

REPORT NO 092-2021/CDB-INDECQPI

A Members of the Committee on Dumping, Subsidies and Elimination of Non-Tariff  
Trade Barriers

Of Technical Secretariat of the Commission on Dumping, Subsidies and Elimination  
of Non-Tariff Trade Barriers

Subject Assessment of the ex officio initiation of an investigation procedure on  
imports of safeguard products

Date 15 December 2021

SUMILLA

File No.  
Matter  
Applicant  
Product to be analysed

020-2021/CDR  
On-initiative  
safeguards



INDEX

BACKGROUND	12
1.1. Safeguard investigation on imports of made-up products iniciada en 2004.....	12
1.2. Investigación por salvaguardias a las importaciones de confecciones iniciada en 2020.....	13
1.3. Labores de monitoreo al sector confecciones en 2021 .....	15
II. EL PROCEDIMIENTO DE INVESTIGACIÓN POR SALVAGUARDIAS .....	19
III. ANÁLISIS .....	22
A. DETERMINACIÓN DEL PRODUCTO SIMILAR O DIRECTAMENTE COMPETIDOR...23	
A.1. Consideraciones técnicas .....	23
A.2. Producto importado.....	24
A.3. Producto nacional .....	25
A.4. Análisis do producto similar o directamente competidor.....	27
/ B. DETERMINACIÓN DE UN POSIBLE AUMENTO SIGNIFICATIVO DE LAS ^ IMPORTACIONES DE CONFECCIONES .....	29
Aument0 de las importaciones en términos absolutos y en términos relativos a la producción.....	29
O/ ANÁLISIS DE LA EVOLUCIÓN IMPREVISTA DE LAS CIRCUNSTANCIAS .....	43
C. ....	1.
Consideraciones iniciales .....	43
C. ....	2
. Circunstancias imprevistas.....	45
C. 3. Conclusiones sobre el aumento que habrían registrado las importaciones de confecciones y las circunstancias imprevistas que habrían propiciado dicho aumento53	
D. DETERMINACIÓN INICIAL DE LA EXISTENCIA DE DAÑO GRAVE A LA RPN.....	54
D. 1. Consideraciones iniciales .....	54
D. 2.Rama de producción nacional 56	
D.3. Ritmo y cuantía del aumento de las importaciones.....	57
D.4. Parte del mercado interno absorbida por las importaciones .....	60
D.5. Situación económica de la RPN .....	63
D.6. Conclusiones sobre la determinación preliminar de la existencia de daño grave a la RPN .....	75
D.7. Otros factores de análisis .....	78
D.8. Conclusiones sobre otros factores de análisis .....	86
E. DETERMINACIÓN INICIAL DE LA EXISTENCIA DE RELACIÓN CAUSAL .....	88
E.....	1.
Consideraciones iniciales .....	88
E.....	2
. Efecto de las importaciones de confecciones .....	88
E.3. Efecto de otros factores .....	89

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## F. CONCLUSIONS

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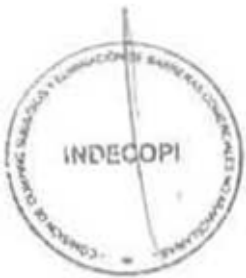
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EXECUTIVE SUMMARY

1. This report contains the technical analysis to assess whether it is appropriate to provide for the ex officio initiation of an ex officio investigation procedure in respect of imports of made-up goods (hereafter made goods), as set out in the World Trade Organisation (WTO) Agreement on Safeguards.
2. This assessment is based on Article 10 of Supreme Decree N° 020-98- ITINCI, as amended by Supreme Decree N° 017-2004-MINCETUR, which regulates at national level the provisions of the WTO Agreement on Safeguards (hereinafter the Safeguards Regulation), according to which the competent authority may, in special circumstances, decide to initiate an investigation procedure ex officio, if it has sufficient evidence of serious injury or threat of serious injury to a domestic industry (hereinafter referred to as the "PN").
3. In this respect, it has been found that in this case there are special circumstances provided for in the Safeguards Regulation empowering the Commission for dumping, subsidies and elimination of non-tariff commercial barriers (hereinafter referred to as the Commission) to assess whether it is appropriate to initiate ex officio an investigation procedure in respect of imports of safeguard products. This, on the basis of the information available at this stage of the procedure, shows that the national manufacturing industry is fragmented.
4. It has also determined that manufactures produced locally and those imported into the country can be considered as like and directly competitive products under the terms set out in the Safeguards Agreement and the Ello Safeguards Regulation, as both products share the same physical characteristics; They are used for the same purposes, are made from the same raw materials and follow the same production process; They are placed on the market under the same marketing channels; They are classified under the same tariff subheadings; And, they are commercially interchangeable on the Peruvian market where they compete  
  
In order to verify the significant increase in imports of making-up during the period under review (January 2016 — June 2021), the criteria set out in the WTO Appellate Body rulings on this issue
5. were taken into account. Asi. has pointed out that, in a safeguard investigation, it is not sufficient to verify any increase in the quantity of imports of the imported product, but that it is necessary to show that such imports have increased 'in such a quantity' that they cause or threaten to cause serious harm to RPN. For such effects, it is necessary that the increase in imports has been sufficiently recent, sudden, acute and significant to cause or threaten to cause serious injury to RPN.
6. On the other hand, for the purpose of analysing the existence of prima facie evidence of possible serious injury to the national making-up industry, it is considered that the RPN of made-up products is composed of one hundred and two (102) domestic producers making up the Monthly Statistical Survey of PRODUCE, which has been provided by the Ministry to the Commission. in this respect, it has been estimated that these producers together represent 3/4 % of the total domestic production of



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production, which makes it possible to reflect the evolution of the economic performance of the industry in question.

As explained in detail in this report, the evidence available at this initial assessment stage shows that during the period January 2016 — June 2021 there would have been an increase in imports of fabrications in such a quantity and under such conditions that they could constitute serious injury to RPN within the meaning of Article 2.1 of the Safeguards Agreement. This is based on the following considerations:

(l) *Increase in imports in absolute terms.* Between 2016 and 2020, imports of made-up products increased by 52.5 %. in cumulative terms, this coincided with a cumulative decrease of 33.6 % in their FOB price. In 2021 (January — June), production imports increased (48.8 %) compared to the same half of 2020, against the background of a resumption of domestic industrial production activities, with the FOB price of such imports falling by 18.7 %.

The increasing trend of imports of manufactures increased after the period of analysis considered in the safeguard investigation which ended in April 2021 (January 2016-June 2020), as in the last two semesters of the analysis period of this case (July — December 2020 and January — June 2021) the highest levels of imports were recorded compared to all semesters covering the analysis period.

(i) *Increase in imports in terms of domestic production:* Between 2016 and 2020, imports of fabrications, in relative terms of domestic production, increased by 253.8 percentage points, as a result of the increase in such imports in absolute terms. In 2021 (January — June), the above indicator increased by 8.9 percentage points, as imports increased (48.8 %) more strongly than domestic production (45.8 %), compared to the similar half of 2020.

8. With regard to developments in the light of the substances, prima facie evidence has been found at this stage of the initial assessment to suggest that unforeseen circumstances within the meaning of Article XIX of GATT 1994 have arisen during the period January 2016 June 2021, as a result of which there would have been a significant increase in imports of making-up products during the period indicated above. This is based on the following considerations:

(l) Between January 2016 and June 2021, the average FOB price of imports of ready-made goods did not follow the price evolution of its main raw materials (cotton and polyester). On the contrary, they showed contrasting trends or decreased in different proportions, which coincided with a significant increase in imports of making-up products.

(i) In that context, the measures to halt production and trade activities in the country during 2020 to contain the rise of COVID-19 (specifically between March and June of that year), which also covered the production sector, contributed to a significant increase in

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imports of made-up products in the period indicated above. Notwithstanding this, in a context of resuming domestic industrial production activities, in 2021 (January — June), imports of fabrications in relative terms of domestic production exceeded the level reached in the previous years that are part of the analysis period.

9 As far as serious injury to RPN is concerned, the evidence available at this stage of the initial assessment indicates the existence of prima facie evidence of possible hardship to RPN resulting from the significant increase in imports of making-up products during the period January 2016 — June 2021. This conclusion is based on the following considerations:

- (I) Rate and amount of increase in printing: Between 2016 and 2019, the pace of increase in imports of fabrications took place at significant levels, with the growth rates of such imports recorded between 2017 and 2018 and between 2018 and 2019 (29.8 % and 13.5 % respectively) being significantly higher than the growth rate recorded between 2016 and 2017 (2.7 %). While between 2019 and 2020 the volume of imports of made-up goods increased (0.7 %) by less than the increase recorded between 2016 and 2017, this was due to the decrease in imports in the

first half of 2020. However, imports of ready-made goods are increased in the second half of 2020, after the restarting of trade activities at national level, with a volume (182,263 thousand units) reported in that six-month period, which is greater than that observed in all semesters from 2016 to 2019 (i.e. prior to the implementation of measures to contain COVID-19).

In the final and most recent part of the analysis period (January — June 2021), the volume of imports of ready-made goods increased by 48.8 % compared with the same period in 2020, reaching the highest level recorded for all semesters covered by the analysis period, showing sustained growth in imports of fabrications after the end of the analysis period.

period of analysis considered in the investigation by safeguards to imports of made-up products which ended in April 2021.

For its part, in 2016 and 2020, the volume of imports of made-up goods in terms of domestic production, there was an average annual increase of 63.4 percentage points, which is explained by the growth of imports during the period mentioned above (at an average annual rate of 26,777 thousand units) and the reduction in domestic production (at a rate of 9,096 thousand units per year) over the period in question. In the final and most recent part of the analysis period (January — June 2021), imports of manufactures in relative terms of domestic production grew by 8.9 percentage points, as the volume of imported products increased (62,901 thousand units) by a larger magnitude than the volume of domestic products (13,630 thousand units).

- (II) Part of the domestic market absorbed by imports is increasing: During the analysis period (January 2016-June 2021), the market share of imports of ready-made goods showed an increasing trend, leading to a gradual shift of the domestic product on the domestic market. Indeed, between 2016 and 2020, when the FOB price of imports of ready-made goods fell cumulatively by 33.6 %, the shareholding



the market share of such imports increased by 13.4 percentage points. At the end of the analysis period (January-June 2021), the drop in the FOB price of imports of making-up products allowed these imports to absorb a higher share of the domestic market (2.9 percentage points) compared to the similar period in 2020.

- (iii) *Changes in the level of sales:* During the analysis period (January 2016 to June 2021), the estimated volume of domestic sales of RPN manufactures showed a decreasing trend, which remained in the final and most recent part of the period in question (January — June 2021). Indeed, between 2016 and 2020, that indicator recorded a cumulative reduction of 56.4 %; While in the final and most recent parts of the analysis period (January — June 2021), it contracted by 17 % compared with the same half of the previous year.

The decreasing trend of the sales indicator increased after the period of analysis considered in the safeguard investigation which ended in April 2021 (January 2016 — June 2020), as for the last two semesters of the analysis period of the present case (July — December 2020 and January — June 2021) the lowest levels of domestic sales were recorded compared to all semesters covered in the analysis period. ASI, at the end of the analysis period (January — June 2021), the level of RPN's domestic sales (7,877 thousand tonnes) continued its declining trend, to reduced (13.8 %) compared to previous half year, therefore the level of the previous semester

and indicator was located below (53.3 %) the average level of all semesters previous years between 2016 and 2020 (16,852 thousand tonnes on average every six months).

- (iv) *CAMBIA in the market participation:* The market share of RPN experienced a decreasing trend during the period January 2016 — June 2021. Indeed, between 2016 and 2020, when the size of the domestic market for making-up increased by 33.6 %, RPN's market share fell by 11.7 percentage points, in a context in which the FOB price of imports of ready-made goods fell by 33.6 %.

The declining trend of the market participation indicator was accentuated after the period of analysis considered in the investigation by safeguards which ended in April 2021 (January 2016 — June 2020), as in the last two semesters of the analysis period of the present case (July — December 2020 and January-June 2021) the lowest levels of market participation were recorded compared to all semesters covered by the analysis period. Thus, in the final and most recent part of the analysis period (first half of 2021), when the size of the domestic market increased by 44.3 % compared to the similar half of 2020, the market share of RPN decreased by 2.9 percentage points, in a context where the imported product showed a 23.9 % reduction in its FOB import price.

- (v) *Changes in the level of utility generated by RPN:* The utility margin obtained by RPN on its sales of made-up products showed a cumulative reduction of 29.8 % between 2016 and 2020. analysis of intermediate trends shows that, between 2016 and 2018, utilities increased by 12 %, however, between 2018 and 2020, utilities decreased by 37.2 %.



- (vi) *ACmbs in production*: During the analysis period (January 2016 — June 2021), against a background of a significant increase in the volume of imports of made-up products, the production of RPN decreased by 34.3 % on a cumulative basis. When reviewing intermediate trends over the period indicated above, differentiated behaviour can be seen. Meanwhile, in the final and most recent part of the analysis period (first half of 2021), although the level of production of RPN (43,401 thousand units) increased (8.5 %) compared to the previous semester, the level of this indicator was below (12.4 %) the average production level of previous semesters between 2016 and 2020.

(vii) *CAM bias incapacity utilisation*: During the analysis period (January 2016 — June 2021), the use of installed capacity of RPN evolved in line with the performance of the output indicator, with fluctuating performance during most of the period (2016-2020). In the end of the analysis period (January — June 2021), although the level of the installed capacity utilisation rate of NRP (53 %) is increased (by 3.5 percentage points) compared to the previous semester, the level of this indicator was below (11.1 percentage points) the average level recorded in the previous half years between 2016 and 2020 (64.1 % half-yearly average).

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(viii) *Change in employment*: During the analysis period (January 2016 — June 2021), the employment indicator of the NRP showed a reduction of 16.1 %, in cumulative terms. When reviewing intermediate trends over the period indicated above, there is a fluctuating pattern, in line with the evolution of the output indicator. At the end of the analysis period (January — June 2021), while the level of \* employment in the NRP (35,290 average number of employees) remained almost stable (0.3 % increase) compared to the previous semester, the level of this indicator was below (13.5 %) the average employment level recorded in each year of the period 2016-2019 (40,815 number of average workers), prior to the implementation of these/ measures to contain COVID 19.

*Cambios in remunerations*: The level of remuneration of RPN experienced fluctuating behaviour during the analysis period (January 2016 — June 2021). Thus, between 2016 and 2020, that indicator recorded a cumulative increase of 5.5 %, which coincided with increases in the Minimum Vital Remuneration (24.0 %)

(IX) decreased over the period referred to above. In addition, in the final and most recent part of the analysis period (January-June 2021), the level of RPN remuneration increased by 7.7 % compared with the same half of the previous year.

10. In addition to the above evidence supporting the existence of prima facie evidence of possible serious injury to RPN, other additional factors, provided for in Article 4 of the Agreement on Safeguards, have been assessed at this initial stage of the administrative procedure, which lead to the conclusion that the increasing trend in imports of fabrications observed during the period of analysis of the present case (January 2016 — June 2021) will continue in the near future. This conclusion is based on the following considerations:

- (I) *The export capacity of the countries supplying the Peruvian production markets*: Between January 2016 and June 2021, the main countries



suppliers of made-up products to the Peruvian market (China and Bangladesh) registered a large export capacity, consolidating themselves as the main exporters of production worldwide, and concentrating a cumulated share of 40.6 % of world exports of the product. In addition, between 2016 and 2020, the freely available capacity for the production of made-up products in China and Bangladesh increased due to the contraction in production in those countries.

While during the first half of 2021 the spare capacity of the Chinese production industry decreased by 4.3 percentage points compared to the similar half of 2020, this capacity (42.5 %) reached a level higher than the average freely disposable capacity (27.9 %) recorded during the analysis period (January 2016 — June 2021). Whereas between January and June 2021 Bangladesh's freely disposable capacity was set at a level similar to that recorded in the year preceding (2019) the adoption of measures in the world to contain COVID-19.

(ii) The position of reorientation of the consignments from China to the Peruvian market.

Over the period 2016-2020, exports of manufactures originating in China and Bangladesh fell by 11.8 %, against the backdrop of measures taken by different countries of destination for exports of manufactures to contain the rise of COVID-19, which led to a contraction in global economic activity in 2020. On the other hand, in the final and most recent part of the analysis period (January — June 2021), the total value of exports of manufactures originating in China and Bangladesh increased by 32.5 % compared to the same half of 2020.

In particular, with regard to shipments to South America of manufactures originating in China and Bangladesh, it appears that exports destined for their main destinations in the region fell during the period 2016-2020. However, in the final and most recent part of the analysis period (January — June 2021), the total value of Chinese exports to South America increased by 24.1 %, mainly explained by increases recorded by Chile (46.9 %), Peru (20.7 %), Colombia (36.1 %) and Uruguay (35.7 %).

With regard to the period 2016-2020, given the four countries in the region mentioned above, Peru maintains one of the lowest tariff and non-tariff restrictions on imports of made-up products, which could facilitate the redirection of the flow of exports of made-up products originating in China and Bangladesh to the Peruvian market.

III) Existence of the main countries suppliers of Peru: The information available shows that between 2016 and 2020 the level of stocks of the Chinese making-up industry decreased by 8.7 %. Furthermore, while in the first half of 2021 Chinese production stocks decreased by 3.8 % compared to the similar half of 2020, it appears that China maintained inventories at a level similar to the level of inventory averaging them (16,821) recorded during the analysis period.

11. As explained in this report, they have also found prima facie evidence to suggest, initially, a causal link between the significant increase in imports of making-up products and a



possible serious damage to RPN. This, since the significant increase in imports of fabrications during the analysis period (January 2016 — June 2021) would have had an impact on the deterioration of the economic situation of the PNR, in so far as the performance of the NRP indicators in the analysis period (January 2016 June 2021), which could have been assessed at this initial stage of the procedure, demonstrates a situation of economic deterioration in the industry.

- 12 In compliance with Article 22 of the Safeguards Regulation, other factors that may influence the economic situation of the RPN of production have also been assessed, such as the export activity of that branch, the evolution of domestic demand, the exchange rate and tariffs. However, no evidence has been found to suggest, at this stage of the procedure, that these factors cause or explain the possible serious damage to RPN.

It is therefore recommended to provide for the ex officio initiation of an investigation procedure in order to determine whether or not it is necessary and appropriate to recommend to the Multisectoral Commission the application of general safeguard measures on imports of making-up products.

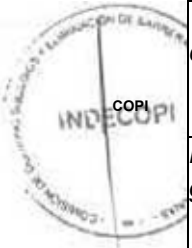
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Table of WTO cases cited in this report

Short title	Full case title and citation
<i>Argentina – shawls</i>	Appellate Body Report, <i>Argentina — Safeguard Measures on Imports of Footwear</i> , adopted 12 January 2000
	Panel Report, <i>Argentina — Safeguard Measures on Import of Footwear</i> , adopted on 12 January 2000.
<i>EC — Asbestos</i>	Appellate Body Report, <i>European Communities — Measures Affecting Asbestos and Asbestos Containing Products</i> , adopted on 05 rd April 2001.
<i>Korea — Leathic products</i>	Panel Report, <i>Korea — Definitive Safeguard Measure on Imports of Certain Leotic Products</i> , <u>Doped on 12 January 2000.</u>
<i>United States — Meat of lamb</i>	Appellate Body Report, <i>United States — Safeguard measure regarding imports of fresh, chilled or frozen lamb from New Zealand and Australia</i> , adopted on <u>16 May 2001.</u>
<i>United States — cotton linters</i>	Appellate Body Report, <i>United States — Transitional Safeguard Measure applied to combed cotton yarns consigned from Pakistan</i> , adopted 05 rd November 2001.
<i>United States — wheat gluten</i>	Appellate Body Report, <i>United States — Definitive Safeguard Measures on imports of wheat gluten from the European Communities</i> , adopted on 19 rd January 2001.
<i>United States — certain steel products</i>	Appellate Body Report, <i>United States • Definitive Safeguard Measures on Imports of Certain Steel Products</i> , adopted on 10 December 2003.
<i>Ukraine — passenger motor vehicles</i>	Panel Report, <i>Ukraine — Definitive Safeguard Measures on Certain Motor Vehicles for the Transport of Persons</i> , adopted on 20 July 2015.



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## I. BACKGROUND

### 1.1. Import safeguards investigation initiated in 2004

1. By Resolution No 054-2004/CDS-INDECOPI published in the official journal "El Peruano" on 22 August 2004, the Committee on the Control of Dumping and Subsidies, now known as the Dumping Committee. Subsidies and Elimination of Non-Tariff Trade Barriers (hereinafter referred to as the Commission)<sup>1</sup>, ordered the initiation of an ex officio investigation procedure on safeguards on imports of made-up goods.

- In the course of that procedure, the Commission issued Report N '022-2004/CDS of 30 September 2004, in which it recommended to the Multisectoral Commission referred to in Article 5 of Supreme Decree N' 02.0-98-ITINCI, as amended by Supreme Decree No 017-2004-MINCETUR (hereinafter 'the Safeguards Regulation'), the application of provisional safeguard measures on imports of products under investigation.
- 2.

By Supreme Decree No 023-2004-MINCETUR published in the official journal 'El Peruano' on 13 October 2004, the Multisectoral Commission provided for the application of provisional safeguards to imports of products, for a period of two hundred (200) calendar days.

By letter No 113-2004/CDS-INDECOPI of 17 November 2004, on behalf of the Commission, the Technical Secretariat requested the Ministry of Production (hereinafter referred to as 'PRODUCE') to submit information relating to the economic indicators of the domestic production industry in order to be able to have the necessary elements to complete the investigation.

- 4.
5. In view of the above, by Ministerial Resolution No 424-2004-PRODUCE published in the official journal 'El Peruano' on 28 November 2004, PRODUCE, through its General Office for Information Technology and Statistics, provided for a national survey of undertakings in the sector, which was carried out by a private company. This, in order to gather information necessary for the preparation of the respective report to be issued by the Commission in support of the decision whether or not to recommend the application of definitive safeguard measures on imports of manufactured goods under investigation.

Between 26 January and 28 February 2005, PRODUCE submitted the results of that survey.

6. In March 2005, the Commission issued Report No 007-2005/CDS, in which it recommended that definitive safeguards should not be applied to imports of made-up products, on the grounds that the evidence obtained in the proceeding did not show significant harm to RPN due to the massive increase in imports.

<sup>1</sup> Legislative Decree No 1212 published in the official journal 'El Peruano' on 24 September 2015, in force since 24 October of the same year, the name of this functional body was mixed by the Commission for Dumping, Subsidies and Non-Tariff Trade Barriers.

8. By Supreme Decree No 014-2005-MINCETUR published in the official journal 'El Peruano' on 04 rd May 2005, the Multisectoral Commission decided not to apply definitive safeguards on imports of products, due to the considerations set out in Report No 007-2005/CDS referred to above.

1.2. Invasion by means of safeguards against imports of products initiated in 2020

9. On 25 June 2020, Official No 00000225-2020-PRODUCE/DVMYPE-I was received from the Deputy Minister of MYPE and PRODUCE Industry, by which it took into consideration the Commission's assessment of the ex officio initiation of an investigation procedure on safeguards for imports of fabrications under Article XIX of the General Agreement on Tariffs and Trade 1994 (hereinafter GATT 1994) and the Agreement on Safeguards of the World Trade Organisation (WTO).

10. On the basis of the communication sent by PRODUCE, the Technical Secretariat of the Commission (hereinafter referred to as the Technical Secretariat) carried out investigations to gather information on the structure of the national production sector of production, the evolution of Peruvian imports of made-up products and the economic performance of the national producers of that product for the period January 2016 to June 2020. This information was obtained from various public authorities such as PRODUCE, the National Superintendencia de Aduanas y de Administración Tributaria (SUNAT), the Ministry of Labour and Employment Promotion (MINTRA), the National Institute of Statistics and Informatics (INEI) and the Central Reserve Bank of Peru (BCRP).

11. By Resolution No<sup>146-2020/CDB</sup> INDECOPI published in the official journal 'El Peruano' on 01 November 2020, the Commission ordered the initiation of an ex officio investigation procedure to safeguard imports of products entering under Chapters 61, 62 and 63 of the National Customs Tariff, which comprise a total of 284 tariff subheadings, in accordance with the provisions of the WTO Safeguards Agreement and the Safeguards Regulation. This procedure was dealt with in Case No 030-2020/CDB.

12. In the context of that investigation, on 25 January 2021, the Commission issued NDECOPI Report No 009-2021/CDB-I, in which it recommended to the Multisectoral Commission (in that case, the Minister for Economic Affairs and Finance:

By letter No 017-2020/CDB of 1 (ref. July 7020. PRODUCE was requested to provide the information necessary to carry out the technical analysis leading to an assessment of whether it is appropriate to initiate ex officio an investigation into imports of manufactured goods with regard to the characteristics of the imported product, the unforeseen development of circumstances which would have led to a possible significant increase in imports of made-up products, as well as the economic situation of the national making-up industry.

Between; 3 July and 02 rd October 2020, PRODUCE sent Notices N "00000747-2020-PRODUCE > 'DVMYPEI, to < XX) 5fi-2020-PRODUCE/OGIEIEE 255 2020 PRODUCE-DVMYPE-I, 0000 (M51-2a20-PROI) UCWDGPAR and OCCO0471-202C-PRODUCUDGPAR, attached to which it provided various information on the evolution of imports of the national industry.



Minister for Foreign Trade and Tourism and the Minister for Production) the adoption of provisional safeguard measures on imports of made-up products originating in China and Bangladesh.

- 13 By Supreme Decree No 002-2021 — MINCEIUR published in the official journal 'El Peruano' on 18 February 2021, the Multisectoral Commission decided not to apply provisional safeguard measures on imports of products, since it considered that there was no clear evidence of the causal link between the increase in imports and the injury or threat of serious injury to the domestic industry.
- 14 On 30 April 2021, the Commission issued Resolution N "169-2021/CDB INDECOPI" by which it decided to terminate the safeguard investigation on imports of made-up products, within the time limit laid down in Article 16 of the Safeguards Regulation, considering that it lacked the technical elements necessary to make a definitive determination as to the possible existence of a threat of serious injury to RPN by imports<sup>of 3</sup> editions. On the same date, the Commission issued Report N "038-2021/CDB-INDECOPI, in which the results of the investigation are detailed.

In the course of the investigation procedure, the Secretario i écnca (Secretario i écnca) took the following steps:

- Between 12 November and 2 December 2020, as well as between 3 and 16 of December of the last year, the 'Questionnaire for the producer nackinar ( hereinafter referred to as the Questionnaire) was sent to fifty three thousand six hundred and twenty 53 620 Persian. < natural and legal products which were used to lift economic actnridanes, classified under fa industrial classification codes Intcmacionai Uniforme — Revision 3 (ISIC) 1721 'CIIU' 1810 'Fabnecti', except for 'Fabnecti', except for fabricated garments 'Intcmacionai Uniforme — Revision (ISIC) 'Fabricnecti'.
- Between 13 November 2020 and the 22th February 2021, communications were sent to the seven main groups bringing together national producers of products from the National Society of Industries (SNI).
- On < and 8 January 2021, a repetitive priority was given to one hundred and twenty-four (124) domestic producers of production, urging them to comply with absolvere! Questionnaire
- On 19 and 22 February 2021, the SNI, CCL, appeal and APIC were reminded of the need to have the information requested in the questionnaire by their assaults in order to be able to assess the economic situation of the national production industry in the context of this investigation procedure.
- Between 22 and 26 of 2021, a first repetition was sent to another group of three hundred sois (306) made up of national producers, urging them to comply with the questionnaire. On the same occasion, a second repetition was referred to another group of one hundred and ten (110) domestic producers of production, urging them to comply with the questionnaire.
- On 31 March 2021, a second repetition was sent to two hundred and ninety-three (293) domestic producers of made-up products, again calling on them to comply with the questionnaire. the SNI, the LCC, was also again asked to comply with the questionnaire. APPELLEE, APIC, UNE 1E. AEgp and ACEGP. the importance of obtaining acquittal of the Questionnaires
- Adicanalmento, on 31 March 2021, sent a repetitive torcer to 82 (82) domestic producers of production, urging them to comply with the questionnaire, fc n the same opportunity, twenty-two (22) letters were sent to the main national producers of products considered at the initial stage of the investigation, reiterating them as a matter of urgency to comply with the questionnaire.
- Fifty two thousand five hundred and twenty (52 520) national producers of production were sent electronically between 25 and 6 April 2021.

As a result of the actions carried out by the Technical Secretariat of the Commission to lacopied information, only a reply was obtained from novtmla (90) national producers who provided complete information on their economic and financial indicators, whose combined production represented 8.03 % of total domestic production of products.

In that sense, the Commission did not obtain the minimum necessary information from a significant proportion of national producers produced to define RPN in accordance with the criteria laid down in the Agreement on Safeguards and the Saivaguarcfias Regulation.

15. By Supreme Decree No<sup>008-2021-MINCETUR</sup> published in the official journal 'El Peruano' on 07 of June 2021, the Multisectoral Commission decided not to apply definitive safeguard measures on imports of made-up products, due to the considerations set out in Report No 038-2021/CDB-INDECOPI referred to above.

### I.3. Monitoring of the production sector in 2021

16. In carrying out the tasks assigned to it as the authority responsible for preventing and correcting distortions of competition caused by the importation of dumped or subsidised products, as well as as an investigating authority in the field of safeguards, the Commission continuously carries out market monitoring tasks to assess the impact that imports could have on the performance



of productive sectors with a significant impact on the national economy and, if appropriate, take the appropriate action within the framework of the powers conferred by law.

17. Within the framework of its powers, at its meeting on 26 March 2021, the Commission instructed the Technical Secretariat to carry out market monitoring of the textile making sector, as part of which it could be considered.'

- 'production, as could be the case of a survey, for the purpose of knowing the' -. *J/current economic performance of such producers.*

'18'. In this context, in order to obtain information on the economic situation of the national production industry, by means of Memorandum No 063-2021- CDB/INDECOPI dated 07 rd April 2021, the Technical Secretariat requested the Office of Administration and Finance of Indecopi to authorise the contracting of a survey service to facilitate the development of market monitoring work for the production sector.

19. By Step Sheet No 001011-2021-GAF/INDECOPI, the Office for Administration and Finance referred to the Sub Gerencia de Logística y Control Patricial (now the Supply Unit) the order made by the Technical Secretariat in order to coordinate the request referred to above. Accordingly, by Memorandum N "532-2021-SGL/INDECOPI of 09 rd April 2021, the Supply Unit requested the Technical Secretariat to send the terms of reference for the survey execution and processing service for the purpose of initiating the preparatory acts for the recruitment, which was met by Notices N' 079 and 120-2021-CDB/INDECOPI dated 20 April and 01 July 2021 respectively, and supplemented by Amendments No 166-128 of 14 July and --CDB/INDECOPI of and respectively, and supplemented by Decisions No 2021- and No respectively.

20. In response to that request, the Indecopi Supply Unit carried out market investigations in order to determine the estimated value of the survey service in question. In those circumstances, by means of Memorandum No 0593-2021- UAB/INDECOPI dated 22 September 2021, the Supply Unit applied to the Administration and Finance Office for authorisation and referral to the Planning, Budget and Modernisation Office for the purpose of



that the budgetary forecast be granted for the execution of the survey service requested.

21. By Memorandum N "0488-2021-OPM/INDECOPI dated 24 September 2021, the Planning, Budget and Modernisation Office informed the Office of Administration and Finance that it is not possible to comply with the request because the Commission is not available to increase the budget forecast for carrying out the requested survey.
- 22 By Memorandum No 625-2021-UAB/INDECOPI dated 27 September 2021, the Head of the Supply Unit informed the Technical Secretariat of the provisions of Memorandum N '0488-2021-OPM/INDECOPI referred to in the previous paragraph.
23. In view of the above, in Report No 080-2021/CDB-INDECOPI of 26 October 2021, the Technical Secretariat informed the Executive Presidency of Indecopi of the need to provide for the collection of primary information from the national production industry in order to ascertain in detail the current economic performance of the industry in question.

In addition, on the basis of the information provided by the Supply Unit in Memorandum N<sup>3</sup> 625-2021-UAB/INDECOPI referred to above, the Executive Presidency of the Indecopi was considered to request the cooperation of other bodies of the public administration in order to carry out a survey of national producers of products, including bodies that restructure the production sector or have assigned responsibilities for the administration of statistical information in relation to the industry, which are frequently used for the purposes of obtaining research into the production sector.

Without prejudice to the above, the Technical Secretariat has collected information from various bodies of the public administration concerning the structure of the national production sector of production, the development of Peruvian imports of products and the economic performance of the national producers of this product during the period January 2017 to June 2021. the investigations carried out before those public bodies are as follows:

25.

