



**TPSA** | CANADA-INDONESIA TRADE AND  
PRIVATE SECTOR ASSISTANCE PROJECT

# INTRODUCTION TO TRADE REMEDIES & DEFENSE

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**Canada**

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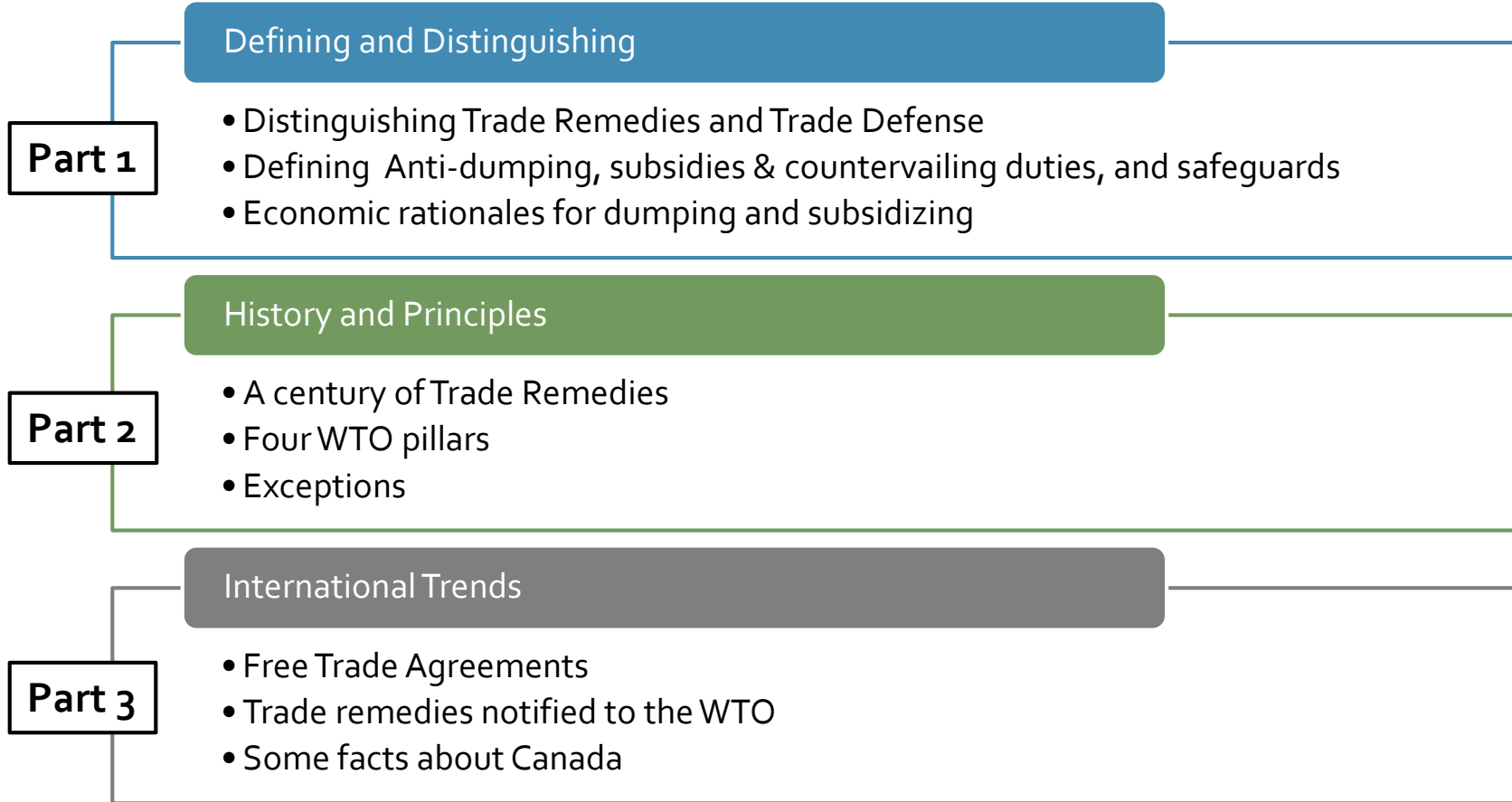
The Conference Board  
of Canada

Partner:



