existence of circumvention practices allows the authorities to extend the antidumping duty to the imports of the like products or its parts originating from third countries or from the investigated country.

In order to take any of the anti-circumvention measures, the following must be taken into account:

- (i) The investigation will initiate upon request;
- (ii) The request must contain sufficient evidence that a circumvention practice is taking place;
- (iii) The investigation authority is the Secretariat of Trade Practices of the Colombian Ministry of Trade;
- (iv) The decision to extend the antidumping duties will be made by the International Trade Office; and
- (v) The procedural rules governing a regular antidumping investigation must be followed.

## 12. ECUADOR

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### I. Institutional Framework.

The institutions that create and enforce antidumping regulations in Ecuador are the following:



Ecuadorian antidumping proceedings are carried out by two separate entities: the Directorate for the Defence of Trade (the “**Directorate**”) and the ministry overseeing the investigated sector. The Directorate investigates dumping margins and the causal link between dumping margins and actual or potential damages to the specific domestic market. On the other hand, the ministry overseeing the sector under investigation will be responsible for determining the existence of actual or potential damages to the market under investigation.

Finally, the International Trade Committee (“**COMEX**”) issues a resolution stating whether or not a specific behaviour constitutes dumping and establishes the trade remedy measures to be adopted.

## II. Investigation proceedings

The following table describes the stages of investigation proceedings carried out by the Ecuadorian antidumping authorities:

	STAGE	REQUEST
1	Initiation of the proceedings	The Directorate may initiate an investigation either in response to a complaint by a domestic industry or <i>ex officio</i> , if justified by the factual background. A complaint must include data sufficiently evidencing potential <i>prima facie</i> dumping behaviours.
2	Initiation of the investigation	<ul style="list-style-type: none"> <li>• Within 30 days of the presentation of a complaint, the Directorate will decide whether or not to initiate an investigation. If it considers there to be sufficient cause to open an investigation, it will provide notice of the initiation of an investigation.</li> <li>• Through the notification, the Directorate will determine which ministry will be responsible for determining the magnitude of the damages.</li> <li>• The Directorate has the authority to verify all the information submitted by the interested parties.</li> </ul>

	STAGE	REQUEST
3	Participation of interested parties	<ul style="list-style-type: none"> <li>• The Directorate will use the notification to initiate the investigation to establish the terms governing the manner in which interested parties will:               <ul style="list-style-type: none"> <li>(i) Submit the requested information and answer the questionnaires sent by the Directorate; and</li> <li>(ii) Submit any additional evidence in written form that they may consider relevant.</li> </ul> </li> <li>• During the investigation, the interested parties may request that hearings be held with the Directorate to present their arguments orally.</li> </ul>
4	Preliminary resolution	<ul style="list-style-type: none"> <li>• If petitioned by the claimant, the Directorate may ask COMEX to adopt provisional measures to prevent dumping. To do so, the Directorate presents a preliminary technical report to COMEX providing preliminary evidence on the existence of dumping - <i>fumus boni iuris</i> - and the damage which will be generated if no measures are taken - <i>periculum in mora</i>.</li> <li>• The decision to implement provisional measures will be published in the official state gazette. The COMEX may not implement provisional measures until at least two months have elapsed since the initiation of the investigation. The provisional measures may be applied for a maximum of six months.</li> </ul>

	STAGE	REQUEST
5	Additional information	<ul style="list-style-type: none"> <li>• The parties may submit to the Directorate all documents they consider relevant for the decision by the authorities, in writing, throughout the investigation.</li> <li>• The Directorate will inform the parties of all relevant facts to be considered for the decision in order to allow the parties the opportunity to submit comments within 30 days of the notification.</li> </ul>
6	Final resolution	When the Directorate finishes its investigation based on the submitted facts and merits, it will present a final technical report to COMEX. Based on that report, COMEX will issue a final resolution which will be notified to all parties and published in the official state gazette.

The antidumping investigation should normally be completed within 12 months of its initiation; however, it may be extended by up to six months.

The exporter should take into consideration that failure to cooperate in the proceedings will not frustrate the investigation, as the Ecuadorian antidumping authorities can issue a decision taking into account the “available facts”, even if they had not been submitted by one of the interested parties.