*Information requested from PRODUCE*

By letter No 058-2021/CDB of 18 August 2021, reiterated by Official Gazette No 073-2021/CDB-INDECOPI of 24 September 2021, PRODUCE was requested to provide the following information concerning the economic performance of the national producers who produce products:

- a) Data (company name and single taxpayer's register) of the national producers who manufactured products during the period January 2017 — June 2021.
- b) Evolution of the economic indicators of the domestic producers manufacturing production (production, domestic sales, installed capacity and capacity utilisation, employment, wages, productivity, stocks and profit/loss margin) for the period January 2017 — June 2021.
- c) Studies on the performance of the Peruvian market for the period January 2017 — June 2021



3 —



27. By Official Gazette No 00Ü0100-2021-PRODUCE/OGEIEE received on 27 September 2021, PRODUCE complied with the above-mentioned request for information, providing a list of one hundred twenty (120) undertakings in the sector which carry out industrial activities in ISIC 1410 and 1430 — Revision 4, which are included in the survey carried out by the Ministry every month on manufacturing production establishments<sup>4</sup>. In addition, PRODUCE sent information on the indicator of production by the national manufacturing industry on the basis of the above-mentioned survey, indicating that it did not have any information on the other economic indicators requested by the Technical Secretariat.

• *Information requested from SUNAT*

28. By letter No 074-2021/CDB-INDECOPI of 24 September 2021, SUNAT asked SUNAT to provide information on the volume and value of imports of products for the period January 2017 to June 2021.
29. At the date of issue of this report, SUNAT did not comply with the above order.

30. By letter N° 075-2021/CDB-INDECOPI of 27 September 2021, reiterated by Official Gazette No 101-2021/CDB-INDECOPI of 27 October 2021, SUNAT was asked to provide information on the monthly sales subject to payment of the General Sales Tax (IGV), in accordance with ISIC codes 141 and 143, for the period January 2017 June 2021, thus correlated with information on the taxable amount for determining the payment of the IGV and the Income Tax (IR) of the undertakings carrying out the economic activities classified under the codes 143, 7 and 141.

By electronic communication dated 03 rd November 2021, SUNAT complied with the above request for information.

31. 32. By letters No 101-2021/CDB-INDECOPI of 27 October 2021 and 115-2021/CDB-INDECOPI of 26 November 2021, SUNAT was asked to provide information on the monthly sales subject to IGV payment of the undertakings in the production sector participating in the survey drawn up by PRODUCE entitled '*Statistics Industrial Mensual*', and the participation of those undertakings in the tax base for determining the payment of IGV and IR. for the period January 2017 to June 2021.
33. By electronic communications of 17 November and 13 December 2021, SUNAT complied with the abovementioned request for information.

• *Information requested from MINTRA*

34. By letter<sup>Nº</sup> 062-2021/CDB-INDECOPI of 26 August 2021, reiterated by letters No 100-2021/CDB-INDECOPI of 12 October 2021 and 109-2021/CDB-INDECOPI of 10 November 2021, MINTRA was asked to provide information on the participation of the making-up sector in national employment and in employment in the manufacturing sector, for the period January 2017 — June 2021, as well as data on employment and monthly remuneration.

<sup>4</sup>The survey is called "Statistics Industrial Mensual", which is not available from publicly accessible sources,



reported by firms in the sector during the period January 2017-June 2021<sup>5</sup>.

35. By letter N 2040-2021-MTPE/4 received on 15 November 2021, MINTRA complied with the above-mentioned request for information.

*Information requested from INEL*

36. By letter No 060-2021/CDB-INDECOPI of 26 August 2021, the INEL was requested to provide, inter alia, information relating to the production, sales and production capacity of the national undertakings in the production industry for the period January 2017 to June 2021<sup>6</sup>.
37. For electronic communications of dates 18 and 26 September 2021, the INEL partially complied with the abovementioned order for information. In this respect, it stated that it did not have detailed information on the economic indicators of the making-up industry which were the subject of the order for information.

*Information requested from the Ministry of Economy and Finance (MEF)*

38. By letter No 059-2021/CDB-INDECOPI of 26 August 2021, the MEF was asked to provide studies on the performance of the Peruvian market for the period January 2017-June 2021.

At the date of issue of this report, the MEF did not comply with the above order.

*Information requested from the Central Reserve Bank of Peru (BCRP)*

39. By letter No 061-2021/CDB-INDECOPI of 26 August 2021, the BCRP was asked to provide studies on the performance of the Peruvian market for the period from January 2017 to June 2021.
- 40.

Specifically, MINTRA was asked to provide the following information:

- Participation of the making-up sector in national employment and employment in the manufacturing sector, for the period January 2017 — June 2021, as well as information on employment and monthly remuneration reported by firms in the making-up sector during the period January 2017-June 2021. List of undertakings in the made-up sector, according to the size of the undertaking, for the period January 2017 June 2021, giving details of the company name and the number of KUC of those undertakings.
- List of undertakings in the manufacturing sector which benefited from the concept of complete suspension of work provided for in Emergency Decree No N° 038-2020.

Specifically, the following information was requested from INEI

- Share of the production industry in the Gross Domestic Product (PBI) of the manufacturing sector and in the national I'BI for the period January 2017 — June 2021
- Share of the gross value of dicho sector in the Aggregated Value Ututo of the Manufacturing Sector and in the National Gross Value Aggregated Value for the period January 2017 — June 2021.  
Information relating to the production and sales of companies in the production industry for the period January 2017 — June 2021  
Monthly production capacity of undertakings in the production sector for the period January 2017 — June 2021, according to company  
List of undertakings in the made-up sector for the period January 2017 to June 2021, detailing the KUC, the company name and the type of product produced by each company.
- Annual value of sales of finished products, change in stored production, intermediate consumption and aggregated value of the sector, as reported in the Annual Economic Survey for the period January 2017 — June 2021.



- 41. At the date of issue of this report, the BCRP has not complied with the above order.
- 42. In addition, by Memorandum No 206-2021-CDB/INDECIPI of 20 October, 2021, the Technical Secretariat requested the Office for Economic Studies of Indecopi (hereinafter the OEE) to calculate, on the basis of the information contained in the Annual Economic Survey — EEA published by INRI, the economic factors and indices of producers in the production sector for the period January 2017• June 2021.
- 43. By Memorandum No 145-2021-OEE/INDECOPI received on 12 November 2021, the OEE complied with the above-mentioned request for information.

II. THE SAFEGUARD INVESTIGATION PROCEDURE

- 44. The general safeguard measures provided for in the WTO Agreement on Safeguards are mechanisms of protection imposed by States when there is an unprecedented increase in imports causing or threatening to cause serious injury to a PNR, facilitated by unforeseen developments in circumstances within the meaning of Article XIX of GATT 1994.

Unlike other trade defence proceedings — dumping or subsidy investigations — the imposition of safeguard measures does not require proof of the existence of unfair international trade practices, but requires verification that there has been a sudden increase in imports causing or threatening to cause serious injury to the local industry. At national level, these measures are regulated in the Safeguards Regulation, which regulates at national level the provisions of the Safeguards Agreement.

45.

In accordance with the Safeguards Regulation, it is the competence of Indecopi, through this Commission, to decide whether it is appropriate to initiate an investigation aimed at assessing the need to impose safeguard measures on imports of certain products. In that case, the Commission exercises exclusively investigative functions, since the power to decide on the application of safeguard measures lies with a Multisectoral Commission composed of the Ministers of Foreign Trade and Tourism, Economic and Financial Ministers, and of the sector to which the NRP concerned belongs.

46.

The Safeguards Regulation provides that investigations leading to the imposition of safeguard measures may be initiated at the request of a party or also on the authority's own initiative. Thus, Article 10 of that regulation provides that if, in special circumstances, the competent authority decides to initiate an investigation without having received a request from a party, it must ensure that it has sufficient evidence of serious injury or threat of serious injury to an RPN as a result of a significant increase in imports in absolute terms or relative to domestic production'.

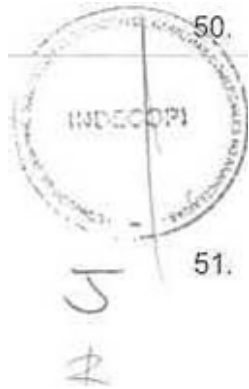
47.

SAFEGUARDS REGULATION. Article 10.- In special circumstances, the investigating authority may initiate an investigation without having received a written BEABA request by the domestic industry Chamber, where there is sufficient evidence of serious injury threatening serious injury as a result of the significant increase in imports in absolute terms or relative to domestic production.  
Special circumstances shall be considered where domestic industry is not organised, fragmented in the national interest.



48. In that regard, special circumstances exist where the domestic industry of the like or directly competing product is atomised, is not organised, or is in the national interest, within the meaning of Article 10 of the Safeguards Regulation. As can be seen, in order for the authority to be entitled to open an investigation of its own motion, it will be sufficient to verify the existence of one of the cases described as 'special circumstances' in Article 10 of the abovementioned Regulation, since that provision uses a disjunctive combination<sup>of 8</sup> in its text.
49. The information gathered by the Technical Secretariat concerning the special circumstances referred to in Article 10 of the Safeguards Regulation, which empowers the Commission to initiate ex officio a safeguard investigation procedure, will be assessed below, provided that there is sufficient evidence of a significant increase in imports, either in absolute terms or relative to domestic production, causing serious injury to RPN.

• Structure of the manufacturing sector



50. Considering the limitations in the availability of information to assess the structure of the national production industry, the information obtained from SUNAT in relation to the total basis of assessment of the payment of the IGV made by the domestic producers of that industry, which consists of official information generated by an entity of the Peruvian State within the framework of the powers conferred by law, has been used.

51. According to the information submitted by SUNAT, it has been verified that the production sector is made up of a large number of productive units, as a total of eighty-three thousand four hundred and sixteen (83 416) undertakings operating in the production sector made payments under the IGV during the period January 2017 — June 2021.

52. Furthermore, on the basis of the information provided by SUNAT, it has been found that the manufacturing sector consists mainly of micro and small enterprises. Indeed, it has been verified that of the total number of undertakings in the production sector (83 416) which made payments under the IGV during the period January 2017 — June 2021, 99.6 % corresponds to micro and small enterprises (83 042)<sup>14</sup>.

53. In that context, in order to determine whether or not the national making-up industry is atomised, it is relevant to estimate the concentration level of that industry.

According to the Diccionario de la Real Academia Española — RAE, the 'disjunctive conjunction' is defined as follows: 'a combination denoting the alternating exclusion or contrast between two or more of us, cousses or ideas: For example. "

These companies operate under ISIC rev 3 Groups 172 'Manufacture of other textile products' and 181 'Manufacture of clothing: Except leather garments'

This figure was calculated on the basis of the information sent by SUNAT by electronic communication received on November 03, 2021.

It should be noted that this method to determine the atomisation of the industry was also used in the investigation procedure for alleged dumping practices in exports to Peru of garments and clothing accessories made of knitted and crocheted fabrics and flat fabrics, precedent from the People's Republic of China, dealt with under Case N° 026 2012/CFD. In d: -CHO procedure, it was established that almost the entire clothing manufacturing sector consisted of a graphite of micro and small enterprises (99.2 %).



industry. For this purpose, it is appropriate to use the Herfindahl-Hirschman Index (HHI), which has also been used in previous trade defence cases to determine the degree of concentration of various industries<sup>12</sup>

54. The result of the HHI application can be between zero and ten thousand. If the result of the HHI tends towards its minimum (zero) value, this implies that there is a great number of companies and none of them has a significant share in the total production of the industry, so that the industry could not be characterised as a concentrated industry. In that regard, it is relevant to note that the competition authority in the United States uses parameters to calculate the level of concentration of an industry applying the HHI, according to which an industry is not concentrated if it shows a HHI result below 1500, is moderately concentrated if an HHI result ranging from 1500 to 2500 is obtained, and the HHI result is highly concentrated at a value higher than 2500<sup>13</sup>.

55. On the basis of information obtained from SUNAT concerning the basis of assessment to determine the payment of the IGV made by national producers of making-up products during the period January-December 2020, the HHI has been calculated for the production sector, resulting in 24.6, which indicates that the national production

it is not concentrated. In addition, as the result obtained is close to the minimum HHI level, it can be inferred that the industry National production is atomised<sup>14</sup>.



It should be noted that this method of determining the concentration index of a given production sector has been developed by the Commission in a number of cases, which are mentioned below.

Investigation procedure for alleged dumping in respect of exports to Peru of garments and clothing accessories made of knitted or crocheted fabrics and flat fabrics from the People's Republic of China, processed under Case No 026-2012/GFI. In that procedure, a concentration index close to 0 (46.53) was obtained, as a result of which it was concluded that the national garments and accessories industry was classified as not concentrated.

Procedure for investigating alleged subsidised practices in exports to Peru of yellow maize originating in the United States of America, dealt with under case N 025-2018/CDB. In that proceeding, a concentration index was obtained at 0 (0.05) and it was therefore concluded that the national yellow maize industry was classified as non-concentrated.

Investigation procedure for imports of safeguard products, dealt with under Expediente N° 030 2020/CDH. This procedure resulted in a concentration rate close to 0 (33.3), which led to the conclusion that the national industry — 'made' — was classified as non-concentrated.

According to the 'Horizontal Merger Guidelines' Department of Justice and the United States Federal Trade Commission, if the HHI value is more than 1500, it considers that the industry is deconcentrated; if you are larger than 1500 but less than 2500, you are moderately concentrated and if you are larger than 2500, it is highly concentrated. (Horizontal Merger Guidelines U.S. (Department of Justice & Federal Trade Commission, 2010). In this respect, <https://www.justice.gov/antitrust/organization-enforcement>. 12 November 2021).

Similarly, the European Union's "Guidelines on the assessment of horizontal mergers" refer to the Council Regulation on the control of inter-company mergers. These indicate that if the result of the application of the HHI is less than 1000, it is unlikely to be a concentrated industry. At the same time, if the result is between 1000 and 2000, it is moderately concentrated, and if it is above 2000, it is highly concentrated. (<https://op.europa.eu/en/press-room/detail/164694-fefa-4732-b0be-3f5106f63333/language/es/format/pdf> (Consultation 12 November 2021)).

As indicated, the calculation of the degree of concentration of the national manufacturing industry was carried out on the basis of the total basis of assessment of the IGV payment made by the companies in that industry, a 2020. last full tax that was found during the period of analysis of this product and for which SUNAT had tax information declared by all the taxpayers in the production sector.

At this juncture, it should be noted that, in an earlier case in the field of commercial defence, the Competition Chamber has stated that it is necessary to calculate the HHI of an industry to obtain information relating to the value of its sales. On Resolution N° 0293-2015/SDC INDECOPI, the Chamber noted the following:



56. The information available therefore suggests that the national making-up industry is characterised by its atomisation.

III. ANALYSIS

57. On the basis of the information gathered by the Technical Secretariat from the public sources consulted, this report will analyse the following:

- A. Determination of the domestic product and the imported product.
- B. Determination of a possible significant increase in imports of making-up.
- C. If this is the case, identification of any unforeseen developments in circumstances which have led to a significant increase in imports of making-up.
- D. If this is the case, determination of the possible existence of indications of serious injury to the domestic industry of making-up.
- E. Ifso, determination of the possible existence of indications of a causal link between the significant increase in imports and serious injury to the domestic industry.
- F. If this is the case, determination of the initiation of a safeguard investigation procedure for imports of made-up goods.



For the analysis of the development of imports of the product under assessment as well as for the determination of the existence of indications of serious injury and causal link, the period from January 2016 to June 2021 shall be considered,

This period is of an appropriate length to analyse the evolution of the economic situation of the domestic production industry, considering that it covers the period of analysis (January 2016 — June 2020) used in the investigation for safeguards on imports of made-up products which ended in April 2021, and makes it possible to observe how the economic performance of that industry has evolved after the investigation period described above. In addition, the period January 2016 — June 2021 is consistent with the extension of the periods of analysis of the latest cases dealt with by the Commission in the area of safeguards on imports of<sup>15</sup> editions.

*On the basis of the above, you can conclude as follows*

*(I) f-viable to conduct the HHI study using available information on the value of garments and supplements as I have done, considering the potential heterogeneity of the products included in the industry under study within the process, and using niche indicator as a reference to the atomizac/on concept, (...) (paragraph 254).*

Er. the safeguard investigation procedures on imports of fabrications concluded in 2005 and April '2 (121, the following DRI analysis periods were taken into account:

<u>026 2003/CDS HEALTH</u>	<u>FCof OCSSRECOGNISE r Enero dor2000-j ulioof200, 4to points and6ME</u>
<u>030-2020/008</u>	<u>ICo nfections Out2016 ju niumof 2020 / / art6me s</u>

## A. DETERMINATION OF THE LIKE OR DIRECTLY COMPETING PRODUCT

### A.1. Technical considerations

60. In accordance with the Agreement on Safeguards, a WTO Member may apply a safeguard measure only if it has determined that imports of a product into its territory have increased in such quantity and are made on such terms as to cause, or threaten to cause, serious injury to the domestic industry producing like or directly competitive products' \*

61 In that sense, Article 3 of the Safeguards Regulation provides that safeguard measures shall apply where increased imports of a product cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products.

62. In particular, Article 4 of the Safeguards Regulation provides that the domestic product is similar to the imported product if it is identical to the imported product in its physical characteristics, or is not identical in all respects, has characteristics closely resembling those of the imported product. It also points out that the two products are directly competitive when, although they are not similar, they are essentially equivalent for commercial purposes because they are intended for the same use and are interchangeable.



63. With regard to the analysis of the “like product”, WTO case law has not developed interpretations of how to carry out such an analysis in safeguard proceedings. However, the similarity analysis appears across the board in other WTO agreements, such as the GATT, the Anti-Dumping Agreement and the Subsidies Agreement. While there may be differences between the provisions of those rules, they all require a determination as to the existence of a product similar to the imported product. F. In that sense, the criteria established by the WTO Appellate Body in various disputes between Members concerning the similarity analysis of products set out in those standards may serve as a reference for the analysis to be carried out in the present case.

64. Thus, in the *EC — Amianto*<sup>18</sup> case, the WTO Appellate Body referred to a number of criteria which are useful for the analysis of similarity between the imported product and the domestic product, such as: (I) physical characteristics; (II) uses; (III) consumer perception; And (iv) tariff classification. Please note that the above criteria do not constitute a closed list for

AGREEMENT ON SAFEGUARDS. Article 2.1.- A Member may apply a safeguard-to product measure only if the Member has determined in accordance with the provisions set out above that imports of that product into its territory are increased in such quantity, either in absolute terms or in relation to domestic production, and are carried out under terms which cause or threaten to cause serious damage to the domestic industry of the status quo produces similar or directly competitive products.

Safeguard Regulation, Article 3. — Safeguard measures shall apply when imports of a product, irrespective of the source from which it is appropriate, increase by that quantity, in absolute terms or in relation to domestic production and takes place under terms which cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products

WTO Appellate Body Report in *EC — Asbestos*, para. 101





the determination of the similarity of products, whereas those criteria may be satisfied with other relevant evidence in each particular case

As regards the analysis of *'directly competing product'*, in the case of *the USA — cotton yarn*<sup>10</sup> in a safeguard proceeding, the WTO Appellate Body indicated that the directly competing product is a product that is commercially interchangeable with the imported product or that can satisfy the same consumer demand on the market. In addition, it expressly stated that the competitive relationship on the market necessarily exists to a greater extent between similar products. Thus, if the analysis carried out determines that the two products — the domestic and the imported products — are *'similar'*, then it is assumed that the two products are also *'directly competitive'*.

In this respect, in the framework of a safeguard proceeding, it is necessary to verify whether the domestic product is like or directly competitive with the imported product, in accordance with the provisions of the WTO rules referred to above.

#### Imported product

The product imported into the Peruvian market is made up. The main characteristics of the imported product will be described below.

#### *Physical characteristics*

Under the 2017 Customs Tariff, imported products are classified as clothing, clothing accessories, bedlinen and table linen. They have different physical characteristics depending on the type of fabric and degree of production, as detailed below<sup>20</sup>:

- Fabric type: Knitted or crocheted fabrics, weft and warp fabrics, embroidered, lace, inside other fabric.
- Grade of manufacture of textile materials: Unbleached, bleached, dyed, yarns of different colours, printed, inside.

Appellate Body Report d 'li WTO in US — Cotton Yellow, paras. 96 and 9/

*"In the ordinary sense of the term "competitors", two products are in a competitive relationship when they are interchangeable or offered as an alternative means of satisfying the same consumer demand in the morning. {.)*

*(...) In order to make this protection reasonable, it is established cxprosnmmit that the domestic industry has produced "like products" or "directly competing products". The competitive relationship in the brand is necessarily to a subtle higher degree between like products Fn consecutive. by allowing for a safeguard measure, the first thing to consider is whether the domestic industry produces a product similar to the imported product in question. If yes, there can be no doubt that the Seiv/r guaróta measure applied to the imported product is reasonable'*

See procedure DESPA IT.01.11 — Work Insluirtive "Minimum Descriptions of Textile Materials and their Manuals".



*Commodities*

69. The raw materials used in the manufacture of imported made-up products are: Natural fibres (such as cotton and wool), man-made fibres and man-made fibres<sup>27</sup>.

*Uses*

70 Imported clothing is used as clothing, clothing accessories or household use<sup>27</sup>.

*Production process*

71. The production process for the production of imported products mainly involves the following stages (i) design, (ii) cutting, (iii) presewing, (iv) sewing (iv) finishing, and (v) packaging

*Marketing channels*

Imported made-up products are mainly marketed on wholesale and retail channels<sup>23</sup>.

*Tariff classification*

Imported products enter the Peruvian market under Chapter 61. 62 and 63 of the National Customs Tariff, comprising a total of 284 tariff subheadings<sup>24</sup>.

National product

73. According to the information obtained from PRODUCE<sup>25</sup> and INEI<sup>26</sup>, national companies which provide national production of products record their economic activities under ISIC 141 and 143. as follows:

**A.3.**

74. From the review of the national commercial base administered by SUNAT, it can be seen that during the period January 2016 — junio do 2021, they were imported with (endpoints consisting of natural fibres, man-made fibres and synthetic fibres).

'In SUNAT's trade statistics, it can be seen that, in the import records carried out in the period January 2016 — junio 2021, the importers have stated that the products are mainly used for clothing accessories and for use by det hoyá:

As can be seen from the information quoted in the import base of SUNAT, a number of importers of made-up products are TTE traders at wholesale and retail level, as they belong to Classes 4641 (Wholesale of textiles, clothing and footwear) and 4751 (Retail of textiles in specialised stores) of ISIC rev 4.

In the framework of the investigation procedure by way of safeguards for the import of products which were carried out under or! Expododa N' 030-2020/CDÜ, oste group of 284 tariff subheadings was identified by PRODUCE tm ol paragraph 6.4 of Report N' 003-2020 PRODUCE/DGPAR, which was provided to support the argument that imports of made-up products classified under the abovementioned subpartKlax tariff could constitute a threat of serious threat to the making-up industry.

This information was provided by PRODUCE in Information No 00000035 2020-'PRODUCE'OEE-tcre of 22 July 2020. attached to Official Gazette No 00000056-2020-PRODUCE/OGEIEE of the same date.

This information must be provided by the INEI by means of electronic communications received on '8 and 26 September 2021.



of making up

Table N "1

ISIC of bow activities					
ISIC Division		ISIC Group		ISIC class	
14	Manufacture of apparel	141	Manufacture of articles of apparel, except furskins	1410	Manufacture of articles of apparel, except furskins
		143	Manufacture of knitted and crocheted textiles	1430	Manufacture of knitted and crocheted textiles

Preparation: ST-CDWINDECOPI

*Physical characteristics*

75. National garments are classified as clothing, clothing accessories, bed linen and table linen. They have different physical characteristics depending on the type of fabric and degree of production, as detailed below<sup>27</sup>:

- Fabric type: Knitted or crocheted fabrics, weft and warp fabrics, embroidered, lace, inside other fabric.
- Degree of manufacture of the textile: Unbleached, bleached, dyed, yarns of different colours, printed, inside.

*Commodities*

76. The raw materials used in the manufacture of national made-up products are: Natural fibres (such as cotton and wool), man-made fibres and man-made fibres<sup>74</sup>.

*Uses*

77. Made-up products of national origin may be used as clothing, clothing supplements or household use<sup>79</sup>.

*Production process*

78. The production process for domestically produced products includes, in particular, the following steps: (I) design, (ii) cutting, (iii) presewing, (iv) sewing, (iv) finishing; And, (v) packaging<sup>10</sup>

VM procedure DESPA-II.01 11 Instruction for i) Minimum Descriptions of Textile Materials and their Articles

Study textile research and textiles. Ministry of Production (2015), pages -170

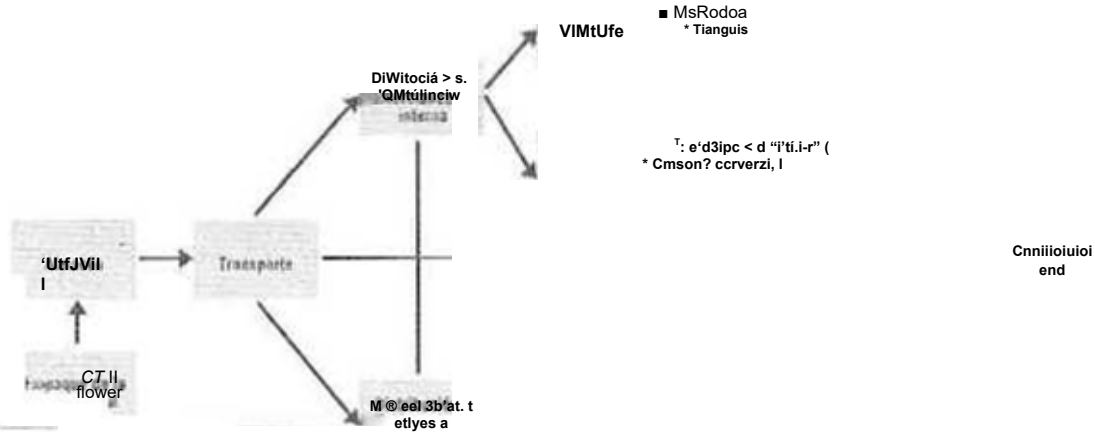
Textile research study and clothing. Ministry of Production (2015) Page 114 116.

Study on research into the toxti sector and confectioners. Ministry of Prrxiucaon (2015), page 119.

Marketing channels

79. According to the information available at this stage of procedure 31, products of national origin are marketed in wholesale and retail channels, as shown in Diagrama N 1.

Diagram N "1



Preparation: Df-MI — PRODUCE  
Source: Study < I <: Research into the loxliil sector and production. Ministry of Production (2015)

Tariff classification

80. National manufactures are classified under Chapters 61, 62 and 63 of the National Customs Tariff, which comprise a total of 284 tariff subheadings.

A.4. Analysis of like or directly competing product

81. In this case, on the basis of the information previously reviewed, it appears that there are elements which would allow it to be inferred that local production and imported products share similarities in a number of fundamental elements relating to physical characteristics, uses, raw materials, production process, marketing channels and tariff classification.

82. It has thus been noted that imported and locally produced produce share the same physical characteristics (depending on the types of fabric and the degree to which they are made); Are used for the same purposes (for clothing, clothing accessories or household use); They are made from the same raw materials (natural, man-made or synthetic fibres) using the same production process (design, cutting, pressing, sewing, finishing and packaging); They are placed on the market under the same marketing channels (wholesale and retail channels); They are classified under the same tariff subheadings.

83 As noted above, as regards the analysis of "directly competing product", in the case of the USA — cotton yarn in a safeguard proceeding, the WTO Appellate Body indicated that:

that the competitive relationship on the market necessarily exists to a greater extent between similar products. In that case, it was established that *'all similar products are, by definition, directly competing or directly substitutable products, whereas not all products 'directly competitive or directly substituted for each other' are 'like' products.* Therefore, if the investigating authority concludes that the imported and the domestic product are similar, then it is assumed that both products are also *'directly competitive'* because, as stated above, that condition is implicit.

84. In the present case, it has been ascertained that local and imported products are similar for the reasons set out in paragraph 82 above. Consequently, both products are directly competitive on the Peruvian market, since the domestic product is commercially interchangeable with the imported product and can satisfy the same consumer demand on the market.

85. However, with regard to the ability of domestic producers to redirect their resources (labour, equipment and raw material) to produce the different varieties of the imported product, in the case of *Argentina — Calculates (EC)*<sup>22</sup> in a safeguard proceeding, the WTO Panel considered the criteria used by <sup>1</sup> to be relevant. •: Argentinian investigating authority for the determination of the like product or directly competing. At that opportunity, the Argentinian investigating authority ■/determined that the footwear produced by RPN was similar or directly competitive to the imported footwear, as it was established that despite the specialisation of domestic producers in certain types of footwear, resources (labour, equipment and raw material) could be reallocated to produce all these types of footwear.

According to the information provided by PRODUCE<sup>33</sup>, the national production industry has the  
86. capacity to reallocate its resources (machinery, raw material, labour, production processes, etc.) to produce a variety of products. Thus, domestic producers could vary the specific type of article produced, making adjustments and adjustments to their production process that are quick and in the vast majority of cases do not require more investment, allowing them to adapt to changes in demand and fashion. In this respect, it is reasonable to consider that the national making-up industry has the ability to reallocate its resources to the production of various made-up products and can satisfy on the market the same demand for the imported product from some consumers.

Although in that case the European Communities did not challenge Argentina's determination of the like or directly competing product, the WTO Panel noted that it considered that it considered appropriate. the criteria used by the Argentinian investigating authority were opposed to its determination of the like or directly competitive product.

In the framework of the investigation procedure for safeguards conducted under consignment N '030-2020ZCÜB, PRODUCE indicated that in the production sector there is a high degree of substitutability between the imported product and that produced by RPN. Thus, according to the Ministry, manufacturers of a type of garment or other made-up textile articles may vary the textile used for wearing apparel. See paragraph 6.16 of Report No 003-2020-PRODUCE/DGPAR. which was attached to Official Gazette No 24/- 2020-PRODUCE/DVMYPF-I of 13 July 2020. It should be noted that the analysis period for this investigation (major of 2016 — June 2021) covers the entire analysis period corresponding to the procedure conducted under Case No 030-2D20/CDH (January 2016 — June 2020). it is therefore appropriate to take into account in this case the information sent by PRODUCE attached to Official Gazette No N' 247-2020-PRODUCE/DVMYPF- I referred to above.



87. At this point, it should be borne in mind that the above information was provided by the governing authority of the industrial sector in the country (PRODUCE), based on the official statistics administered by PRODUCE for the national production sector. In that regard, the information provided by that State authority, within the framework of its powers, may be validly taken into account by the Commission in the course of its trade defence investigations, as has been the case in numerous occasions. In this case, the information in question is relevant and provides prima facie evidence that the domestic making-up industry would have the ability to reallocate its resources to produce various made-up items. The Commission reached the same conclusion in the Import Safeguards investigation recently concluded in April 2021.
88. Productions produced locally and those imported into the country could therefore be considered as like and directly competitive products under the terms set out in Article 4 of the Safeguards Regulation and Article 2 of the Safeguards Agreement.

**B. DETERMINATION OF A POSSIBLE SIGNIFICANT INCREASE IN IMPORTS OF MAKING-UP**

**1. Increase in imports in absolute terms and relative to A production**

**B.2' 1. Initial considerations**

Article 2 of the Agreement on Safeguards provides as follows:

*Article 2 conditionalities*

*1. A Member may apply a safeguard measure to a product only if that Member has determined, in accordance with the provisions set out below, that imports of that product into its territory have increased in such quantity, in absolute terms or relative to domestic production, and take place under such conditions as to cause, or threaten to cause, serious injury to the domestic industry producing like or directly competitive products.*

*2. Safeguard measures shall be applied to a product being imported irrespective of its source.*

90. As can be seen, Article 2 of the Agreement on Safeguards provides that a country member of the WTO may apply a safeguard measure to a product only if it has determined, in accordance with the provisions of that agreement, that imports of that product have increased in such quantity, either in absolute terms or in terms relative to domestic production, and are carried out under such conditions as to cause, or threaten to cause, serious injury to RPN produced by like or directly competing products.

91 With regard to the determination of the increase in imports provided for in Article 2 of the Agreement on Safeguards, the WTO Appellate Body in *the case of 'United States — Certain Closing Products'* 34 stated as follows:

Appellate Body Report ' *United States — Definitive Safeguard Measures scibi* ' on imports of *tfelarminadüs short-range products* ' (Document code: WT/DS24R/AH/K WI7DS249/AB/R,

'354 (...) Therefore, it is not possible to determine whether there is an increase in imports. simply by comparing the endpoints of the investigation period. in cases where an examination does not show, for example, a continuous upward trend in import volumes, a simple extreme assessment could easily be manipulated to lead to different results, depending on the choice of those extroms. A comparison could support the finding of an increase or decrease in import volumes simply by choosing different starting and ending points."

92 Furthermore, the WTO Appellate Body in the 'Argentina — footwear' case has highlighted the need for an analysis of intermediate trends in imports during the investigation period in order to demonstrate the existence of an increase in imports within the meaning of Article 2 of the Agreement on Safeguards:

'129 (...) In other words, if there is indeed an increase in imports, this should be evident both in a comparison between peak periods and in an analysis of intermediate trends during that period. In other words, the two analyses should reinforce each other. Where, as in the present case, their results differ, there are doubts as to whether imports have increased within the meaning of Article 2.1.'