# Agenda:

## Introduction to Trade Remedies & Defense



# PART 1

# DEFINING AND DISTINGUISHING

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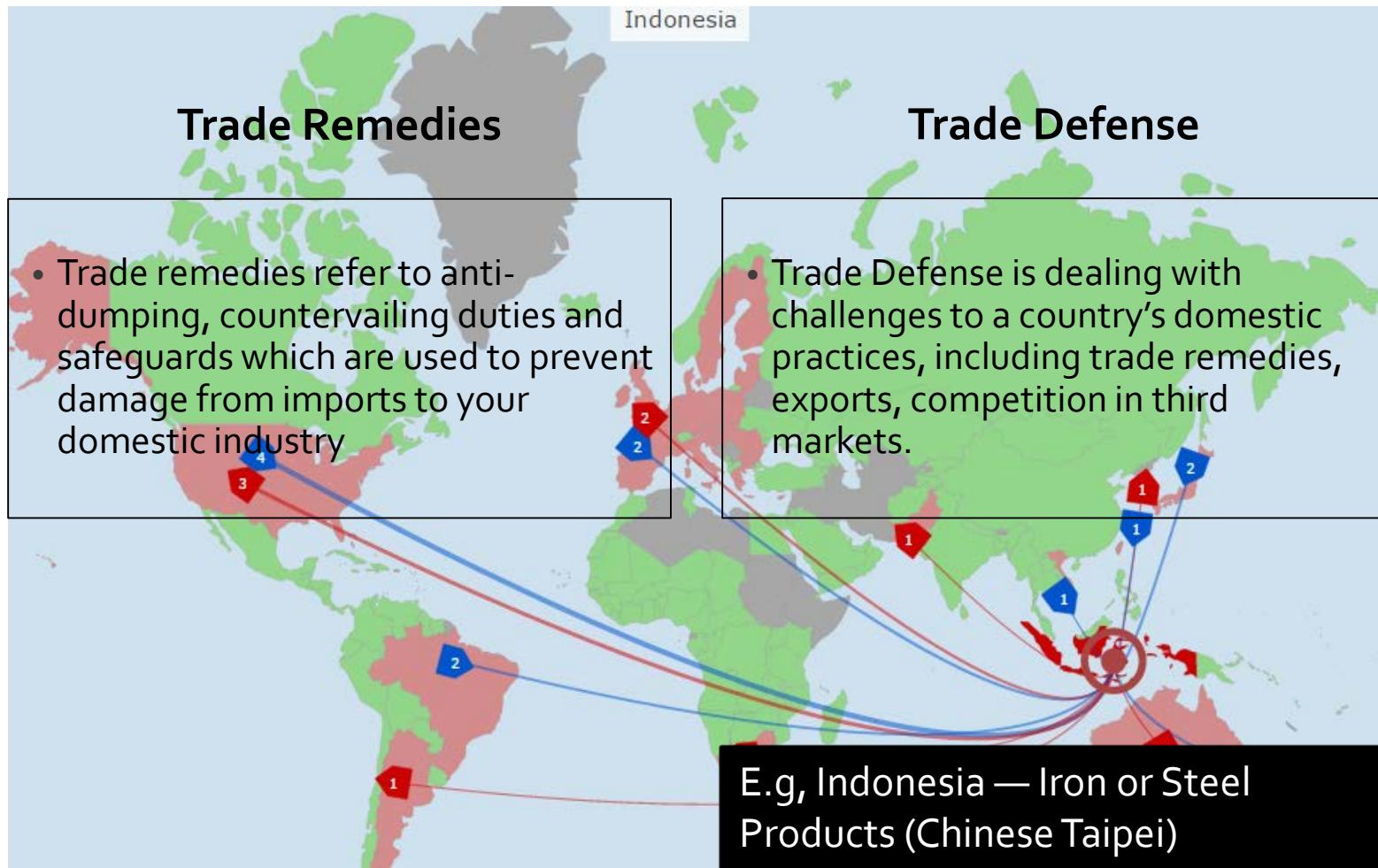
Distinguishing Trade Remedies and Trade Defense

Defining Anti-dumping, subsidies & countervailing duties, and safeguards

Economic rationales for dumping and subsidizing



# Distinguishing Trade Remedies and Trade Defense



Source: Peter Clark



# THREE TRADE REMEDIES

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Anti-Dumping measures

Countervailing duties

Safeguards



## What is “dumping”?

“Dumping is a form of price discrimination, which takes place when the price of a product when exported to another country is less than the price of that same product when sold in the market of the exporting country.”

Under specific circumstances, dumping can be sanctioned by WTO and national laws:

- Article VI of GATT
- Anti-Dumping Agreement
- Canada’s *Special Import Measures Act (SIMA)*
- Indonesia’s *Government Regulation Number 34 of 2011 concerning Antidumping Measure, Countervailing Measure, and Safeguard Measure.*



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Source: WTO, “Technical Information on anti-dumping”



# What's wrong with dumping?

GATT Art. VI:1

"The contracting parties recognize **that dumping ... is to be condemned** if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry."



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Source: WTO, "Technical Information on anti-dumping"



*Why is dumping condemnable?*

*Is it illegal then?*

*Could Indonesia submit a complain against another WTO member for "dumping"?*

*What's the adequate remedy?*

## What is a “subsidy”?

The definition of subsidy contains three basic elements: (i) a financial contribution (ii) by a government or any public body within the territory of a Member (iii) which confers a benefit.

All three of these elements must be satisfied in order for a subsidy to exist.

