

# Introductory Workshop on WTO Trade Remedies

## Session 6

### *Canadian Anti-Dumping Legislation and Practices*

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# Overview

- Will review chronology of steps in a typical Anti-Dumping case
  - Complainant – preparation to final determination
  - Respondents – initiation to final determination



# Overview

- Presentation based on Canadian practice
- Consistent with WTO obligations
- Consistent with practice in other jurisdictions



Canada

# Participants

- Canadian Border Services Agency (CBSA)  
– initiates investigations to detect and measure dumping and subsidization
- Canadian International Trade Tribunal (CITT) – conducts inquiries into whether or not dumping and subsidization has caused or is threatening material injury .



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# Legislation

- Special Import Measures Act (SIMA) – AD and CVD
- Canadian International Trade Tribunal Act (CITT) – Safeguards Inquiries



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# Terminology

- Complainant - party seeking duties
- Generally the domestic industry, but can include Unions in the U.S.
- Respondents – any party opposing duties
- Can include foreign producers, exporters, importers, consumer advocates, any other interested group



# AD Process

- Complainants must establish that:
  - Subject imports are dumped;
  - It is injured or is threatened with injury; and
  - Dumped subject imports cause the injury
- Complainant must establish all three conditions for duties to be imposed



# AD Process

- Respondents will rebut Complainant's case by demonstrating:
  - No dumping
  - No injury
  - No causality
- Respondents only have to establish one of these to avoid duties





# Complainant's Process

- Step 1 Preparation
- Step 2 Filing Properly Documented Complaint
- Step 3 Participation in the Administrative Process



# Complainant's Process

## Step 1: Preparation

- Complainant must identify subject goods and like domestic goods
- Resolved by determining which of its products are negatively affected by imported goods



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# Complainant's Process

## Step 1: Preparation

- Complainant must determine injury by considering:
  - extent of injury
  - types of injury
  - which subject goods caused/threatened injury
  - dumping margins
  - volume of dumped goods



# Complainant's Process

## Step 1: Preparation

- Extent of injury concerns the actual injury caused or threatened by imports
  - Reduced prices (depression, suppression)
  - Lost sales
  - Reduced return on investment
- Injury must be “material” – injury below this threshold is not sufficient



# Complainant's Process

## Step 1: Preparation

- Must determine origin of the subject goods (ie., originating in or exported from country X) causing injury
- Must assess dumping margins for these goods by calculating domestic price and export price
- Must determine whether dumping is negligible
- Must determine whether volume is *de minimis*



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# Complainant's Process

## Step 1: Preparation

- Injury finding shall be based on positive evidence (ADA Art 3.1)
- Requires objective examination of:
  - Volume of dumped imports
  - Effect of dumped imports
  - Impact of dumped imports on domestic producers



# Complainant's Process

## Step 1: Preparation

- Final Step, determining the likelihood of success
- Conducting objective assessment in light of all evidence, is it more likely than not that the case will succeed



# Complainant's Process

## Step 2: PDC

- Complainant must prepare and file a complaint with authorities
- Complaint demonstrates dumping, injury and causality
- Attaches all evidence
- Must meet all procedural requirements



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# Complainant's Process

## Step 2: PDC

- Complaint is submitted to investigating authorities (CBSA in Canada)
- Authorities will review the complaint to determine whether it provides sufficient evidence to warrant an investigation
- Properly Documented Complaint meets this threshold



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# Complainant's Process

## Step 2: PDC

- Investigating authorities may request additional information
- Review and amendment process can take some time
- Once accepted, investigating authorities will initiate the investigation



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# Complainant's Process

## Step 3: Participation

- Bifurcated process in Canada
  - CBSA determines dumping
  - CITT determines injury
- Process begins with a Preliminary Injury determination
- Process ends with a CITT Injury hearing



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# Canadian AD Process Steps

- I. Preliminary Injury Inquiry – CITT
- II. Dumping Investigation - CBSA
  - A. Preliminary Determination
  - B. Final Determination
- III. SIMA Section 20 - CBSA
- IV. Final Injury Inquiry - CITT



# Complainant's Process

## Step 3: Participation

- Complainant must be actively involved in the process from beginning to end
- Complainant must:
  - respond to Questionnaires
  - prepare and file written submissions
  - respond to written submissions filed by parties in opposition
  - present evidence (including witnesses) and participate fully in the hearing processes
  - prepare and file RFIs
  - object/respond to RFIs
  - respond to requests for product exclusions



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# CITT Preliminary Injury Inquiry Schedule