Similarly, the Panel in the *Argentina — footwear case* noted that the analysis of the pace and amount of the increase in imports requires an assessment of the intermediate trends of such imports during the period under review. At that occasion, the Panel clarified that the term "rhythm" in the provisions of Article 4.2 (a) of the Safeguards Agreement refers to the speed and direction of increased imports. In particular, in the above case, the Panel noted the following:

"8.759 (...) We note that the term "rhythm" reflects both speed and direction, and therefore intermediate trends (bottom-up or top-down) should be fully taken into account. The fact that during the IP the trends have been mixed may be decisive (...) For practical purposes, we consider that the best way to weigh the importance of such mixed trends in imports is to determine whether any decrease is merely temporary or whether it reflects a change in the longer term."

However, it is not enough to warn of any increase in imports. In order to implement the safeguard measures provided for in multilateral law, such an increase must have taken place under special conditions and quantities, that is to say, 'an increase in such quantity' and 'under such conditions' as to cause or threaten to cause serious injury to domestic producers.

94 95. As regards the term 'in this amount' referred to in Article 2 of the Agreement on Safeguards', the WTO Appellate Body in the 'Argentina-footwear' case has stressed that in an investigation it will not be sufficient to indicate a simple increase in imports, but that it is necessary for that increase to be made in such imports.

WT7DS251/AH/R, WT/IJS252/AB/R. WT7DS253/AB/R, W17DS2M/AWR, WT/DS253.AB7R. WT7DS259/AB/R) 10 November 2003.

Report of the Appellate Body in case 'Anjenltna — Definitive Mipiiesias Safeguards to Footwear' (Document Code. WI7DS121/AB/R) 14 December ce 1999

quantities causing serious injury to the domestic industry. In that regard, it was stated as follows:

*'131 (. The determination of whether the requirement of imports 'in such quantity' is fulfilled is not a purely mathematical or technical determination. In other words, it is not sufficient for an investigation to show simply that imports of the product this year were more than last year, or five years ago. Again, and it is worth repeating it, any increase in import quantities will not suffice. There must be such an increase in quantities 'to cause or threaten to cause serious injury to the industry in order to comply with this requirement for the application of a safeguard measure. if, as indicated in Article 2.1 of the Agreement on Safeguards as in Article XIX (1) (a) of the GAI I 1994, the increase in imports must be sufficiently recent, sufficiently sudden, sufficiently acute and sufficiently significant, both quantitatively and qualitatively, and to cause or cause serious injury. '*

In this respect, the Panel in the case of "Ukraine — passenger motor vehicles \*16" provides an interpretation of the terms "sudden" and "acute", characteristics required for increased imports to be considered "in such quantities" as to cause or threaten to cause serious injury to the domestic industry, in accordance with the provisions of the Agreement on Safeguards. In that regard, it was stated as follows:

96. *"7,134 (...) we will first examine the requirement for increased imports to be "sudden" and "acute" as defined in the dictionary of" sharp "(acute) es" involving sudden change of direction: Abrupt, steep "(involving a sudden change of address; Abrupt, pronounced) whereas "sudden" is defined as "happening or Corning without warning; Unexpected ", or" abrupt, sharp"; Unexpected, or abrupt, acute)'*

However, the Safeguards Agreement and GATT 1994 do not contain any criteria as to how sudden, recent and important the increase in imports must be in order to be regarded as an increase within the meaning of the Safeguards Agreement. In particular, the Appellate Body in the "United States — Certain Steel Products" case, citing the Panel Report of that case, noted that the assessment of whether the increase in imports was "sufficiently recent, sufficiently sudden and significant enough to cause or threaten to cause serious injury" should be made on a case-by-case basis:

97. *'359. (...) [the] findings of a competent authority arising from an increase in imports, other than its findings on injury and causation, may be based on the results of its entire investigation, the findings of the competent authority on the primacy requirement being increased imports may have an effect on findings concerning injury or causal link, as required by Article 4 (2) (a). When a competent authority examines the other conditions necessary for the imposition of a safeguard measure, it determines, as required by the Appellate Body in Argentina — Footwear (EC) whether the increase in imports was sufficiently recent, sufficiently sudden and significant enough to cause or threaten to cause serious injury to the relevant domestic producers."*

*'374. (...) In our view, what is needed in all cases is an explanation of how the trend of imports corroborates the finding of the*

Panel Report in the following cases: 'Ukraine — Definitive safeguard measures imposed on imports of motor vehicles for the transport of persons' (document code: WI7DS468/R) 26 June 2015 competent





authority that it has complied with the requirement of an “increment] by such an amount within the meaning of paragraph 1 (a) of Article XIX and paragraph 1 of Article 2. It is this explanation relating to the trend of imports — throughout the investigation period — which allows the competent authority to demonstrate that ‘imports of a product have increased by that quantity’.

98. In addition, the Agreement on Safeguards requires the competent authority to verify that imports of the product concerned have been made under certain conditions (“under such conditions”). According to the revised case law, the term “under such conditions” is not explicitly indicated in the Agreement on Safeguards. ASI, according to the Panel in the case of “Argentina — footwear”:

“8.249 (...) In our view, the phrase “under such conditions” does not constitute a specific legal requirement with respect to price analysis, in the sense of a separate and separate analysis of the increase in imports, injury and causation provided for in Article 4.2. We consider that Article 2.1 sets out the basic legal requirements (i.e. the conditions) for the application of a safeguard measure, and that Article 4.2 sets out the operational aspects of these prohibitions (■) ”—

For its part, the WTO Appellate Body in case “USA — Wheat gluten”<sup>37</sup> indicates that the term “on such terms” refers to the market conditions under which increased imports took place. It has stated as follows:



99. ‘78. (...) the expression “under such conditions” generally refers to the “conditions” prevailing on the dol product market in question when there is an increase in imports. Interpreted in that way, the expression ‘under such conditions’ is a summary reference to the other factors listed in paragraph 2 (a) of Article 4, which reiterate the general situation of the domestic industry and the domestic market, as well as other factors ‘related to the situation of [the] industry’. Therefore, the expression “under such conditions” confirms the view that, under Article 4 (2) (a) and (b) of the Agreement on Safeguards, the competent authorities should determine whether the increase in imports, not on its own but in conjunction with the other relevant factors, causes serious injury’.

Similarly, the WTO Panel in the Korea — Dairy <sup>TM</sup> case stated that the competent authority should interpret the phrase ‘and under such conditions’ as follows:

7.52 (...) We consider that the phrase ‘and under such conditions’ does not provide for an additional criterion or analytical requirement to be carried out before a Member State can impose a safeguard measure, we consider that the failure and under such conditions qualifies and relates both to the circumstances under which the products under investigation are imported and to the market circumstances in which those products are imported (...). In this regard, we consider that the phrase ‘under these conditions’<sup>1</sup> refers more generally to the obligation imposed on the country’.

100.

Report of the Appellate Body in the case of “United States — Definitive Safeguard Measures on Wheat Gluten Imports from the European Communities” (Document code: WI/DS161/AB/R) 7?. December 2000.

Panel Report one case: ‘Korea — Definitive Safeguard Measures on Imports of Language Products’ (document code WI/US98/R) 21 June 1999.

*importer to carry out an appropriate assessment of the impact of the increase in imports concerned and the specific market under investigation'*

101 The Appellate Body of the WTO in *Argentina — footwear* also stated that, in order to assess the increase in imports under the provisions of Articles 2.1 and 4.2 (a) of the Agreement on Safeguards, the investigating authority must take account of that information relating to quantities, that is to say, the volume of imports.

*'8.152. Before examining whether Argentina's finding of an increase in imports is in accordance with the requirements of Article 2.1 and Article 4.2 (a), it is noted that both parties, in relation to this requirement, have referred both to data on quantity and to data on the value of imports. The foregoing is clear in the sense that, in this context, the relevant information on the quantities of imports, both in absolute terms and in relation to (the nity of) the production of the product, is clear, given that the 'A notes' refers to imports which 'have seen such an amount' (italic added). Therefore, our assessment will concentrate on data on import quantities.'*



102. As explained in the preceding paragraphs, Article 2 of the Safeguards Agreement requires the investigating authority to determine the existence of an increase in imports by such quantity and under such conditions as to cause injury to the domestic industry. However, that Agreement does not provide for a particular methodology for carrying out the analysis of the increase of imports prescribed in Article 2 of the Agreement on Safeguards.

103. In this respect, according to the rulings of the WTO panels and Appellate Body, the methodology selected by the competent authority for the analysis of increased imports should not be biased, nor should it avoid a reasonable assessment of the facts observed in the case in question.

104. Similarly, when determining whether there has been an increase in imports within the meaning of Article 2 of the Agreement on Safeguards, the competent authority must examine the rate and amount of such imports, within the meaning of Article 4 (2) (a) of that agreement. The assessment of the pace of the increase in imports involves not only an examination of the speed and direction of the increase in such imports, but also an assessment of the amount of such imports.

105. The assessment of the increase in imports should include a comparison of the extreme points of the volume of imports observed during the analysis period as well as an examination of the behaviour of intermediate trends in imports during that period, so that the analysis of intermediate trends described above reinforces the conclusions reached by the investigating authority when comparing the extreme points of the evolution of imports.

106. Moreover, in accordance with the rulings of the WTO panels and Appellate Body, in order to determine whether imports have increased under such conditions as to cause or threaten to cause injury to RPN, the investigating authority should assess the conditions under which the domestic product and the imported product compete on the market of the importing country.



it includes an analysis of the price conditions for placing both products on the market.

107. ASI, as explained in the preceding paragraphs, for the purpose of determining the existence of an increase in imports within the meaning of the Safeguards Agreement, the investigating authority must assess whether such an increase has occurred in such quantity and under such conditions as to cause, or threaten to cause, serious injury to PNR.
108. Thus, as explained in the preceding paragraphs, for the purpose of determining the existence of an increase in imports within the meaning of the Safeguards Agreement, the investigating authority must assess whether such an increase has occurred in such quantity and under such conditions as to cause or threaten to cause serious injury to PNR.
109. In this respect, in order to assess whether, during the analysis period (January 2016 to June 2021), imports of fabrications, in absolute terms and relative to domestic production, increased in *such a quantity as* to cause injury to RPN, first, information on the performance of imports and domestic production of making-up will be reviewed during the period indicated above. Subsequently, in order to assess whether imports of fabrications, in absolute terms and relative to production, increased under *such conditions* as to cause serious injury to RPN, information enabling an assessment of the conditions under which competition occurred between the domestic product and the imported product on the made-up market will also be examined.

#### B.2.2. Increase in import volume in absolute terms

110. This section of the report will assess the behaviour of imports of production in absolute terms during the period January 2016 — June 2021.
111. In this respect, according to the information available at this stage of the initial assessment, during the period January 2016 — June 2021, the domestic producers making up the NRP made imports of made-up products classified under the tariff headings detailed in Annex N "1<sup>39</sup>, which indicates that these imports complemented the production of the manufactures manufactured by RPN during the period indicated above. In view of this, it can reasonably be inferred that the above-mentioned imports did not compete on the domestic market with the products produced by RPN during the analysis period (January 2016-June 2021) and could therefore not cause any serious injury to the domestic industry.
112. In the light of the above, in order to analyse the trend in the volume of imports of made-up products during the period indicated above, the statistical information obtained by SUNAT relating to imports made during the analysis period (January 2016 — June 2021) under the tariff headings detailed in Annex N '1 to this report will be taken into account at this stage of the initial assessment, excluding the volumes imported by the national producers of RPN products in this case.

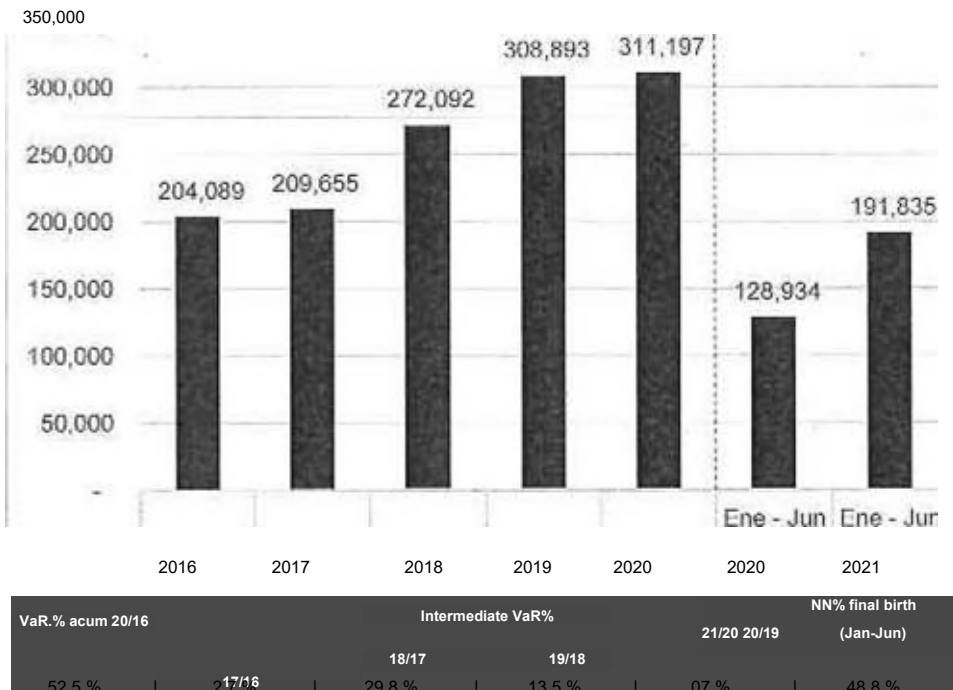
During the analysis period (January 2016 June 2021) The share of imports made by RPN producers in the total volume of imports of made-up goods was on average 0.6 %. in particular, the share of the Biiportaclanes of RPN was 0.7 %, 0.9 %, 0.7 %, 0.6 %, 0.-4 % and 0.3 % in 2016. 2017 2018, 2019. 2020 and 2021 (January-June), respectively



113 During the period January 2016 — June 2021, the volume of production imports showed an increasing trend throughout the analysis period.

114. Between 2016 and 2020, the volume of imports of ready-made goods increased by 52.5 % in cumulative terms, from 204,089 thousand units in 2016 to 311,197 thousand pieces in 2020, as shown in Figure N° 1. Similarly, between January and June 2021, the volume of imports of made goods continued its increasing trend, increasing by 48.8 % compared to the same period in 2020, from 128,934 thousand units between January and June 2020 to 191,835 thousand units between January and June 2021.

Figure N° 1  
Evolution of import volume during the period  
January 2016 — June 2021 (in thousands of units)



Source: SUNAT  
Preparation: S I-CDH/INUF.COPI

115. In order to determine whether there would have been an increase in imports of made-up products within the meaning of the Agreement on Safeguards, in addition to corroborating the level of increase of such imports, this section will assess whether the increase in such imports between 2016 and 2020 (52.5 %) and in the first half of 2021 compared to the similar half of the previous year (48.8 %) has occurred in such a quantity that it could constitute serious injury to RPN.

116. Indeed, as indicated above, the WTO Appellate Body in the *Argentina — footwear case* noted that, in order to determine the existence of an increase in imports in such a quantity as to cause or threaten to cause serious injury to the PNCR, the investigating authority should assess the pace and amount of the increase of such imports, in accordance with Article



4.2 (a) of the Agreement on Safeguards, which requires an assessment of the intermediate trends of such imports during the period of analysis.

117. However, any increase in the quantity of imports is not sufficient to satisfy the condition laid down in the Agreement on Safeguards. Indeed, the WTO Appellate Body in *Argentina — footwear* noted that, in order for the requirement for the application of a safeguard measure to be met, the competent authority must determine that imports have increased ‘in such a quantity’ that they cause or threaten to cause serious injury to PNR, ‘which requires that the increase in imports has been sufficiently recent, sudden enough, sufficiently acute and significant, both quantitatively and qualitatively, to cause or threaten to cause injury’<sup>131</sup>.
118. This being the case, in order to assess the pace and size of the increase in imports of made-up products, the intermediate trends recorded for such imports between 2016 and 2020 are shown below:

Between 2016 and 2017, the volume of imports increased by 2.7 %, from 204,089 thousand units in 2016 to 209,655 thousand units in 2017.

Between 2017 and 2018, the volume of imports increased by 29.8 %, from 209,655 thousand units in 2017 to 272,092 thousand pieces in 2018.

Between 2018 and 2019, the volume of imports increased by 13.5 %, from 272,092 thousand units in 2018 to 308,893 thousand units in 2019.

Between 2019 and 2020, the volume of imports increased by 0.7 %, from 308,893 thousand units in 2019 to 311,197 thousand units in 2020.

119. As can be seen, the pace of the increase in production imports took place at significant levels over the period 2016-2020, albeit with a deceleration in the latter year coinciding with the context of the contraction in general economic activity associated with the implementation of the restrictive measures to contain the rise of COVID-19. However, as will be explained in the following paragraphs, in the first half of 2021 imports of products recovered their dynamism, reaching even a higher level than all the previous half years of the analysis period.

Thus, between 2017 and 2018, the increase in the volume of imports of made-up products (29.8 %) was 120. more than eleven (11.1) times the increase observed between 2016 and 2017 (7.4 %); While between 2018 and 2019 the volume of such imports increased (13.5 %) by more than six (6.6) times the increase observed between 2016 and 2017. Although between 2019 and 2020 the volume of imports of made-up goods increased (0.7 %) by less than the increase between 2016 and 2017, a detailed review of the data shows that, in the second half of 2020, after the restarting of the

In this respect, reference should be made to the findings of the WTO Appellate Body in *Argentina — footwear*:

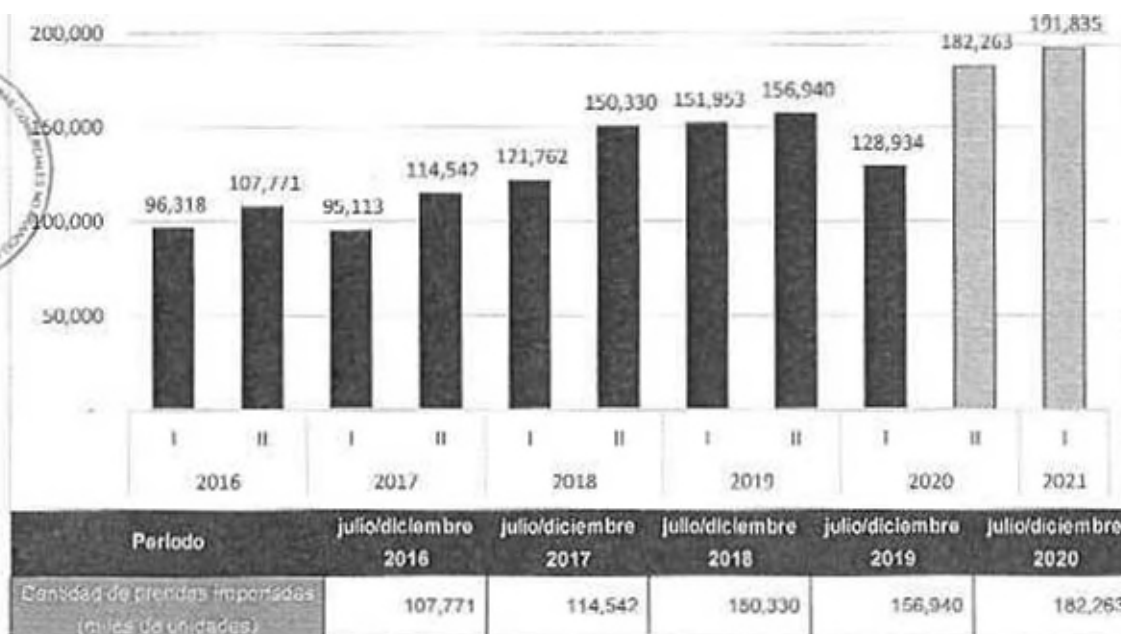
<sup>131</sup> (...) It is not sufficient for the investigating authority to show that this year's imports have been greater than last year — or five years ago. (...) For the requirement to apply a safeguard measure to be met, imports must have increased 'in such quantity' as to cause or threaten to cause serious injury to the domestic industry.

Domestic trade activities<sup>4</sup>, the volume of imports of made-up products (182,263 thousand pieces) exceeded (on average 46.6 %) the levels observed in all previous half years between 2016 and 2019 (132.396 thousand half-yearly units), as shown in Figure<sup>N</sup> 2.

121. Meanwhile, between January and June 2021, the volume of imports of ready-made goods increased by 48.8 % compared to the same period in 2020, from 128,934 thousand units between January and June 2020 to 191,835 thousand units between January and June 2021. As indicated above, in the first half of 2021 the volume of imports of made-up products reached the highest level recorded in all semesters covering the analysis<sup>42</sup>, as shown in Figure 2.

Figure 2  
Six-monthly trend in the volume of imports of made-up products  
during the period January 2016 — June 2021  
(thousands of units)

250,000



Source SUNAI  
Preparation. ST-CDB/INDECOH

Supreme Decree N° 080 2020-PCM published in the official journal 'El Peruano' on 3 May 2020 approved the gradual and gradual resumption of economic activities within the framework of the National Health Emergency Declaration. Subsequently, by Decree Supremo 117-2020-PCM registered in the official journal 'El Peruano' on 30 June 2020, it was decided that from July 2020, Phase 3. was to begin, whereby economic activities were resumed in shops in general, with a capacity of up to 50 %.

At the present, the increasing trend in imports of made-up HS products became more pronounced after the perverse analysis considered (2016 — June 2021) in the investigation by safeguards which unfolded in April 2021. In the last two painful half-years of analysis of this case (July — December 2020 and January-June 2021) recorded the highest levels of imports compared to all the semesters covering the period of analysis.



- 122. The above shows a sufficiently recent, sudden and sharp increase in imports, as required by the provisions of Article 2.1 of the Agreement on Safeguards.
- 123. Moreover, in order to establish the existence of an increase in imports within the meaning of the Agreement on Safeguards, it is also necessary to verify that the increase in imports occurred under such conditions that they could constitute serious injury to RPN, in accordance with Article 4.2 (a) of that agreement. In that regard, in accordance with the latter rule, the competent authorities must analyse the conditions under which the imported product and the domestic product compete on the market of the importing country.

Whether, in this report, the evolution of the volume and the FOB price of imports of made-up products during the period January 2016 — ■ September 2021 will be analysed in order to assess whether

- 124. imports of that product would have increased under such conditions as to constitute serious injury to RPN.

Figure3 shows that between 2016 and 2020 the increase in imports of made-up products coincided with a cumulative reduction (33.6 %) in the FOB price of such imports. In particular, between 2017 and 2018 there was a reduction in the FOB price (10.1 %), precisely when the imports in question recorded their largest increase. Subsequently, between 2018 and 2019, when the FOB price of imports of ready-made goods decreased further (6.2 %), the volume of such imports also increased. Then, between 2019 and 2020, when there was the most pronounced decrease in FOB price (23 7 %), the volume of imports of fabrications increased, reaching in 2020 the highest level recorded during the analysis period.

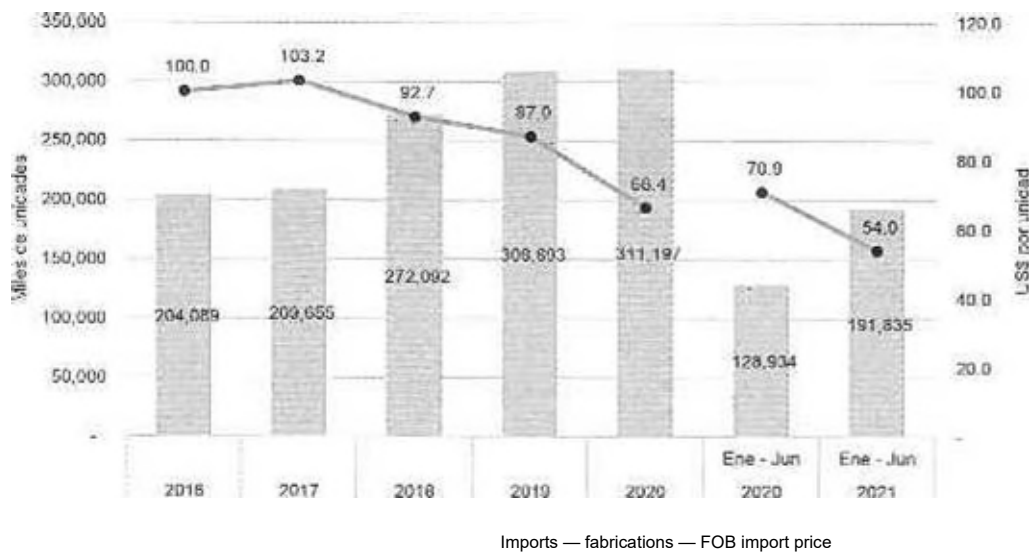
- 125.

126. In addition, it has also been noted that the FOB price of imports of fabrications continued its downward trend in the final and most recent part of the analysis period (January — June 2021), recording its highest trend in that semester.

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Figure 3  
FOB volume and price of imports of made-up products during the period January 2016 — June 2021 (in thousands of pieces, index 2016 = 100)

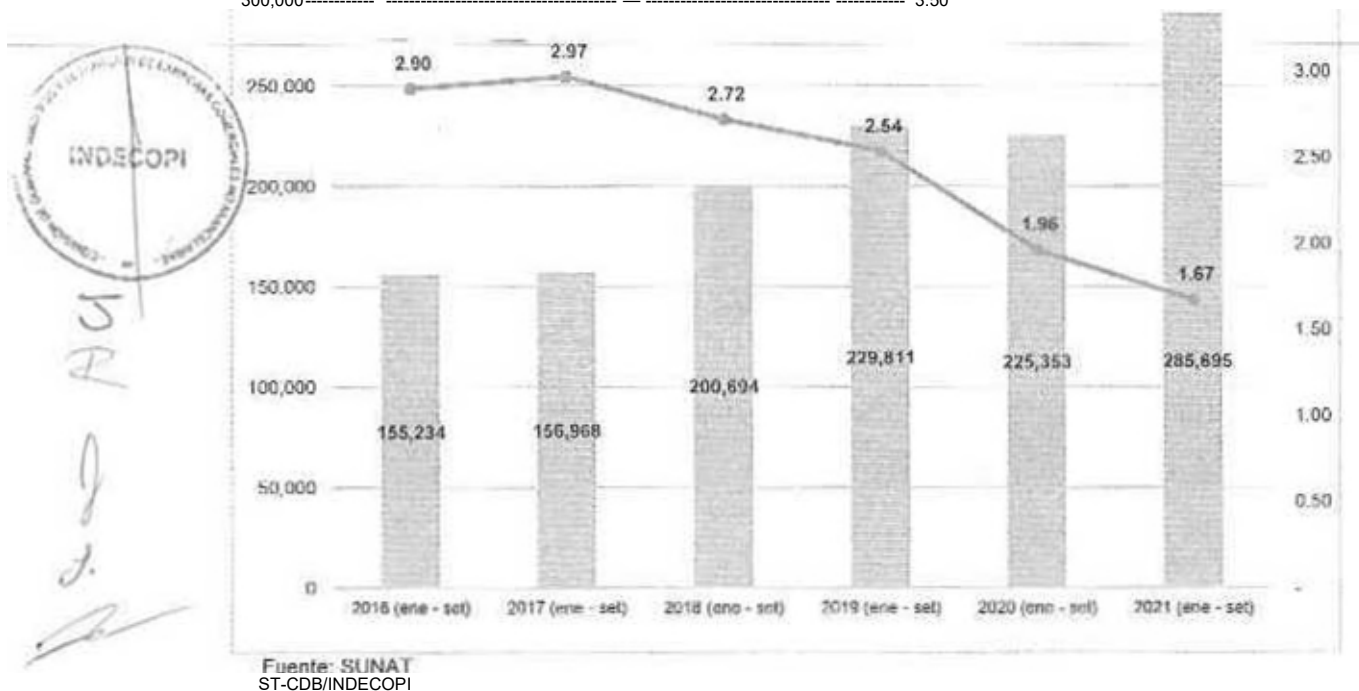




fall (23.9 %) within the analysis period, coinciding with a significant increase in imports of making-up (48.8 %) compared to the same half of 2020

127. In addition to the above, it should be noted that the information available at this initial assessment stage for July and September 2021 supports the findings in the analysis period considered in this case. This means that between January and September 2021 the volume of imports of made-up products (285.695 thousand pieces) exceeded the levels observed in similar periods from 2016 to 2020 (191,842 thousand units on average). In addition, it has also been noted that, in January and September this year, the FOB price of imports of ready-made goods continued its downward trend, falling by 14.8 % compared with 2020 (January — September).

Figure N° 4  
Evolution of the FOB volume and price of imports of made-up products during the period January — September of the years from 2016 to 2021 (in thousands of units)



128. Therefore, the information available at this initial stage indicates that imports of manufactures have increased in absolute terms, in such quantity and under such conditions that they could constitute serious injury to RPN within the meaning of Article 2 1 of the Safeguards Agreement.

#### B.2.3. Increase in imports relative to domestic production<sup>4</sup>

129. This section of the report will assess the behaviour of imports of fabrications in terms of domestic production in the period January 2016-June 2021.

The national production of products has been calculated on the basis of the production information provided by PRODUCE for 102 companies.



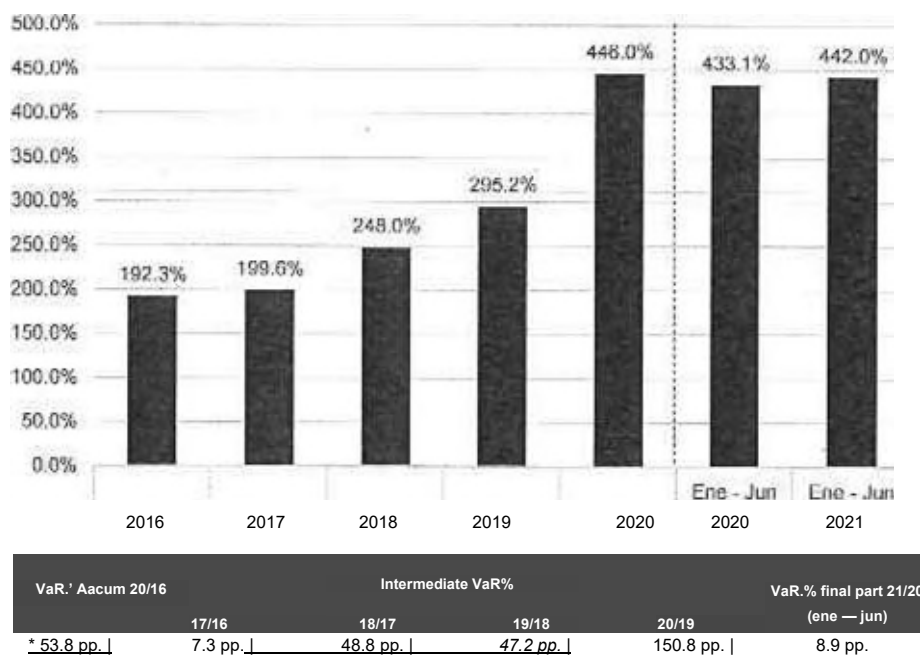


- 130. During the analysis period (January 2016 — June 2021), the volume of imports of fabrications showed an increasing trend in relative terms of domestic production.
- 131. in particular, between 2016 and 2020, the volume of imports made in relative production terms increased cumulatively by 253.8 percentage points, from 192.3 % in 2016 to 446 % in 2020. It should be noted that this increase in imports of fabrications in relative terms occurred as a result of the significant increase of such imports in absolute terms over the years indicated above.

Figure 5

However, in order to determine whether between 2016 and 2020 there would have been an increase in imports of fabrications in terms of production within the meaning of the Safeguards Agreement, in

Evolution of the volume of imports of fabrications relative to domestic production during the period January 2016 — June 2021 (in percentages)



Source: SUNAT, PRODUCES  
Preparation: S T-CDB/INDECOPI

132. addition to corroborating the level of increase of such imports (in this case, a cumulative increase of 253.8 percentage points between the years indicated above)<sup>44</sup>, it is necessary to assess whether the increase in imports has occurred *in such a quantity* that it could constitute serious injury to RPN.

133. In this respect, as indicated above, in order to establish the existence of an increase *in imports in such a quantity* as to cause or threaten to cause serious injury to RPN, the investigating authority should assess the rate and amount of

In the light of this, THE WTO Appellate Body in case *A/ymen/rw — footwear*:

*'131. (...) It is not enough for an investigation to show simply that this year's imports have been higher than last year — or five years ago. (...) If the requirement to apply a safeguard measure is met, imports must have increased "by (the quantity) causing or threatening to cause serious injury to the domestic industry".*



increase in such imports, which requires an examination of intermediate trends in such imports over the period considered, in accordance with Article 4.2 (a) of the Agreement on Safeguards.

134. This being the case, the information on the performance of imports and national production between 2016 and 2020 will then be reviewed as data on the year-on-year increase in such imports, in terms of domestic production, for the period indicated above.
135. In this respect, the review of intermediate trends between 2016 and 2020 shows that the increase in imports of fabrications in relative terms resulted from a significant increase in such imports in absolute terms, as detailed below:

Between 2016 and 2017, the volume of imports of made-up goods grew by 2.7 %, while domestic production decreased by 1 %, resulting in an increase in the share of imports relative to production by 7.3 percentage points.