Under specific circumstances, subsidizing can be sanctioned by WTO and national laws:

- Articles VI and XVI of GATT
- Agreement on Subsidies and Countervailing Measures
- Canada’s *Special Import Measures Act (SIMA)*
- Indonesia’s *Government Regulation Number 34 of 2011 concerning Antidumping Measure, Countervailing Measure, and Safeguard Measure.*



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Source: WTO, “Subsidies and Countervailing Measures”



# What's wrong with subsidizing?

GATT Art. III.8(b)

"this Article shall not prevent the payment of subsidies exclusively to domestic producers"

*Why applying CVDs if subsidies are permitted under the GATT?*

*Could Indonesia submit a complain against another WTO member for "subsidizing"?*

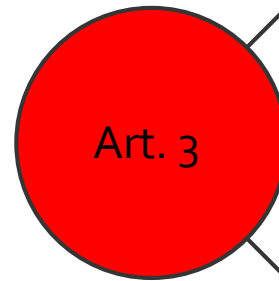


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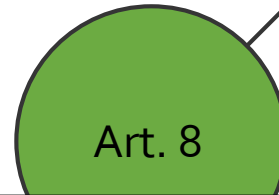
Source: WTO, "Technical Information on anti-dumping"



# SCM Agreement: Three-pronged “traffic-light system”

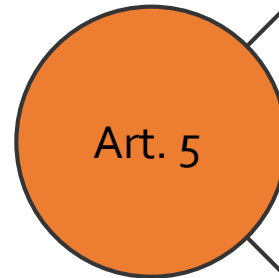


Export subsidies and  
Subsidies contingent on  
the use of domestic  
products

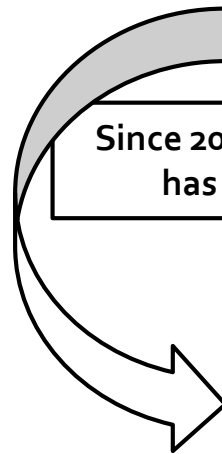


Subsidies that are not  
“specific” or offer specific  
forms of assistance  
(research; disadvantaged  
regions; adaptation; etc.)

Since 2000, the Green Light  
has lapsed (Art. 31)



Other subsidies can be  
countervailed or  
challenged directly if  
conditions are met



Source: Guzman & Pauwelyn,  
“International Trade Law” (2009)



## What is a “safeguard” action?

Safeguard measures are defined as “emergency” actions with respect to increased imports, where they have caused or threaten to cause serious injury to the importing Member's domestic industry.

They can consist of quantitative import restrictions or of duty increases to higher than bound rates.

Under specific circumstances, taking safeguard actions is allowed by WTO and national laws:

- Article XIX of GATT 1994
- Agreement on Safeguards
- Canadian International Trade Tribunal Act ( CITT Act)
- Indonesia's *Government Regulation Number 34 of 2011 concerning Antidumping Measure, Countervailing Measure, and Safeguard Measure.*



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Source: WTO, "Agreement on Safeguards"

# Distinguishing 3 types of Trade Remedies

## Anti-dumping and countervailing duties

- Protection against “unfair trade” practices
- **Applicable selectively** against only dumped or subsidized imports - on the theory that dumping and subsidization are unfair practices.
- Last as long as the **targeted practices continue**
- Exporting country has **no claim to compensation**.

## Safeguards

- Protection against “free/fair trade” practices
- **Imposed against all imports** of a particular kind, not just unfairly traded imports
- **Temporary** by nature
- Invoking country **must compensate** affected exporting countries (or such countries may retaliate)



Source: Barcelo III, "A History of GATT Unfair Trade Remedy Law – Confusion of Purposes" (1991)

# ECONOMIC RATIONALES

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Why are companies dumping?

Why are governments subsidizing?



# Why are companies dumping?

## Program or Policy

- Different trade barriers
- Need generate hard currency
- Industrial policies

## Expand Market Shares

- Inexpensive way of maximizing investments in longer term
- Killing competition

## Dispose Excess Domestic Production

- "Sporadic" dumping
- Cover variable costs
- "Exporting burden of recession"



Source: Terence P. Stewart,  
"Administration of the Antidumping Law:  
A Difference Perspective" (1991)

# Why adopting anti-dumping rules?

## Proponents

- **Reduced investments:** price drop leads to cancellation or postponement of investment decisions, and negatively impact on domestic industry's competitiveness in the longer term
- **Predatory pricing:** killing competition will eventually lead to price raises and reduce consumers' welfare in the longer term
- **Unfair trade:** Unfair trade may not be excused by free trade, which would have negative impact

## Opponents

- **Beneficial to Consumers:** Dumping does not harm consumers as they may buy at lower cost. Dumping could even make manufacturers/transformers more competitive in GVCs
- **No economic justification:** ADD fails to prevent market destabilization and "international predation" is very unlikely
- **Limited social justice impact:** ADD law is very rarely used for distributive justice concerns (Canadian study) and they are inappropriate responses



Source: Terence P. Stewart,  
"Administration of the Antidumping  
Law: A Difference Perspective" (1991)

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Source: Trebilcock & Boddez, "The Case  
for Liberalizing North American Trade  
Remedy Laws" (1995)

# Why are governments subsidizing?

“socially beneficial goods”

- Financial support for industries with positive externalities of production and consumption. E.g. renewable energy subsidies

Infant industry

- Industry that has the potential to become competitive but needs temporary support to grow and compete internationally (Canadian manufacturing in 19<sup>th</sup> century)

Strategic industry

- Industries with high potential for job creation, technological advantage, or natural resources transformation (aerospace, IT, auto, etc.)