- Day 0 CBSA initiates investigation, notifies CITT
- Day 1 Notice of Commencement of Preliminary Injury Inquiry
- Day 12 Notice Published in Canada Gazette
- Day 16 Notices of Participation and Representation, Declarations and Undertakings
- Day 22 Distribution of Documents received from CBSA



# CITT Preliminary Injury Inquiry Schedule

- Day 32 Submissions by Parties opposed to the Complaint
- Day 39 Replies from the Complainant and those in support of the Complaint
- Day 60 CITT Issues Preliminary Injury Determination
- Day 75 CITT Issues Statement of Reasons



# CBSA Dumping Investigation

- Day 0      Initiation of CBSA Investigation,  
Initial compilation of CBSA  
Exhibits Available
- Day 0      CBSA Questionnaires Distributed
- Day 15     Statement of Reasons on Initiation
- Day 20     Response to CBSA RFIs Due





# CBSA PD Schedule

Day 45	PD Decision Issued
Day 60	PD Statement of Reasons

Note: Possible to delay the PD by 45 days, affecting the PD and FD schedule



# CBSA FD Schedule

Day 45	Exporter/Importer Ruling Letters
Day 75	Record Closes
Day 90	Arguments from All Parties
Day 97	Reply Arguments Due
Day 135	Final Determination Export/Importer Ruling Letters
Day 150	Statement of Reasons



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# CBSA NME Schedule

- CBSA will conduct NME inquiry if it considers that Complainant has filed sufficient evidence
- NME inquiry under SIMA Section 20
- Schedule follows the PD & FD schedules



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# CITT's Injury Schedule

- Day 0 Receipt of PD
- Day 1 Notice of Inquiry, Inquiry Schedule and Questionnaires Distributed by CITT
- Day 14 Notice of Participation and Representation, Declarations and Undertakings
- Day 21 Replies to all Questionnaires due
- Day 50 Distribution of Tribunal exhibits, including Staff Report
- Day 60 Complainant's Submission Due



# CITT's Injury Schedule

Day 60 – 70	Responding Parties Submit RFIs
Day 70	Respondents' Submissions Due
Day 70 – 80	Complainant Submits RFIs
Day 80	Complainant's Reply Submission Due
Day 90	Hearing Commences, must end by Day 105
Day 120	CITT's Finding
Day 135	CITT's Statement of Reasons



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# Complainant's Process

## Step 3: Participation

- Complainant's role at this point is to present evidence and arguments to support its claim that duties are warranted



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# Respondent's Process

- Respondents will become involved in the process following PDC and initiation
- Respondent must review the administrative record
- Objective is to understand the Complainant's case, to identify the weak points and determine a response



# Respondent's Process

- Respondent has the right to submit evidence supporting its case
- Respondent must undertake research, as necessary, to respond to Complainant's case
- Requires "positive evidence" to support and "objective analysis"





# Respondent's Process

- Respondents must,
  - respond to Questionnaires
  - prepare and file written submissions to respond to the Complainant's submissions, including Complaint
  - present evidence (including witnesses) and participate fully in the hearing processes
  - prepare and file RFIs
  - object/respond to RFIs
  - prepare requests for product exclusions, if any



# Respondent's Process

- Generally more than one Respondent in each case
- Important to coordinate as much as possible
- Fatal if Respondents take mutually exclusive positions



# After Injury Determination

- Threat of Injury / Future Injury
- Refund duties collected in provisional period
- Instruct importers and ports of entry on prospective normal values
- Imports flagged for review and audit



# Definitive Injury

- CBSA conducts Section 55 investigation to determine amount of refunds if any of provisional duties
- CBSA updates normal values
- Exporters and Ports of entry are advised of prospective normal values.
- Imports flagged for review and monitoring by Enforcement Division



# Enforcement

- CBSA requires regular reporting of imports by known importers.
- Secondary audit to ensure dumping/CVD reported and duties collected
- Up to 2 years to issue detailed Adjustment statement (DAS)
- All assessments can be appealed



# Decision Tree

- SIMA s 57 Decision by designated officer
- SIMA s 59 Decision by CBSA President
- Appeal to CITT
- Judicial Review by Federal Court of Appeal - only final decisions – Chisholm
- Appeal to Supreme Court – very rare- National Corn Growers



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# Reviews

- Interim Review - changed circumstances
- Sunset Review - 5 years
- CBSA determines whether or not there is likely to be continuing or renewed dumping or subsidization
- CITT determines whether or not dumping or subsidization will cause or threaten renewed injury



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# Results

- Negative CBSA – termination
- Affirmative – continue process
- Negative CITT – Termination
- Affirmative – finding extended for up to an additional period of up to 5 years



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