Ecuadorian antidumping regulations establish a *de minimis* threshold to determine if trade remedy measures may be adopted in any given case. Antidumping duties may not be adopted if:

- (i) The dumping margin is less than 2% under the normal price;

- (ii) The dumped product, which is imported from a single country, represents less than 3% of the total imports of the product; or
- (iii) The product is imported from several countries which individually export less than 3%, which aggregately represents less than 7% of the total imports of the product dumped into Ecuador.

Finally, if trade remedy measures are adopted, the antidumping authorities will review, *ex officio*, the necessity of enforcing the antidumping duties every year following their imposition. However, trade remedy measures may not exceed five years.

### III. Confidentiality

When submitting evidence to the Directorate, the parties may state which files they consider confidential, although they will be required to provide non-confidential summaries of all confidential documents. Only under justified and evidenced special circumstances will it not be mandatory to provide public summaries.

The parties must state a reason why each document should be considered confidential. If the Directorate finds that the information should not be considered confidential, and the interested party nevertheless does not want it to become public, the Directorate will respect its confidentiality, but will not take that document into consideration when issuing its final resolution.

### IV. Non-Market Economy

In the event that there are no market economy export prices available for the investigated product, the Directorate may use one of three methods to determine the price of the product:

- (i) It may use the price of a similar product within the internal market of the exporting country, if it reflects the “market value” of the product;

- (ii) It may calculate the price of the product using the prices of the product as exported to a third country, if it reflects the “market value” of the product; and
- (iii) It may calculate the price on basis of the production cost, plus added value in consideration of administrative costs, sales costs and profit margins.

#### V. Price Undertakings

If all interested parties agree to resolve the dispute through price undertakings, the Directorate may declare the investigation to be terminated if it is satisfied that the agreement effectively eliminates the adverse effects.

#### VI. Circumvention

Ecuadorian law establishes that, when faced with circumvention practices, the antidumping duty may be extended to the imports of the parts, pieces or components destined to the assembly or finishing of a similar product to that subject to import duties. Nevertheless, there must be sufficient evidence that the imports are an actual mechanism employed by the exporter with the intent to avoid the payment of import duties.

## 13. MEXICO

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### I. Institutional and legal framework

The institutions that create and enforce antidumping regulations in Mexico are the following:



The Ministry of Economy is supported by the International Trade Practice Unit, which is in charge of filing and resolving dumping investigations by determining whether or not to impose antidumping duties. The decisions of this body must be based on the Mexican Foreign Trade Law.



## II. Investigation proceedings

The following table describes the stages of investigation proceedings carried out by the Mexican antidumping authorities:

	STAGE	REQUEST
1	Initiation of the proceedings	<ul style="list-style-type: none"> <li>The investigation may be initiated ex officio by the authorities or by any interested party. The request must be filed by a legal or natural person.</li> <li>Interested parties must represent at least 25% of the total domestic production of identical or similar merchandise.</li> </ul>
2	Initiation of the investigation	The Ministry of Economy may either: (i) accept the request and declare the initiation of the investigation (within 25 days from the filing of the request); (ii) request additional evidence or data, which the parties must provide (20 days); or (iii) reject the request if the applicable requirements are not met (20 days).
3	Participation of interested parties	The resolution must be published in the Federal official gazette and notice must be provided to the interested parties, who will have 28 days to file their legal arguments, and submit all information and evidence in conformance with Mexican legislation.

	STAGE	REQUEST
4	<b>Preliminary resolution</b>	Within 90 days of the publication of the initiation of the investigation, a public preliminary resolution will be issued which may: (i) establish a provisional antidumping duty; (ii) not impose a provisional antidumping duty and continue with the administrative investigation; or (iii) declare the conclusion of investigation on the basis of insufficient proof.
5	<b>Additional information</b>	The Ministry of Economy may request further evidence, information and data considered relevant from the interested parties.
6	<b>Final resolution</b>	Within 210 days of the publication of the initiation of the investigation, the Ministry of Economy will issue a final resolution which will either: (i) impose an antidumping duty; (ii) revoke the provisional antidumping duty; or (iii) declare the investigation as terminated without imposing an antidumping duty.

Antidumping investigations must be carried out within 210 days of the publication in the official gazette of the resolution declaring the initiation of the investigation.