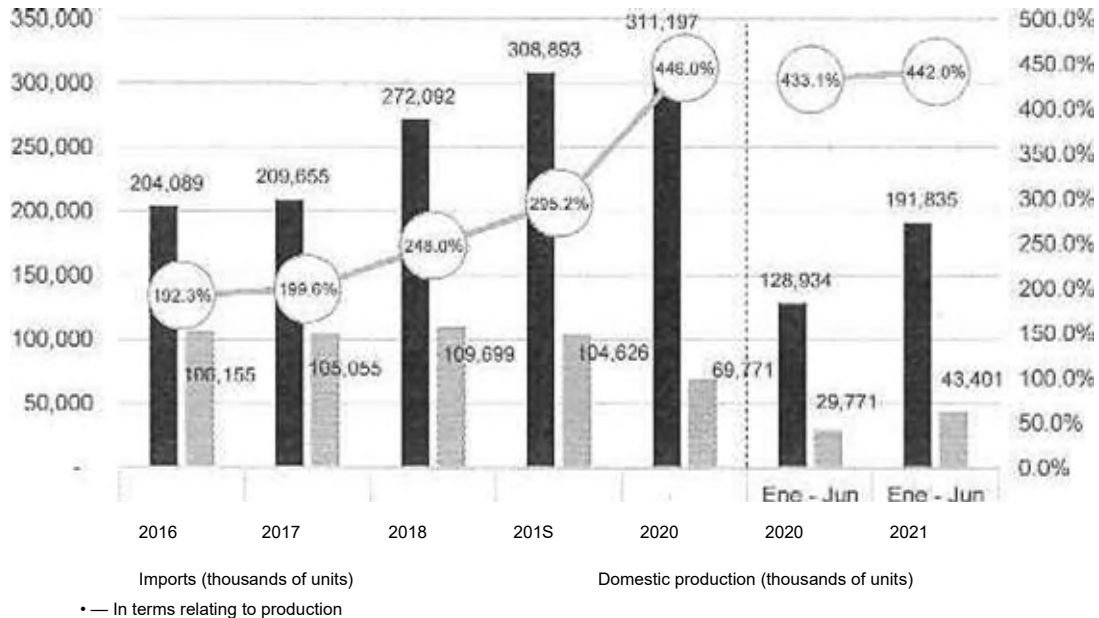
Between 2017 and 2018, the volume of imports of made-up goods grew by 29.8 %. while domestic production increased by 4 4 %, leading to an increase in the share of imports relative to production by 48.5 percentage points.

Between 2018 and 2019, the volume of imports of made-up goods grew by 13.5 %, while domestic production decreased by 4.6 %, resulting in an increase in the share of imports relative to production by 47.2 percentage points.

Between 2019 and 2020, the volume of imports of made-up goods grew by 0.7 %, while domestic production decreased by 33.3 %, resulting in an increase in the share of imports relative to production by 150.8 percentage points.



Figure No 6 Volume of imports and national production of made-up products during the period January 2016 — June 2021 (in thousands of units, in percentages)



Source: SUNAT, PRODUCE  
ST CDB/INDECQPI preparation.



As can be seen, the pace of growth in manufacturing imports in relative terms reached significant levels between 2016 and 2020, with relative import growth accelerating in the last years of the period indicated above. The increases in imports made in relative terms of production between 2017 and 2018 (48.5 percentage points), between 2018 and 2019 (47.2 percentage points) and within 2019 and 2020 (150.8 percentage points), were 6.6 times, 6.5 times and 20.6 times higher than the increase experienced by Talos imports in relative terms of production between 2016 and 2017 (7.3 percentage points) respectively. This indicates a sufficiently sudden, sharp and recent increase in such imports, as required by the provisions of Article 2.1 of the Agreement on Safeguards.

137. In the final and most recent part of the analysis period (January — June 2021), despite the fact that this is a half year after the resumption of industrial production activities at national level<sup>45</sup>, including the manufacture of made-up products, imports made in relative terms of domestic production continued their increasing trend (increased by 8.9 percentage points) as imports increased (48.8 %) more strongly than domestic production (45.8 %), compared to the similar half of 2020.

138. ASI, between January and June 2021, increased imports (62,901 thousand units) which was 4.6 times the increase in production of PNR (in

By Supreme Decree No 080-2020-PCM published in the official journal 'El Peruano' on 3 fie maya fie 2C70'. Phase I was approved for the gradual and gradual resumption of economic activities within the framework of the National Health Emergency Declaration, allowing from May 2020 the completion of the economic activities of the mining and industrial sector, including, inter alia, the activities of the manufacturing industry.



13,630 thousand units), compared with the same half of the previous year, resulting in production-related imports reaching a level (442.0 %) higher in 2021 (January June) than in previous years that are part of the analysis period (on average 302.4 %).

139. ÜE thus shows a sufficiently sudden, sharp and recent increase in imports in relative terms within the meaning of Article 2.1 of the Safeguards Agreement.

142. Therefore, the information available at this initial assessment stage provides prima facie evidence that imports of manufactures have increased in terms relative to production, in such quantity and under such conditions that they could cause serious injury to RPN within the meaning of Article 2.1 of the Safeguards Agreement.

C. ANALYSIS OF UNFORESEEN DEVELOPMENTS

C.1 Initial considerations

143. Paragraph 1 (a) of Article XIX of G'I I of 1994 provides as follows:



*'If, as a result of unforeseen developments in circumstances and as a result of obligations, including tariff concessions, entered into by a Contracting Party under this Agreement, imports of a product into the territory of that contracting party have increased in such quantity and are made on such terms as to cause, or threaten to cause, serious injury to domestic producers of like or directly competitive products in the territory, that Contracting Party may, to the extent and for such time as is necessary to prevent or remedy such damage, withdraw or partially suspend the concession,'*

The Appellate Body, in *Korea — Dairy Products* \* \*, noted that the meaning of the term "unforeseen developments" in Article XIX: 1 (a) of the GATT 1994 refers to developments in circumstances that cannot be foreseen, anticipated or anticipated.

144.

*'84. (...) As regards the meaning of 'unforeseen developments in circumstances', we note that the definition that the dictionary defines 'unforeseen' (unforeseeable), in particular in relation to a 'change in circumstances as a synonym of' unexpected'. Moreover, the term 'unpredictable' (unforeseeable) is defined in dictionaries as 'unpredictable' or 'which cannot be predicted, predicted or anticipated'.*

*As a result, we consider that the meaning of the expression 'as a result of unforeseen developments in circumstances' requires that the development of circumstances as a result of which imports of a product have increased in such quantity and takes place in such a way as to cause or threaten to cause serious damage to domestic producers has been 'unexpected'.*

145 Similarly, in the abovementioned case, the Appellate Body also stated that, in accordance with the provisions of Article 1 (a) of GATT 1994, for the application of a safeguard measure, unforeseen circumstances identified by the authority

Appellate Body Report on the case "Cwe.w — Definitive salvaiimrdip measures on imports of certain dairy products" (doameiil code W77DS98/AK'R) 14 of December 1999.

investigator should result in increased imports. In particular, the Appellate Body noted the following:

'85. (...) *I at the beginning of paragraph 1 (a) of Article XIX — 'as a result of the unfettered evolution of the circumstances and the effect of the obligations, including tariff concessions, entered into by [a Member] under this Agreement is a phrase which, in our view, is grammatically dependent on the word 'imports {...] have increased' in the second part of that sentence. We consider that the initial expression in the first sentence of paragraph 1 (a) of Article XIX, although it does not lay down separate conditions for the application of a safeguard measure, additional to those set out in the second part of the sentence, describes certain circumstances which must be demonstrated in fact in order for a safeguard measure to be applied in a manner consistent with the provisions of Article XIX of GATT 1994. In this respect, we consider that there is a logical connection between the circumstances set out in ella — 'as a result of the development that has taken place with the circumstances and by the effect of the obligations. — and the conditions are satisfied in the second part of paragraph 1 (a) of Article XIX for the imposition of a safeguard measure'* (Added Subrayado),

146. Moreover, with regard to the nature of unforeseen circumstances allowing WTO Members to apply safeguard measures, the Appellate Body in the *Argentina — Calculated case* indicated that such events should be unusual or unusual and urgency issues.

'93. (...) *As part of the context of paragraph 1 (a) of Article XIX, we note that the title of Article XIX is "Emergency measures on the import of certain products". (...) We would point out once again that Article XIX (1) (a) requires that imports of a product have "increased such quantity" and are made "under such conditions" as to "cause or threaten to cause serious injury to domestic producers". (emphasis added) F \$ev which is not common events and the usual eating. In our view, the wording of paragraph 1 (a) of Article XIX of the GATT 1994, interpreted in accordance with its ordinary meaning and in relation to its context, shows that the intention of the drafters of the TT AG was to ensure that the safeguard measures were not ordinary, quest for urgency; In short, "emergency measures". 'Emergency measures' were to be invoked only in situations where, as a result of obligations under GATT 1994, an importing Member was faced with a change in circumstances which would not have been 'anticipated' or 'expected' when it entered into those obligations (.). It is clear that, in all respects, Article XIX (c) establishes an extra-monetary resource'. [emphasis added]*

In particular, as regards the logical connection to be found between increasing imports and the associated unforeseen circumstances, the Appellate Body in the *US — certain steel products* case stated that the evolution of the circumstances in question should result in increased imports of the product under investigation.

'316. *It is therefore clear that not every development of circumstances which is 'unforeseen' is sufficient. In order to give rise to the right to apply a safeguard measure, the evolution of the substances must have been the result of an increase in the imports of my product ('this product') which is the result of my alva guardia. In addition, any product, as provided for in Article XIX (1) (a), may, potentially, be the subject of such a*

147.

A vertical column of handwritten marks and stamps on the left margin. At the top is a circular stamp with the word 'INDECOPI' in the center. Below the stamp are several handwritten initials or marks, including what appears to be 'S', 'P', 'J', and a signature.



safeguard measure, provided that “the imprevi evening of the alleged circumstances has anaum intheimports of that specific product (“ d ichoproducto”), (...)” [Subrayado added]

148. It follows from the above that, in accordance with the provisions of the AG7 I of 1994 and the Agreement on Safeguards, the competent authority must support the occurrence of certain “unexpected” circumstances resulting in an increase in imports causing or threatening to cause serious injury to domestic producers.

149. In the light of the above, the information available at this initial stage of the procedure will be assessed in order to assess whether, during the period January 2016 — June 2021, unforeseen circumstances within the meaning of paragraph XIX of Article 1 (a) of the GATT have occurred which would have led to a significant increase in imports of made-up products into the Peruvian market during the period in question.

## C.2 Unforeseen circumstances

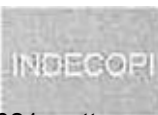
150 This section of the Report will assess the existence of unforeseen circumstances on the Peruvian market for manufactures, within the meaning of Article XIX of GATT 1947, as a result of which there would have been a significant increase in imports of fabrications during the period January 2016 to June 2021.

In order to carry out the above evaluation, data relating to: (I) the price behaviour of the main raw materials used in the manufacture of made-up products (cotton and polyester); (II) the development of the FOB price of imports of made-up products during the period January 2016 — June 2021: And (iii) government measures implemented in the country to contain the progression of COVID-19.

### • *Price behaviour of raw materials (cotton and polyester) for the manufacture of made-up products*

152. Cotton and polyester fibres are the main raw materials used in the manufacture of made-up products placed on the Peruvian market in the period January 2016 June, 2.021. According to information published by the International Textile Manufacturers Federation<sup>47</sup>, cotton and polyester fibres accounted for between 44 % and 78 % of the total production costs of fabrics (articles used in the manufacture of made-up products) made in China and Bangladesh (countries where consignments of made-up goods accounted for more than 86 % of the total volume of imports made during the period January 2016 — June 2021).

In that regard, it should be heard. ‘*INTOMATIONOL Piwlkilioh Cosí Comparison 2018*’ published by the International Textile Manufacturers Federation (International loxtilo manufacturen Federaticui), April 2019. I would point out that this docniimito is a source of information commonly used by the Commission in order to approximate the cost of production in different countries supplying the Peruvian textile market (Case No 039-2018/CDB concerning the dumping investigation procedure on imports of mixed fabrics of polyester with cotton originating in China: File No 0-10-2014 relating to the examination procedure for changed circumstances to the anti-dumping duties in force on imports of popelin type fabrics originating in the People’s Republic of China; And Case N ‘010-2014 relating to the expiry examination procedure of the anti-dumping measures in force on imports of popelin type fabrics originating in China)



153. During the period January 2016 — June 2021, cotton and polyester prices experienced fluctuating behaviour. Between 2016 and 2017, the price of cotton increased by 12.6 % and continued its increasing trend until 2018, when that price increased by 9.3 % compared to 2017. Subsequently, in 2019, the price of cotton fell by 14.7 % compared to 2018, and then fell by 7.7 % between 2019 and 2020. Meanwhile, in 2021 (January — June), the price of cotton increased by 26.9 % compared to 2020. Thus, in 2021 (January — June), the price of cotton was at a higher level (US\$ 2.01 per kilogram) than in 2016 (US \$1.64 per kilogram).

Moreover, during the analysis period (January 2016 — June 2021), the price of polyester developed in a similar way to the cotton price. Between 2016 and 2017, the price of polyester increased by 3.7 % and continued its increasing trend until 2018, when it increased by 12.0 % compared to 2017. Subsequently, in 2019, the price of polyester decreased by 13.0 % and then decreased by 10.9 %

154. between 2019 and 2020. The price of polyester increased by 13.1 % in 2021 (January — June) compared to 2020. Thus, in 2021 (January — June), the price of polyester was at a level (US \$1.24 per kilogram) higher than in 2016 (US\$ 1.22 per kilogram).

0.50

2016 2017 2018 2019 2020 2021

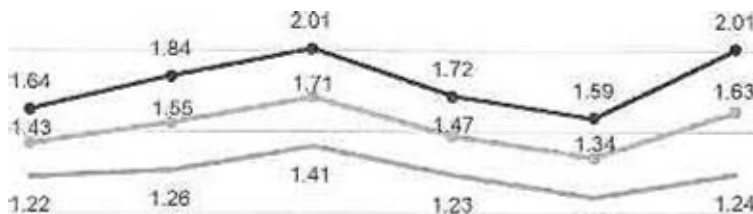
■ Price of cotton — Price for polyester — e-medium to GODON and polyester

ENE-A



Figure 7  
Cotton price and polyester price for the period January 2016 — June 2021 (in US\$ per kilogram)

2.50



Concept/Var.%	17/16	18/17	19/18	20/19	21/20
Price of cotton	12.6 %	9.3 %	- 14.7 %	- 7.7 %	26.9 %
Price of polyester	3.7 %	12.0 %	- 13.0 %	- 10.9 %	13.1 %
Average cotton and polyester	8.8 %	10.4 %	- 14.0 %	9.0 %	21.3 %

0.00

surgeon: Index Munrii/COMTRADE Elaboration: ST-CDH/INDECOPI

155 On the contrary, although those textile fibres are the main components of the total cost of production of the imported product, during the period January 2016 — June 2021, the average FOB price of imports of made-up products did not follow the evolution of the cost of its main raw materials (cotton and polyester).

156. As can be seen from Figure 8:

Between 2016 and 2017, against the background of a 8.8 % increase in the average price of cotton and polyester, the average FOB price increased by 3.2 %. In the opposite context, the volume of imports increased by 2.7 %.

— Between 2017 and 2018, the average price of cotton and polyester increased by 10.4 %, the average FOB price fell by 10.4 %, in a context where Talos imports increased (29.8 %) by more than eleven (11.1) times the increase observed between 2016 and 2017.

— Between 2018 and 2019, despite the fact that the average price of cotton and polyester fell by 14 %, the average FOB price of imports of made-up products decreased less, this time in the order of 6.2 %. In that context, the volume of imports increased (135 %) equivalent to more than six (6.6) times the increase observed between 2016 and 2017.

— Subsequently, between 2019 and 2020, the FOB price of imports of made-up products decreased (23.7 %) by a magnitude significantly higher than the decrease in the average price of cotton and polyester (9.0 %), against a background of an increase of 0.7 % in imports of making-up products.

Between January and June 2021, although the average price of cotton and polyester increased by 21.3 %, the average FOB price of imports of ready-made goods contracted by 18.7 %. against this background, the volume of imports of ready-made goods increased significantly by 48.8 % compared to the same period in 2020. It should be noted that during the first half of 2021 the volume of imports made exceeded the levels observed in similar semesters of the analysis period.

As can be seen from the analysis in the preceding paragraphs, during the period January 2016 to June 2021, the average price of cotton and polyester experienced a fluctuating pattern (cumulative increase of 13.9 %), against the background of a sustained reduction in the average FOB price of imports of made-up products, which recorded a cumulative contraction of 46 % over that period. In particular, the data show that despite the fact that cotton and polyester are the main raw materials for the production of the product under investigation, a differentiated trend in the average FOB price of made-up imports and the average price of its main raw materials took place from 2018 onwards, in a context in which the pace of growth of imports of made-up products accelerated significantly from 2018 onwards.

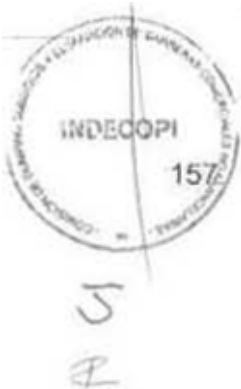
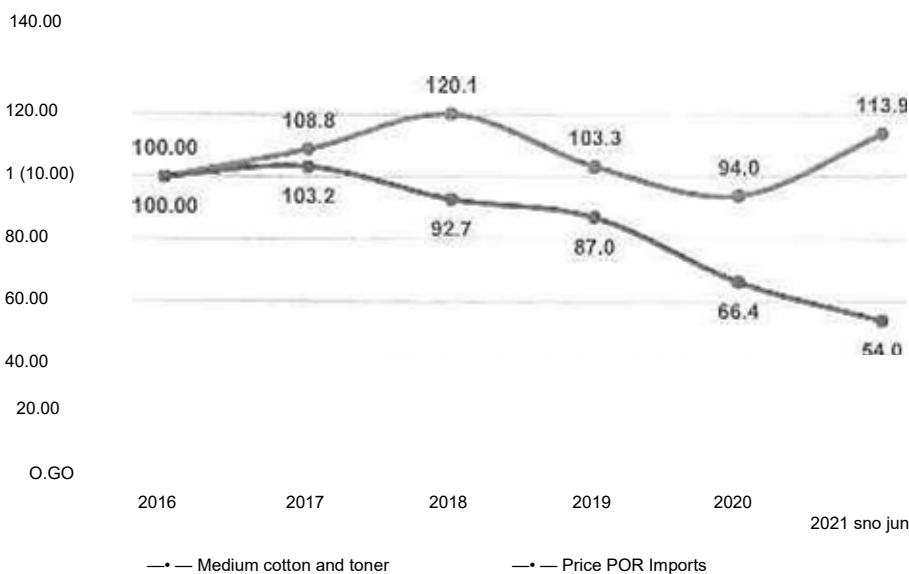






Figure 8  
Average price of cotton and polyester and FOB price of imports of made-up products in the period January 2016 — June 2021 (indicate: 2016 = 100)



Concept/Var.%	17/16	18/17	19/18	20/19	21/20
Average price of cotton and polyester	8.8 %	10.4 %	- 14.0 %	- 9.0 %	21.3 %
FOD import price	3.2 %	- 10.1 %	6.2 %	- 23.7 %	- 18.7 %

Source: SUNAT, Index Men, COMTRADC  
Preparation: SF-CDB/INDECOPI

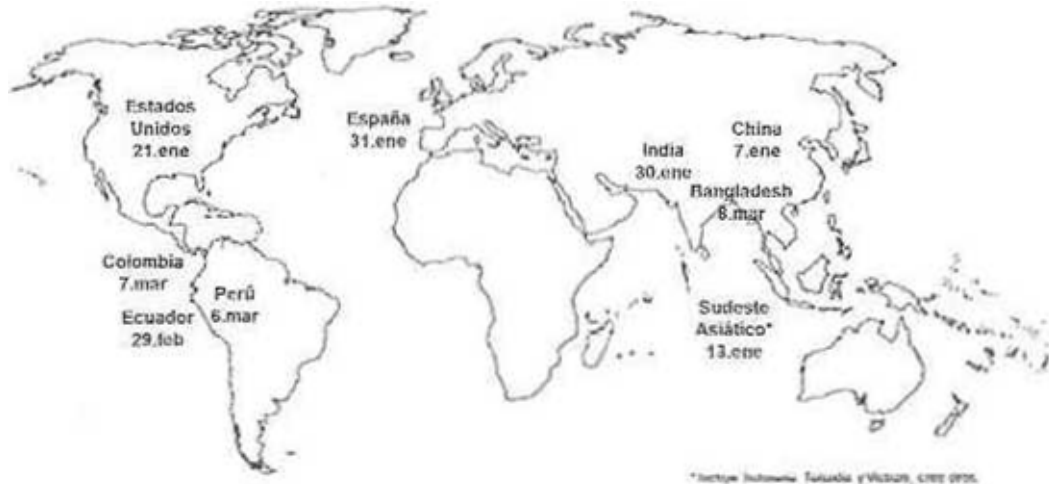
**Government measures to contain COVID-19**

159. In line with the context described above, the first cases of COVID-19 reported in both Peru and the main supplier countries to the Peruvian market for production were recorded in the first half of 2020.

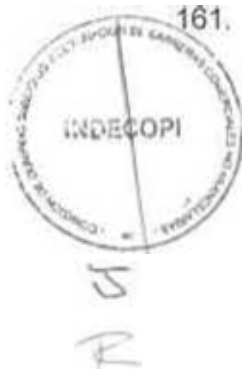
160. According to information published by the World Health Organisation<sup>43</sup>, the first cases of COVID-19 reported in the main supplying countries to the Peruvian market (China and Bangladesh) were submitted between 7 January (China) and 8 March (Bangladesh) in 2020. In Peru, the first case was reported on 6 March 2020.

See 'WVO Coronavirus Disette (COVID-19) Dashboard'. available at: <https://covid19.who.int/> (last consulted: 19 November 2021).

Figure N° 9  
Map of the first COVID-19 cases reported in the main countries supplying the Peruvian product market



Fuente- 'MIO Coronavirus Disease (COVID-19) Dashboard  
Preparation. ST-CDB/INDECOP'



161. Since March 2020, the Peruvian government has implemented various health and economic measures to contain the development of COVID-19 at national level, including:

On 11 March 2020, Supreme Decree No 008-2020-SA declared the Health Emergency at national level for ninety (90) calendar days and issued measures to prevent and control COVID-19.

Supreme Decree No 044-2020-PCM, which declares the State of National Emergency as a result of COVID-19, was published on 15 March 2020 and provides for restrictions on freedom of transit at national level. Subsequently, the National Emergency State was extended by a number of legal arrangements<sup>49</sup> until 30 June 2020.

162. the above mentioned government measures, implemented by the Peruvian government as of March 2020 to contain the progression of COVID-19, restricted economic activities at national level in general, which had a direct impact on the production and marketing of manufactures in the first half of 2020. According to information published by the Central Reserve Bank of Peru, there was a 8.6 % contraction in domestic private consumption in 2020, as well as a fall of more than 30 % in economic activity in the textile and clothing sector.

163. Subsequently, as of May 2020, provision was made for the resumption of some of the economic activities suspended by the State of Emergency National. The economic recovery process was established in four (4) stages, each aimed at specific headings of national economic activity, and subject to the

On scratching, check the following legacy devices: Supreme Decree No 044-2020-PCM temporarily extended by Supreme Decrees N- Ú51-2020-PCM. N \* 064 2070-PCM, NO. 075-2020-PCM, NO. 083 2020 1 'GM, N "094-2020 PGM. N- 116-2070-PCM and 135-2020-PCM

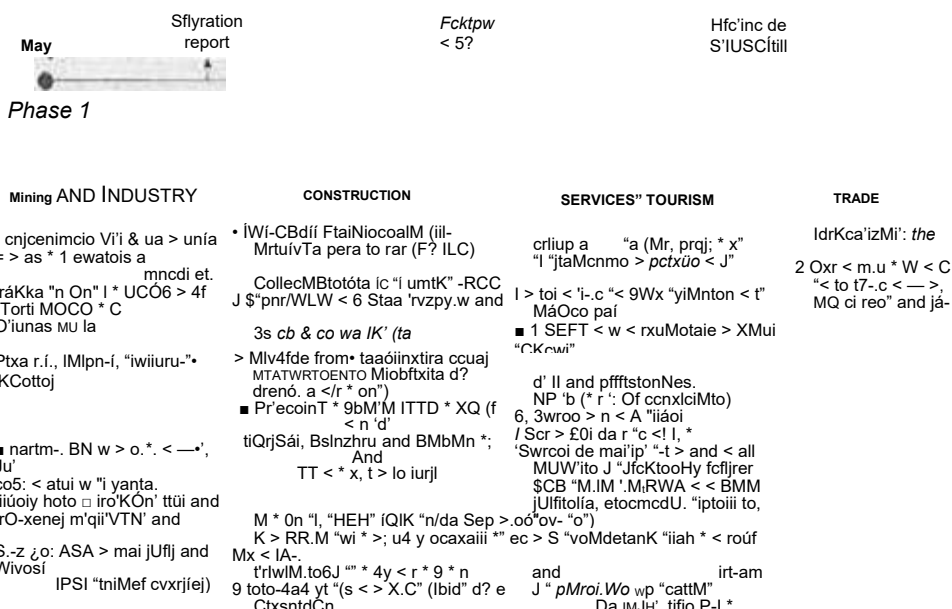
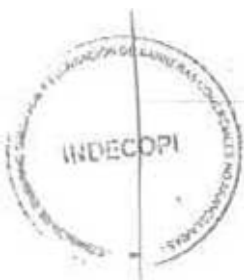


compliance with protocols for resuming operations. In particular, the following legal instruments were issued:

Supreme Decree 080-2020-PCM, issued on 02 rd May 2020, which provides for the start of Phase 1 and provides for the resumption of certain economic activities in the country, including the production of making-up;

Supreme Decree 101-2020-PCM, published on 04 rd June 2020, establishing the start of Phase 2 and providing, among other measures, for the extension of the resumption of economic activities for shopping centres, conglomerates and shops by department, for direct attention to the public, with up to 50 %; Supreme Decree 117-2020-PCM, published on 30 June 2020, establishing the start of Phase 3 and providing, inter alia, for the extension of the resumption of economic activities in shops in general, with up to 50 %; Supreme Decree 157-2020-PCM, published on 28 September 2020 establishing the start of Phase 4.

Graph No 10  
National economic recovery process



Source: PGM.

Preparation: ST-CDB/INDECOPY

164. In particular, Ministerial Resolution No 137-2020-PRODUCE, published on 06 rd May 2020, established the COVID-19 Health Operation Protocol applicable to various productive activities, including those in the production sector. In accordance with the provisions of this legislation, employers<sup>50</sup> in this production sector must implement related policies and practices, but not limited to:

Asifnismo, the new distribution of piana must provide for distancing between workers with a minimum of 1 metres. the corridors, control areas, transitional storage areas and other areas concerned must be demarcated (education of workers by area and line of production, complying with the provisions of the aforementioned protocol.

On the other hand, in accordance with Ministerial Resolution No 138-2020-PRONUCE published on 06 of May 2020, the specific sectoral approval for the resumption of textile activities and editions (by

the Office implementing flexible working hours (e.g. staggered tumours);

Increase the physical space among workers (e.g. equipments, materials, tools, vehicles, service areas and work areas in such a way that the distance of at least 01 metres between workers is met); Implement flexible meeting and travel options (e.g. postponing meetings or events that are not strictly necessary, remote meetings among others);

Reduce operations that are considered unnecessary or vital; And, Provision to grant work permits or permits to workers.

165. Furthermore, with regard to external trade operations and the transport of cargo and goods by air, sea, land, rail and inland waterways to be carried out during the National Emergency State, the Peruvian Government issued the following legal provisions:

Supreme Decree 044-2020-PCM, published on 15 March 2020, which provides that the transport of cargo and goods is not covered by the temporary closure of borders, stating that the competent authorities must take the necessary measures to ensure the entry and exit of goods from the country through authorised ports, airports and border points, giving priority to the entry of basic necessities, health products and all those necessary to deal with the health emergency (Article 8 3). Ministerial Resolution No 0232-2020-MTC/01.02, published on 17 March 2020, by which the Ministry of Transport and Communications states that the provisions on the carriage of cargo and goods cover all other activities related to such operations, such as services provided by general agencies, maritime

agencies, customs agencies, loading agencies, warehouses, logistic operators, suppliers of customs seals, suppliers of packaging material, pallet suppliers, vehicle safekeeping companies, cargo inspectors, document forwarding providers, trailer cranes, maintenance vehicles, pallet suppliers, vehicle safekeeping companies, cargo inspectors, document providers, trailer cranes, workshops Among others

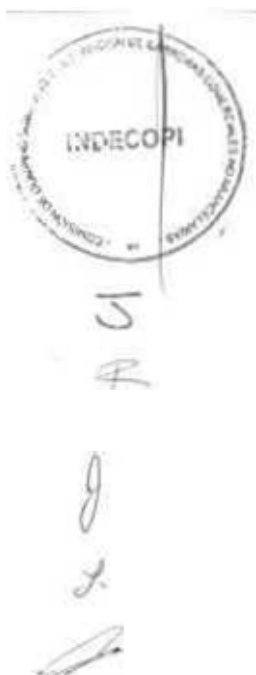
With regard to the transit of personnel involved in the international transport of goods, by Ministerial Resolution N "304-2020-IN. published on 17 March 2020, measures were implemented to ensure the movement of staff strictly necessary for the provision of freight and freight transport services in general and their related activities<sup>51</sup>.

In relation to the customs service, it was provided during the emergency period with restricted staff, ensuring the priority entry of goods to respond to the health emergency, without restricting the entry and exit of goods across borders<sup>52</sup>.

Deputy Ministerial of MYPC c Industry) is issued within 1 calendar day, counting from < the submission of your application, by electronic or digital physical means prior to the submission of activities, companies or natural or legal persons must comply with s. (i) the "guidelines for monitoring the health of workers at risk of exposure to COVID-19" and (ii) the health protocols for COVID-19 operations; In order to draw up their "Piar for the prevention and control of COVID-19 on the work", and/or register them in the Integrated System for COVID-19 (SICOVID 19) of the Ministry of Health, subject to sectoral approval I on the date of commencement of the activities, it is the caiendgrio day following the date of registration of the 'Plan for the Prevention and Control of COVID-19 in work' in the Integrated System for COVID-19 (SICOVID 19) of the nsterio Health.

In addition, on 30 March 2020 the MINCETUR issued a press release stating that freight and freight transport and related activities are not restricted during the Emergency State. In this regard, RDR. 1illps7?l 'AV\ v.gob.pe/ir/sttiicioii/mincetur/noúcias/111618-comunúcado (last viewed: 15 November 2021)

In that regard, it must be heard. SUNAT Press Note N<sup>s</sup> 028-2020. available at <http://Aww.sunat.gnb.pe/salaprensa/lima/Index liiml> (last viewed: 15 November 2021).





166 As can be seen, from May 2020, the Peruvian government started the economic recovery of various industrial activities, including, but not limited to, the production of made-up products. As from June of that year, the commercial activities of shops were resumed by departments and various retail establishments engaged in the sale of made-up products. It is appropriate to point out that the activities of foreign trade and customs clearance of goods were not stopped, although they were provided with restricted staff and giving priority to the entry of products required to meet the health emergency.

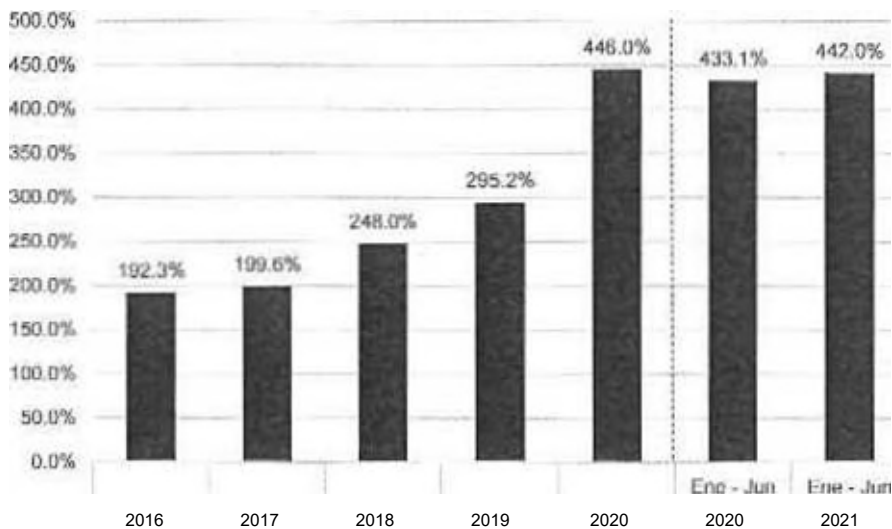
167 Thus, in 2020, in a context in which the FOB price of imports of made-up products fell by a magnitude (23.7 %) greater than the reduction in the average price of cotton and polyester used in their manufacture (9 %), the restrictions on the carrying out of production and marketing activities for made-up products, on the occasion of the measures implemented by the Peruvian Government in the context of the National Emergency State, coincided with a significant increase in imports of made-up products in terms of national production.

