



TPSA | CANADA-INDONESIA TRADE AND PRIVATE SECTOR ASSISTANCE PROJECT

Session 2: GENERAL IMPACT ASSESSMENT OF TRADE REMEDY MEASURES



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The Conference Board
of Canada

Introduction

- Dumping is a common practice in international trade.
- Dumping is price discrimination which occurs in international trade. In domestic trade it is called competition.
- Anti-dumping laws are designed to eliminate injury.
- Anti-dumping laws are not about eliminating imports.
- Anti-dumping measures should not be only about eliminating dumping.




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Why is Public Interest Important?

“In some cases the objectives of anti-dumping policy and those of competition policy may conflict.”

- Clive Stanbrook in *Dumping and Subsidies*



Domestically, very low prices are called a "sale", but internationally that's illegal dumping.

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Imposition of AD duties is Permissive not Mandatory

- ADA Article 9.1

“The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. ***It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.***”

- Indeed, ADA Article 6.12

“The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.”



Canada



Anti-dumping duties are designed to:

- Increase the price of imports.
- Make imports less competitive.
- Increase market prices.
- Improve profitability and viability of local industry.
- Domestic industry may choose not to take full price benefit – increasing market share – or eliminating imports.
- What is the argument for increasing prices more than necessary to remove injury?



Canada



Solar Panels from China (2015)

Exporters	Margin of Dumping	Margin of Subsidy
Canadian Solar Manufacturing (Changshu) Inc. / Canadian Solar International Limited	83.2%	0.4%
Changzhou Trina Solar Energy Co., Ltd.	120.5%	0.8%
Hefei JA Solar Technology Co., Ltd.	48.4%	0.3%
Jinko Solar Co., Ltd.	112.6%	1.1%
Renesola Jiangsu Ltd.	9.3%	0.1%
Wuxi Taichen Machinery & Equipment Co., Ltd.	25.9%	1.8%
Wuxi Suntech Power Co., Ltd.	N/A	0.6%
Zhejiang Jinko Solar Co., Ltd.	115.9%	1.7%
All other exporters	154.4%	10.9%

Source: CBSA, Solar Panels from China, Reasons, June 18, 2015



Canada



Impacts of Excessive Protection

- Creates unnecessary costs on other stakeholders.
- Can impact market by decreasing competitiveness.
- Eliminate injury does not mean eliminate all imports.
- Trade remedy laws have become captive of user industries.
- Overcapacity in steel industry is driving countries to add excess protection.



Canada



Canada



What are the Choices – for Government – for the Public

ARE YOU FOR STEEL TARIFFS TO HELP THE STEEL WORKERS
OR AGAINST THEM TO HELP THE AUTO WORKERS?



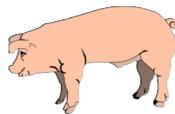
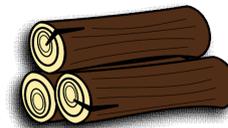
Canada



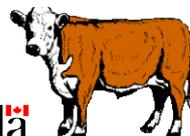
WTO Doha Round Rules Negotiations: Paper from Canada

Tabled; November 17, 2005

- There are relatively few AD/CVD complaints against Canada.
- There are few targeted Canadian exports but all have very high export volumes – billions of \$\$\$.
- Beef Cattle
- Live Swine
- Softwood Lumber
- Investigations are initiated by U.S.A.
- Canada proposed more effective public interest provisions in the Doha Round Rules, negotiation.



Canada



WTO Doha Round Rules Negotiations: Paper from Canada

Proposal

Amend the ADA by adding the following to the end of Article 9.1:

9.1 bis - Each Member shall establish appropriate procedures in its law to allow its authorities to inquire into whether the imposition of an anti-dumping duty or the imposition of such a duty in the full amount would not be in the public interest. These procedures shall require the authorities to take due account of representations made by any domestic party whose interests may be affected by the imposition of the anti-dumping duty, including, but not limited to, industrial users of the product under consideration, representative consumer organizations, and the domestic competition law authorities of the Member. In conducting such an inquiry, the authority concerned should consider all relevant information, including those factors set out in Annex III to this Agreement. As a result of any such inquiry, the authorities may decide to eliminate or reduce the level of duties that would otherwise be applied. For greater clarity, public interest decisions cannot give rise to claims of violation under the DSU.