The Mexican Ministry of Finance is responsible for reviewing final determinations in matters of certificates of origin and resolutions imposing definitive antidumping duties. In all other cases, the Ministry of Economy is responsible for reviewing final determinations on antidumping matters in order to revoke, amend or confirm the reviewed antidumping duties.

The definitive antidumping duties may be reviewed annually upon the request of the interested party (during the month of determination) or *ex officio* by the Ministry of Economy (at any time), despite the fact that such duties may be subject to an alternative dispute resolution mechanism or an administrative or judicial proceeding.

The Ministry of Economy will use the “facts available” methodology in the following scenarios:

- (i) The producers or importers fail to appear during the investigation;
- (ii) The producers or importers fail to file the requested information properly, significantly obstruct the investigation, or submit information or evidence that is incorrect, incomplete or that does not derive from accounting records and does not permit the determination of the dumping margin; or
- (iii) The producers did not export or the importers did not introduce the product during the investigation period.

Pursuant to domestic Mexican law, before issuing any decision on antidumping measures, the authorities must consider both the protection of the domestic market from unfair trade practices and the contribution of the measures to the country’s welfare or to the general public interest.

### III. Confidentiality

The following information is considered confidential under Mexican law:

- (i) Production processes;
- (ii) Production costs;
- (iii) Distribution costs;

- (iv) Sale terms and conditions, excluding those of public offers;
- (v) Sale prices per transaction or per product, excluding details such as product sales and distribution dates, as well as transportation if based on public itineraries;
- (vi) Description of the types of clients, distributors and suppliers;
- (vii) If available, the exact quantity of the dumping margin associated with individual sales;
- (viii) The adjusted amounts for terms and conditions of sale, volumes or quantities, variable costs and tax burdens, proposed by the interested party; and
- (ix) Any other specific information regarding any party which may cause damage to its competitive position if disclosed.

Confidential information may only be disclosed to the legal representatives of the interested parties and to legal or natural persons granted access to it pursuant to international treaties or agreements to which Mexico is party. The interested parties, in any case, must first obtain authorisation from the Ministry of Economy and provide a guarantee of MXN 4.2 million (approximately USD 320,000.00) to access the confidential information. Commercial secrets and governmental information may not be disclosed to the interested parties.

#### IV. Non-Market Economy

In a scenario involving imports from a country with a centrally-planned economy (i.e. a non-market economy), the normal value of the products will be the price of an identical or similar product in a third country with a market economy. That country may be considered as a substitute for the centrally planned economy in order to determine the “normal” price of the product.

## V. Price Undertakings

If during an investigation the exporters voluntarily commit to amend their prices or cease their exports, or if the exporting government eliminates or limits the corresponding subsidy, the Ministry of Economy may suspend or terminate the investigation without imposing antidumping duties.

The Ministry of Economy will evaluate whether or not such agreements eliminate the harmful effect of the unfair trade practice. However, in practice the Ministry of Economy rarely takes that approach.

## VI. Circumvention

Mexican legislation establishes an anti-circumvention procedure which may be initiated *ex officio* or at the request of an interested party. Pursuant to domestic Mexican law, circumvention practices are the following:

- (i) Introduction of raw material, parts or components necessary for the production or assembly of products subject to antidumping duties or safeguards;
  - (ii) Introduction of merchandise subject to antidumping duties or safeguards made from raw materials, parts or components integrated or assembled in a third country;
  - (iii) Introduction of merchandise from the same country of origin as the merchandise subject to antidumping duties or safeguards that contain relatively minor differences with respect to the same product;
  - (iv) Import of merchandise subject to antidumping duties or safeguard measures that are imported with a lower antidumping duty or less restrictive safeguards;
- and

- (v) Any other conduct that results in non-payment of the antidumping duty or compliance with safeguards.

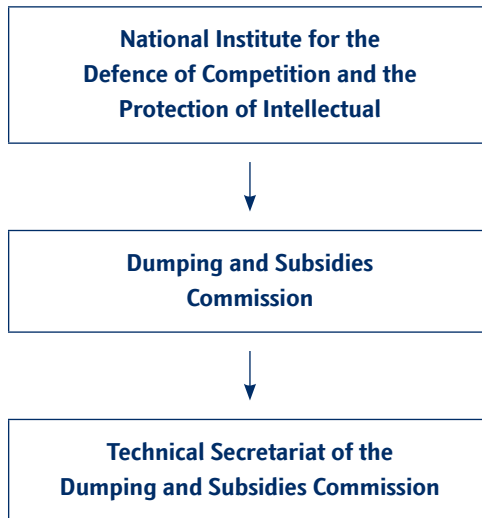
If through the investigation the antidumping authorities conclude that a circumvention practice is taking place, they will extend the application of the antidumping duties to the products or parts associated with that practice.