168. In addition, at the end of the analysis period (January — June 2021), despite the fact that the average price of cotton and polyester increased by 21.3 %, the average FOB price of imports of made-up products contracted by 18.7 %, against the background of an increase in imports of made-up products in relative terms of domestic production, compared to the average level reached in the previous years that are part of the analysis period (302.4 %), as shown in Figure N "11.



Figure N "11

Volume of imports of making-up relative to domestic production during the period January 2016 — June 2021 (in percentages)



Source: SUNAI PRODUCES  
For Ekjooaracjn: ST-CDO/INL) t-COPI



C.3 Conclusions on the increase in imports of ready-made products and the unforeseen circumstances which would have led to such an increase

169. As explained in this section of the Report, safeguard measures under Article XIX of GATT 1994 and the Agreement on Safeguards constitute emergency measures that WTO Members may apply on imports of certain products, when such imports have increased in such quantity and under such conditions as to cause, or threaten to cause, serious injury to the domestic industry. However, for the requirements set out in Article 2.1 of the Agreement on Safeguards and paragraph 1 (a) of Article XIX of GATT 1994 to be met, any increase in the quantity of imports is not sufficient, as such provisions require that the increase in imports has been sufficiently recent, sudden, acute and significant to cause or threaten to cause serious injury to RPN.
170. The evidence available at this stage of the initial assessment shows that during the period January 2016 — June 2021 there would have been an increase in imports of fabrications in such quantity and conditions as to constitute serious injury to the domestic industry within the meaning of Article 2.1 of the Agreement on Safeguards. This is based on the following considerations:



(I) AUM in terms of absolutes: Between 2016 and 2020, production imports increased by 52.5 % on a cumulative basis, coinciding with a cumulative decrease of 33.6 % in their FOB price. In 2021 (January — June), imports of fabrications increased (48.8 %) compared to the same half of 2020, against the background of a resumption of industrial production activities at national level<sup>53</sup>, with the FOB price of such imports falling by 18.7 %.

The increasing trend of imports of manufactures increased after the period of analysis considered in the safeguard investigation which ended in April 2021 (January 2016 June 2020), as in the last two semesters of the analysis period of this case (July December 2020 and January — June 2021) the highest levels of imports were recorded compared to all semesters covering the analysis period.

(i) Increase in imports and rminos relating to the pipeline at: Between 2016 and 2020, imports of fabrications, in relative terms of domestic production, increased by 253.8 percentage points, as a result of the increase in such imports in absolute terms. In 2021 (January — June), the above indicator increased by 8.9 percentage points, as imports increased (48.8 %) more strongly than domestic production (45.8 %), compared to the similar half of 2020.

171. With regard to unforeseen developments in circumstances, prima facie evidence has been found at this stage of the initial assessment to suggest that unforeseen circumstances within the meaning of Article XIX of GATT 1994 have arisen during the period January 2016 — June 2021.

See footnote N° 40. This is based on the following considerations:

(I) Between January 2016 and June 2021, the average FOB price of imports of ready-made goods did not follow the price evolution of its main raw materials (cotton and polyester). on the contrary, they showed contrasting trends or decreased in different proportions, coinciding with a significant increase in imports of made-up products.

(II) In that context, the measures to halt production and trade activities in the country during 2020 to contain the rise of COVID-19 (specifically between March and June of that year), which also included the making-up sector, contributed to a significant increase in imports of making-up products in the period indicated above. Notwithstanding this, in a context of resumption of industrial production activities at national

level, in 2021 (January — June), imports of manufactures in terms of domestic production exceeded the level reached in the previous years? I] that fornari P arte del Per, ord of analysis.

D. INITIAL DETERMINATION OF THE EXISTENCE OF SERIOUS HARM TO RPN

"D. 1. Initial considerations

172. Article 4 of the Agreement on Safeguards stipulates that:

*'For the purposes of this Agreement  
(a) 'serious injury' means a general significant impairment of the situation of a domestic industry;*

173. In this respect, the WTO Appellate Body in *US — Safeguard Measures for Imports of Fresh, chilled or frozen lamb meat from New Zealand and Australia* <sup>44</sup> indicated that the term "serious injury" set out in the above mentioned standard is very strict:

*"(...) the word "damage" is described by the adjective "serious", which, in our view, underlines the extent and degree of the "general significant impairment" that the domestic industry must suffer, or that it must be close to suffer, in order for the crime to be complied with. We confirm our view that the criterion of "serious injury" in the Agreement on Safeguards is very strict if we compare this criterion with the one relating to "material injury" set out in the Anti-Dumping Agreement, the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement") and the GATT 1994, we consider that the word "gravely" gives rise to a cntery relating to very serious injury than the term "material".*

174 Article 4 of the Agreement on Safeguards is to be read in conjunction with paragraph 1 of Article 5 of the Agreement, which lays down as a condition for the application of the safeguard measure that it is necessary to prevent or remedy serious injury. Article 5 expressly provides:



*'A member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and facilitate adjustment'*

175. For its part, in order to determine whether increased imports have caused or threaten to cause serious injury to a domestic industry, Article 4.2 (a) of the Agreement on Safeguards provides that the investigating authority must assess all objective and quantifiable factors related to the situation of the domestic industry. In particular, the provisions of paragraph 2 (a) of Article 4 of the Agreement on Safeguards provide as follows:

*'In an investigation to determine whether increased imports have caused or threaten to cause serious injury to a domestic industry within the meaning of this Agreement, the competent authorities shall assess all relevant factors of a factual and substantial nature relating to the situation of that industry, in particular the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market absorbed by the increasing imports, changes in the level of sales, production, employment, utilisation, and losses.'*

176. In particular, with regard to the analysis to be carried out by the investigating authority on the existence of serious injury, the WTO Appellate Body in *Argentina — Safeguard Measures on Imports of Footwear* stated the following:

*"In our view, it is only when the overall situation of the domestic industry has been assessed in the light of all relevant factors relating to the situation of that industry that it can be determined whether its overall significant injury to the situation of that industry has been <sup>3</sup>. Although paragraph 2 (a) of Article 4 technically requires that certain listed factors be assessed, and that all other relevant factors must be assessed, this provision does not specify what such an assessment should demonstrate. any such assessment will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An assessment of each of the factors listed does not necessarily have to show that each of them is "decreasing"*

In view of the findings of the Appellate Body, it is necessary to determine that the domestic industry suffers *'significant overall injury'* by the effect of imports in order to justify the application of the general safeguard measure, even if it appears that a certain factor used in the analysis may not be decreasing or affected. To that end, the authority must have previously provided a reasoned explanation of how the factors analysed corroborate its determination<sup>55</sup>.

177. On the other hand, the competent authority's analysis of those factors is of a substantive nature, that is to say, it must demonstrate that those factors have a relationship, influence, effect or impact on the situation of the domestic industry. This has been established by the WTO Appellate Body in *US — Definitive Safeguard Measures on Imports*

Report of the Ce AJM- 'HQOI BODY in the case: 'Argentina — Mmbdas de lavogvd' a tax on footwear imports' (document code: WR/ÜS121/A8/R) 14 December 1999, footnote 15, paragraph 121



*Of wheat gluten from the European Communities<sup>50</sup> and the United States — Safeguard measures in respect of imports of fresh, chilled or frozen lamb meat from New Zealand and Australia<sup>57</sup>.*

179. In view of the above, the report will analyse each of the above mentioned factors in order to determine whether there is prima facie evidence of the existence of possible serious injury to RPN as a result of the significant increase in imports of making-up products in the period considered (January 2016 — June 2020).

#### D.2. Domestic industry

180. Article 4.1 (c) of the Agreement on Safeguards provides that a domestic industry is defined as the producers as a whole of the like or directly competitive products operating within the territory of a Member or whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products.

181. In that regard, the Safeguards Agreement and the Safeguards Regulation do not lay down provisions on the requirement of a certain level of participation of the undertakings constituting RPN in the total domestic production, at the stage of the initial assessment of a proceeding in this area. However, for the purpose of examining the economic situation of RPN, the competent authority should have available economic information for domestic producers which allows, taking into account the level of participation of such producers in the total national production, to obtain results reflecting the evolution of the economic performance of the national industry as a whole, for the purposes of the injury or threat of serious injury analysis<sup>58</sup>.

182. As a reference, it should be noted that the safeguards regulations of countries in the region such as Mexico, Dominican Republic, Ecuador and Argentina if they establish a certain level of representativeness for the initiation of an investigation. The regulations of the abovementioned countries set levels of representativeness of 25 % and 30 %<sup>59</sup>.

Report of; Appeal body in the case: *'United States — Definitive Safeguard Measures on Imports of Togo gluten from the European Communities'* (Document code: W17DS166/AB/R) 77 Dec.2CCO. footnote 19, paragraph 71.

Appellate Body Report in the case: *'United States — Safeguard measures in respect of previous refrigerated or frozen sheep meat impositions from New Zealand and Australia'* (Document code: WT7DS177/AB/R and WT7DS1/8/AB/K) 01 of May 2001. Paragraph 104

Similarly, the relevant legislation in Chile also does not require a certain level of representativeness to provide for the initiation of an investigation. (see: [Http7Av\vw.cndp.cl/paginaInterior.asp?inferior=interior\\_lcy18525.asp](http://www.cndp.cl/paginaInterior.asp?inferior=interior_lcy18525.asp)).

However, in a case initiated in 2019 for the application of safeguards to lactic productions, the investigating authority in Chile established that the applicant's participation rate was representative of the national production of dairy products (36 %). (available at [http://vaww.cndp.cl/Actas/Comision\\_2018/Sesion\\_405.pdf](http://vaww.cndp.cl/Actas/Comision_2018/Sesion_405.pdf)).

Indeed, the safeguards rules of countries such as Mexico, Dominican Republic Ecuador and Argentina establish a certain level of representativeness to provide for the initiation of an investigation.

Mexico: The legislation of that country provides that, in order for an investigation to be initiated, a request must be made by a company or group of companies representing at least 25 % of the domestic production of the product covered by the request (see: [HTTP://www.sice.oas.org/antidumping/legislation/mexico/I.CEXT\\_s.asp](http://www.sice.oas.org/antidumping/legislation/mexico/I.CEXT_s.asp)).

Dominican Republic: The legislation of that country provides that, in order to initiate an investigation, an application must be made by a company or group of undertakings which:

183. In addition, it should be noted that, in the provisions governing investigations into dumping and subsidisation, it lays down a minimum threshold of representativeness to be met by the applicant domestic producers. ASI, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures provide that the domestic producer requesting an investigation whose economic and financial information will be assessed in order to determine whether there are indications of injury or threat of injury to RPN, must constitute at least 25 % of the total domestic production of the product subject to the request. In that regard, given the absence of regulation in the Agreement on Safeguards in this respect, it is appropriate to consider a threshold close to that set out in the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures for the purposes of determining whether the information of domestic producers of making-up in this case allows the evolution of the economic performance of that industry to be reflected.
184. In the present case, the Commission has collected information relating to one hundred and two (102) national producers of products which make reference to the Monthly Statistical Survey of PRODUCE, which was supplied by the Ministry to the Commission<sup>60</sup>.
185. On the basis of the information available, it has been estimated that these producers together represent 37.4 %<sup>61</sup> of the total national production of production, which makes it possible to reflect the evolution of the economic performance of the industry.

#### Pace and amount of the increase in imports

As explained above, the provisions of Article 4 (2) (a) of the Agreement on Safeguards provide that, in order to determine the existence of serious injury, the investigating authority must assess, inter alia, the rate and amount of the increase in imports of the imported product, both in absolute terms and in terms relative to domestic production.

Represent at least 25% of the national production of product covered by the application (see: <http://cdc.gob.do/index.php/sobre-nosotros/nia-legal/categoria/26/eyes>).

Ecuador: The rules of that country which, in the case of atomised industries or industries consisting of small and medium-sized enterprises, require the initiation of an investigation by a group of companies representing at least 25 % of the domestic production of the product requested.

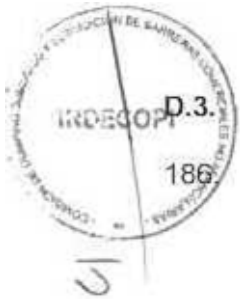
Argentina: Argentinian legislation indicates that for the initiation of the investigation a request must be made by the domestic industry representing at least 30 % of the domestic production. of \_\_\_\_\_ for three marketing years: products \_\_\_\_\_ (at \_\_\_\_\_ in respect of: \_\_\_\_\_ see: \_\_\_\_\_

[https://www.argentina.gob.ar/sitcs/dcfault/files/decreta\\_1059.1996.pdf](https://www.argentina.gob.ar/sitcs/dcfault/files/decreta_1059.1996.pdf)).

<sup>60</sup> In Annex N° 2 to this report, the names of the hundred and two (102) undertakings mentioned above can be found.

<sup>61</sup> In view of the limitations on the availability of information that they face at this stage of the initial assessment, in order to calculate the representativeness of the (102) national producers produced in the national production sector, the Total national production of that product has been approximated to the total basis of assessment of the IGV payment made by the companies operating under the economic activities corresponding to ISIC 1721 'Manufacture of clothes with textile materials, except wearing apparel and 1810' Manufacture of garments, except for the years covered by the investigation of the complete UIC 2016.

We would point out that SUNAI has provided information on the total taxable amount of the IGV payment made by undertakings in the production sector, as well as the basis of assessment corresponding to the hundred and two (102) undertakings referred to above.





187. The term 'rhythm' in the provisions of Article 4.2 (a) of the Agreement on Safeguards refers to the speed and direction of increased imports. However, such provisions do not require that the pace of the increase in imports should be accelerated at each time of the analysis period<sup>32</sup>. Furthermore, the Safeguards Agreement provides that the investigating authority must assess both the pace and the amount of increased imports.

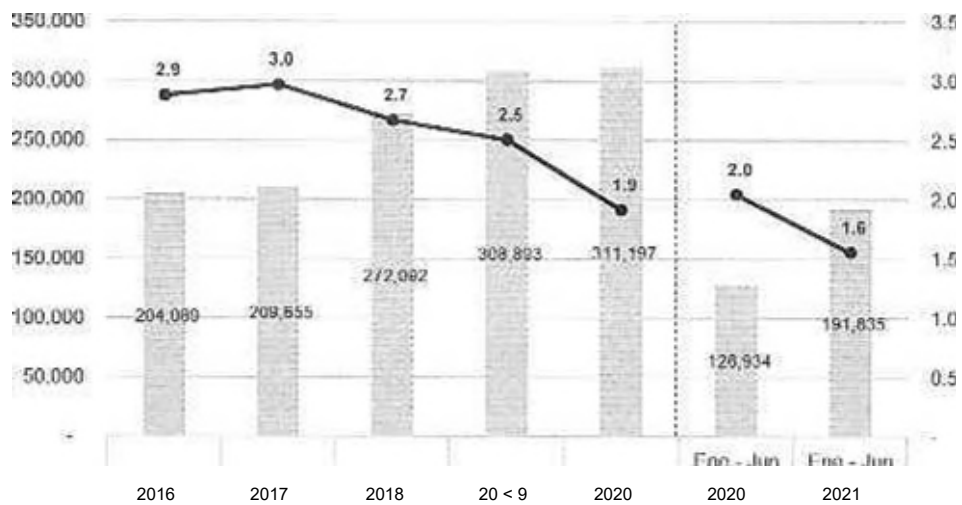
188. This being the case, in order to assess the pace and size of the increase in imports of made-up products during the analysis period (January 2016 June 2021), information corresponding to the year-on-year increase in such imports in the period indicated above, both in absolute terms and in relative terms of domestic production, will then be reviewed.

D.3.1. Pace and amount of the increase in imports in absolute terms

As can be seen from Table 2, between 2016 and 2020, the rate of increase in imports of products produced at significant levels, with growth rates between 2017 and 2018 and between 2018 and 2019 (29.8 % and 13.5 % respectively) significantly higher than the growth rate of such imports between 2016 and 2017 (2.7 %).

Imports of products ■ Price FOR (U.S \$/unid)

Table 2  
Pace and amount of the increase in imports of made-up products during the period January 2016 — June 2021 (thousands of pieces and in percentages)



Incrementólea Isa Imports	17/16	18/17	19/18	20/19	Prom. 20/18	21-1/201
	2.7 %	29.8 %	13.5 %	0.7 %	11.7 %	48.8 %
	5,565	62,637	36,801	304	26,777	62,901

Preparation: SI-CIJB/INDECOPI

190. However, as can be seen, the pace of the increase in imports of making-up took place at significant levels during the period 2016-2020, albeit with a deceleration in the latter year (with a growth rate of 0.6 % between 2019 and 2020) which coincided with the context of the contraction in activity.

In this regard, see Appellate Body Report in *Argentina — Footwear*, para. 131



overall economy associated with the implementation of the restriction measures to contain the progression of COVID-19. Notwithstanding the latter, in the final and most recent part of the analysis period (January — June 2021) imports of made-up products returned to dynamism, recording the highest growth rate observed during the period under review (growth of 48.8 % compared with the same half of 2020).

191. In addition to the analysis period, it should be noted that in the months following June 2021 the volume of imports of made-up products continued its increasing trend, with the volume of imports of made-up products remaining 47.6 % higher during the period January September 2021 (285,695 thousand pieces on average) than in the same period from 2016 to 2020 (on average 193,612 thousand units).

Table 3 Volume of imports between January and September in the years 2016 to 2021

(thousands of units)

Period	January — September 2016	January — September 2017	January* September 2018	January — September 2019	January* September 2020	January — September 2021
Total volume of imports	155.234	156.968	200.694	229.811	225.353	285.595

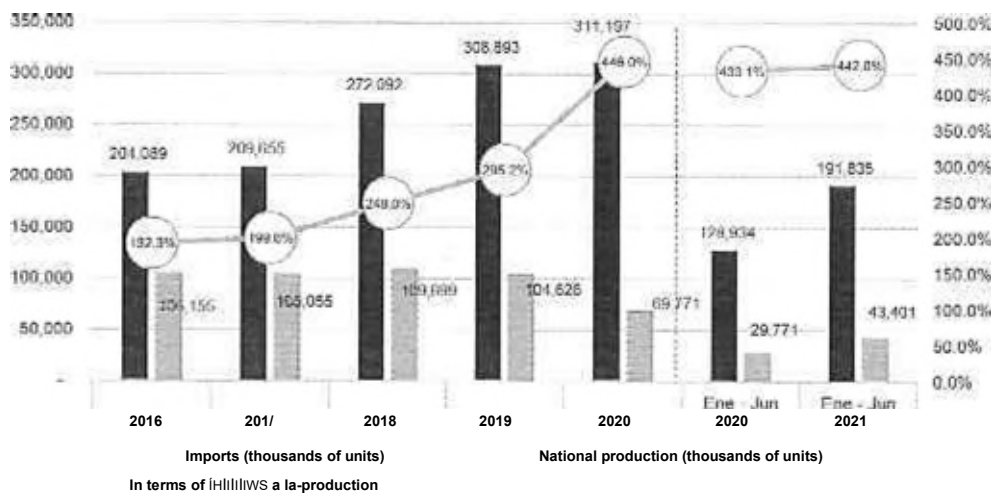
surgeon: SUNAT  
Preparation: SI-CIJH/INDCCOPI

#### Pace and amount of the increase in imports relative to production

192. As can be seen from Figure N "12, between 2016 and 2020, the volume of imports of manufactures in terms of domestic production increased on average by 63.4 percentage points per year, as a result of which, over the period indicated above, imports of made-up goods grew at an average annual rate of 26,777 thousand units, while domestic production fell at a rate of 9,096 thousand units per year.



Figure N "12  
Pace and amount of the increase in imports in relative production terms during the period January 2016 — June 2020 (in percentage points and thousands of pieces)



(ifilcranual accent	17 MB	18117	19/18	20/1'	Prora 20/18	21-1/20-1
Prxii KXHYTI	5,565	toAXI	36,861	2,304	26,777	62,901
VD. pp.	— 1.100	4,61-1	5,073	— 34.8'	— aa'	13,630
mport9C' fe \$en	r.3pp	■ 13.5 pp.	47 7pp	IMB pp.	63.4 pp.	8.9 pp.
lérrrnw- relative to l?						
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Source: SUNAI  
Preparation: ST-CDB/INDECOPI



193.

In the final and most recent part of the analysis period (January — June 2021), imports of manufactures in relative terms of domestic production grew by 8.9 percentage points, as the volume of imported products increased (62,901 thousand units) more than the volume of domestic products (13,630 thousand units).

Part of the domestic market absorbed by imports

D.4.

As explained in paragraph C.1 above, the provisions of Article 4 (2) (a) of the Agreement on Safeguards provide that, in order to determine the existence of serious injury, the investigating authority must assess, inter alia, the part of the domestic market absorbed by the increasing imports. However, such provisions do not set out a methodology for determining how the behaviour of the import participation in the domestic market indicates the existence of serious injury to RPN.

194.

195. In view of the above, in order to assess the share of the domestic market of making-up products absorbed by the increasing imports during the analysis period (January 2016 — June 2021), the information available at this initial stage of the procedure will then be used to approximate the size of the domestic market for making-up during the period mentioned above and, on that basis, the development of the share of the volume of imports of made-up products in the domestic market of making-up will be assessed.

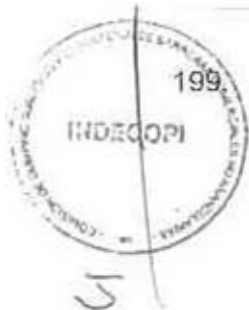
196. In order to gain a better understanding of the evolution of this variable, the analysis to be carried out in this section of the report shall take into account the price



conditions under which imports of manufactured goods entered the Peruvian market during the period indicated above.

*Size of the national market for made-up products*

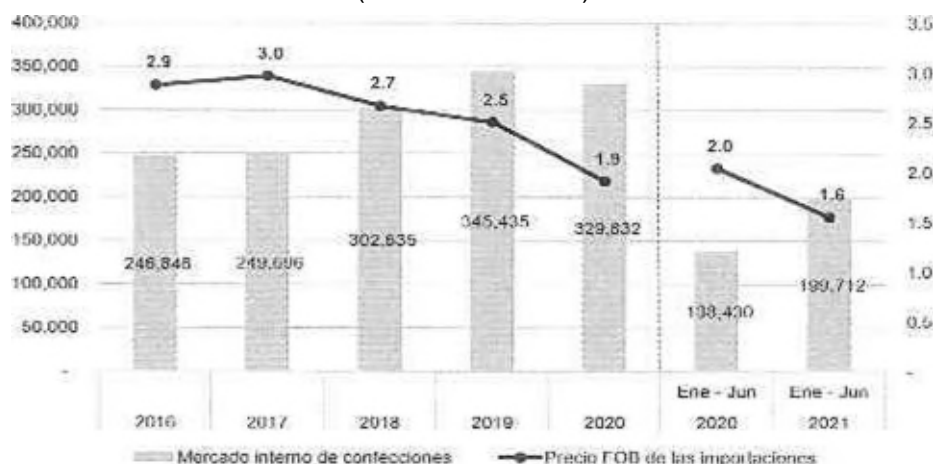
197. In order to approximate the size of the national production market, information is available at this initial assessment stage on the volume of total imports of manufactures registered by SUNAT during the analysis period (January 2016 to June 2021), as well as data relating to the volume of domestic sales of RPN made up during the same period<sup>03</sup>. In this way, the size of the national market for making-up will be estimated as the sum of the volume of imports of manufactures and of the domestic sales for June 2021.
198. As shown in Figure N "13, over the period from 2016 to June 202, the size of the domestic market showed an increasing trend, which was reversed in 2020, against the background of a contraction in domestic demand associated with the implementation of measures to contain COVID-19. However, in the final and most recent part of the analysis period (first half of 2021), the domestic market rebounded its dynamism, increasing by 44.3 % compared to the same period in 2020.



A detailed analysis of the data shows that the increase in the size of the domestic market for ready-made goods increased since 2018, when the FOB price of imports of made-up goods fell by 10.1 % compared to 2017, a trend which continued until the end and most recent part of the analysis period (January June 2021), when the FOP price of the product under analysis fell by 23.9 %, which coincided with a significant increase in imports of manufactures (48.8 %) compared to the same half of 2020.

As explained in section D.4.5. of this report, the volume of internal sales of RPN manufactures during the period 7 (116 — joint d'2021) has been estimated on the basis of the data provided by PRODUCE relating to "I volume of the national production of manufactures made by RPN during the period indicated above, discounting from this quantity the volume of exports of manufactures made by RPN in January 2016 and June 2021. Published by the INEI corresponding to the share (in%) of the value of stocks of finished products in the production value of the wearing apparel and other textile making industries, for the years 2016, 2017, 2018 and 20 (9. % on average) I to information contained in the Annual Economic Survey published by INEI via its carrier on the Internet can be consulted at <http://inei.inei.gob.pe/riitcrodatos/>

Figure 13  
National market for production  
(thousands of units)



Concepto	2016	2017	2018	2019	2020	2021	Var. %	Var. % parte final
A. RPN	43 757	40 041	30 593	35 542	18 535	9 480	-56.4%	-17.0%
B. Importaciones de confecciones	304 091	309 655	272 042	309 893	311 197	120 934	52.5%	48.8%
Mercado interno de confecciones (A+B)	246 848	249 696	302 635	345 435	329 832	138 433	33.6%	44.3%

Source: SUNAT, INEI, PROÚCF  
Elaboration: ST CDMNDECOPI

*Share of imports in the domestic production market*

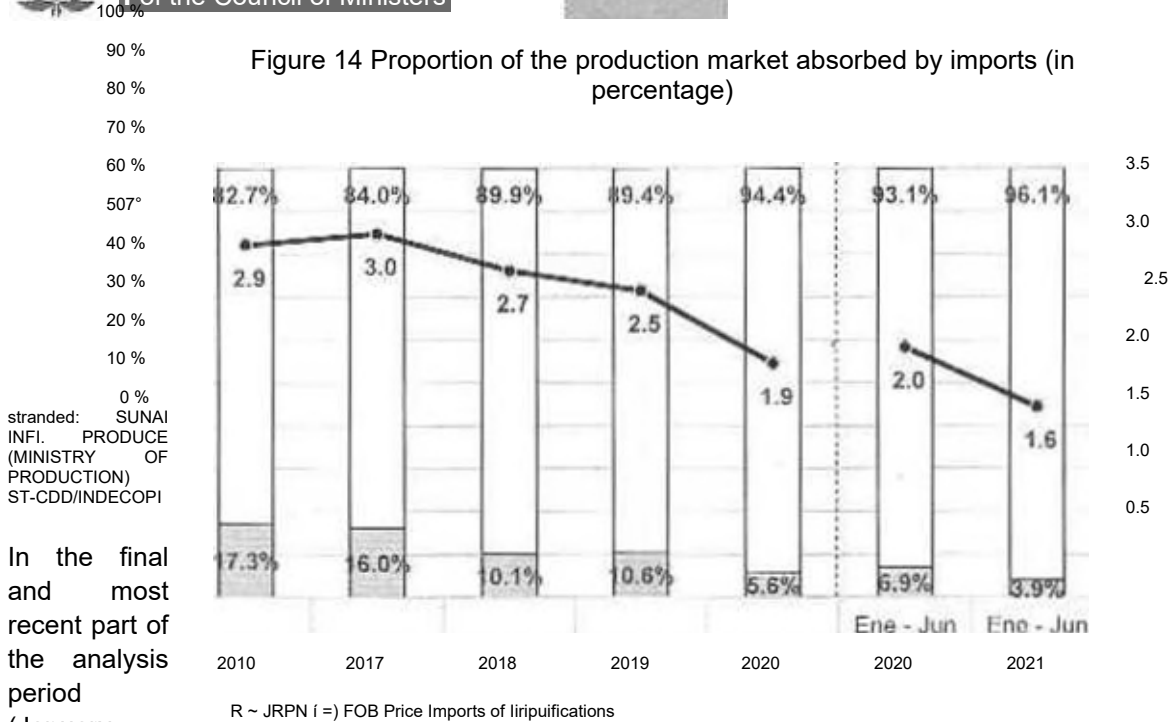
During the analysis period (January 2016 — June 2021), the share of imports in the domestic market has been on an increasing trend, leading to a gradual shift of the domestic product on the domestic market.

201. Indeed, as can be seen from Figure 14, although the estimated share of imports in the domestic market for<sup>64</sup> products remained stable between 2016 and 2017 (increased by 1.3 percentage points), that indicator increased by 5.9 percentage points between 2017 and 2018, while it remained stable between 2018 and 2019 (decrease by 0.5 percentage points) and then increased by 4.9 percentage points between 2019 and 2020. The increase in the market share of imports of made-up products from 2018 onwards coincided with the decrease observed since that year in the FOB price of Talos imports, a trend which has continued to the final and most recent part of) the analysis period (January — June 2021).

In this regard, see paragraph 136 of this Report.



Figure 14 Proportion of the production market absorbed by imports (in percentage)



In the final and most recent part of the analysis period (January — June

2021) The market share of imports of ready-made goods increased by 2.9 percentage points compared to a similar period in 2020. It should be noted that during the above-mentioned six-month period, the increase in the market share of imported products occurred in a context where the FOB import price decreased most in the analysis period (23.9 % compared to the similar half of 2020).

#### D.5. Economic situation of RPN

This section of the report will present information gathered in relation to the performance of the economic indicators of the RPN for the period January 2016 — June 2021.

##### Production

203.

204. During the analysis period (January 2016 — June 2021), in a context of increasing import volumes, the production of RPN of manufactures

a.

205. Indeed, between 2016 and 2020, the production volume of RPN decreased by 34.3 % on a cumulative basis. However, when reviewing intermediate trends over the period indicated above, there is a differentiated pattern, with the following findings:

it experienced fluctuating behaviour.

Between 2016 and 2017, the production volume decreased by 1.0 %. Between 2017 and 2018, the production volume increased by 4.4 %. Between 2018 and 2019, the production volume decreased by 4.6 %. Between 2019 and 2020, production volume dropped by 33.3 %.

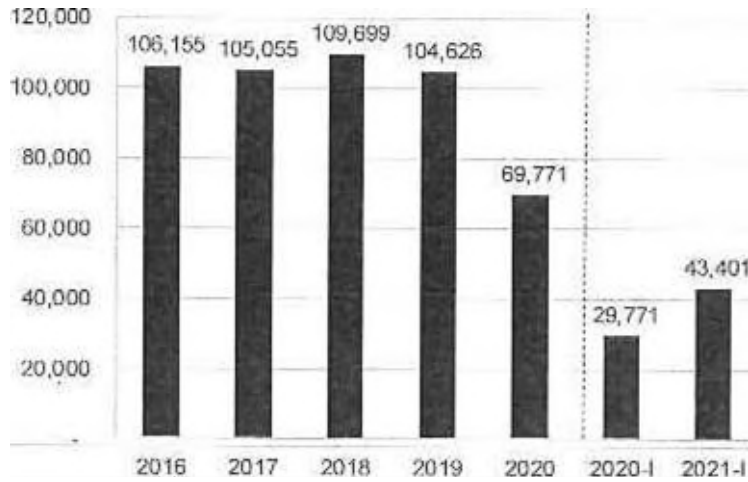






In the final and most recent part of the analysis period (first half of 2021), the volume of RPN

Figure N "15  
Evolution of production of RPN products (thousands of units)



VaR%. Aqum		Intermediate VaR%			VaR% final part	
20/16	17/16	18/17	19/18	20/19	21-V20-I	

production of manufactures increased by 45.8 % compared with the same half of the previous year.

$\frac{43,401 - 29,771}{29,771} = 34.3\%$      $\frac{105,055 - 106,155}{106,155} = -1.0\%$      $\frac{109,699 - 105,055}{105,055} = 4.4\%$      $\frac{104,626 - 109,699}{109,699} = -4.6\%$      $\frac{69,771 - 104,626}{104,626} = -33.3\%$      $\frac{43,401 - 29,771}{29,771} = 45.8\%$

Source: PRODUCE (MINISTRY OF PRODUCTION)  
Preparation: ST-CDB/IÑDECOPI

207.

It should be noted that in the second half of 2020, after the resumption of domestic trade activities, the volume of production (40, 000 thousand units) was below (24.8 %) the levels observed in all semesters prior to the implementation of measures to contain COVID 19, ranging from 2016 to 2019 (53 192 thousand half-yearly units on average).

