

Public Interest in Canada's Trade Remedy System

April 10, 2015

International Conference on Trade Remedy Measures
Centre for WTO Studies



Department of Finance
Canada

Ministère des Finances
Canada

Canada

Outline

- **Rationale for public interest in trade remedies**
- **Canada's public interest framework and process**
- **Canadian experience with public interest in trade remedies**
- **Link to WTO rules and FTAs**

Rationale for public interest provisions

- **Other affected parties can raise concerns over detrimental effects of trade remedy measures**
- **Offers a channel to apply lower duties that mitigate detrimental effects while maintaining appropriate protection from injury**
- **Allows trade remedy system to reflect consumer interests and promote competition**

Legislative history

- **Canada introduced “public interest” to its trade remedy system with the enactment of SIMA in 1984**
 - **Broad discretion for consideration of public interest and process issues**
- **Amendments in 2000**
 - **Specified interested parties**
 - **Specified factors in public interest reviews**
 - **Added timelines such that inquiries follow imposition of measures**
 - **Added option for CITT to self-initiate**
 - **Established initiation threshold**
 - **Specified that CITT to recommend a level of duty reduction, or price adequate to eliminate injury**

Process for CITT public interest inquiries

Request for Public Interest Inquiry

Within 45 days of finding

CITT determines if properly documented

No set timeline

- Request is posted on web site
- Interested parties make submissions

CITT decision whether to initiate

Within 35 days of PDC

- Questionnaires issued
- Interested parties make submissions
- Oral hearing (in some cases)

CITT report and recommendation

Within 100 or 140 days of initiation

- Indicates whether there is a public interest issue
- Recommends adjustments to duties

Minister of Finance decision

No set timeline

Who is an “interested party”?