## 14. PERU

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### I. Institutional and legal framework

The institutions that create and enforce antidumping regulations in Peru are the following:



Peru's antidumping authority is the Dumping and Subsidies Commission, which answers to the National Institute for the Defence of Competition and the Protection of Intellectual Property ("**INDECOPI**", for its Spanish initialism).

In practice, the investigation is actually carried out through the Technical Secretariat of the Dumping and Subsidies Commission, a sub-organ answering to the INDECOPI.

## II. Investigation proceedings

The following table describes the stages of the investigation proceedings carried out by the Peruvian antidumping authorities:

	STAGE	REQUEST
1	Initiation of the proceedings	<ul style="list-style-type: none"> <li>An investigation may be initiated either:               <ol style="list-style-type: none"> <li>At the request of local producers representing at least 25% of the national production; or</li> <li><i>Ex officio</i> by the antidumping authorities.</li> </ol> </li> </ul>
2	Initiation of the investigation	Once the complaint has been filed, the antidumping authorities may: (i) initiate an investigation; (ii) request further information from the plaintiff, which, if not produced, may lead to the dismissal of the suit; or, (iii) dismiss the suit as inadmissible.
3	Participation of interested parties	<ul style="list-style-type: none"> <li>The following are considered interested parties: (i) importers, foreign producers, importers of the investigated product and commercial associations and guilds in which the majority of members are producers, exporters and importers of the investigated product; (ii) the government corresponding to the state of the exporter; (iii) producers of similar products in Peru and Peruvian commercial associations in which the majority of members are producers of similar products<sup>4</sup>.</li> <li>Respondents may file their arguments in writing within 30 calendar days, providing answers to the corresponding importer's questionnaires. Upon receiving an adequately justified request, the authorities may extend the term by up to 30 calendar days.</li> </ul>

4.- This list is not exhaustive. The Peruvian antidumping authority may grant other parties standing if they demonstrate a legitimate interest in the proceedings.



	STAGE	REQUEST
4	Preliminary resolution	<ul style="list-style-type: none"> <li>• The Peruvian antidumping authorities may only apply temporary duties 60 calendar days after the beginning of the investigation if:               <ul style="list-style-type: none"> <li>(i) A preliminary investigation has been carried out that afforded the parties an adequate opportunity to submit information and to make observations;</li> <li>(ii) It has been determined <i>prima facie</i> that there have been dumped imports, injury or threat of injury to a national industry and there exists causation between the dumped imports and the alleged injury; and</li> <li>(iii) It is considered necessary to prevent further injury to local production during the course of the investigation.</li> </ul> </li> <li>• If no permanent duties are ultimately imposed, a full reimbursement of the paid amount will be ordered, or the guaranty granted for the amount of the temporary duties imposed will be fully released. Temporary duties must be imposed for a period not exceeding four months. Upon receiving a justified request, the authorities may extend the term for up to two additional months.</li> </ul>

	STAGE	REQUEST
5	Additional information	<ul style="list-style-type: none"> <li>• The parties involved in the investigation proceedings may present relevant information and arguments to the antidumping authorities within six months of the investigation commencing. Nevertheless, the Secretariat has authority to request information at any stage of the proceedings. Upon receiving a justified request, the Peruvian antidumping authorities may extend the term for up to three additional months.</li> <li>• Within 30 days of the conclusion of the discovery period, the authorities must notify the parties of the essential facts that will serve as the basis for the final ruling. The parties may submit their comments on these facts and request a hearing within ten days of their receipt (the parties will have seven days to submit written arguments for the hearing).</li> <li>• If the parties so request, the Peruvian antidumping authorities must call a hearing to identify which facts, from the essential facts report, are disputed by them.</li> <li>• The antidumping authorities will only take into consideration information presented in the hearings if submitted in writing within seven days of the date of the hearing.</li> </ul>