- ADA Article 9.1 is permissive. These changes would make lesser duty consideration mandatory.
- Anti-dumping as a single remedy is no longer in fashion.
- Allegations of both dumping and subsidies are increasingly common.
- Canada proposed to amend Article 19.2 of the ASCM in the same manner.



Canada



WTO Doha Round Rules Negotiations: Paper from Canada

Add an Annex III to the ADA as follows:

- For the purposes of Article 9:1 bis, factors that should be considered include:
 - (a) whether products like the product under consideration are readily available from sources to which the measure does not apply;
 - (b) whether imposition of an anti-dumping duty in the full amount
 - (i) has eliminated or substantially lessened or is likely to eliminate or substantially lessen competition in the domestic market in respect of products,
 - (ii) has caused or is likely to cause significant damage to domestic producers that use the products as inputs in the production of other products and in the provision of services,
 - (iii) has significantly impaired or is likely to significantly impair competitiveness by
 - (A) limiting access to products that are used as inputs in the production of other products and in the provision of services, or
 - (B) limiting access to technology, or
 - (iv) has significantly restricted or is likely to significantly restrict the choice or availability of products at competitive prices for consumers or has otherwise caused or is otherwise likely to cause them significant harm;
 - (c) whether non-imposition of an anti-dumping duty or the non-imposition of such a duty in the full amount is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic manufacture or production of like products; and
 - (d) any other factors that are relevant in the circumstances.



Canada



Canada: 1982 Mackasey Report on Special Import Measures Act

National and Consumer Interest

- The primary purpose of Canada's anti-dumping and countervailing legislation is to protect domestic producers from the injury caused by unfair import practices. In the opinion of some experts, this should be its only purpose. However, some witnesses made strong representations to the Sub-Committee that the concentration on producer interests alone is too narrow a focus and the consumer interest must be considered.
- These witnesses stressed that the strict calculation of the dumping margin, resulting in an unduly high import price, eliminates needed competition from a Canadian market dominated by only one or two producers. In this case, a less than full margin of dumping could be levied in order to reflect consumer interest and to promote competition in Canada. However, it must be emphasized that this legislation cannot replace an adequate Competition Bill nor was it intended to.



Canada



Canada's Anti-Competition Remedy

• SIMA s. 14

Exemption of goods from application of Act

14 (1) The Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods from the application of this Act.

Marginal note: Exemption of goods of Chile from application of Act

(2) The Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods of Chile from the application of this Act or any of its provisions. The exemption may be in respect of the dumping of those goods or that class.

Marginal note: Duration and conditions

(3) Regulations made under subsection (2) may specify the period during which the exemption applies and make it subject to conditions.