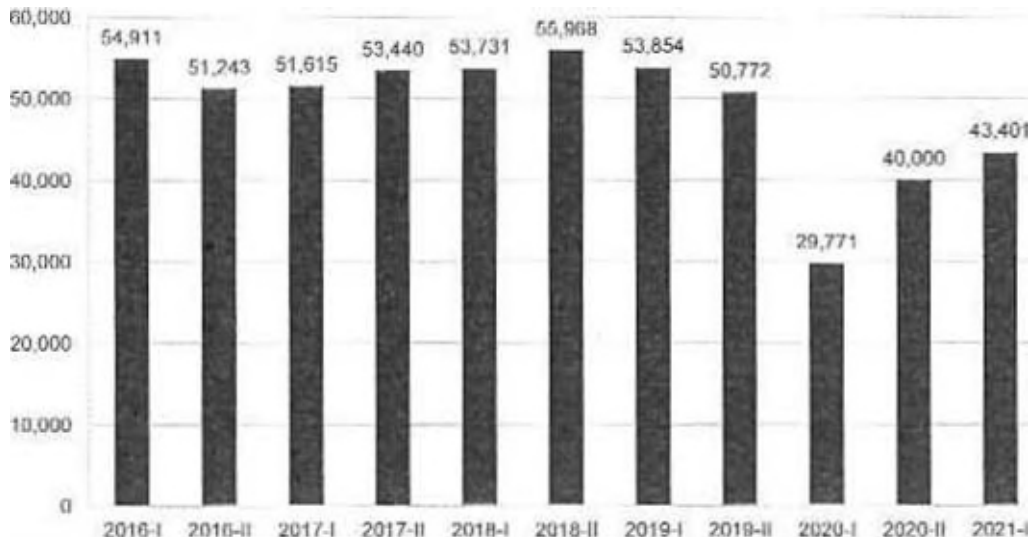
208.

On the other hand, at the end of the analysis period (January — June, 2021), while the level of production of RPN (43,401 thousand units) increased (8.5 %) compared to the previous semester, the level of this indicator was below (12.4 %) the average production level recorded in the previous half years between 2016 and 2020 (49,531 thousand half-yearly average units).



Capacity utilisation installed

Figure N° 16  
Six-monthly trend in the production of RPN products (thousands of units)



Source: PRODUCE (MINISTRY OF PRODUCTION)  
Elaboración: IINDECOPI

During the analysis period (January 2016 — June 2021), the use of installed capacity of RPN evolved in line with the performance of the output indicator, with fluctuating performance.

Between 2016 and 2020, RPN's capacity utilisation decreased cumulatively by 24.2 percentage points. However, when reviewing intermediate trends over the period indicated above, there is a differentiated pattern, with the following findings:

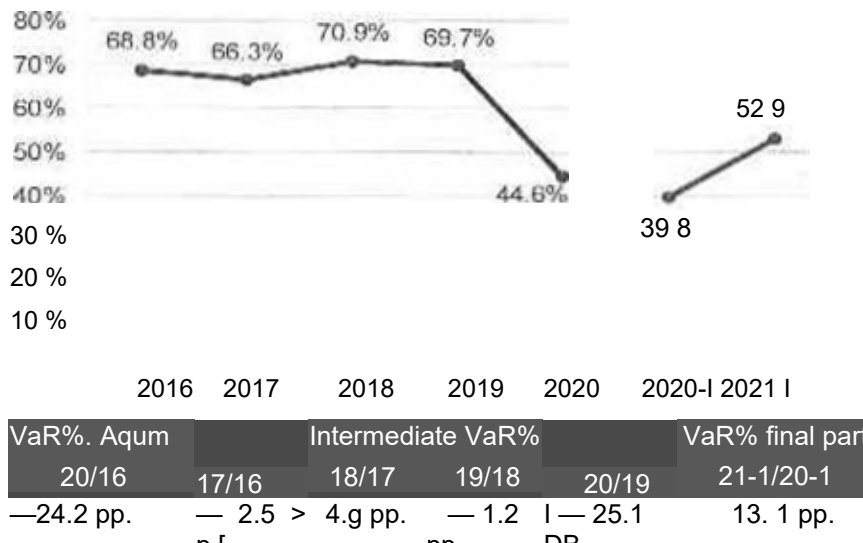
- 210. Between 2016 and 2017, the capacity utilisation of RPN decreased by 2.5 percentage points. Between 2017 and 2018, the capacity utilisation of RPN increased by 4.6 percentage points. Between 2019 and 2018, the capacity utilisation of RPN decreased by 1.2 percentage points. Between 2019 and 2020, the capacity utilisation of RPN showed a significant decrease of 25.1 percentage points.

211. In the final and most recent part of the analysis period (first half of 2021), RPN capacity utilisation increased by 13.1 percentage points compared with the similar half of the previous year, in line with the significant increase in production (45.8 %).





Figure Nº17  
Utilisation of installed capacity of RPN (in percentages)



Source: DCRP  
ST-CDU/INDI-COPI

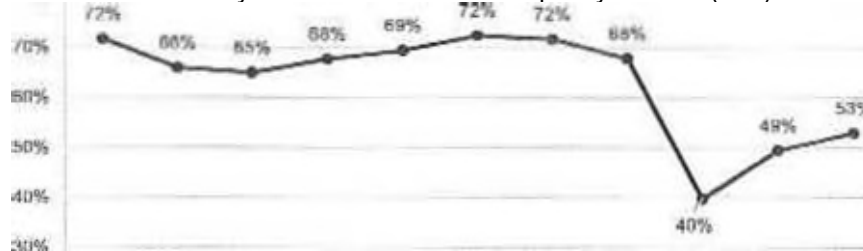
212. j It should be noted that, in the second half of 2020, after the resumption of trade activities at national level, the -/installed capacity utilisation rate of RPN (49 %) was below (19.5 percentage points) the levels observed in all the half years preceding the implementation of measures to contain COVID 19. between 2016 and 2019 (68.9 % half-yearly average).

And

213.

For its part, at the end of the analysis period (January — June 2021), while the level of the installed capacity utilisation rate of RPN (53 %) increased by 3.5 percentage points compared to the previous semester, the level of this indicator was below (11.1 percentage points) the average level recorded in the previous half years between 2016 and 2020 (64.1 % half-yearly average).

Figure 18  
Six-monthly utilisation of installed capacity of RPN (in%)



20 %

10 %

3 %

2010I 2016-H 2011/I 2017-11 2018. 2018-1 2019 1 2019II 2020-I 2020II 2021-I

Strong: BCRP  
Drafting ST CDB/INDECOPI



C. Employment

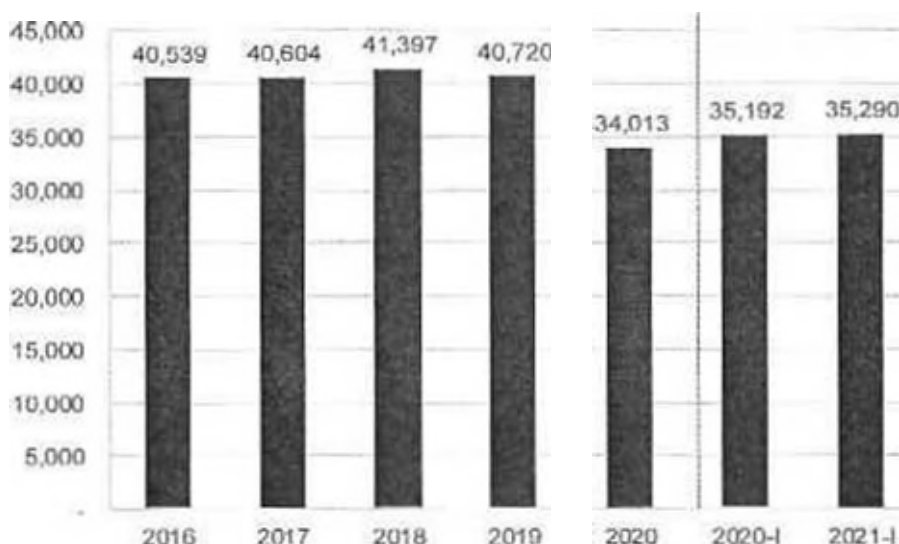
214 DN employment performance during the analysis period (January 2016 — June 2021) fluctuated, in line with the evolution of the output indicator.

215. Indeed, between 2016 and 2020, the employment rate of RPN recorded a cumulative reduction of 16.1 %. However, the review of intermediate trends over the above period shows a differentiated pattern, with the following findings:

Between 2016 and 2017, the employment level of NRP remained broadly stable (increase of 0.2 %).

Between 2017 and 2018, the employment level of NRP increased by 2.0 %. Between 2018 and 2019, the employment level of NRP decreased by 1.6 %. Between 2019 and 2020, the employment level of NRP decreased by 16.5 %, with the lowest level recorded during the analysis period in the last year.

Figure No 19 Evolution of employment level (in number of employees)



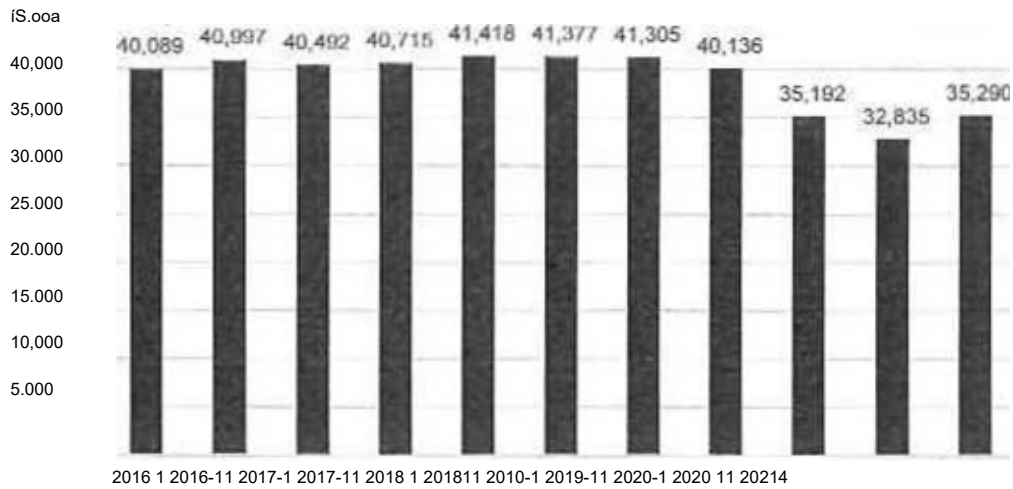
VaR%. Aqum		Average VaR%		VaR% final part	
20/16	17/16	18/17	19/18	20/19	21-1/20-1
-16.1 %	0.2 %	2.0 %	-1.6 %	-16.5 %	0.3 %

For Tuento: MTPF.  
Preparation: ST-CDB/INDECOP

216. For its part, at the end of the analysis period (January — June 2021), while the employment level of the NRP (35,290 average number of employees) remained broadly stable (0.3 % increase) compared to the previous semester, the level of this indicator was below (13.5 %) the average employment level recorded in each year of the period 2016-2019 (40,815 average number of employees), prior to the implementation of the measures to contain COVID 19.



Figure 20  
Six-monthly evolution of the level of employment  
(in number of employees)



MTPC source  
FLaboradon: ST CDB/INDECOPI

### Remuneration

During the analysis period (January 2016 — June 2021), the level of remuneration of RPN experienced increasing behaviour.

218. Between 2016 and 2020, the level of remuneration for RPN increased cumulatively by 5.5 %, which coincided with increases in the minimum remuneration (24.0 %) decreed over the abovementioned period 65. When reviewing intermediate trends over the period indicated above, the following can be seen:

- Between 2016 and 2017, the level of remuneration for RPN increased by 3.2 %.
- Between 2017 and 2018, the level of remuneration for RPN increased by 4.9 %.
- Between 2018 and 2019, the level of remuneration for RPN increased by 1.6 %.
- Between 2019 and 2020, the remuneration level of RPN decreased by 4.1 %.

219 In the final and most recent part of the analysis period (first half of 2021), the level of remuneration for RPN increased by 7.7 % compared with the similar half of the previous year.

OJ According to the information published by the Central Reserve Manco de! Peru, during the analysis period (January 2016-2021 jumo), there were two (2) consecutive increments of the Minimum Vital Remuneration (VMR). By Supreme Decree N \* 005-2016-TR. published in the official journal 'El Peruano' ol 31 March 2016. an increase in the RMV was approved for workers subject to the private-sector employment scheme, which went from S/. /50 to 3/850. and was effective from 1 May 2016. Then, by Supreme Decree N' 004-2018-TR, published in the official journal 'El Peruano' on 22 March 2018, an additional increase to the RMV was approved and moved from S/. 850 to S/930, effective from 1 April 2018  
In this regard, cfr.. <https://ostadisticas.bcrp.gob.pe/estadisticas/sorles/mensuales/> (last viewed: 19 do iivlomlire of 2021)

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218.

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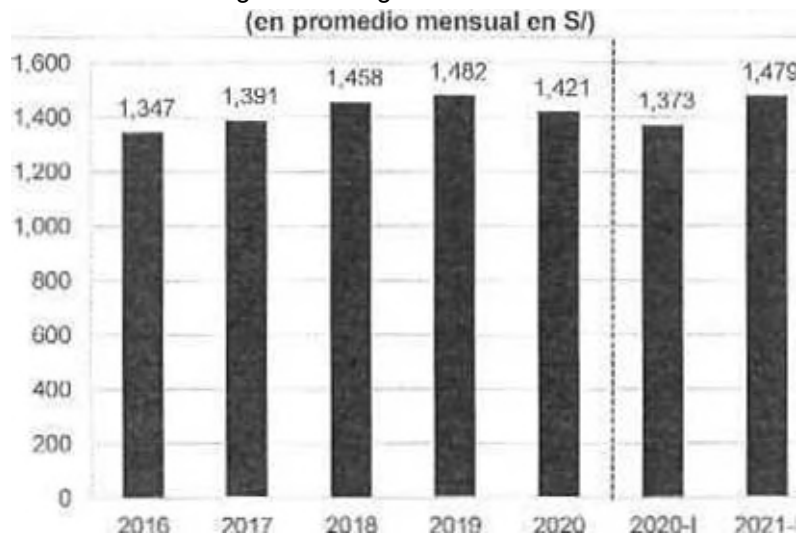
l

24

[Signature]



Evolution of the weighted average level of remuneration<sup>14</sup>



VaR% acum	Average VaR%				
20/16	Final 17/16	18/17	19/18	20/19	21-1/20-1

and the number of workers registered for the same occupational category employed in the production sector (executive, worker, employee and 'other \*).

Source: MTPE  
Production SI-CDBIINDECOP



c. Domestic sales

220.

In order to assess the performance of RPN's internal sales of manufactures, this indicator will be estimated in this report using the data provided by PRODUCE in relation to the volume of the national production of RPN production during the period indicated above, less an amount for existing productions, 66 and the volume of exports made by RPN during the period January 2016 and June 2021.

221.

As can be seen from Figure 22 during the analysis period (January 2016 — June 2021), the volume of internal sales of RPN manufactures showed a declining trend, which increased in the final and most recent part of the analysis period (first half of 2021).

222. Between 2016 and 2020, the volume of domestic sales decreased cumulatively by 56.4 %. When reviewing intermediate trends over the period indicated above, the following can be seen:

Between 2016 and 2017, the volume of RPN's domestic sales decreased by 6.4 %.

Between 2017 and 2018, the volume of RPN's domestic sales dropped by 23.7 %.

For the purpose of this report, the volume of stocks of made-up products used to approximate the internal sales indicator < i < \* the PNR was calculated on the basis of the data obtained from the annual survey published by the INEI for the paibcipsdon (in%) of vaxk of stocks of finished products in the value of production of the clothing

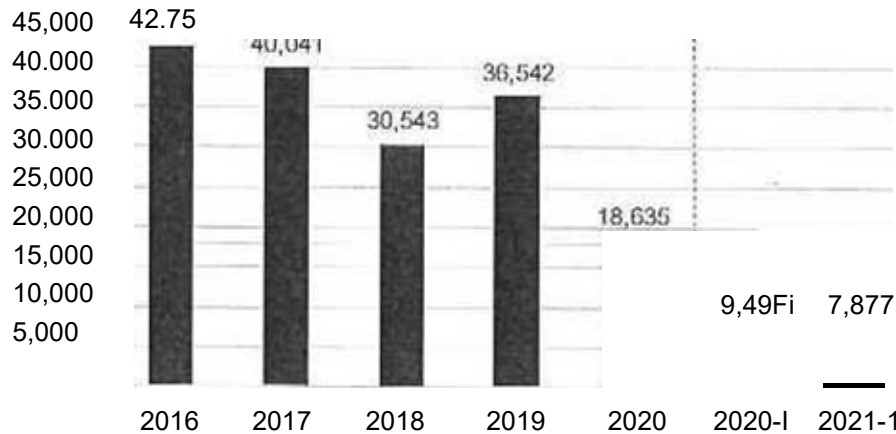


and textile works industries (CIIJ 1410 and 1430) and between 2016 201 and 2018.

Between 2019 and 2020, the volume of RPN's domestic sales decreased by 49 %, with the latter year at the lowest level recorded during the analysis period.

223. In the final and most recent part of the analysis period (first half of 2021), the volume of RPN's domestic sales contracted by 17 % compared with the similar half of the previous year.

Figure No 22 Evolution of the volume of RPN's domestic sales (in thousands of units)



VaR%. Aquim		Intermediate VaR%		VaR% final part	
20/16	17/16	18/17	19/18	20/19	21-1/20-1
— 56.4 %	6.4 %	—23.7 %	19.6	— 49.0 %	— 17.0 %

Source: PRODUCE, INEI, VERIIRADF  
Preparation SI-CoR/INDECOPI

224. It should be noted that in the second half of 2020, despite the resumption of domestic trading activities, the level of domestic sales by RPN (9,139 thousand units) was below (51.2 %) the levels observed in all half years prior to the implementation of measures to contain COVID 19, ranging from 2016 to 2019 (18,735 thousand half-yearly average units).

- 22.5. In addition, at the end of the analysis period (January-June 2021), the level of RPN's domestic sales (7,877 thousand tonnes) continued its declining trend, decreasing (13.8 %) compared to the previous half year, thus the level of this indicator was below (53.3 %) the levels recorded in all previous half years between 2016 and 2020 (16,852 thousand half-yearly average tonnes)<sup>37</sup>.

In respect of this, the decreasing trend of the sales indicator was accentuated after the period of analysis considered in the safeguard investigation which ended in April 2021 (January 2016 June 2020), we took one of the last two semesters of the period of analysis of the present case (July December 2020 and January — June 2021), the lowest levels of domestic sales were recorded compared to all semesters covered in the period considered.

Figure 23

Six-monthly evolution of the volume of RPN's domestic sales (in thousands of units)

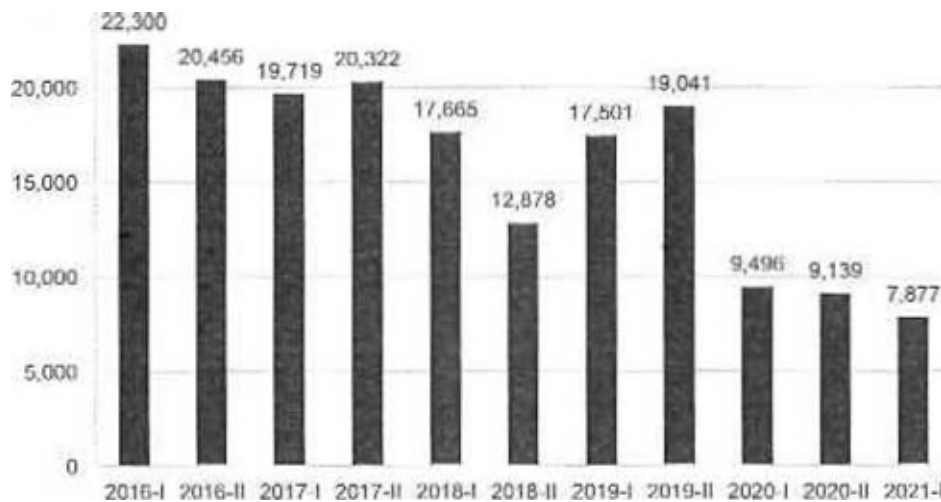
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of the Council of Ministers

INDECOP



Source: IT PRODUCES. INH. VERITRADE  
— A Preparation: SI — CIJH/INDECOP

#### f./Market participation

22b. This section of the Report will assess the information available at this initial stage of the procedure with regard to the participation of RPN in the internal market for production during the period January 2016 — June 2021.

227. In order to gain a better picture of the evolution of the participation in the domestic market of RPN during the analysis period (January 2016 — June 2021), the information available at this initial stage of the procedure will also be taken into account with regard to the evolution of wholesale prices of domestically marketed products during the period indicated above, as well as the price of imports of ready-made goods.

228. As can be seen from Figure 24, the market share of RPN in production showed a decreasing trend during the analysis period, in a context in which the size of the market was untempered by 33.6 % between 2016 and 2020.

229. Between 2016 and 2020, the market share of RPN in production showed a cumulative reduction of 11.7 percentage points. When reviewing intermediate trends over the period indicated above, the following can be seen:

Between 2016 and 2017, the market share of RPN decreased by 1.3 percentage points.

Between 2017 and 2018, RPN's market share decreased by 5.9 percentage points.

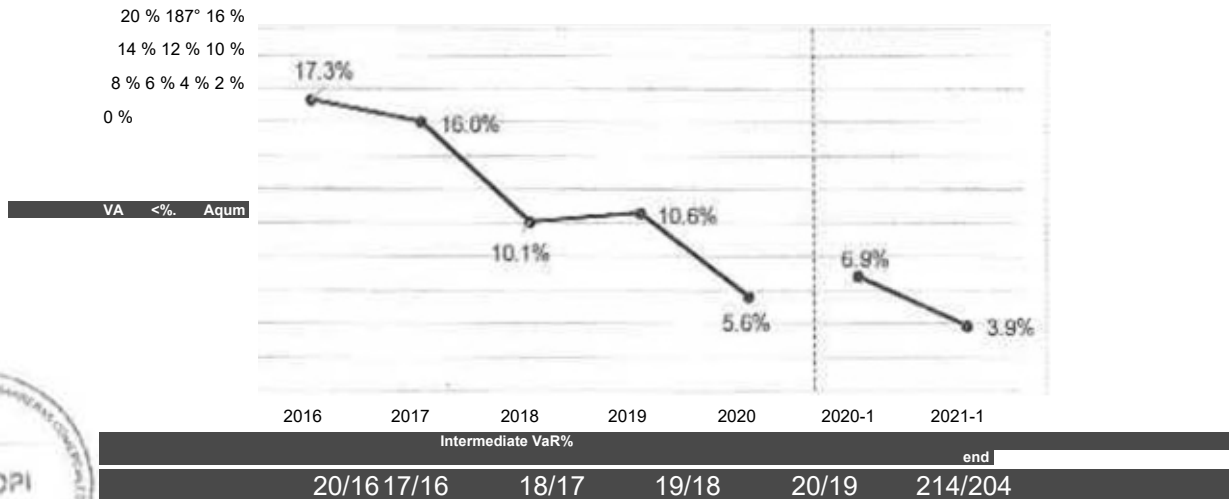
Between 2019 and 2018, the market share of RPN remained almost stable (a slight increase of 0.5 percentage points). Between 2019 and 2020, the market share of RPN decreased by 4.9 percentage points.





230 In the final and most recent part of the analysis period (first half of 2021), despite the revival of economic activities after COVID 19, the market share of RPN decreased by 2.9 percentage points compared with the same half of the previous year.

Figure N° 24 Evolution of the market share of RPN (in percentages)



Source: IT PRODUCES, INEI. MR VERITRADC  
Preparation: ST-COB/INIJECOY1

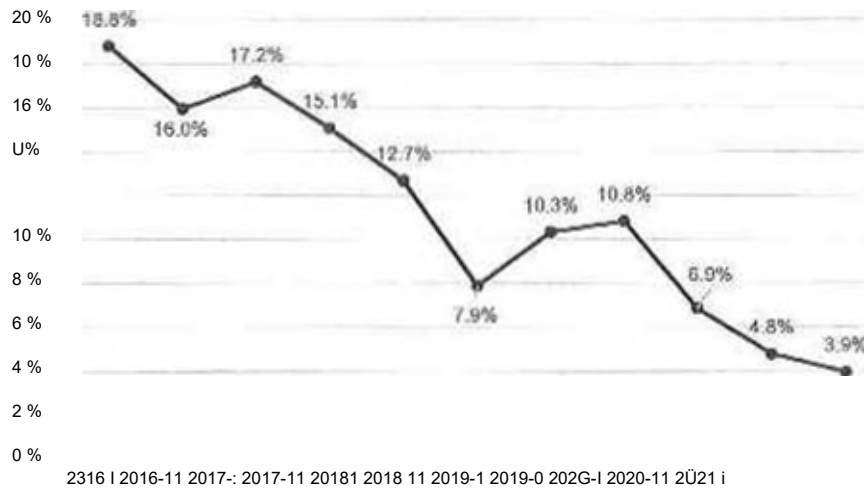
231. It should be noted that in the second half of 2020, despite the re-launch of domestic trading activities, the market share of RPN (4.8 %) was below (on average 8.8 percentage points) the levels observed in all semesters prior to the implementation of measures to contain COVID 19, ranging from 2016 to 2019 (13.6 %).

232. In addition, at the end of the analysis period (January June 2021), the market share of RPN (3.9 %) continued its declining trend, decreasing by 0.8 percentage points compared with the previous semester, and the level of this indicator was below (8.1 percentage points) the levels recorded in all previous half years between 2016 and 2020 (12 % half-yearly average)<sup>68</sup>.

In this respect, the declining trend of the market participation indicator was accentuated after the period of analysis considered (January 2016 June 2020) in the Safeguards investigation which ended in April 2021 as the last two semesters of the analysis hub of this case (July December 2020 and January — June 2021) recorded the lowest levels of market participation compared to all semesters covering the analysis period.



Figure No 25 Semi-annual developments in the market share of RPN (in percentages)



Source PROiXJCE, INC! Veritrade Habaradon: ST-CDB'INDECOPI

233. At this point, it is relevant to note that the sustained reduction in the market share of RPN during the period January 2016 to June 2021 occurred in a context in which unforeseen circumstances occurred which<sup>1</sup> led to a significant increase in imports during the above/indicated period, directly affecting the conditions under which the domestic product and the imported product compete on the Peruvian market for manufactures.

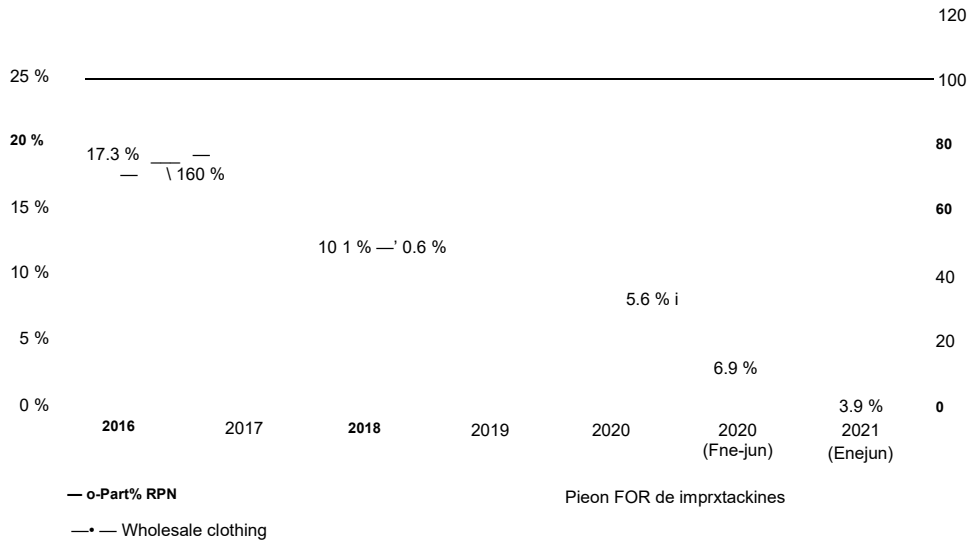
234. Indeed, as can be seen from Figure N "26, between 2016 and 2020, when the size of the domestic market for making-up increased by 33.6 %, the market share of RPN decreased by 11.7 percentage points (from 17.3 % in 2016 to 5.6 % in 2020), in a context where the FOR price of imports of made-up goods decreased (33.6 %) compared to the relatively stable behaviour of the wholesale clothing price (a slight increase of 0.8 %).

235. In the final and most recent part of the analysis period (first half of 2021), when the size of the domestic market increased by 44.3 % compared to the similar half of 2020, the market share of RPN decreased by 2.9 percentage points, in a context where the imported product became cheaper on the domestic market (a 23.9 % reduction in the FOR price of imports of made-up goods).



INDECOPI

Figure 26  
Market share of RPN, wholesale price of manufactures and price FOB of imports of made-up products



Concept	2016	2017	2018	2019	2020	2020 (Jan-Jun)	2021 (Jan-Jun)
Recio HJfSde iiprxtaciones	100.0	103.2	92.7	87.0	06.4	70.9	54.0
Spray to PTX the largest wearing apparel	100.0	1 (XJ.O	99.9	100.7	100.FI	100.9	100.7
Internal market (unit routs)	246.646	249,695	302.635	345,435	329,83?	138,430	199.712

Source: INEI VERIIRADF. Produces: ST-CDB/INDECOPI

(in percentages and indices (100: 2016))

g.

Utility level generated by RPN<sup>69</sup>

236.

During the analysis period (January 2016 — December 2020), the utility generated by RPN experienced fluctuating behaviour.

237.

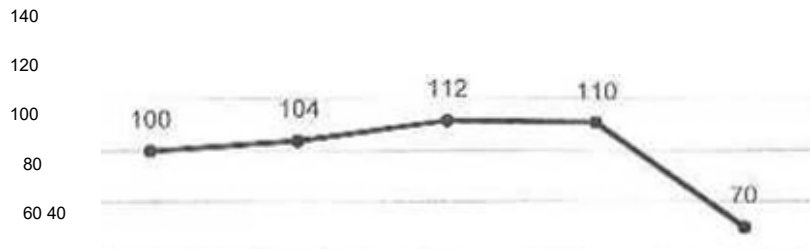
Indeed, between 2016 and 2020, the utility generated by RPN showed a cumulative reduction of 29.8 %. When reviewing intermediate trends over the period indicated above, the following can be seen:

- Between 2016 and 2017, the utility generated by RPN increased by 4 %. Between 2017 and 2018, the utility generated by RPN increased by 7.7 %.
- Between 2018 and 2019, the utility generated by RPN showed a reduction of 1.3 %.
- Between 2019 and 2020, the remuneration level of RPN showed a reduction of 36.4 %.

In this report, in order to estimate the level of utility generated by RPN, the information provided by or UNA I concerning the electoral value (cu sols) of the utilities corresponding to one hundred and two (102) national producers of manufactures reported to the monthly industrial statistical survey of PRODUCE, which is available only for the period 2016-2020, has been used. For this reason, the estimation of the utility level generated by RPN does not cover the last half of the analysis period (in June 2021). In this regard, Annex N° 2 to this report shows the names of the hundred and two (102) undertakings mentioned above.



Figure 27  
Utility level generated by RPN  
(indicate (100: 2016))



Conclusions on the preliminary determination of serious injury to RPN

VaR%. Aquim		Intermediate VaR%		
20/16	17/16	18/17	19/18	20/19
- 29.8 %	4.0 %	7.7 %	+ 1.3 %	- 36.4 %

Huente: SUNAT  
Production of ST-CDD/INDECOP



With regard to damage to RPN, on the basis of the information available in relation to factors of an objective and quantifiable nature related to the situation of RPN and which can be assessed at this initial stage, it is possible to establish, at this initial stage of the administrative procedure, the existence of prima facie evidence of possible serious injury to the PNR from production due to the significant increase in imports of makings during the period January 2016.

2.39. In particular, it appears that the unfavourable development of the main economic indicators of RPN (sales and market share) increased after the analysis period considered (January 2016 June 2020) in the safeguard investigation concluded in April 2021. this conclusion is based on the following considerations:

- (I) *The rhythm and amount of theaum de Zas Importacionis.* Between 2016 and 2019, the pace of increase in imports of fabrications took place at significant levels, with the growth rates of such imports recorded between 2017 and 2018 and between 2018 and 2019 (29.8 % and 13.5 % respectively) being significantly higher than the growth rate recorded between 2016 and 2017 (2.7 %). While between 2019 and 2020 the volume of imports of made-up goods increased (0.7 %) by less than the increase between 2016 and 2017, this was due to the decrease in imports in the first half of 2020. However, imports of ready-made goods increased in the second half of 2020, following the resumption of domestic trade activities, with a volume (182,263 thousand units) reported in that half year, which is greater than that observed in all semesters.



from 2016 to 2019 (i.e. prior to the implementation of measures to contain COVID 19).

In the final and most recent part of the analysis period (January-June 2021), the volume of imports of ready-made goods increased by 48.8 % compared to the same period in 2020, reaching the highest level recorded for all semesters covered by the analysis period, demonstrating a sustained growth in imports of making-up products after the analysis period considered in the investigation by safeguards to imports of making-up products which ended in April 2021.

Meanwhile, between 2016 and 2020, the volume of imports of fabrications in terms of domestic production increased on average by 63.4 percentage points per year, which is explained by the growth of imports during the period mentioned above (at an average annual rate of 26,777 thousand units) and the reduction in domestic production (at a rate of 9,096 thousand units per year) over the period in question. In the final and most recent part of the analysis period (January — June 2021), imports of manufactures in relative terms of domestic production grew by 8.9 percentage points, as the volume of imported products increased (62,901 thousand units) by a larger magnitude than the volume of domestic products (13,630 thousand units).

