

# Canada's Approach to Expiry (Sunset) Reviews

April 10, 2015

International Conference on Trade Remedy Measures  
Centre for WTO Studies



Department of Finance  
Canada

Ministère des Finances  
Canada

Canada

# Outline

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- **Overview of law and process governing expiry reviews**
- **Canada's experience with expiry reviews**
- **Observations and WTO context**

# Expiry of measures - legislative framework

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- Expiry reviews are provided for in Section 76.03 of the *Special Import Measures Act (SIMA)*
- Measures to expire five years after the date of the last order if no expiry review has been initiated
  - As a result of no parties requesting an expiry review
  - As a result of CITT determining that an expiry review is not warranted
- Outlines a process for conduct of expiry reviews

# Purpose of expiry review

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- To determine whether existing measures that are set to expire should be continued
- Two issues are addressed:
  1. Is dumping or subsidization likely to resume/ continue if a measure expires?
  2. Would such dumping or subsidizing be likely to result in injury or retardation?
- If both questions are answered in affirmative, the order or finding may be continued

# Process for expiry review

## CITT notice of expiry

- Notice issued
- Interested parties make submissions

10 months before expiry

## CITT decision to initiate

Within 50 days of notice

## CBSA expiry review investigation (AD/CV)

- Questionnaires issued
- Interested parties make submissions
- Report to CITT (goes on official record)

120 days

## CITT expiry review inquiry (injury)

- Questionnaires issued
- Interested parties make submissions
- Oral hearing

130 days

## CITT decision

Within 250 days of initiation

# Initiation decision

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- **CITT may self-initiate or may initiate in response to request by an interested party if CITT is satisfied that a review is warranted**
- **Prescribed factors include:**
  - **Likelihood of a continuation or resumption of dumping/subsidization**
  - **Likely volume and price ranges of imports if dumping/subsidization were to continue or resume**
  - **Domestic industry's recent performance (production, market share, profits)**
  - **Likelihood of injury to the domestic industry if the finding expired**
  - **Other context (developments affecting domestic industry, other domestic or international context, or other relevant matters)**

# Factors in expiry reviews

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- Once review is initiated, CBSA and CITT conduct separate analyses
  - CBSA: Is dumping or subsidization likely to resume/ continue if measures expire?
  - CITT: Would such dumping/ subsidization be likely to result in injury?
- There are some common factors:
  - Likely future performance of the foreign industry
  - Potential for foreign producers to switch to production of subject goods
  - Whether AD/CVD measures have been imposed by other countries on similar goods, and whether that could cause diversion of goods to Canada
  - Any changes in market conditions domestically or internationally
  - Any other factors that are relevant in the circumstances

# Factors in dumping/ subsidy analysis only

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- **CBSA may consider the following factors:**
  - **Whether dumping has occurred while measures in place**
  - **Whether subsidizing of goods has occurred while measures in place**
  - **Imposition of AD/CVD measures in Canada in respect of similar goods**



# Factors in injury analysis only

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- **CITT may consider the following factors:**
  - **Likely volume and prices of dumped or subsidized goods**
    - Is a significant increase in volume of dumped/subsidized goods expected?
    - Will dumping/subsidizing significantly undercut, depress, or suppress prices?
  - **Likely performance of the domestic industry**
  - **Likely effects of dumped and subsidized goods on domestic industry**
    - Output, sales, market share, profits, productivity, return on investment, capacity utilization, inventories, employment, wages, growth, ability to raise capital
    - Development and production efforts, including efforts to produce other versions of like goods