US - Renewable Energy  
(India) 2016

Canada

Source: Harris, Keay, and Lewis,  
"Protecting Infant Industries: Canadian  
Manufacturing and the National Policy,  
1870-1913" 2013



# Why adopting countervailing duties?

## Proponents

- **Threat of CVDs:** Prospect of CVDs can reduce the use of “wasteful” subsidies by governments.
- **Protection against unfair trade:** illegal subsidies unfairly increase competitiveness of foreign products against which domestic producers would have to compete
- **“Strategic” trade policy arguments:** in situations where extraordinary profits possible and where international market could support only one firm and where competition would raise cost dramatically. “Optimal tariff argument”.

## Opponents

- **No harm:** from the perspective of the importing country, subsidized imports may hurt domestic producers, but not consumers or manufacturers/transformers who would greatly benefit from cheap imports
- **Bad response:** instead of imposing CVDs, WTO members should challenge the legality of those subsidies before the DSB



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Source: Guzman & Pauwelyn,  
“International Trade Law”  
(2009)

# PART 2

# HISTORY AND PRINCIPLES

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A century of Trade Remedies

Four WTO pillars

Exceptions



# A century of Trade Remedies

**1904:** Canada's first Anti-dumping law

**1916:** US' Antidumping Act

- Combat US dumping of steel;
- Domestic pressure;
- Only few countries took effective action against dumping

Pre-GATT

Origin of GATT Art. VI

- Concerns over 'abuse' of trade remedy laws;
- Focus on price discrimination; limiting duty to dumping margin; and 'material injury'

**1946-47:** Formative conferences for the GATT

**1948:** GATT's entry into force

- **1967:** Concerns on (1) lack of injury test in Canadian law; (2) abuse through weak tests; (3) procedural delays, uncertainties, and arbitrariness
- **1979:** Few amendments; weakening of the Code's causality standard

Anti-dumping Codes of 1967 and 1979

**1963-67:** Kennedy Round

**1974-79:** Tokyo Round



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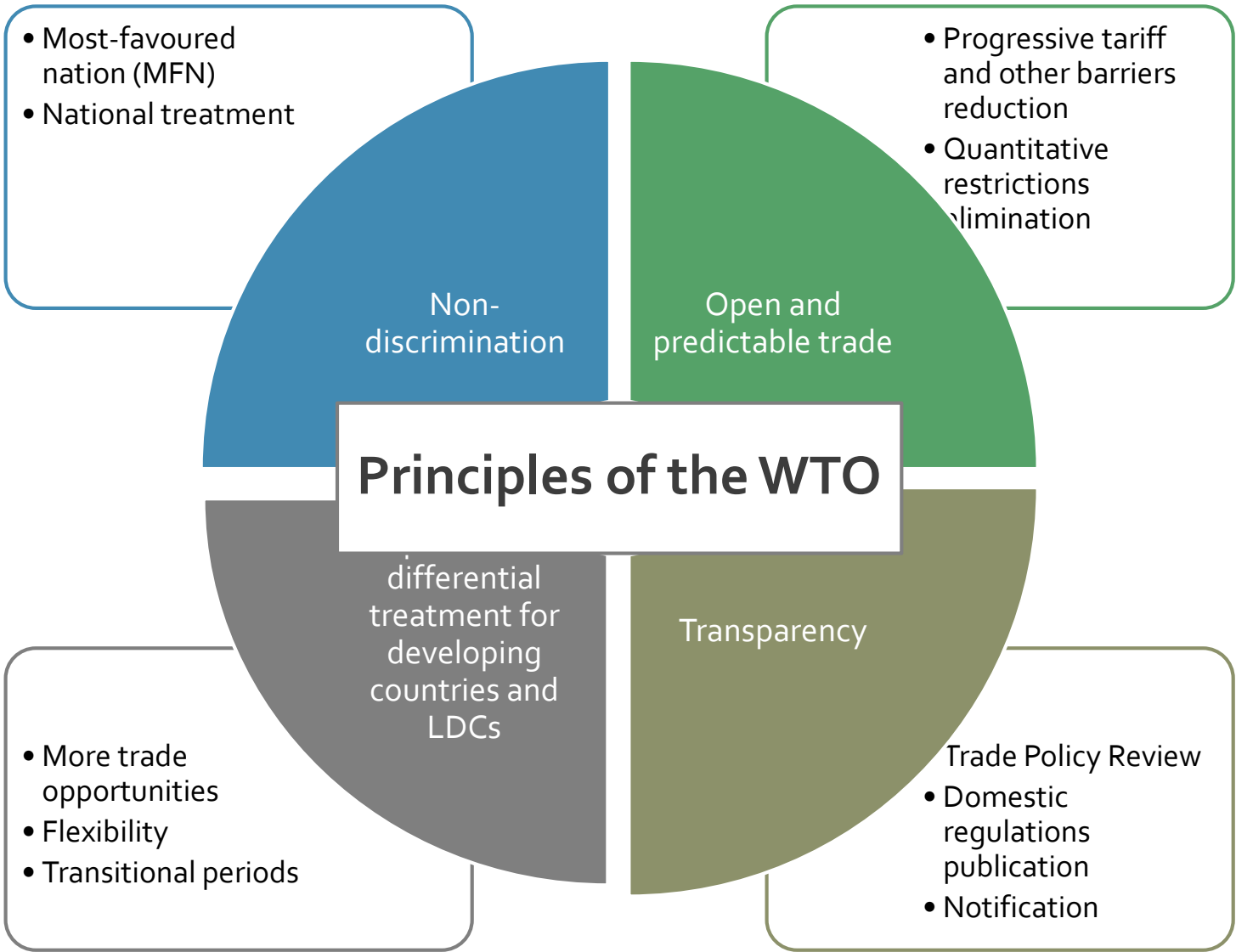
Source: Barcelo III, "A History of GATT Unfair Trade Remedy Law – Confusion of Purposes" (1991)