Upstream

Producer or seller in Canada of **inputs** to the subject goods or like goods

Producer, purchaser or seller of subject goods

Producer, purchaser or seller in Canada of like goods

Importer of subject goods

Exporter of subject goods

Downstream

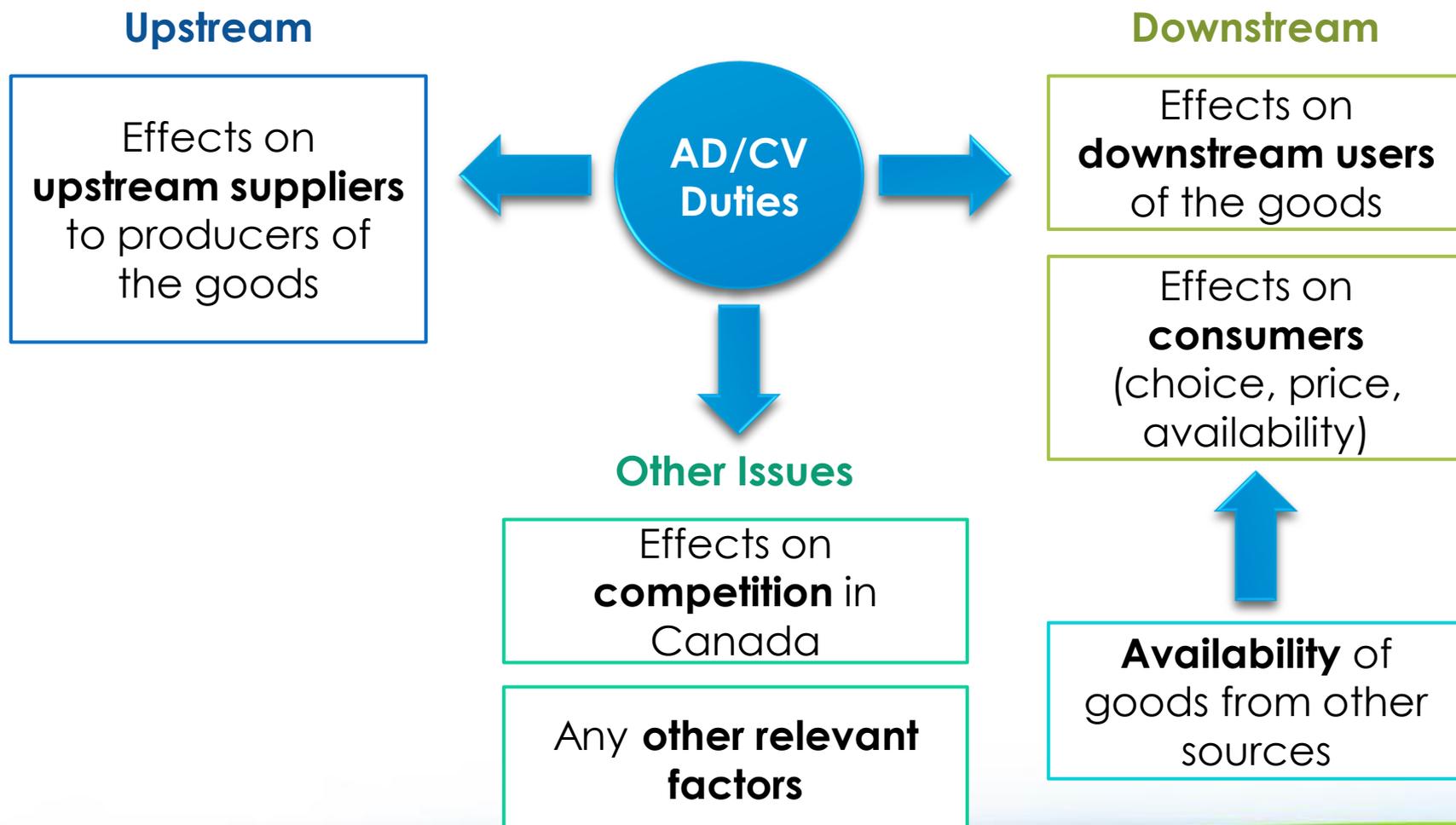
User of subject goods or like goods

Consumer advocacy group

Others

Those authorized by federal or provincial laws to participate (e.g. provincial governments, competition agencies)

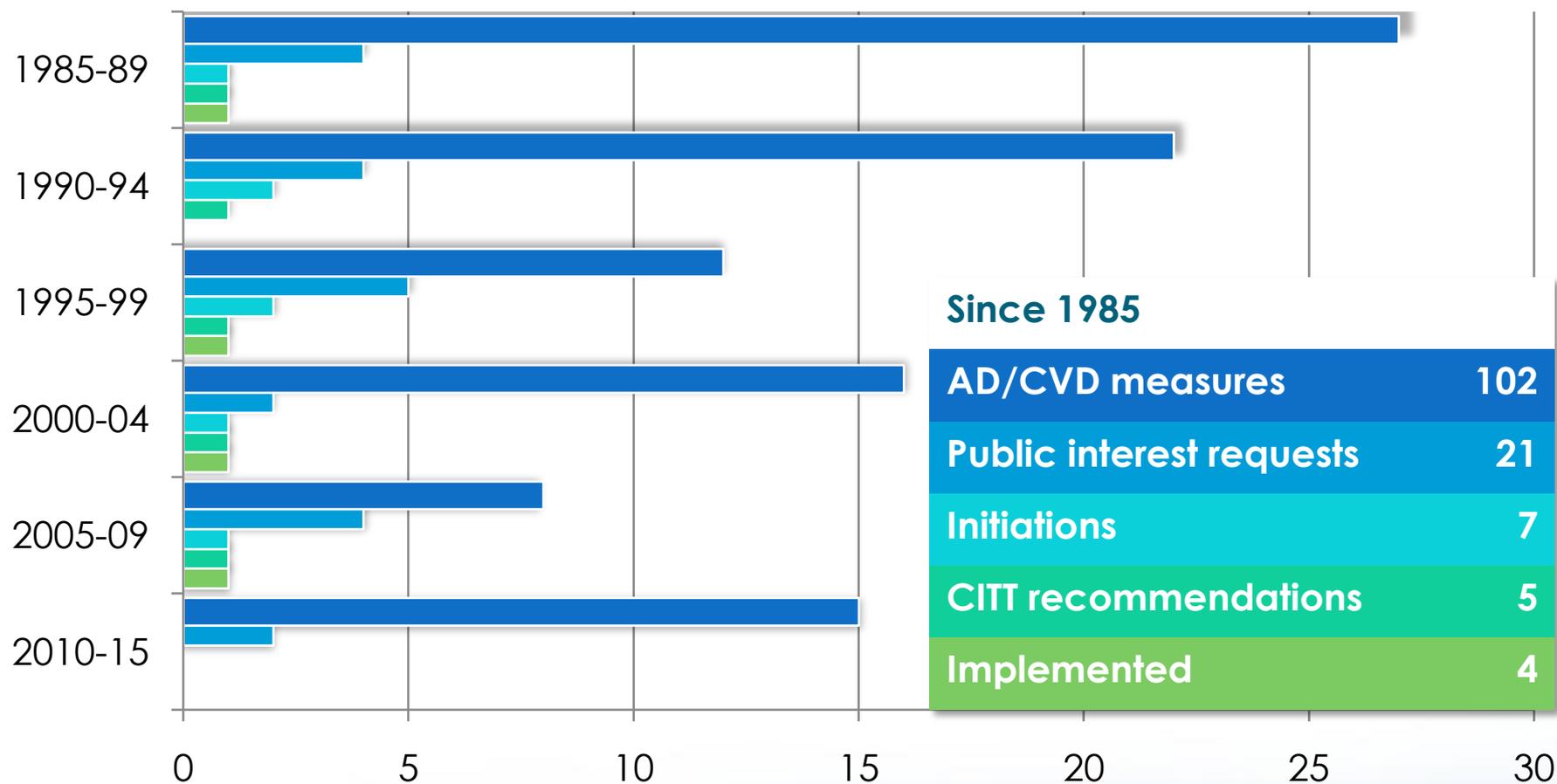
What factors does CITT consider?