Uncomfortable partitioning of market share absorbed by imports in increase: During the analysis period (January 2016-June 2021), the market share of imports of ready-made goods showed an increasing trend, leading to a gradual shift of the domestic product on the domestic market. Between 2016 and 2020, when the FOB price of imports of ready-made goods fell by 33.6 %, the market share of those imports increased by 13.4 percentage points. At the end of the analysis period (January — June 2021), the drop in the FOB price of imports of making-up products allowed these imports to absorb a higher share of the domestic market (2.9 percentage points) compared to the similar period in 2020.

Changes in the level of sales: During the analysis period (January 2016 — June 2021), the estimated volume of domestic sales of RPN manufactures experienced a declining trend, which increased in the final and most recent part of that period (January — June 2021). Indeed, between 2016 and 2020, that indicator recorded a cumulative reduction of 56.4 %; While in the final and most recent parts of the analysis period (January — June 2021), it contracted by 17 % compared with the same half of the previous year.

The decreasing trend of the sales indicator increased after the period of analysis considered in the safeguard investigation which ended in April 2021 (January 2016 — June 2020), as for the last two semesters of the analysis period of the present case (July — December 2020 and January — June 2021) the lowest levels of domestic sales were recorded compared to all semesters covered in the analysis period. ASI, at the end of the analysis period (January — June 2021),



(ii)

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(iii)

the level of RPN's domestic sales (7,877 thousand tonnes) continued its declining trend, decreasing (13.8 %) compared to the previous half year, so that the level of this indicator was below (53.3 %) the average level of all previous six-month periods between 2016 and 2020 (16,852 thousand half-yearly average tonnes).

- (IV) Changes in the commercial involvement of ACI: The market share of RPN experienced a decreasing trend during the period January 2016 — June 2021. Indeed, between 2016 and 2020, when the size of the domestic market for making-up increased by 33.6 %, RPN's market share fell by 11.7 percentage points, in a context in which the FOB price of imports of ready-made goods fell by 33.6 %.

The declining trend of the market participation indicator was accentuated after the period of analysis considered in the safeguard investigation which ended in April 2021 (January 2016 — June 2020), as the lowest levels of market participation were recorded in the last two semesters of the analysis period of the present case (July December 2020 and January — June 2021) compared to all semesters covered by the analysis period. Thus, in the final and most recent part of the analysis period (first half of 2021), when the size of the domestic market increased by 44.3 % compared to the similar half of 2020, the market share of RPN decreased by 2.9 percentage points, in a context where the imported product showed a 23.9 % reduction in its FOB import price.

Cambitions in the level of its utility generated by RPN: The utility margin obtained by RPN on its production sales showed a cumulative reduction of 29.8 % between 2016 and 2020. analysis of intermediate trends shows that between 2016 and 2018, utilities increased by 12 %; However, between 2018 and 2020, utilities decreased by 37.2 %.

During the analysis period (January 2016 June, 2.021), in a context of a significant increase in the volume of imports made, the production of RPN decreased by 34.3 % tonnes in cumulative terms. the review of intermediate trends over the period indicated above shows a differentiated behaviour. Meanwhile, in the final and most recent part of the analysis period (first half of 2021), although the level of production of RPN (43,401 thousand units) increased (8.5 %) compared to the previous semester, the level of this indicator was below (12.4 %) the average production level of previous semesters between 2016 and 2020.

(vii) During the analysis period (January 2016 — June 2021), the use of RPN installed capacity evolved in line with the performance of the output indicator, showing fluctuating behaviour during most of the period (2016-2020). At the end of the analysis period (January — June 2021), while the level of the installed capacity utilisation rate of RPN (53 %) increased by 3.5 percentage points compared to the previous semester, the level of this indicator was below (11.1 percentage points) the average level recorded in the previous half years between 2016 and 2020 (64.1 % half-yearly average).



(v)

(vi)



- (viii) *Changes in employment:* During the analysis period (January 2016 — June 2021), the employment indicator of the NRP showed a decrease of 16.1 % on a cumulative basis. When reviewing intermediate trends over the period indicated above, there is a fluctuating pattern, in line with the evolution of the output indicator. At the end of the analysis period (January — June 2021), while the employment level of the NRP (35,290 average number of employees) remained broadly stable (0.3 % increase) compared to the previous semester, the level of this indicator was below (13.5 %) the average employment level recorded in each year of the period 2016-2019 (40,815 number of average workers), prior to the implementation of the measures to contain COVID 19.
- (ix) *Change in remunerations:* The level of remuneration of RPN fluctuated during the analysis period (January 2016 — June 2021). Thus, between 2016 and 2020, that indicator increased cumulatively by 5.5 %, which coincided with increases in the minimum remuneration (24.0 %) which were decreed over the period referred to above. In addition, in the final and most recent parts of the analysis period (January — June 2021), the level of RPN remuneration increased by 7.7 % compared with the same half of the previous year.

I 24 © In addition to the analysis of the factors listed in Article 4.2 (a) of the Safeguards Agreement for the determination of RPN damage, it is appropriate to carry out a review of other factors that are analysed in order to assess the threat of injury to RPN. Thus, in the present case, they will allow us to identify prima facie evidence that the increasing trend of imports of making-up observed during the period considered in this case (January 2016-June 2021) will continue in the near future.

#### D.7. Other factors of analysis

##### D.7.1. Export capacity of countries supplying the Peruvian production market

241. An analysis of the export capacity of the main countries supplying the Peruvian market can make it possible to assess whether those supplying countries have the capacity to place significant volumes of that product on the local market.
242. In this respect, for the purposes of assessing the export capacity of the main supplier countries to the Peruvian market, the evolution of exports of these products to the world will be analysed using the subheadings detailed in Annex N “1 to this Report, during the period 2016-2021 (January — June). In particular, data on export capacity and stock levels will be assessed in monetary terms.

- *Exports of production worldwide*

243. In the period 2016-2020, the value of total world production exports (classified under the subheadings detailed in Annex 1 to this report) decreased cumulatively by 4.2 %, in the context of

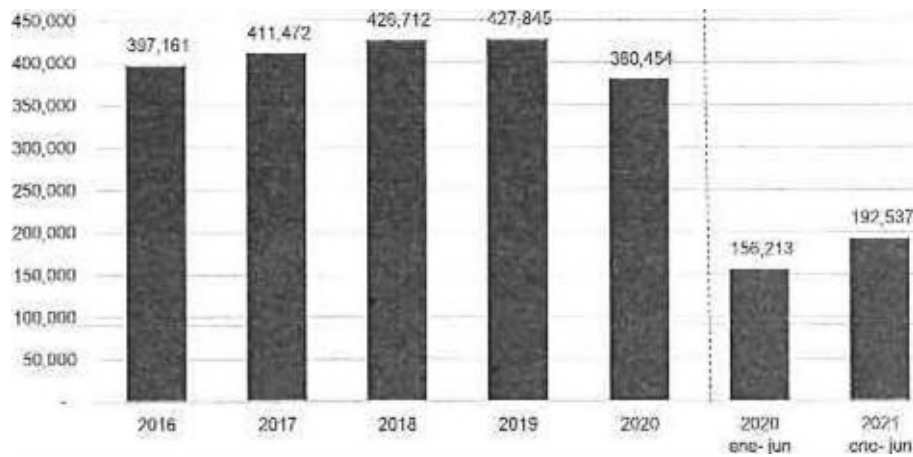


measures taken by different countries of destination for exports of fabrications to contain the rise of COVID-19, which led to a contraction in global economic activity in 2020.

244. On the other hand, in the final and most recent part of the analysis period (January — July 2021), the value of total world production exports increased by 23.3 % compared with the similar half of 2.020.

As shown in Table N "4, between 2016 and 2021 (January June). China and Bangladesh positioned

Figure 28 World production exports (US \$million)



ruon: TRADEMAP  
Preparation: ST CDB/INDECOPI

themselves as the world's largest manufacturers' exporters, concentrating an average cumulative share of world exports of 40.6 %<sup>70</sup>.

It should be noted that between 2016 and 2021 (January — June), China and Bangladesh were the main suppliers to the Peruvian market for manufactures, representing more than 86.5 % of the total volume imported in that period.



246.

According to the information contained in Table N "4. les six (6) pnnr.ipales countries exporting products according to their share in the world exported made produce during the period January 2016 June 2021. they were China (32.7 %), Bangladesh (7 9 %). Vietnam (5.9 %), Germany (4.7 %), Italy (4.6 %) and India (4 1 %).

Table 4  
World production exports





Exporters	2016	2017	2018	2019	2020	2021 (Jan-Jun)	Part. %	VaR% acum 20/16
Main exporters to Peru	230,534	233,051	237,888	234,565	210,728	114,962	50.4 %	- 8.6 %
China	141,513	139,699	178,515	130,703	119,073	02,542	32.7 %	- 15.9 %
—/laofitotesft	28,479	30,338	33,953	35,344	31,266	18,351	7.9 %	9.87°
India	18,207	18,551	16,943	17,495	13,410	8,031	4.1 %	- 28.3 %
— Colombia	437	443	471	417	337	111	0.1 %	- 22.8 %
Pakistan	7,445	7,935	6,425	8,737	8,527	5,242	2.1 %	14.5 %
— Turkey	14,402	14,245	14,591	(15,3) 7	14,197	8,369	3.6 %	1.4 %
— v/ethriun	20,056	21,740	24,930	26,418	23,970	14,311	5.9 %	19.3 %
Germany	14,929	18,039	20,898	21,265	20,055	10,613	4.7 %	34.3 %
Italy	17,260	18,351	70,035	20,471	17,083	9,432	4.6 %	- 1.0 %
Espagne	11,080	12,401	12,754	12,827	10,777	8,711	2.9 %	- 7.3 %
Estados Unidos	7,087	7,901	9,415	10,086	10,148	6,179	2.3 %	43.3 %
India	9,236	9,796	10,853	10,837	9,243	5,242	2.5 %	0.1 %
Potente	4,515	4,746	6,233	6,424	7,905	5,101	1.6 %	75.1 %
3 but United Kingdom	7,667	7,163	7,577	7,549	6,857	2,050	1.7 %	- 3.0 %
Remainder	95,450	100,016	101,114	103,822	88,183	32,698	23.3 %	- 7.6 %
Cost	397,161	411,472	426,712	427,845	380,454	192,537	100.0 %	- 4.2 %

Source: TRADCMAP  
Preparation: CD8/INDECOPI

To sum up, between 2016 and 2020 (January — June), the main supplier countries of the Peruvian market (China and Bangladesh) recorded a large export capacity and became the world's leading exporters of the product.

*Evolution of exports of made-up products originating from the main suppliers on the Peruvian market, according to the main destination*

248. This section of the Report will analyse the evolution of exports of manufactures made by the main suppliers in the Peruvian market (China and Bangladesh) to each of their main export destinations in the world, between January 2016 and June 2021.
249. During the period 2016•• 2020, the total value of exports of manufactures originating in China and Bangladesh fell by 11.8 %, in the context of measures taken by different countries of destination for exports made to contain the rise of COVID-19, which led to a contraction in global economic activity in 2020. On the other hand, in the final and most recent part of the analysis period (January — June 2021), the total value of exports of manufactures originating in China and Bangladesh increased by 32.5 % compared to the same half of 2020.
250. In particular, with regard to shipments to South America of fabrications originating in China and Bangladesh, it appears that exports to their main destinations decreased during the period 2016• 2020. However, in the final and most recent part of the analysis period (January — June 2021), the total value of Chinese exports to South America increased by 24.1 %, mainly explained by increases in Chile (46.9 %), Peru (20.7 %), Colombia (36.1 %) and Uruguay (35.7 %).



Table 5  
Exports of made-up products originating in China and Bangladesh,  
according to country of  
( US \$million)

País de destino	2016	2017	2018	2019	2020	2020 (ene-jun)	2021 (ene-jun)	Part. %	Var % acum 2016	Var. % 2021-I/2020-I
Estados Unidos de América	31,862	31,007	33,559	32,021	28,165	11,678	10,728	20.0%	-11.6%	43.2%
Japón	14,371	14,335	14,900	14,020	12,298	5,891	6,303	8.8%	-14.4%	8.0%
Alemania	8,731	8,981	9,773	9,118	8,910	4,368	5,504	5.9%	2.1%	26.1%
Reino Unido	10,747	9,613	7,599	7,210	8,001	2,853	3,660	5.4%	-25.6%	35.3%
Francia	4,867	4,882	5,049	5,002	4,874	2,114	3,045	3.2%	0.2%	44.0%
España	4,641	4,580	4,974	5,009	4,350	2,003	2,280	3.0%	-8.3%	13.8%
República de Corea	4,501	4,786	4,435	4,830	4,757	1,894	2,640	3.0%	3.6%	39.4%
América del Sur	4,313	5,607	5,523	4,710	3,260	1,512	1,876	2.9%	-24.4%	24.1%
- Chile	2,240	2,681	2,614	2,127	1,488	655	903	1.4%	-33.0%	46.9%
- Brasil	900	1,400	1,309	1,192	666	372	350	0.7%	-23.0%	-5.9%
- Perú	329	329	441	488	401	187	225	0.3%	22.1%	20.7%
- Colombia	320	428	449	418	266	103	140	0.2%	-10.7%	36.1%
- Argentina	231	203	267	157	145	80	61	0.1%	-37.2%	-24.0%
- Uruguay	162	196	210	157	125	51	69	0.1%	-18.1%	35.7%
- Venezuela	67	74	33	75	55	20	28	0.0%	-17.0%	0.7%
- Ecuador	31	52	68	67	52	24	22	0.0%	69.5%	-9.0%
- Suriname	11	14	16	16	15	4	7	0.0%	32.3%	60.7%
- Guyana	19	24	18	17	14	4	10	0.0%	-20.7%	160.4%
- Paraguay	11	13	14	12	8	4	3	0.0%	-27.7%	-20.5%
- Bolivia	3	3	5	3	5	3	2	0.0%	80.1%	-28.4%
Resto	78,915	78,147	78,894	70,059	68,742	27,213	36,588	48.0%	-12.3%	34.5%
Total	163,037	162,836	164,705	158,085	143,856	59,525	78,892	100.0%	-11.6%	32.5%

Source: TRADEMAP  
Laboration: S1-CDIWNDECOP1

- p. 7. Tariff and non-tariff restrictions on the entry of made-up products into the countries of the region
- f. In Oslo in the report, the tariff and non-tariff restrictions applied to the accession of the main suppliers to the Peruvian market (China and Bangladesh) to the main destinations in South America will be analysed during the analysis period (January 2016 — June 2021).
252. In the preceding line, it was indicated that, while between 2016 and 2020, the country's destinations in South America of fabrications originating in China and Bangladesh fell, at the end of the analysis period (January June 2021), these destinations recorded significant increases in shipments of these products compared to the same period in 2020: Chile (46.9 %), Peru (20.7 %), Colombia (36.1 %) and Uruguay (35.7 %).
253. In the light of the above, this section of the report will examine the information available at this stage of the initial assessment, with regard to the tariff and non-tariff restrictions imposed in the countries referred to in the previous paragraph, on the entry of made-up products originating in China and Bangladesh during the period from January 2016 to June 2021.
- 254 As regards tariff restrictions, Table 6 shows that between January 2016 and June 2021 Peru recorded the lowest tariff rate applicable to imports of manufactures (11 %) originating in China and Bangladesh compared to Chile, Colombia and Uruguay.



255. On the other hand, in order to assess the non-tariff restrictions applied in Peru, Chile and Ecuador on the entry of manufactures originating in China and Bangladesh, information is published by the World Bank via *Doing Business 2020*<sup>7</sup> in relation to the *Cross-Border Trade Index*, which compares the time and cost related to compliance with the requirements for submitting documents to various governmental agencies supervising international trade in goods, compliance with customs regulations and compulsory inspections of cargo at the country's border, and to the country's internal cargo.

256. In this regard, Table 6 shows that, according to the above information, Peru has the second best handling of the costs and procedures associated with the logistical process of international trade in goods, compared to the countries of the region mentioned above (Chile, Colombia and Uruguay).

It can be seen from the above that, among the main destinations in South America for production from China and Bangladesh, which recorded the highest growth in imports of such products (Peru, Chile, Colombia and Uruguay), Peru maintains one of the lowest tariff and non-tariff restrictions on the importation of made-up products, which could facilitate the redirection of the flow of goods from China and Bangladesh to the Peruvian market.

257

In this respect, Peru ranks 102 on a puncture de/1, 1 (for an i00 point lual) a global ranking drawn up by the *Doing Business* publication, while Brazil, Colombia and Ecuador are in 108th positions. 133 and 103 of the abovementioned ranking, with punches of 69.9, 62.7 y/1 2, respectively. In this respect, hear: <https://www.doingbusiness.org/rankings> (last viewed: 19 November 2021)



Table 6  
Restrictions (tariff and non-tariff) on the entry of made-up products,

	Tariff of Confectors	Sector specific policies	Trade defence measures at the time of production, etc.	Existence of Free Trade Agreement with China and Bagladesh	Tading Aerees Sordera *
PERU	11 %	Not applicable	NA applies	CtWK > (M excluding Sul dtiorminados) PUI WUS of aonfecclctoS}	102
COLOMBIA	40 %	Not applicable	Not suitable	NO	133
CHILE	25%	NJ apūca	Not applicable	Clear (excluding from CONL eucycvius det'min.adasubpart Klas)	73
URUGUAY	35 %	Not applicable	Not applicable	NO	150

\*The indication of *Trade/Across Borders*, is published by the World Bank in the ranking *Doing Business*, by which it endorses the time and cost associated with the laistic export and import processing of goods Source: WTO, Hanco Global Elaboration ST-CHINDECOPI



### D.7.3. Installed excess capacity in countries supplying the Peruvian market for production

258. This section of the Report will assess the installed overcapacity in the main supplying countries to the Peruvian market for production (China and Bangladesh) during the analysis period (January 2016 — June 2021).

- *China*

259 From the information available at this initial assessment stage, it can be seen that, between 2016 and 2020, Chinese manufacturing production contracted by 37.4 %, whereas the installed capacity utilisation rate of that industry decreased by 34.1 percentage points in the context of measures taken by different countries of destination of Chinese exports of fabrications to contain the COVID-19 advance.

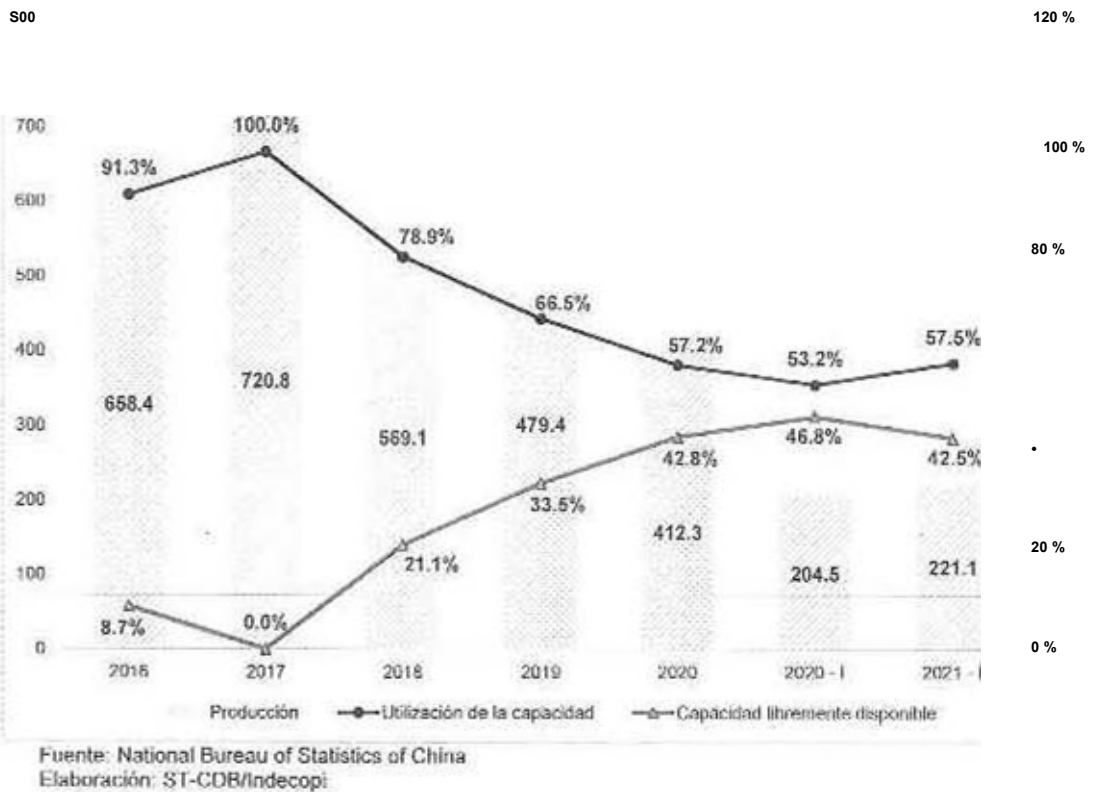
260 In the final and most recent part of the analysis period (January — June 2021), the production and utilisation rate of the installed capacity of the Chinese production industry increased by 8.1 % and 4.3 percentage points respectively, compared with the same half of 2020.

261 Considering the above, the freely disposable capacity for the production of made-up products in the PRC (calculated as the difference between the maximum installed production capacity rate of production and the installed capacity utilisation rate of that product) increased steadily from 2017 onwards, peaking in the first half of 2020 (46.8 %). While during the first half of 2021 the free disposable capacity of the Chinese production industry decreased by 4.3 percentage points compared to the similar half of 2020, this capacity (42.5 %) was positioned at a level higher than the average freely disposable capacity (27.9 %) recorded during the analysis period (January 2016 — June 2021).





Figure 29  
Production, utilisation rate of installed capacity and freely available production capacity in China  
during the period January 2016 — June 2021 (in million metres and percentages)



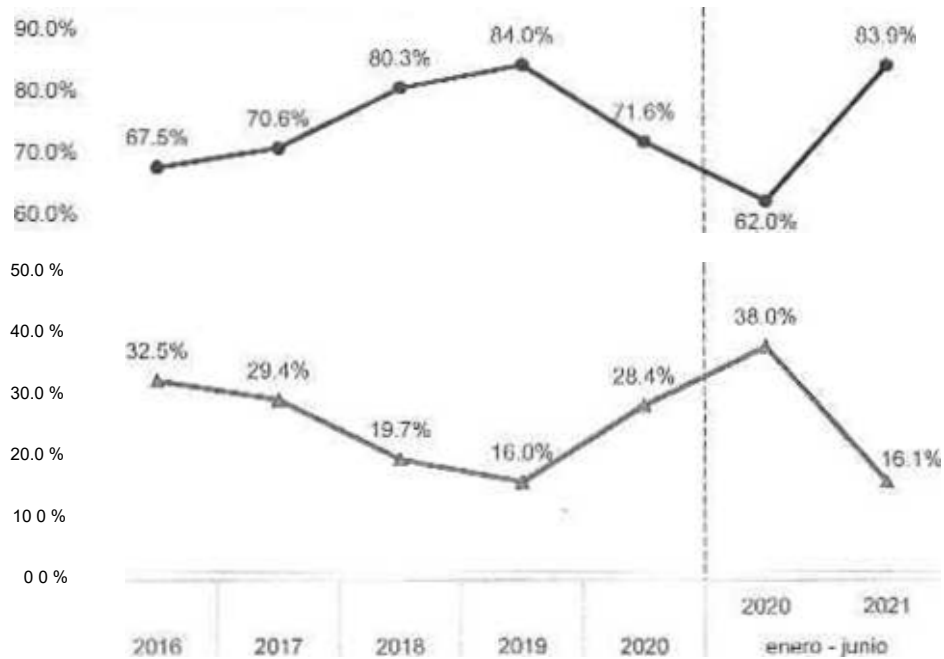
• **Bangladesh**

262. On the basis of the information available at this initial assessment stage, between January 2016 and June 2021, the installed capacity utilisation rate of the Rangla-production industry increased by 16.4 percentage points, reaching its lowest levels between January and June 2020, in the context of measures taken by different countries of destination for bangladesies exports to contain the COVID-19 advance.

263, as a result, the freely available capacity for the production of made-up products in Bangladesh (calculated as the difference between the maximum installed production capacity rate and the installed capacity utilisation rate of that product) peaked between January and June 2020, when the installed excess capacity of the Bangladeshi production industry represented 38.0 % of its production capacity, while between January and June 2021. Bangladesh's freely available capacity was located at a level similar to that recorded in the previous year (2019).



Figure No 30 Use of installed production capacity in Bangladesh for the period January 2016 June 2021 (in percentages)



Capacity utilisation rate of installed capacity — A-Libiquitous disposable capacity

route: ILCI Organisation, United Nations for Industrial Dusrollo.  
Preparation: ST-CDMndeCopi

To sum up, there is prima facie evidence of excess capacity for the production of made-up products in the markets of the two countries of origin from which made goods are mainly exported to Peru (China and Bangladesh), which peaked in the first half of 2020. this could make it easier for exporters from these countries to substantially increase their shipments to Peru in the near future.

Stocks in countries supplying the Peruvian production market

In order to analyse the evolution of stocks recorded during the analysis period (January 2016 June 2021) in the main supplying countries on the Peruvian production market, information is available at this initial assessment stage only from China, which accounted for more than 80 % of imports of made-up products into Peru during the period indicated above.

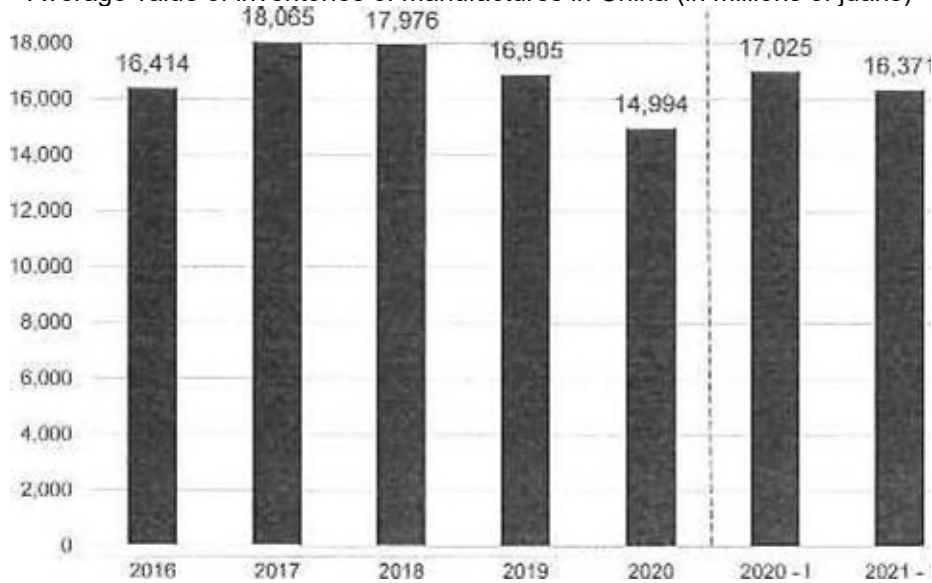
As can be seen from Figure 31, between 2016 and 2020, the level of stocks of the Chinese production industry decreased by 8.7 %. Furthermore, while in the first half of 2021 Chinese production stocks decreased by 3.8 % compared to the similar half of 2020, it appears that China maintained inventories at a level similar to the level of average inventories (16,821) recorded during the analysis period.



D.7.4.  
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266.

Figure N "31  
Average value of inventories of manufactures in China (in millions of juans)



Source: National Bureau of Statistics of China  
Preparation: ST-CDD- 'Indocúpi

In view of the above, at this stage of the initial assessment it is reasonable to infer that the level of stocks of made-up products originating in China (the main supplier in the Peruvian market) during the analysis period (January 2016 June 2021) could lead to such products being redirected to Peru significantly in the near future. This is due to the following elements:

- (i) During the period 2016-2020, exports to Peru of manufactures originating from the main suppliers on the Peruvian market — of which China accounts for more than 50 % of the total value exported — grew at a rate of 22.1 %. while the main countries of destination for exports of Chinese and Bangladeshis made to the region recorded a reduction of 24.4 %. At the end of the analysis period (January — June 2021), exports from China and Bangladesh to Peru increased by 20.7 % compared to the same period in 2020.
- (ii) Peru maintains lower tariff and non-tariff restrictions on international trade in manufactures compared to other destinations in South America (Chile, Colombia and Uruguay).

#### Conclusions on other factors of analysis

In addition to the above evidence supporting the existence of prima facie evidence of possible serious injury to RPN, other additional factors, provided for in Article 4 of the Agreement on Safeguards, have been assessed at this initial stage of the administrative procedure, which lead to the conclusion that the increasing trend in imports of fabrications observed during the period of analysis of the present case (January 2016 — June 2021) will continue in the near future. This conclusion is based on the following considerations:



PERU

Presidencia  
of the Council of Ministers



(i) Capacidad export from the countries pro veedores of CONFECCE iones' mercador Peruvian:

Between January 2016 and June 2021, the main supplier countries of the Peruvian market (China and Bangladesh) recorded a large export capacity, consolidating themselves as the main exporters of production worldwide, and concentrating a cumulated share of 40.6 % of world production exports. In addition, between 2016 and 2020, the freely available capacity for the production of made-up products in China and Bangladesh increased due to the contraction in production in those countries.

While during the first half of 2021 the spare capacity of the Chinese production industry decreased by 4.3 percentage points compared to the similar half of 2020, this capacity (42.5 %) reached a level higher than the average freely disposable capacity (27.9 %) recorded during the analysis period (January 2016 — June 2021). D.o.b. between January and June 2021, Bangladesh's freely disposable capacity was set at a level similar to that recorded in the year preceding (2019) the adoption of measures in the world to contain COVID-19

Posibilidad derdireccion amicnto de losvviros de confecci ones al merperuano: Over the period

2016-2020, exports of manufactures originating in China and Bangladesh fell by 11.8 %, against the backdrop of measures taken by different countries of destination for exports of manufactures to contain the rise of COVID-19, which led to a contraction in global economic activity in 2020. On the other hand, in the final and most recent part of the analysis period (January — June 2021), the total value of exports of manufactures originating in China and Bangladesh increased by 32.5 % compared to the same half of 2020.



In particular, with regard to shipments to South America of manufactures originating in China and Bangladesh, it appears that exports to their main destinations in the region fell during the period 2016-2020. However, in the final and most recent part of the analysis period (January — June 2021) The total value of Chinese exports to South America increased by 24.1 %, mainly explained by increases recorded by Chile (46.9 %), Peru (20.7 %), Colombia (36.1 %) and Uruguay (35.7 %).

In this respect, during the period 2016-2020, considering the four countries in the region mentioned above, Peru maintains one of the lowest tariff and non-tariff restrictions on the import of made-up products, which could facilitate the redirection of export flows of made-up products originating in China and Bangladesh to the Peruvian market.

(iii) ThereisENCI as do the princ ipales País isewesfrom Peru: The information available shows that between 2016 and 2020 the level of stocks of the Chinese making-up industry decreased by 8.7 %. Furthermore, while in the first half of 2021 Chinese production stocks decreased by 3.8 % compared to the similar half of 2020, it appears that China maintained inventories at a level similar to the level of average inventories (16,821) recorded during the analysis period.





E. DETERMINATION INICIAL OF THE EXISTENCE OF A CAUSAL LINK

E. 1. Clnicalous steel industry

269. Article 4 (b) of the Safeguards Agreement stipulates the following with regard to the causal link and the analysis of non-attribution factors:

*For the purposes of the Agreement*

*the determination referred to in paragraph (a) (dd) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports dd product of treatment and serious injury or threat of serious injury. When other factors, other than dd increase in imports, at the same time cause injury to the domestic industry, this injury will not be attributed to the increase in imports ”.*

270 For its part, according to Article 22 of the Safeguards Regulation, the investigating authority shall demonstrate the causal link between the increase in imports and the alleged serious injury. Also, in the case of factors other than increased imports, which could result in serious injury to RPN, this cannot be attributed to imports.

On the basis of these considerations, the existence of prima facie evidence of serious injury to RPN due to a significant increase in imports of made-up products will be examined below and, if there are other factors, other than such imports, which could result in serious injury to the local industry, as set out in the Safeguards Agreement and the Safeguards Regulation.

Effect of imports of made-up products

E.2. 272. As indicated in section D.3 of this report, imports of fabrications increased in cumulative terms by 52.5 % between 2016 and 2020, in a context where the FOB price of such imports showed a decreasing trend. In the final and most recent part of the analysis period (January — June 2021), the volume of imports of fabrications continued its increasing trend with an increase of 48.8 % compared to the same period in 2020.

273. Between 2016 and 2020, the volume of imports of fabrications relative to production increased cumulatively by 253.8 percentage points. In addition, in the final and most recent part of the analysis period (January-June 2021), imports of fabrications increased, in relative terms, by 8.9 percentage points compared with the same half of 2020.

274. As explained in this Report, during the period January 2016 — jumo 2021, the excess capacity installed for the production of fabrications from two main supplying countries on the Peruvian market (China and Bangladesh) increased significantly. In particular, between January and June 2021, installed production overcapacity in China (the main supplier of production to the Peruvian market) reached a level (42.5 %) higher than the average level (27.9 %) recorded during the analysis period.