Canada

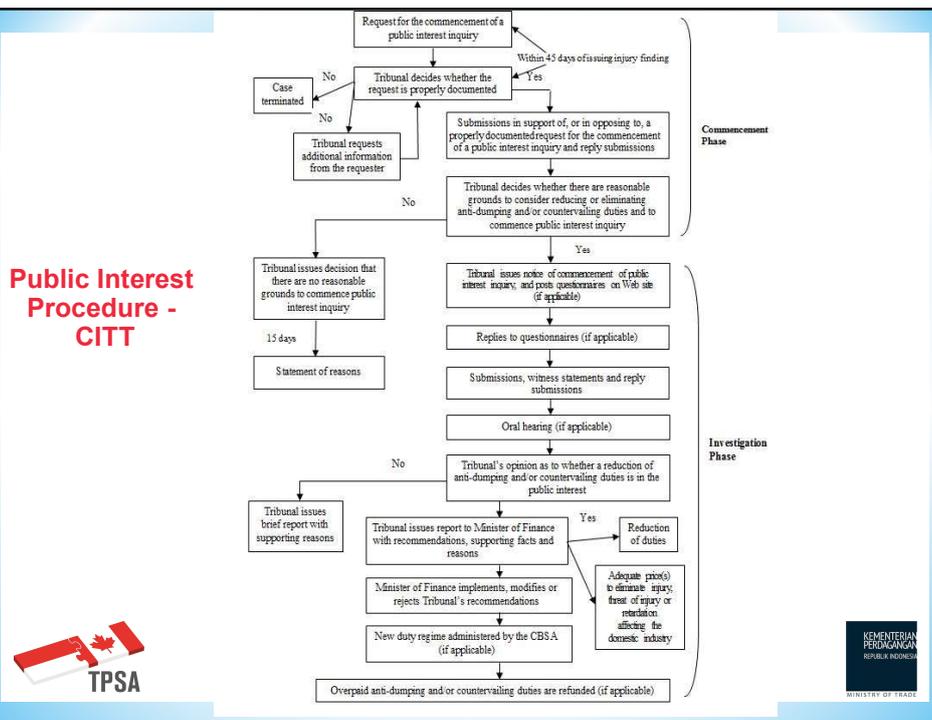


Public Interest in Canada

- SIMA s. 45

Initiation of inquiry if imposition of duty not in public interest

45 (1) If, as a result of an inquiry referred to in section 42 arising out of the dumping or subsidizing of any goods, the Tribunal makes an order or finding described in any of sections 3 to 6 with respect to those goods, the Tribunal shall, on its own initiative or on the request of an interested person that is made within the prescribed period and in the prescribed manner, initiate a public interest inquiry if the Tribunal is of the opinion that there are reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount provided for by any of those sections, in respect of the goods would not or might not be in the public interest.



Public Interest Procedure - CITT

Commencement Phase:

- File a request for the commencement of a Public Interest Inquiry.
- Decision by Tribunal on whether the request for a Public Interest Inquiry is properly documented.
- Schedule for the Commencement Phase.
- Tribunal's Notice of a properly documented request for a Public Interest Inquiry.
- Submissions filed.
- Reply Submissions.
- Decision on whether to commence a Public Interest Inquiry.



Canada



Public Interest Procedure - CITT

Information to be Included in a Request for the Commencement of a Public Interest Inquiry:

1. Application signed by the requester or counsel;
2. A statement of the public interest affected by the imposition of anti-dumping and/or countervailing duties, indicating the degree to which it is affected; and
3. Sufficient information as to whether the imposition of anti-dumping and/or countervailing duties would not or might not be in the public interest; *Cont'd...*



Canada



Public Interest Procedure - CITT

Information to be Included in a Request for the Commencement of a Public Interest Inquiry: *(cont'd)*

4. Address all relevant factors, including, where applicable:
 - a) The availability of goods of the same description from countries or exporters to which the order or finding does not apply,
 - b) The effect that the imposition of anti-dumping and/or countervailing duties has had or is likely to have on:
 - i. Competition in the domestic market,
 - ii. Producers in Canada that use the goods as inputs to produce other goods or provide services,
 - iii. Competition by limiting access to:
 - Goods that are used as inputs to produce other goods and provide services, or
 - Technology.



Canada



Public Interest Procedure - CITT

Information to be Included in a Request for the Commencement of a Public Interest Inquiry:

4. address all relevant factors, including, were applicable:
 - iv) the choice or availability of goods at competitive prices for consumers; and
 - c) the effect that a reduction or elimination of anti-dumping and/or countervailing duties is likely to have on domestic producers of inputs, including primary commodities, used in the production of like goods; and
5. include any other information that is relevant.



Canada



Public Interest Procedure - CITT

Factors that the Tribunal may consider in a Public Interest Inquiry:

- Availability from other sources;
- State of competition in the domestic market;
- Impact on domestic producers of inputs; and
- Other factors.



Canada



Availability of Alternative Sources

- Are goods of the same description readily available from countries to which the order or finding does not apply?
- If there are alternative sources, this will have an important influence on the state of competition?
- Is the issue – access? Or access at prices which injure local production of like goods?



Canada



Impact on Other Stakeholders

- Will the imposition of full anti-dumping and/or countervailing duties have or is likely to have the following effects;
 - a) Substantially lessen or eliminate competition in the domestic market in respect of like goods;
 - b) Cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services; (i.e., steel vs. autos)
 - c) Significantly impair, competitiveness by limiting access to; and
 - i. Goods that are used as inputs in the production of other goods and in the provision of services, or
 - ii. Technology
 - d) Significantly restrict the choice or availability of goods at competitive prices for consumers or otherwise cause them significant harm.



Canada



Public Interest Procedure - CITT

- Is a reduction or elimination of anti-dumping and/or countervailing duties likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic production of like goods?

For example:

- Steel to automobiles;
 - Silicon Metal to solar panels;
 - Soybeans, soybean oil, palm oil to biodiesel; and
 - Grain corn to ethanol in High-Fructose Corn Syrup (HFCS).
- New Zealand considers that this is not a proper public interest issue. Producers of inputs are not producers of like goods.