	STAGE	REQUEST
6	Final resolution	<ul style="list-style-type: none"> <li>• The proceedings must be concluded within nine months of the publication date of the initiation notice. The authorities may extend the term, within the initial discovery period, by up to three months.</li> <li>• The authorities must issue a final ruling within 30 days of the expiration of the term in which to submit comments or upon the expiration of the term to submit arguments in the hearing.</li> <li>• Permanent duties may only be established if there is evidence on the existence of dumped imports, injury or threat of injury and causation between the dumped imports and the alleged injury.</li> <li>• The investigation will end if the authorities determine that (i) the margin of dumping is <i>de minimis</i> (i.e. less than 3% of the export price); (ii) the injury or threat of injury is insignificant<sup>5</sup>.</li> <li>• In case the investigation is considered to be without merit, the authorities may, at the request of a party, determine that administrative, procedural and other costs incurred by the importer and by the exporter under investigation be paid by the plaintiff.</li> </ul>

For investigations initiated by private request, the imports must have been made within the six months prior to the date on which the suit was filed. In addition, in these

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5.- Nevertheless, the volume of dumped imports will not be considered insignificant whenever it originates from countries which individually represent less than 3% of the imports of a like product in the importing country if, on aggregate, they represent more than 7% of such imports.

cases, the suit must include a description of the dumping practice, the injury caused or to be caused to the domestic industry, and the causal relationship between the alleged dumped imports and the injury or threat of injury being claimed.

The timeframe for the procedure carried out by the authorities is between approximately 12 and 18 months. The decision of the Peruvian antidumping authorities may be appealed to the Tribunal for the Defence of Competition ("**Tribunal**"). The Tribunal will issue a final decision within six months, although the period may be extended by two months. The Tribunal's ruling can be disputed in Peruvian courts.

In addition to demanding information from the interested parties, the Peruvian antidumping authorities may directly demand any information and data from customs agents, supervisory companies, transport companies and any other entity from the private or public sector that it deems appropriate to accomplish its functions and resolve the procedure. Such information must be submitted as instructed by the Peruvian antidumping authorities and in accordance with the provisions of domestic law.

Pursuant to Article 6.8 of the AD Agreement and domestic Peruvian law<sup>6</sup>, if any interested party refuses the authorities access, fails to provide the required information within a reasonable period, or significantly frustrates the investigation, preliminary and final affirmative or negative rulings may be made on the basis of the available facts.

Antidumping duties may not exceed the amount necessary to neutralise the injury or threat of injury. In no case may duties exceed the calculated margin of dumping. The

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6.- Articles 19 and 35 of Supreme Decree No. 006-2003-PCM.

duties will remain in effect while the causes of the injury or threat of injury survive, but may not exceed five years.

Authorities may, where warranted, review the need for the continued imposition of the duty on their own initiative or, provided that a reasonable period of time has elapsed (one year), at any time upon request by any interested party that submits information substantiating the need for a review.

### III. Confidentiality

Privileged information which could grant a competitor a significant advantage or which could cause damages to any party should it become public, will be considered confidential. The party requesting that a document remain confidential must provide a non-confidential summary of the same.

If the party requesting confidentiality fails to provide a non-confidential summary of the supposedly confidential information, and does not want it to become public, the Peruvian antidumping authorities will not take the document into consideration for its decision unless the veracity of information can be confirmed by an independent source.

### IV. Non-Market Economy

The Peruvian antidumping authorities apply the AD Agreement and Supreme Decree No. 006-2003-PCM to all procedures and investigations involving producers from states party to the WTO. Supreme Decree No. 133-91-EF is applied in procedures involving producers from states that are not party to the WTO.

In the event that the exporting country has a non-market economy, the Peruvian antidumping authorities may calculate the normal price of the product by either using the prices of the export of the product to a third country if they reflect the “market value” of the product in question, or by basing the calculation on the production cost,

plus added value in consideration of administrative costs, sales costs, other general costs and profit margin.

Moreover, pursuant to article 15 of the AD Agreement, WTO member countries may treat developing economies differently when calculating normal values and export prices.