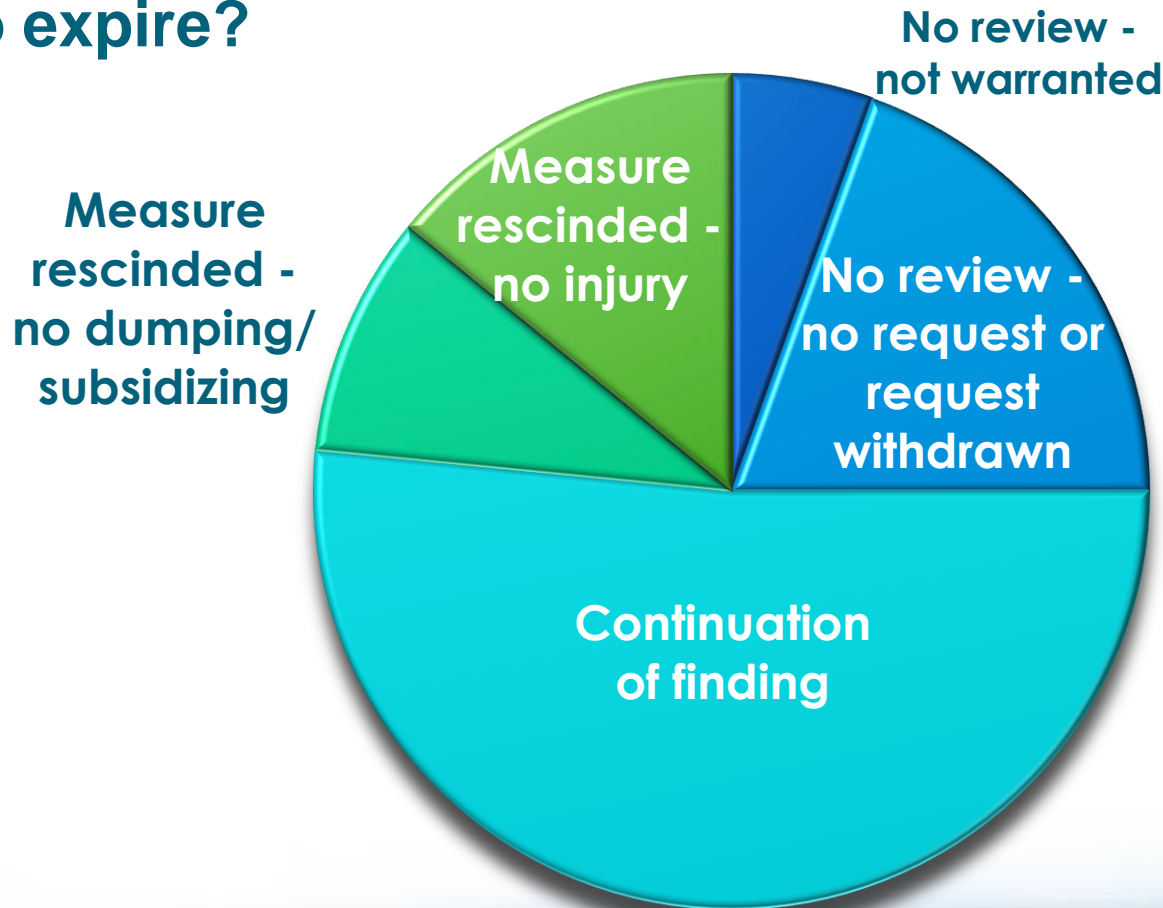
# CITT finding

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- **CITT may rescind, continue or modify its original finding, depending on circumstances**
- **Finding is issued before expiry of measure**
- **Both CBSA statement of reasons dumping/subsidizing and CITT statement of reasons are published**
- **Positive finding results in measures being extended for 5 years from the date of expiry**

# Experience with expiry reviews

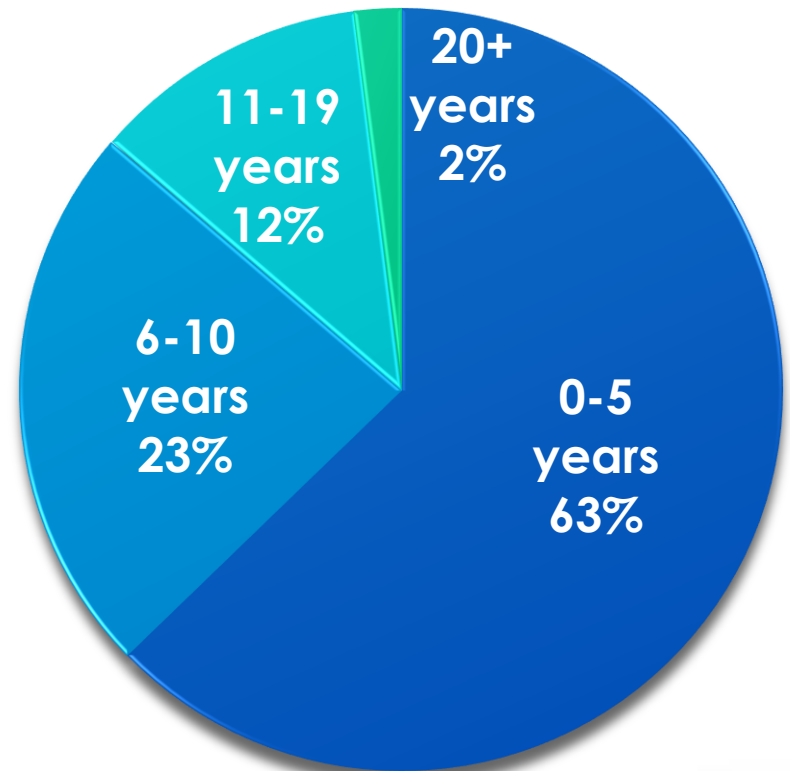
- Historically, what has happened when a measure is set to expire?



# Duration of measures

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Duration	Since 1984	Currently in force
0-5 years	64	15
6-10 years	24	6
11-19 years	12	5
20+ years	2	1
<b>Average</b>	<b>7.1</b>	<b>7.7</b>



# Policy issues and observations

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- **No clear trend that measures are staying in place longer – certain outliers, but average is still between 5-10 years**
- **Longer-term measure can be warranted**
  - **Often related to sectors where dumping and/or subsidization is prevalent and entrenched**
- **Important to demonstrate that decisions are not arbitrary or automatic**
  - **Arm's length process**
  - **Transparency in factors in review**
  - **Transparency in decision-making**

# WTO

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- **General rule that orders should be terminated after 5 years unless a review determines that a cessation of duties would lead to a resumption of dumping/ subsidization and injury**
- **Little guidance on how to assess if measures are still warranted**
- **Canadian approach is consistent with rules, in practice always concludes expiry reviews before 5 year limit**

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