Canada



Factors to Examine:

- Market share of domestic industry;
- Margin analysis- impact on price;
- Gross margin and profit trends;
- Future production and capacity utilization;
- Employment;
- Domestic support / subsidies; and
- Change in market share.



Canada



Competition

- When duties are imposed competition from subject countries will be reduced or eliminated.
- Behaviour of the industry participants:
 - Is there a record of anti-competitive behaviour?
 - How are prices set?
 - Nature of demand, elastic or inelastic?
- Nature of the product.
- Is it a commodity?
- Degree of product differentiation.

Elastic Demand: Demand for a product is relatively insensitive to a change in the price.

Inelastic Demand: Demand for a product is relatively sensitive to a change in the price.



Canada



Impact on Employment

- Jobs... Jobs.... Jobs.
- Where are jobs located? (Regional differences)
- How many jobs are affected, who and how many that will benefit from the duties?
- How many jobs in user industries are put at risk by the duties?



Canada



Employment Considerations



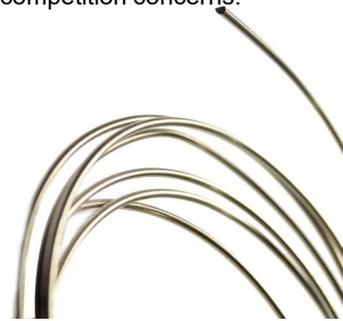
Canada



Steel Round Wire from U.S.A. (PB-2004-002)

Relief was provided because:

- Price volatility of nickel cost element;
- Central Wire's continued strong export sales and gross margin; and
- Limits on user access to supplies created competition concerns.



Canada



Gypsum Board from U.S.A (2016)

Exporters	Margin of Dumping
CertainTeed Gypsum and Ceiling Manufacturing Inc.	211.0%
United States Gypsum Company	201.0%
Georgia-Pacific Gypsum LLC	94.6%
All other exporters	324.1%

Source: CBSA, Gypsum Board from USA, Reasons, December 20, 2016



Canada



Economic & Tariff Inquiry: Gypsum Board from U.S.A. (2016)



- "...the Tribunal finds that the imposition of duties, in their full amount, in respect of imports of the subject goods will have the effect of substantially reducing competition in the Western Canadian market in the future, including losses in sources of supply, excessive price increases and reduced consumer choice."
- "...the Tribunal finds that the immediate imposition of provisional or final duties, in their full amount, in respect of imports to the subject goods has had or would have the effect of causing significant harm to businesses who use these goods, unless there is a mechanism put in place to allow the market to adjust to the resulting price increase."
- "The fact remains that the duties will ultimately result in house buyers paying thousands of dollars more for a typical home; in addition, this increase is occurring in a market where builders and ultimately house buyers have already seen other major increases in costs. Both of these issues cannot be ignored by the Tribunal."



Source: CITT, Gypsum Board from USA, Reasons, January 19, 2017

Canada



Preformed Fibreglass from U.S.A. (1994)

- "The Tribunal is of the view that, if there is a public interest issue in this case, it would relate to the allegation that the imposition of anti-dumping duties may curtail effective price competition in the domestic market for the subject goods."
- "...the Tribunal is of the view that the imposition of the full amount of the anti-dumping duties would not exclude the U.S. subject goods from the Canadian market nor interfere with effective price competition between the subject goods made in the United States and like goods made in Canada."
- "The evidence available to the Tribunal indicates that Manson is not able to supply the entire domestic market for preformed fibreglass pipe insulation with a vapour barrier. The firm's plant capacity is constrained by plant equipment limits and by raw-material supply."
- "Moreover, in these circumstances, the Tribunal anticipates that Manson will respond to the imposition of the anti-dumping duties by raising its prices."



Source: CITT, Preformed Fibreglass from USA, Public Interest Reasons, January 28, 1994



Canada



Grain Corn (1987 Report of the Canadian Import Tribunal)

“It does, however, **increase uncertainty for both users and corn producers**. It raises unwarranted price expectations on the part of the corn producers, and unjustified fears on the part of users as to the future price of corn. Instability and risk follow from closing the border to U.S. imports which have traditionally entered Canada during the summer months and have conveniently allowed corn users to depend upon U.S. corn storage facilities. A poor Canadian crop year might result in shortages that could drive up prices for Canadian corn well above the normal market premium resulting from the countervailing duty. This would create a hardship for all users”.