# FOUR WTO PILLARS

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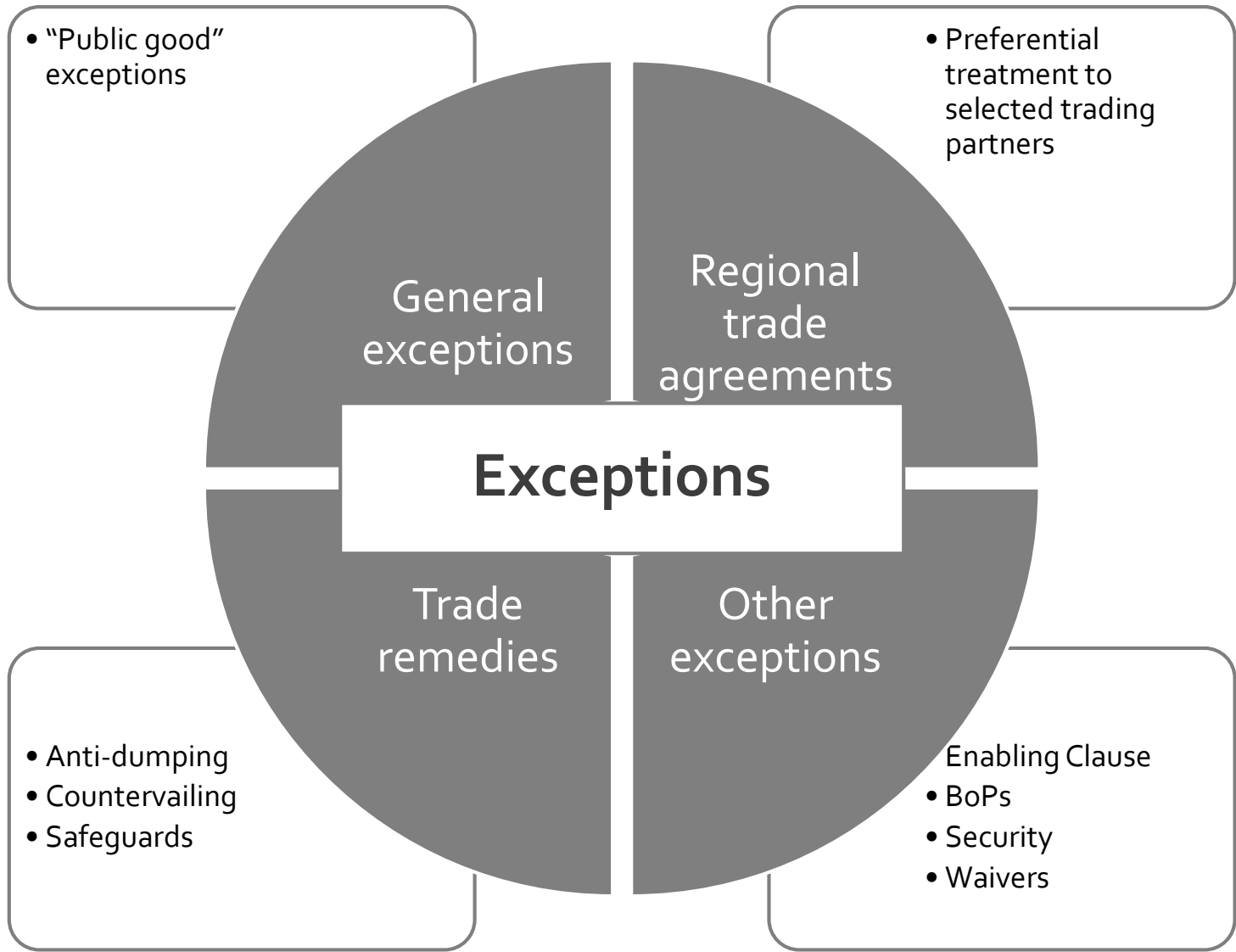
Source: Online Course Of Introduction to the WTO