## V. Price Undertakings

During the course of an investigation, the exporter or the government of the country exporting the goods at dumping prices may voluntarily commit to undertakings in order to revise its prices or cease exports at dumped prices. In such cases, the Peruvian antidumping authorities will require the initial claimant to submit their comments on the offered undertakings within 15 days. Once the term has expired, the antidumping authorities may accept the undertakings, issuing an order suspending or terminating the investigation.

Satisfaction of the terms of voluntary undertakings is subject to periodic review by the Peruvian antidumping authorities, whether at its own initiative or at the request of an interested party. When noncompliance has been confirmed, the dumping party will be given 15 days to submit arguments, after which the antidumping authorities may establish the immediate application of the corresponding temporary duties on the basis of the best information available. In such cases, the authorities may continue the investigation and impose permanent duties on the products declared for consumption in the 90 days preceding the application of the temporary duties.

## VI. Circumvention

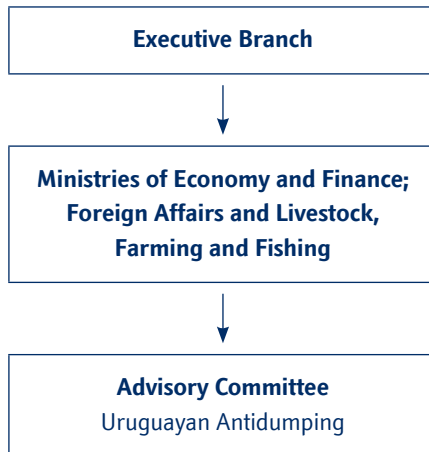
Peruvian law does not establish specific anti-circumvention measures.

## 15. URUGUAY

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### I. Institutional and legal framework

The institutions that create and enforce antidumping regulations in Uruguay are the following:



#### Composed by:

- Ministry of Economy and Finance
- (President of the Commission)
- Ministry of Foreign Affairs
- Ministry of Livestock and Farming
- Planning and Budget office

Depending on the nature of the product, investigation proceedings will be carried out by either the Office of Agricultural Planning and Policy (OPYPA) or the National Department of Industry (DNI) (jointly, the “**Investigating Authority**”).

## II. Investigation Proceedings

The following table describes the stages of investigation proceedings carried out by the Uruguayan antidumping authorities:

	STAGE	REQUEST
1	Initiation of the proceedings	Investigations may be initiated with the submission of a written complaint by local affected entities or, under special circumstances, at the sole discretion of the Investigating Authority.
2	Initiation of the investigation	Within 30 days of opening the investigative procedure, the Advisory Committee will decide whether or not to open an investigation (“ <b>Resolution of Initiation</b> ”). The Resolution of Initiation will be published in the official gazette.



	STAGE	REQUEST
3	Participation of interested parties	<ul style="list-style-type: none"> <li>• The interested parties will be personally notified at the same time the Resolution of Initiation is published. The Investigating Authority will send questionnaires to exporters, foreign producers and authorities of the investigated country. Interested parties must return the questionnaires, properly answered, within 40 days of their receipt. The term may be extended by up to 30 days.</li> <li>• Pursuant to domestic Uruguayan law, the importers and their foreign government are considered interested parties and are therefore entitled to participate in the investigative proceedings in several ways: <ul style="list-style-type: none"> <li>(i) Answering the questionnaires prepared by the Investigating Authority;</li> <li>(ii) Providing the Investigating Authority with evidence and information;</li> <li>(iii) Requesting that the Investigating Authority hold hearings;</li> <li>(iv) Requesting information on the status of the proceedings (which may or may not be granted depending on the confidentiality of the status of the investigation);</li> <li>(v) Presenting closing statements; and</li> <li>(vi) Requesting the revision of the decision after one year has lapsed since the imposition of the definitive antidumping measures.</li> </ul> </li> </ul>
4	Preliminary resolution	Provisional measures may be imposed within 60 days of the Resolution of Initiation in order to avoid further damages to the local industry during the investigation process. The Advisory Committee will make the decision on whether or not to impose such measures. The decision must be published in the official gazette and the interested parties notified.