Canada



Bicycles from China and Taiwan (PB-92-001)

Public Interest request was declined because:



- The vigorous price competition which has characterized the Canadian market in the past would continue to thrive in the Canadian market following the imposition of anti-dumping duties from countries which have had unrestricted access to Canada (China, Taiwan);
- The evidence showed that the domestic industry has sufficient production capacity to supply a substantial proportion of the Canadian bicycle demand;
- Any demand that couldn't be met by domestic suppliers can be satisfied by a number of alternative sources;
- Subject countries have relatively low anti-dumping duties and are still able to participate in the Canadian market with their unique margins; and
- Imports of the subject bicycles, with an F.O.B. Taiwan and China selling price exceeding CAN\$325, were excluded from the finding because they were not causing injury to Canadian production.



Canada



Refined Sugar from U.S.A, Denmark, Germany, Netherlands, U.K. and E.U. (PB-95-002)

Public Interest request was declined because:

- There was an increase in the degree of competition between Canadian refiners. The increased competition occurred for both industrial user and re-seller accounts;
- Industrial users that have not yet renegotiated their contracts during the period of increased price competition will be making strong efforts to negotiate margins which are at least comparable to those being paid by their competitors;
- Most buyers of refined sugar have countervailing power and account for significant volume. As such, can negotiate better margin with sellers;
- Substitutability of High Fructose Corn Sweetener HFCS: would create downward pressure on the price of domestic liquid sugar in order to protect the domestic market share for liquid sugar;
- The price and delivery advantages, together with the product characteristics of the refined sugar from the domestic industry, have made domestic sugar the preferred source for the industrial users;
- The imposition of duties did not result in large increases in the refining margins that industrial users pay for refined sugar;
- High Sugar Content Products: the elimination or reduction of anti-dumping duties would do very little to assist these producers to find markets to replace sales lost as a result of U.S. border measures; and
- The duties did not led to a significant increase in the price that consumers pay for refined sugar or sugar-containing products.



Canada



Certain Iodinated Contrast Media (PB-2000-001) from U.S.A.



Public Interest request was granted because:

- Domestic producers could only supply 80 to 85% of the market;
- Reduction in number of procedures or shift to high osmolality contrast media (HOCM) would reduce quality of health care for patients;
- Price increases large enough would reduce choice of low osmolality contrast media (LOCM) for radiologists;
- Continuing need for hospitals to purchase even 10 to 15 percent of LOCM at higher prices is not in public interest;
- Cost to public finances was crucial;
- Reduction in competition would result in significant loss of monetary or non-monetary benefits to hospitals; and
- New sources of supply from EU reflected considerable uncertainty on both price and ability to supply.



Canada



Copper Pipe Fittings from U.S.A., Korea and China (PB-2006-001)

Public Interest request was declined because:

- Some exporters had no or little dumping margin and could supply market; and
- There were ample sources of copper pipe fittings available in the domestic market.



Canada



Aluminum Extrusions from China (PB-2008-003)

Public Interest request was declined because:

- Subject goods were available from other supplying countries (U.S.A.);
- Average selling price of custom-shaped aluminum extrusions from all non-subject countries was \$0.39/kg lower than that of imports from China; and
- No evidence that users couldn't adjust to price increases.



Canada



CITT Report on Certain Prepared Baby Food (CPBF) (1998)

- Tribunal reported that jarred baby food accounted for 47% of food costs for a child of 4 to 18 months.
- If retail price increased by 10 percent, cost of commercial baby food on average would increase by \$63.00 over 15 month feeding period. (or \$4.20 per month)
- Tribunal: "Too high for low-income consumers to bear."



Canada



CITT Report on Certain Prepared Baby Food (CPBF) (1998)

"If the duties were reduced...the increased possibility of competition between suppliers of commercial CPBF, along with continued Canadian production, could be expected to lead to a smaller increase in the price of CPBF than would occur under either the imposition of the full amount of anti-dumping duties or, in the long run, the elimination of the duties. In the Tribunal's view, this is the option that will cause the least concern for low-income families in the long run."



Canada



Q&A and Discussion

Thank you for your participation.