What does CITT report contain?

- **If CITT is of the opinion that imposition of full duty would not be in public interest, issues report to the Minister of Finance**
- **Sets out facts and reasons supporting that opinion**
- **Recommends a course of action**
 - A level of reduction of the AD or CV duties or
 - A price or prices that are adequate to remove the injury
- **The Minister of Finance then decides whether to implement the CITT recommendations**

Experience with public interest provisions



Trends in CITT decision-making

✓ Reasons for initiating/ recommending

■ Competition

- **Baby food and stainless steel round wire:** sole producer in Canada, duties would block imports and create a virtual monopoly

■ Consumer and welfare impacts

- **Baby food:** low-income families, infant health
- **Contrast media:** costs for hospitals, patient care
- **Beer:** consumer choice, price effects

■ Utility of higher duties

- **Grain corn:** high duties would create market uncertainty, prompt product switching
- **Beer:** Higher duties not necessary to remove injury

Trends in CITT decision-making

X Reasons for not initiating/ recommending

- Adequate supply of goods from countries not covered by the measure
- Adequate supply of goods from countries with low margins of dumping/ subsidy amounts
- Good conditions of competition in Canada
- Lesser duty claim not substantiated by information on public interest factors
- Request not made in public interest, but in the private interest of a single exporter
- Some concern over using public interest inquiries to revisit exclusion decisions made in the context of initial inquiries

Implementation - administrative issues

- **Challenges with Canada's prospective normal value duty assessment system, used in anti-dumping context**
- **Duties need to be set in such a way that they (1) affect actual prices in the market and (2) are enforceable**

| Case | Country | Outcome |
|---------------------------------|--------------------------|--|
| 1987 Grain Corn | U.S. | CVD \$/ bushel reduced by two-thirds |
| 1998 Baby Food | U.S. | Reduced normal values through specific benchmark prices |
| 2000 Contrast Media | U.S. | Reduced normal values through formula-derived benchmark prices |
| 2005 Stainless Steel Round Wire | U.S., Korea, Switzerland | AD duties paid in excess of 35% to be refunded (previous max was 181%) |

Implementation - policy issues

- **Alignment with international obligations (WTO, NAFTA, other FTAs)**
 - In stainless steel wire case, request and CITT recommendation limited to imports from U.S.
 - In implementing, reduced duties for all importers
- **Retroactive vs. prospective application**
 - In some cases remission is granted retroactive to the preliminary determination
 - Determined on a case-by-case basis

Links to WTO and FTAs

■ WTO

- Anti-Dumping and Subsidy Agreements note desirability of applying only the level of duty necessary to remove injury
- In Canada, public interest inquiries are the means for allowing for the application of a lesser duty
- In practice, CITT recommendations generally focus on the level of duties necessary to address public interest issues

■ Recent Canadian FTAs (EU and Korea)

- Include language requiring authorities to consider whether imposing the full margin of dumping or amount of subsidy is in the public interest
- Allow for the application of a lesser amount, in accordance with each party's domestic law

Conclusion

- **Public interest ensures that authorities can consider broader public interest issues in the imposition of AD and CV duties**
- **Is in keeping with transparency and fairness of trade remedies system**
- **Infrequently requested and applied**
 - **Overall intent of trade remedy system is to address injury to domestic producers**
 - **Duty reductions due to public interest concerns apply only in exceptional circumstances**

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