	STAGE	REQUEST
5	Additional information	<ul style="list-style-type: none"> <li>• The Investigating Authority will analyse the answers and decide whether to: (i) request further information or (ii) carry out an <i>in situ</i> inspection (i.e. within the country of origin of the investigated party).</li> <li>• Two types of hearings might be held during the investigation:               <ul style="list-style-type: none"> <li>(i) <b>Requested hearings:</b> Interested parties may request a hearing in order to present their positions and defend their interests. The other parties must be notified 30 days in advance; and</li> <li>(ii) <b>Final hearings:</b> a mandatory hearing will be held prior to the issuance of a final decision. The Investigating Authority will deliver a summary of the main facts and conclusions to the parties. The date of the hearing will be notified to the parties 30 days in advance. After the final hearing, the parties will have the opportunity to present their closing statements.</li> </ul> </li> </ul>
6	Final resolution	<ul style="list-style-type: none"> <li>• The Investigating Authority will issue a final recommendation to the Advisory Committee within 30 days of the conclusion of the investigative procedure. The Advisory Committee will issue a decision within 30 days on whether definitive antidumping measures will be adopted or if the procedure will be closed.</li> <li>• The Executive Branch will consider the advice and, through a ministerial resolution, will make a final decision on whether or not to impose definitive antidumping measures. The resolution will be published in the official gazette and personally notified to interested parties.</li> </ul>

The entire procedure could last up to 18 months from the Resolution of Initiation and the investigative stage must end 120 days before the expiry of that term.

Final decisions (adopted throughout ministerial resolutions) may only be reviewed judicially, by filing a nullity action with an administrative court. The authorities may at their own initiative review the need for the continued imposition of the duty where warranted or, provided that a reasonable period of time has elapsed since the imposition of the definitive antidumping duty, at the request of any interested party that submits information substantiating the need for a review.

Whether at the request of an interested party or carried out *ex officio*, the Uruguayan antidumping Investigating Authority may review the antidumping measures imposed provided that:

- (i) A year has elapsed since the imposition of the measures (unless imposed for reasons of public interest); and
- (ii) Sufficient evidence is provided regarding the need to modify the measure.

### III. Confidentiality

Uruguayan authorities may not disclose information which is inherently confidential or deemed confidential by the disclosing party. The interested parties must rely on non-confidential summaries prepared and delivered by the party asserting the confidentiality of the information or document.

Only under special and justified circumstances (which must be evidenced by the alleging party), will it not be mandatory to provide the authorities with non-confidential summaries. Nevertheless, the Investigating Authority will always retain access to the information. If the Investigating Authority considers that there are no grounds to

maintain the confidentiality of the information and the interested party is not willing to make it public or share access, that information will not be taken into consideration by the Investigating Authority when issuing final decisions.

#### IV. Non-Market Economy

If the investigated products are exported from a non-market economy, the normal price of the product will be determined by using the third country methodology, comparing the consumption price of a similar product in a third country with a market economy.

If this methodology cannot be used, the normal price of the product will be determined on any reasonable grounds, including the price paid or to be paid for a similar product in Uruguay. For the purposes of the third country methodology, the country will be chosen considering the production process in that country, the main characteristics of the market for the product and the market's level of development.

#### V. Price Undertaking

Price undertakings in Uruguay comply with the general requirements of Section 8 of the WTO AD Agreement. If the exporter voluntarily commits to adjust prices or to cease exporting to Uruguay at dumped prices, and the Investigating Authority is satisfied with the undertakings, the proceedings could be suspended or concluded throughout a Ministerial Resolution.

The proceedings may also continue through a Ministerial Resolution. The Resolution will be published in the official gazette and notified to the interested parties. The Investigating Authority may reject the proposed price undertakings if they are deemed to be ineffective. The Investigating Authority will not accept or try to achieve any price

undertaking if there is *no prima facie* decision on the existence of dumping. Exporters are not obliged to accept the price undertakings offered by the Investigating Authority, and such rejection will not result in any prejudice to the exporter.

## VI. Circumvention

Circumvention procedures could be imposed if any party attempts to avoid paying the corresponding duty by modifying the product subject to the antidumping measure or importing similar products that hide their origin, or any other circumvention practice.

In such cases, the investigation will commence upon a request by an interested party. The Investigating Authority must issue a report within 60 days from the presentation of the interested party. The report will be subject to review by the Advisory Committee, which will recommend the measure to be applied, if any. The applicable procedure is very similar to the regular procedure of antidumping investigation, except that the terms in circumvention cases are shorter.