# EXCEPTIONS

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# PART 3

# INTERNATIONAL TRENDS

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Trade remedies and RTAs

Trade remedies notified to the WTO in 2016

Some facts about Canada



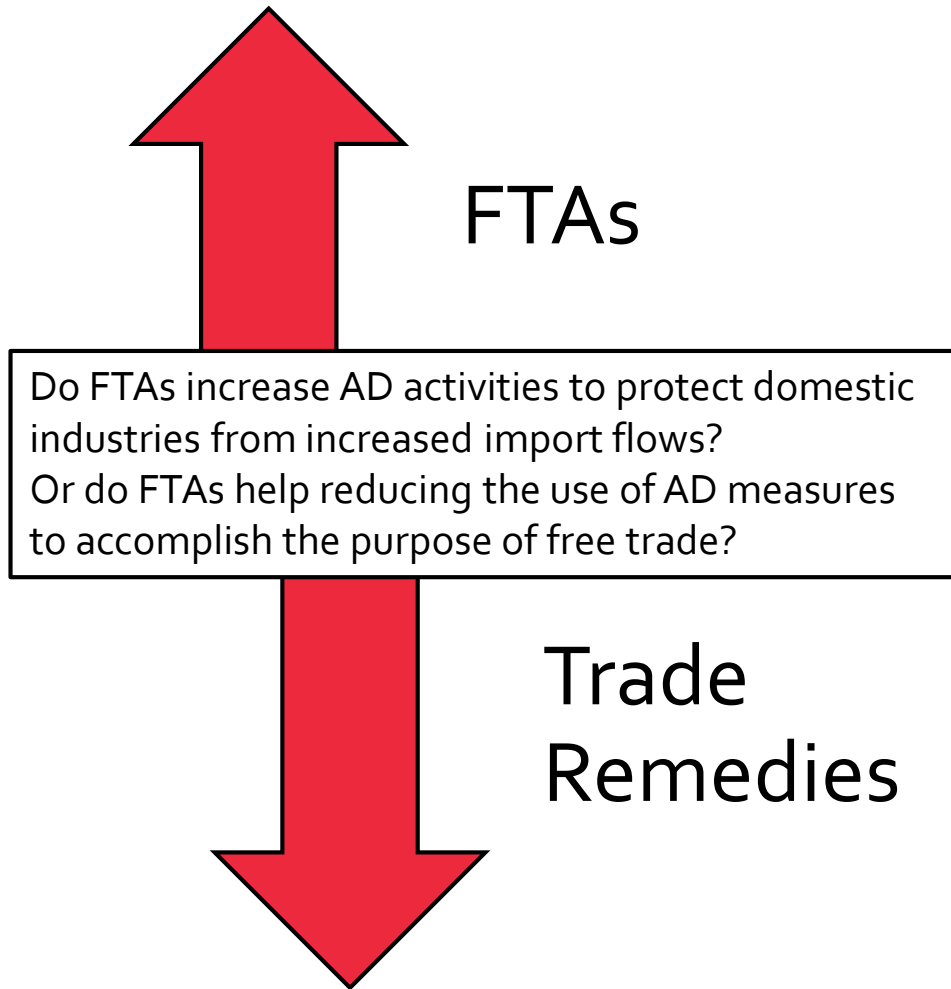


# Trade Remedies and FTAs

**Clear and inverse relationship between an FTA and anti-dumping activities**

“Subsequent to FTA enactment, the number of AD investigations initiated against FTA partners considerably dropped – by approximately 44% to 52%”