275 Moreover, during the period January 2016 June 2021, the main supplier countries of the Peruvian market (China and Bangladesh) recorded a large export capacity, consolidating them as the world's largest exporters of that product. While between 2016 and 2020 shipments to the South American region from the two countries mentioned above fell by 23.1 %, during the final and most recent part of the analysis period (January — June 2021) an increase of 24.1 % was recorded, with Peru being the third largest destination market for exports of made-up products originating in China and Bangladesh in the South American region.

276. As stated in section D.6 of this report, unlike other destinations in the region, the Peruvian market offers fewer restrictions (tariff and non-tariff) on the entry of products, which could encourage the redirection of import flows to Peru.

Whereas Peru is an important destination for exports of made-up products originating in China and Bangladesh in the South American region and lays down lower restrictions (tariff and non-tariff) on the entry of that product, the overcapacity installed and the large export capacity of the main

277. suppliers on the Peruvian market (China, Bangladesh), could lead to a substantial increase in imports of made-up products into Peru. This could lead to a situation in which the level of competition between imports of made-up products (which have recorded a decreasing price during the analysis period) and manufactures produced by domestic producers would lead to a greater displacement of the domestic product on the domestic market and the deterioration of the economic indicators of RPN which could be analysed in this report, which would in the near future lead to a general impairment of the economic situation of RPN as evidenced during the period January 2016-June 2021.

In the light of the above, on the basis of the information available at this initial stage of the procedure, the existence of a causal link between the substantial increase that would have been recorded by imports of made-up products in the analysis period and the damage that such a situation would cause to the PNR of that product is preliminary established.

#### Effect of other factors

278. In addition to the entry of imports of analyses, this acpite of! The following factors that could cause significant damage to the PNR will be analysed. the evolution of PNR exports, the evolution of Peruvian imports from other countries, the evolution of the exchange rate and the tariff regime, as well as the evolution of domestic demand for that product.

#### E.3. Evolution of RPN exports

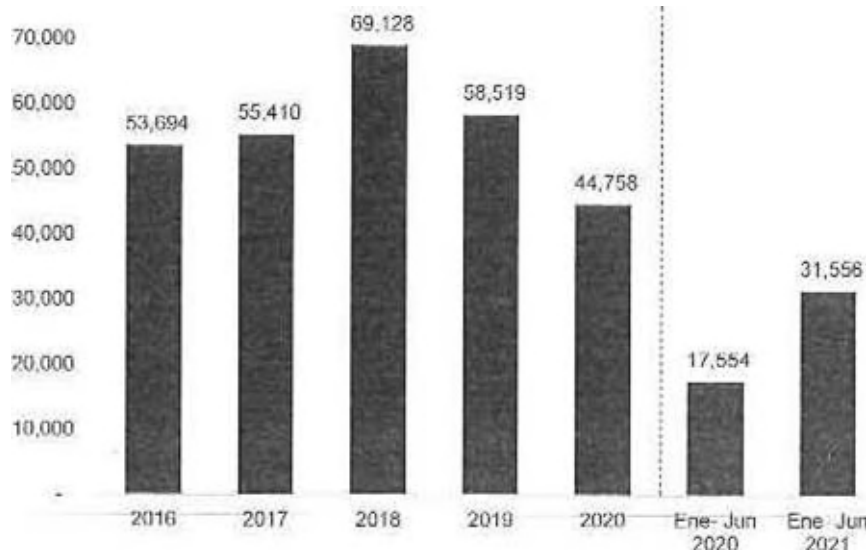
279. 280. Between 2016 and 2020, RPN sales of manufactures destined for the external market decreased by 16.6 %. in 2021 (January — June), these sales increased by 79.87° compared to the same half of 2020.



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Figure No 32 Exports of RPN  
production during the period January 2016 — June 2021 (in  
thousands of units) <sup>80.001</sup>



Source: VERITRADE  
Preparation: S I -CDR/INDECOP

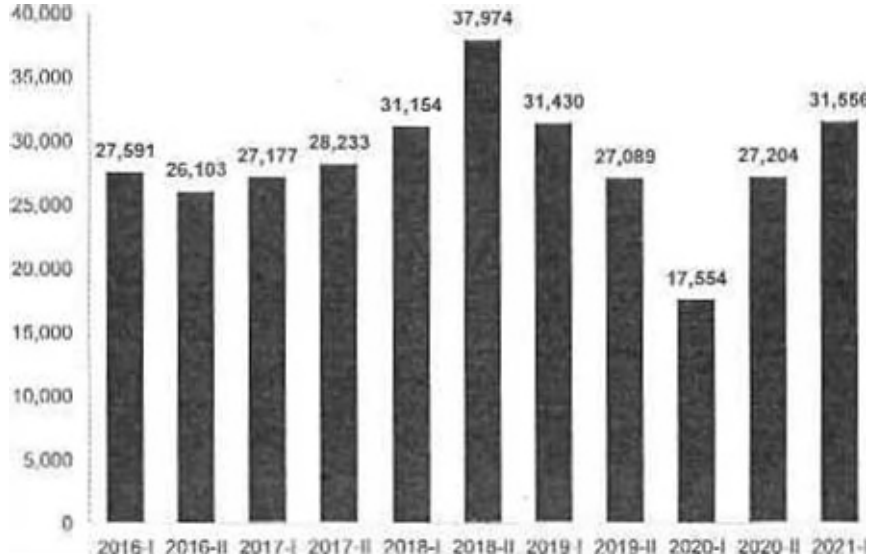
A review of the trend in exports of RPN manufactures every six months shows that between the first half of 2016 and the first half of 2021 these exports increased by 14.1%. While in 2021 (January-June) exports increased by 79.8% and 16.0% compared to the first and second half of 2020 respectively. It should be noted that, in the last half of the year, production exports reached a level higher (by 6.6%) than the average level of exports recorded in the half years preceding the implementation of measures to contain COVID 19. between 2016 and 2019 (29 594 thousand half-yearly units on average).



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[Handwritten signatures]



Figure N “33 Exports of RPN production during the period January 2016 — June 2021 Six-monthly periods (in thousands of units)



surgeon: MR VFRIKADC  
Preparation: ST-CDB/INDECC' i



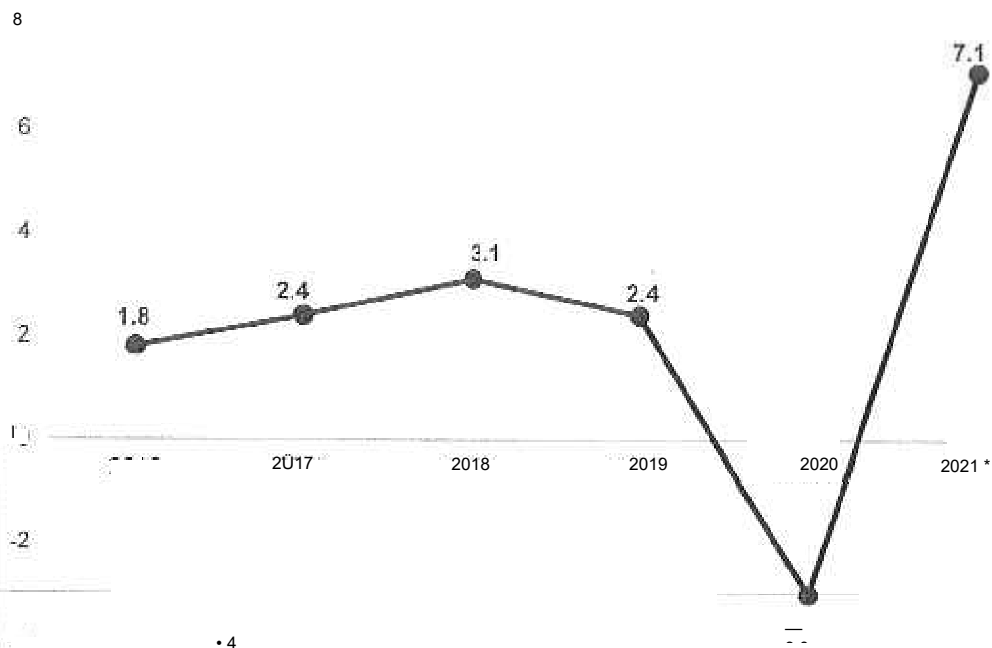
of the Council of Ministers

In addition, it should be noted that during the analysis period (January 2016 — June 2021), sales of RPN manufactures destined for the external market were mainly destined for the United States (to which, on average, 74.2 % of total exports were directed). In this regard, according to the International Monetary Fund's *World Economic Outlook* between 2016 and 2019, domestic demand in the United States increased by an average of 2.4 % per year. Subsequently, in 2020, demand fell by 3.0 %. however, in 202.1 demand in the United States is expected to recover (an increase of 7 1 % compared to 2020).

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Figure 34  
Developments in domestic demand in the United States over the period 2016-2021 \*  
(VaR% p.a.)



Projection of annual change in domestic demand in the United States Source: International Monetary Fund  
/Preparation: ST-CDBANDECOPI

283. Considering the increase in exports of RPN manufactures during the analysis period (increase of 14.1 % between the first half of 2016 and the first half of 2021), the growth of consignments of RPN made-up after the resumption of economic activities in the country as of May 2020<sup>d</sup> and, in a complementary manner, the domestic consumption behaviour in the main market for RPN exports (i.e. the United States) during the period 2016-2021, is not reasonable to infer that the export performance could cause serious injury.

### E.3.2 Exchange rate developments

Exchange rate developments may have an impact on the price of the imported product expressed in domestic currency. if, in the event of an appreciation of the sun against the dollar (exchange rate reduction), this will enhance the competitiveness of the imported product vis-à-vis the domestic product.

284 Conversely, in the event of a depreciation of the sun against the dollar (exchange rate increase), this will harm the competitiveness of the imported product in relation to the domestic product.

285. In the present case, during the period under review (January 2016 — June 2021), the nominal exchange rate showed an increasing trend, with levels ranging from S/3.26 to 3.73 per US dollar 74. It is thus clear that the

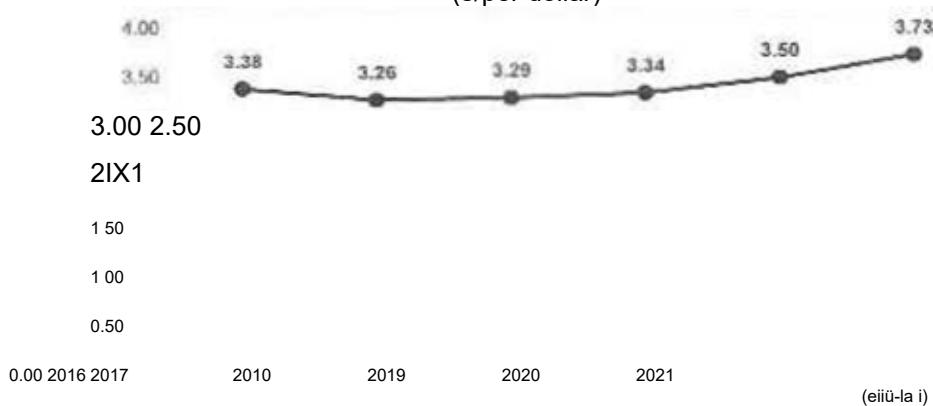
See footnote? page N "40.

This information has been retrieved from the 8CRP web portal. In this regard, I: FR  
<https://estadisticas.bcrp.gob.pe/estadisticas/serles/mensuales/tipode-cambio-nominal> (Last consultation: 19 November 2021).



increasing exchange rate trends do not explain the increase in imports of making-up during the analysis period. Even in October 2021, the exchange rate reached S/4 01 per US dollar, which was higher than during the whole analysis period.

Figure N "35  
Exchange rate developments during the period January 2016 — June 2021  
(s/per dollar)



For Tuento: BCRP  
Preparation SI-CÚMNDECOPi

In view of the above, it is not reasonable to infer that the exchange rate may be a factor causing serious harm to RPN.

E.3.3. Tariff rate

- 287. Tariffs have a direct impact on the price at which imported products enter the country. In the case of analyses, imports of these products have been subject to a tariff of 11 % during the analysis period (January 2016 — June 2021).
- 288. Since 1 April 2007, with the entry into force of the Customs Tariff of 200775, the customs duty corresponding to the subheadings listed in Annex 1, for which imports of made-up goods enter the Peruvian market by reference, is 11.0 % 76.
- 289. Whereas during the analysis period (January 2016 June 2021) the tariff duty applied to imports of made-up goods has not been

The 2007 Customs Tariff was approved by Supreme Uncialo No 017 2GO7-FF

'In the case of imports of made-up products of Chinese origin, in March 2010, the Trade Book Treaty (FTA) signed between Peru and China entered into force, in which it is noted that most (89 1 % of the total) of the tariff subheadings indicated in Annex N "i of the Presenlo Informo (which are classified as "by reference to the products entering the primary market") were excluded from the relief from aianceiia agreed in that trade agreement in January 20. On the other hand, imports of made-up mills originating in China quo are subject to orange relief during the period January 2016 June 2021, corresponding to a sixteen (16) year duty-free basket of tariff relief (they will be duty-free on 2025). In particular during the period under review (January 2016 — June 2021), imports from ORIGER etnot subject to tariff relief in inarc ol from the FTA signed between Peru and China recorded an annual average tariff reduction of 1.04 percentage points, representing a cumulative reduction of 5 2 % within artos 2016 and 2020. It should be noted that in 2021, the prefere-icial tariff for Chinese production will be reduced by 0.07 porrentals compared to 2020.

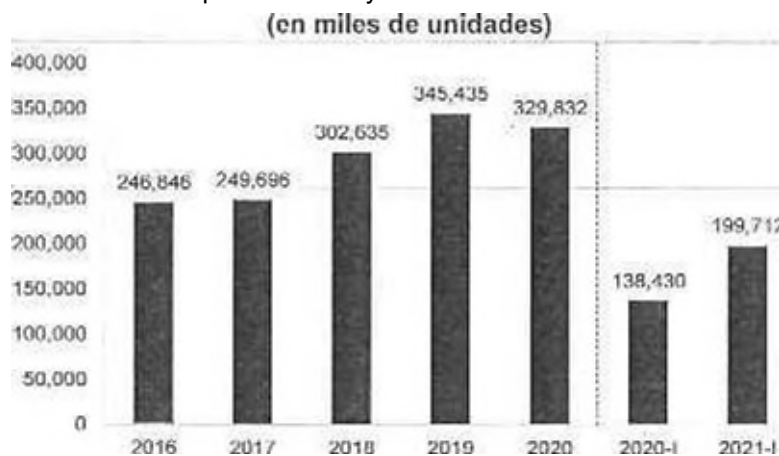


as amended, it is not reasonable to infer that the tariff rate may be a factor causing serious damage to RPN.

#### E.3.4. Developments in domestic demand

290. Between 2016 and 2020, domestic demand for production recorded a cumulative increase of 33.3 %. By contrast, at the end of the analysis period (January-June 2021), the indicator increased by 44.3 % compared with the similar half of 2020, which was driven mainly by the revival of economic activities associated with the marketing of domestically and foreign-sourced products affected by COVID-19.

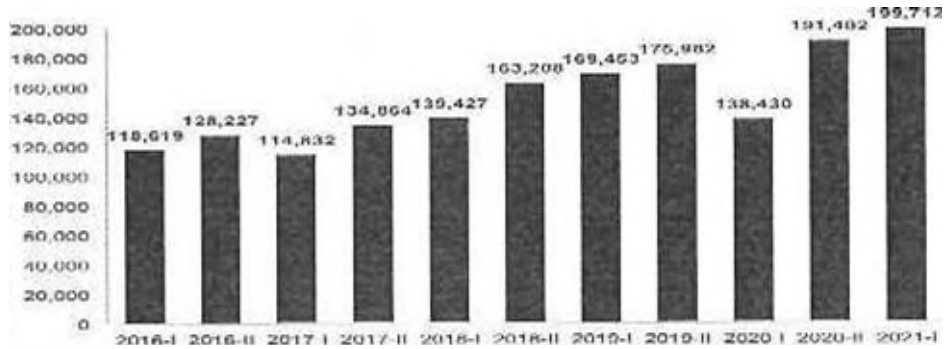
Figure 36  
Developments in domestic demand for production during the  
period January 2016 — June 2021



Source: INEI. VERITRAOE, PKOJUCf-  
Elaboración: ST CDB/INDECOPI

291. As can be seen, during the analysis period (January 2016 — June 2021), RPN's domestic sales have shown behaviour that cannot be explained by the evolution of domestic demand for production. Indeed, between 2016 and 2018, when RPN's domestic sales decreased by 28.6 %, domestic demand increased by 22.6 % as a result of an increase (33.3 %) of total imports of made-up goods. Subsequently, between 2018 and 2020, when RPN's domestic sales decreased by 39.0 %, domestic demand for production increased by 9.0 %, mainly justified by the increase in imports (14.4 %). In the final and most recent part of the analysis period (first half of 2021), RPN's domestic sales declined by 17.0 %, by contrast, domestic demand increased by 44.3 % compared with the similar half of the previous year, in a context where total imports of fabrications increased by 48.8 % compared to the same half of 2020.
292. Reviewing developments in domestic demand on a six-monthly basis, it appears that, during the analysis period (January 2016 — June 2021), domestic demand for production showed an increasing trend, with the exception of the first half of 2020, when restrictive measures were implemented to contain COVID-19. Notwithstanding the above, at the end of the analysis period (January — June 2021), the indicator peaked with respect to the levels recorded in each of the semesters in the analysis period (January 2016-June 2021).

Figure No 37 Evolution of internal demand for production during the period January 2016 — June 2021 Six-monthly frequency (in thousands of units)

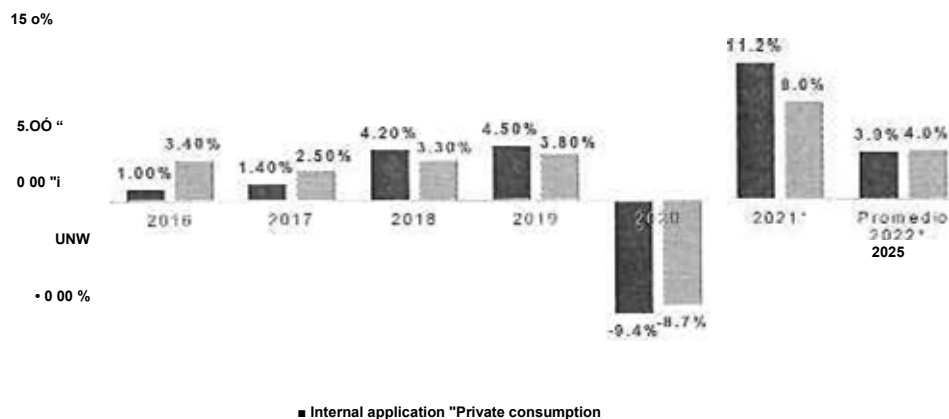


Source: INEI, VERIIRAUL. Produces S T-CDB/INDECOPI

293. In addition, it should be noted that according to the “Multi-annual Macroeconomic Frameworks” prepared by the Ministry of Economy and Finance (MEF) 77, between 2016 and 2019, domestic demand and private consumption experienced average annual increases of 2.78 % and 3.25 % respectively. While in 2020, when the restrictive measures to contain COVID 19 were implemented, both domestic demand and private consumption recorded significant reductions (9.4 % and 8.7 % respectively compared to 2019), but by 2021, these indicators are expected to recover significantly.

294. Thus, in line with the MEF projections, domestic demand and private consumption in 2021 will increase by 11.2 % and 8.0 % from the level reached in 2020, respectively. Thereafter, between 2022 and 2025, domestic demand and private consumption will be on average 3.9 % and 4.0 % respectively.

Figure 38 Domestic demand and private consumption over the period 2016-2025 (VaR.% p.a.)



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■ Annual change projections for domestic demand and private consumption.  
Source: Ministry of Economy and Finance (MEF)  
Preparation: ST-CDB/INDECOP

Extracted from the Multic Macroeconomic Marks of 2018-2021, 2019-2027, 2022-2025. prepared by the Ministry of Economy and Finance (MEF)



295. Considering the revival of economic activities in the country, the increasing trend in domestic demand for production, as well as the evolution of domestic demand and private consumption, it is not reasonable to infer that the development of the domestic market for production could cause serious harm to PNR.

F. CONCLUSIONS

296. The analysis carried out in this report shows that in this case there are special circumstances provided for in the Safeguards Regulation, which entitle the Commission to assess ex officio an investigation procedure in respect of imports of safeguard products. On the basis of the information available at this stage of the procedure, this shows that the national manufacturing industry is fragmented.

297. It has also been established that manufactures produced locally and those imported into the country can be considered corno like and directly competitive products under the terms set out in the Safeguards Agreement and the Safeguards Regulation.

298. In addition, as set out in Section B of this Report, it appears that during the period January 2016 — June 2021 there would have been an increase in imports of fabrications in such a quantity and under such conditions that they could constitute serious injury to RPN within the meaning of Article 2.1 of the Safeguards Agreement.

Prima facie evidence has been found to suggest that unforeseen circumstances within the meaning of Article XIX of GATT 1994 have arisen during the period January 2016 — June 2021, as a result of which the significant increase in imports of making-up would have occurred during the period indicated above.

For their part, other factors which are analysed in order to assess possible injury to RPN have been assessed and show prima facie evidence that the increasing trend of imports of fabrications observed during the period of analysis (January 2016 — June 2021) will continue in the near future.

300. In addition, as set out in Section D of this Report, prima facie evidence of possible serious injury to RPN has been found as a result of the significant increase in imports of making-up products during the period January 2016-June 2021.

302. Similarly, in compliance with Article 22 of the Safeguards Regulation, they have also assessed other factors that may influence the economic situation of the RPN of production, such as the export activity of that branch, the evolution of domestic demand, the exchange rate and tariffs. However, no evidence has been found to suggest, at this initial stage of the procedure, that these factors cause serious harm to RPN.

303 It is therefore recommended to provide for the ex officio initiation of an investigation procedure in order to determine whether or not it is necessary and appropriate to recommend to the Multisectoral Commission the application of general safeguard measures on imports made out.




- 304 If an investigation is available, given that the making-up sector is characterised by a fragmented industry consisting of a large number of micro and small enterprises, this will mean that significant efforts should be made in the course of this investigation to collect and process a significant amount of information on the economic and financial indicators of a large number of domestic producers.
305. Having regard to paragraphs 5 and 21 of this report, as well as to the previous paragraph, it is recommended that PRODUCE be requested, as the national authority responsible for reorganising the industry, to evaluate the carrying out of a survey of national producers of production, to provide information corresponding to the economic and financial indicators of the national manufacturing industry, as referred to in Article 4 of the Agreement on Safeguards, in order for the Commission to carry out the analysis of this technical standard.




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**Luis Alberto León Vásquez**  
Technical secretary



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**Jasmin Huapaya Chafloque**  
Economic Assistant



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**Jayro Alburqueque Flores**  
Legal Assistant



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**Martha Lucía Ali Silva**  
Economic Assistant



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**Martín Pinedo Aubián**  
Asistente Legal



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**Ronzo Eduardo Mires Montes**  
Economic Assistant



## Annex 1

## Reference tariff subheadings

	1	6101200000	59	6202190000	117	6105100092
	2	6101300000	60	6202910000	118	6105100099
	3	6101901000	61	6202920000	119	6105201000
	4	6101909000	62	6202930000	120	6105209000
	5	6102100000	63	6202990000	121	6105900000
	6	6102200000	64	6203110000	122	6106100021
	7	6102300000	65	6203120000	123	6106100022
	8	6102900000	66	6203190000	124	6106100029
	9	6103101000	67	6203220000	125	6106100031
	1b	6103102000	68	6203230000	126	6106100032
	11	6103109000	69	6203291000	127	6106100039
	12	6103220000	70	6203299000	128	6106100090
	13	6103230000	71	6203310000	129	6106200000
	14	6103291000	72	6203320000	130	6106900000
	15	6103299000	73	6203330000	131	6107110000
	16	6103310000	74	6203390000	132	6107120000
	17	6103320000	75	6203410000	133	6107190000
	18	6103330000	76	6203421010	134	6107210000
	19	6103390000	77	6203421020	135	6107220000
	> 20	6103410000	78	6203422010	136	6107290000
		6103420000	79	6203422020	137	6107910000
		6103430000	80	6203429010	138	6107991000
		6103490000	81	6203429020	139	6107999000
		6104130000	82	6203430000	140	6108110000
		6104192000	83	6203490000	141	6108190000
	> 26	6104199000	84	6204110000	142	6108210000
	27	6104220000	85	6204120000	143	6108220000
	28	6104230000	86	6204130000	144	6108290000
	29	6104291000	87	6204190000	145	6108310000
	30	6104299000	88	6204210000	146	6108320000
	31	6104310000	89	6204220000	147	6108390000
	32	6104320000	90	6204230000	148	6108910000
	33	6104330000	91	6204290000	149	6108920000
	34	6104390000	92	6204310000	150	6108990000
	35	6104410000	93	6204320000	151	6109100031
	36	6104420000	94	6204330000	152	6109100032
	37	6104430000	95	6204390000	153	6109100039
	38	6104440000	96	6204410000	154	6109100041
	39	6104490000	97	6204420000	155	6109100042
	40	6104510000	98	6204430000	156	6109100049
	41	6104520000	99	6204440000	157	6109100050
	42	6104530000	100	6204490000	158	6109901000
	43	6104590000	101	6204510000	159	6109909000
	44	6104610000	102	6204520000	160	6111200000
	45	6104620000	103	6204530000	161	6111300000
	46	6104630000	104	6204590000	162	6111909000
	47	6104690000	105	6204610000	163	6112110000
	48	6201110000	106	6204620000	164	6112120000
	49	6201120000	107	6204630000	165	6112190000
	50	6201130000	108	6204690000	166	6112200000
	51	6201190000	109	6105100041	167	6112310000
	52	6201910000	110	6105100042	168	6112390000
	53	6201920000	111	6105100049	169	6112410000



54	6201930000	112	6105100051	170	6112490000
sa	6201990000	113	6105100052	171	6113000000
	6202110000	114	6105100059	172	6114200000
57	6202120000	115	6105100080	173	6114300000
58	6202130000	116	6105100091	174	6114901000
<b>Reference orchards</b>					
					<b>1</b>
175	6114909000	212	6207910000	249	6213909000
176	6115101000	213	6207991000	250	6214100000
177	6115109000	214	6207999000	251	6214200000
178	6115210000	215	6208110000	252	6214300000
179	6115220000	216	6208190000	253	6214400000
180	6115290000	217	6208210000	254	6214900000
181	6115301000	218	6208220000	255	6215100000
182	6115309000	219	6208290000	256	6215200000
183	6115940000	220	6208910000	257	6215900000
184	6115950000	221	6208920000	258	6216001000
185	6115960000	222	6208990000	259	6216009000
186	6115990000	223	6209200000	260	6301100000
187	6116100000	224	6209300000	261	6301201000
188	6116910000	225	6209901000	262	6301209000
189	6116920000	226	6209909000	263	6301300000
190	6116930000	227	6210100000	264	6301400000
191	6116990000	228	6210200000	265	6301900000
< 192	6117100000	229	6210300000	266	6302101000
£50	6117801000	230	6210400000	26/	6302109000
or	6117802000	231	6210500000	268	6302210000
19M	6117809000	232	6211110000	269	6302220000
19g	6117901000	233	6211120000	270	6302290000
	6117909000	234	6211200000	271	6302310000
> 98	6205200000	235	6211320000	272	6302320000
199	6205300000	236	6211330000	273	6302390000
200	6205901000	237	6211391000	2/4	6302401000
201	6205909000	238	6211399000	275	6302409000
202	6206100000	239	6211420000	276	6302510000
203	6206200000	240	6211430000	27/	6302530000
204	6206300000	241	6211491000	278	6302591000
205	6206400000	242	6211499000	279	6302599000
206	6206900000	243	6212100000	280	6302600000
207	6207110000	244	6212200000	281	6302910000
208	6207190000	245	6212300000	282	6302930000
209	6207210000	246	6212900000	283	6302991000
210	6207220000	247	6213200000	284	6302999000
211	6207290000	248	6213901000		

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Annex 2

1		NT IH I
1	Valdivieso Cueva Maria Susana	10072961981
2	Basauri Lcscano Ysabel	10087316934
3	Valdiviezo Rasauri Jeannette Rosalía	10410347135
4	Cotton Kinz S.A.C	20100014395
5	Gestión de Integración Empresarial S.A.	20100022223
6	Topy FopS.A.	20100047056
7	Industrias Ncttalco S.A.	20100064571
8	Intratesa S.A.C.	20100066786
10	Lancaster S.A.	20100089051
	The modelador S.A.	20100174911
11	Incapalca Textiles Peruanos de Fxport S.A.	20100226813
12	Franky and Ricky S.A.	20100231817
13	Cooperative Industrial Manufacturas Tres Estrellas S.R.L.	2010028736/
15	Industrial Gorak S.A.	20100306337
	Manuel Cendra S.A.C.	20100310016
16	Company Universal Textil S.A.	20100562848
17	Confecciones Choque S.A.	20100824559
18	Artesanian Mon Repos S.A.	201008/3410
19	DORA Conroy S.R.L.	20100957435
20	Constructions or Investments Alpama S.A.	20101022944
21	Mariana S.R L	20101156126
22	Agroinca Productos Peruanos de Fxp. S.A.	2010118/943
23	Textimax S.A.	20101362702
24	Almeriz S.A.	20101600735
25	Cotton Knit S.A.C.	20101635440
26	Atlanta S.R.L.	20101814450
27	Applauzi S.A.	20101852971
28	Lives S.A.C.	20102089635
29	Nunu S.A.C.	20102234236
30	Reprind S.A.C	20102309180
31	Textiles del Valle S.A.	20104498044
32	Santa Jacinta S R.L. tissues	20107807994
33	Haas Contex S.A.C,	20125347283
34	Creaciones Cactus S.R.L	20126806435
∞	Textiles Processes F.LR.L.	20132280780
	Creditex S.A.A.	20133530003
37	MFH Knits S.A.C.	20170291345
38	Glopac S.A.C.	20251952648
39	Kobet s S.A.	20255707231
40	Modeos FilippoAlpi S.A.	20260516907



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41	Texgroup S.A.	20264592497
42	Craftsmen Inca-Tex S.A.C.	20266867418
43	Industrial Textil Acuario S.A.	2026/910813
44	Articles Charles S.R.L.	20291068279
45	Figi S. International Co. E.I.R.L,	2029928/891
46	Textilan S.R.L.	20326560210
4Z	Body Fashion S.A.C.	20332029623
48	Awar S.A.C.	20334426379
49	Anahui S.A.C.	20338996706
50	Mauricio Creaciones S.R.L.	20340002556
51	Consortium Carolina S.A.C.	20341191476
52	KERO Uesign S.A.C.	20341823537
53	Mcxthon S.A.C.	2034815062/
54	Samitex S.A.	20348511824
55	Delta Confecciones S.R.L.	20373078078
56	Corporación Wawa S.A.C.	20374343964
57	Stallone Industry Corporation S.A.C.	20376033253
58	Bavela S.A.C.	203/6233937
59	ZHi Nao S.A.C.	20376638082
60	Southern Tcxtile NetWork S.A.C.	203/6729126
61	Snow Boarding S.A.C.	20379288449
62	Textiles Arlcy S.A.C.	20383372543
63	Texpima S.A.C.	20384759166
64	Solara S.A.C.	20385752.360
65	Maroti Shobo Crafts Association	20393278219
66	Art Atlas S.R.L.	20413770204
67	lilanderia de Algodón Peruano S.A.	20418108151
68	Servitejo S.A.	20418835886
69	Items Textiles S.A.	20419128393
70	Creaciones Tilomas S.R.L.	20421154873
71	Modas Diversas del Peru S.A.C.	20423925028
72	Consortium 1 extil y Confecciones para la Exportación S.A.	20424590119
73	Chalización S.A.C.	20424874141
74	New Expo S.A.C.	20427896/40
75	D'lugaro S.A.C.	20460366209
76	Corporación Rip Sol S.A.C.	20460419418
77	Association of Crafts Don Sosco	20463339342
78	Cotton Project S.A.C.	20463541681
79	Anazer S.A.C	20468268508
80	Investments Tricotex S.A.C.	20486006464
81	Renato Industries S A C.	20501848035
82	Devanlay Peru S.A.C.	20501977439



83	Ufitec S.A.C.	20502011121
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84	Lenny Kids S.A.C.	20502141768
85	Inka Knit S.A.	20502561112
86	Texcorp S.A.C.	20503790271
87	Precotex S.A.C.	20504550681
88	Industrias Plomar S.A.C.	20505787553
89	CMT del Sur S.A.C.	20506883301
90	Articles Kukuli S.A.C.	2050/590323
91	Catalogo S.A.C.	20507907114
92	Garment Industries S.A.C.	20508108282
93	Corporación Muquís S.R.L.	20508697849
94	Articles of Sneak E.I.R.L.	20509075205
95	Textiles carmelita S.A.C.	20509184837
96	Creaciones Torres Sport S.A.C	20509588334
97	Zigzag Designar E.I.R.L,	2050965996/
98	Interior clothing in general S.R.L.	20512184261
99	COFACO Industries S.A.C.	20512243534
100	Sombro Peru S.A.C.	20512572350
101	Design Textil Rbmio E.I.R.L.	20513522208
102	Artimoda S.A.	20514357961



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