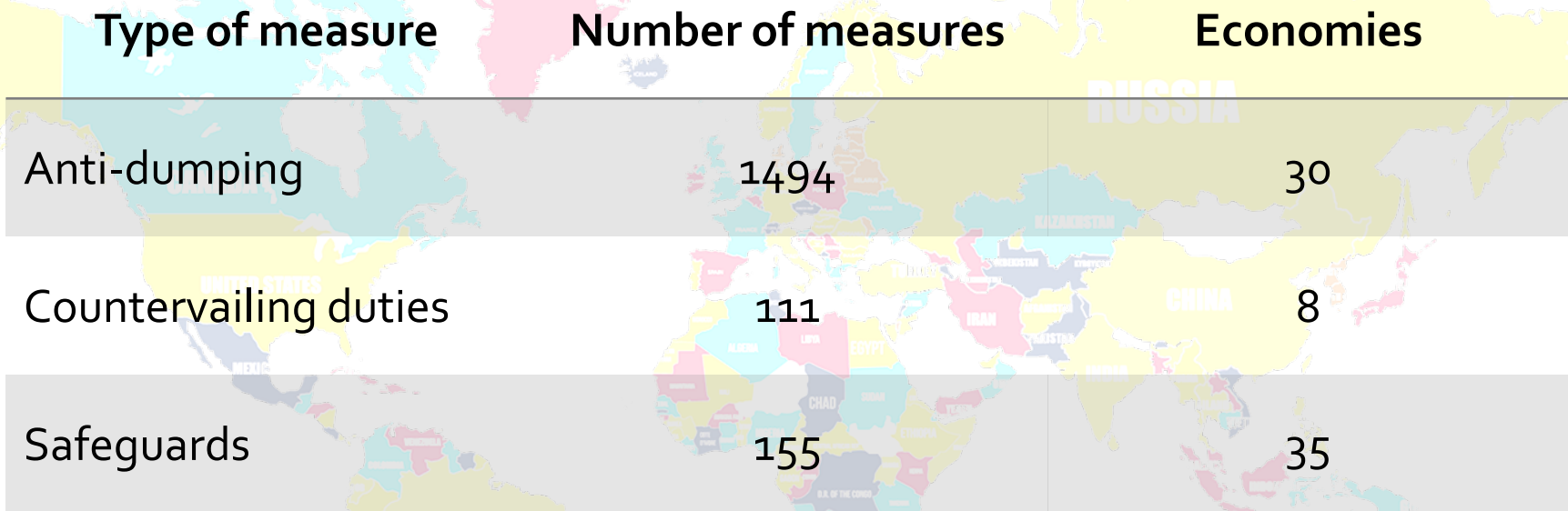
*\*\* With the exceptions of Argentina and Mexico*



Canada

Source: Ahn and Wonkyu Shin,  
“Analysis of Anti-dumping Use in  
Free Trade Agreements”

# Trade Remedies Measures around the World



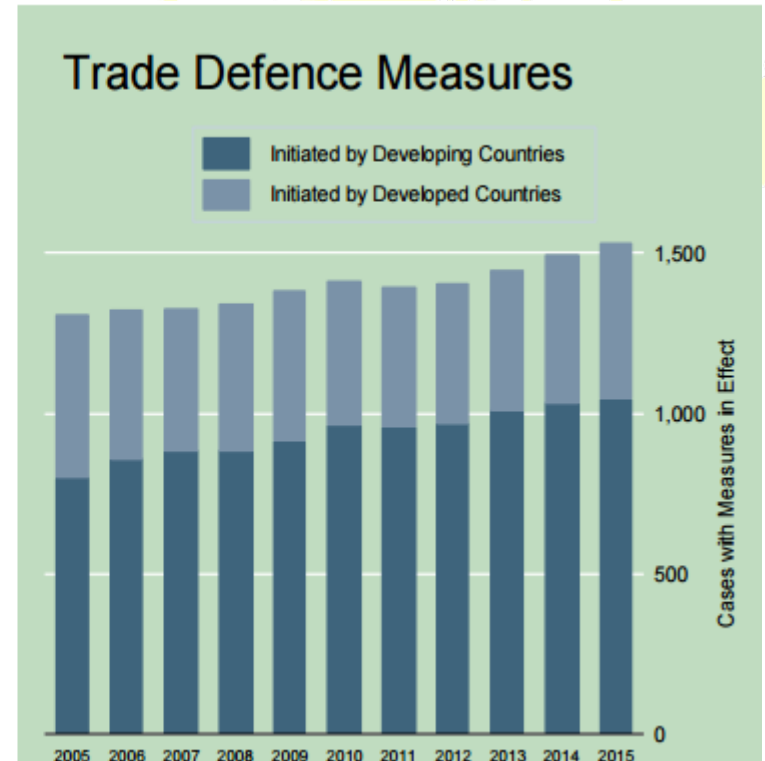
Type of measure	Number of measures	Economies
Anti-dumping	1494	30
Countervailing duties	111	8
Safeguards	155	35



Source: WTO, "World Trade Statistical Review 2016"



# Trade Remedies Measures around the World



Source: UNCTAD, "Key Statistics and Trends in trade Policy 2016"



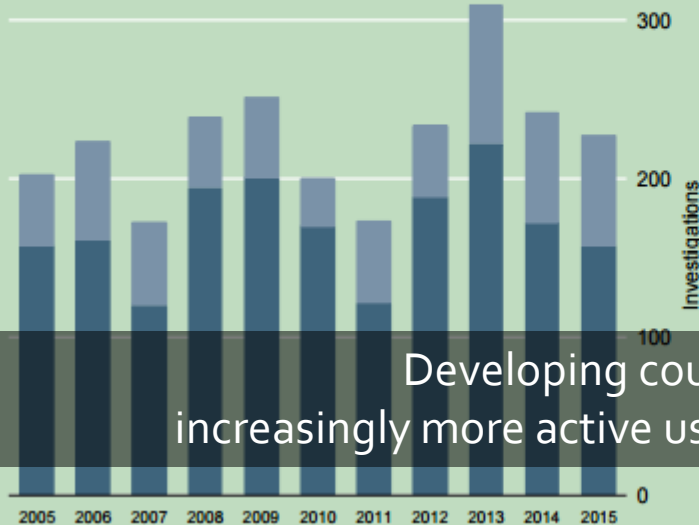
# Trade Remedies Measures around the World

As of 2015, 1,500+ antidumping measures in effect

Annually, between 150 and 250 antidumping cases before WTO

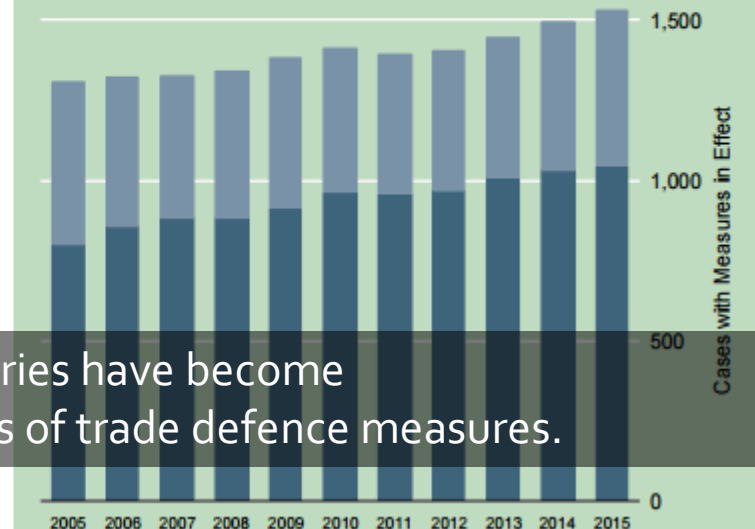
## Trade Defence Investigations

■ Initiated by Developing Countries  
■ Initiated by Developed Countries



## Trade Defence Measures

■ Initiated by Developing Countries  
■ Initiated by Developed Countries



Developing countries have become increasingly more active users of trade defence measures.

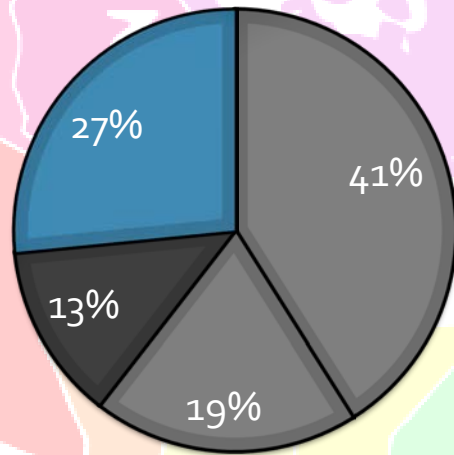


Source: UNCTAD, "Key Statistics and Trends in trade Policy 2016"



# Some facts about Canada and trade remedies

## Countervailing duty initiations by country (1995-2014)



■ United States    ■ European Union  
■ Canada        ■ Rest of the World

**World's TOP9 Anti-dumping initiator**  
196 AD initiations (1995-2014)

**World's TOP3 Countervailing duty initiator**  
49 CVD initiations (1995-2014)

**Steel is Canada's #1 Industry for ADCV investigations: 15/33 investigations from (2005-2015)**

**Not big user of safeguards**  
3 Global-Safeguard Inquiries under the WTO  
No definitive import-restricting measures in each of the three cases



Source: Bown, "Canada's Antidumping and Safeguard Policies: Overt and Subtle Forms of Discrimination" 2007

Canada

Source: Evaluation Report of CBSA Anti-dumping and Countervailing Program (2016)

# Canada's Anti-dumping and Countervailing (ADCV) program



Anti-dumping and Countervailing (ADCV) programs since 1904 in Canada  
✓ First nation in the world!

The ADCV program involves multiple agencies :

- Canada Border Services Agency (CBSA),
- Canadian International Trade Tribunal (CITT),
- Administrative Tribunal Support Service of Canada (ATSSC),
- Department of Finance Canada (FIN),
- Canada Revenue Agency (CRA), and
- Global Affairs Canada (GAC).

ADCV Program spent between \$6M-\$7.5M annually

Purpose ADCV system is to provide a "domestic redress mechanism against unfair trade practices by foreign companies."

Canada implemented WTO AD and CVD agreements with the *Special Import Measures Act (SIMA)*



Canada

Source: Evaluation Report of CBSA Anti-dumping and Countervailing Program (2016)