



TRADE REMEDIES IN THE CPTPP CONTEXT

— A GUIDE FOR BUSINESS —



About This Guide

This Business Guide to Trade Remedies and the CPTPP was prepared as part of a collaborative process between the Governments of Canada and Vietnam to support the implementation of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). With the support of Global Affairs Canada, Cowater International and the Institute of Public Administration of Canada administer the Expert Deployment Mechanism for Trade and Development, a technical assistance program established to develop greater familiarity with features of the CPTPP among the business community and members of the public. Enhanced understanding of the rights and obligations of the CPTPP through publications such as this will ensure that the benefits of trade agreements flow to both businesses and consumers of trade agreement partners.

The Trade Remedies Authority of Vietnam (TRAV), which administers Anti-dumping, Countervail and Safeguard trade remedies, recognizes the importance of compliance with the CPTPP and the World Trade Organization agreements on which they are based. This publication is intended to enhance understanding of potential users of trade remedies in the Vietnam business and industrial community so that such measures are deployed only to the extent necessary to protect the trade-enhancing effects of the CPTPP while keeping Member trade free, fair and sensitive to social and environmental values. This Guide was prepared by international trade lawyer Greg Somers in consultation with TRAV.

The information contained in this publication is provided for informational purposes only, and should not be construed as legal advice on any subject matter. You should not act or refrain from acting on the basis of any content included in this publication without seeking expert legal or other professional advice.



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Prepared for Cowater International under the Expert
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In Partnership with:



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1. OVERVIEW

The term “Trade remedies” used in this Guide applies to measures that governments can implement in three specific cases of perceived abuses in international trade in goods. These measures are provided for in three separate agreements of the World Trade Organization (WTO), being the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (commonly known as the Antidumping Agreement); the Agreement on Subsidies and Countervailing Measures; and the Agreement on Safeguards. The measures authorized by the Antidumping and Subsidies Agreements are by their nature discriminatory – that is, they entitle a WTO member to deny, for a limited period and following prescribed procedures, to deny Most-Favoured-Nation (MFN) treatment to specified goods of another WTO member.

Dumping occurs when foreign goods are sold to importers at prices that are lower than the selling price of comparable goods in the country of export, or when foreign goods are sold to importers at a price that is lower than their full costs of production. Where injury to importing country production results, the amount of dumping on imported goods may be offset by the application of “antidumping” duty.

Subsidized goods are goods that benefit from foreign government financial assistance. Examples of subsidies to producers can include loans at

preferential rates, grants and tax incentives. The amount of subsidizing on imported goods, when injurious to producers in the importing country, may be offset by the application of “countervailing” duty.

Safeguards constitute the third branch of contingent trade measures permissible under WTO rules. The WTO Safeguards agreement relates to a situation where a product is being imported into a country in such increased quantities that it causes, or threatens to cause, serious injury to the domestic industry that produces “like or directly competitive” products. Under the safeguards agreement, the relevant authorities of the importing country must determine if serious injury is found to have occurred or likely to occur to its domestic industry. Once this inquiry has been conducted, the authorities can impose either special import duties or quantitative restrictions on imports. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) uses the term “Safeguard action” to refer to four distinct types of safeguard measures, each discussed later in this Guide.

The remedies and procedures provided for in the WTO Agreements are available equally to all 164 WTO member countries. In practice, although western economies began the intensive use of trade remedies historically, today the countries most heavily using trade remedies are India, United States, Brazil, China, and Argentina, with upwards of 2000 measures in place today. As well, the countries which most extensively use trade remedies are the same countries which are most



2. AD AND CVD INVESTIGATIONS

heavily targeted by these measures. Economic integration and globalization are obvious factors contributing to the great increase in the number of trade remedy actions. One should not neglect also the effective use of such measures for retaliation, as exporting industries shut out of foreign markets seek to shore up protection of their domestic markets to compensate for lost export opportunities. For industries considering a trade action against the imports of a trading partner, the possibility of a responding action by the target exporting country should be one of the considerations before taking such action.

Within the framework of the WTO requirements, the national governments of member countries legislate individually on the precise procedures by which investigations are conducted and duties imposed; but all must observe the framework rules set out in the Agreements. In cases of dispute between countries over the implementation of trade law (for instance, where the exporter claims that the margin of dumping has been wrongly calculated, or that an excessive rate of duty has been imposed) the dispute settlement procedures of the WTO may be invoked.

This Guide accordingly focuses on the trade remedies practices of two established users of trade remedies, the US and Canada. Of course, of the two countries only Canada is a member, like Vietnam, of the CPTPP. Nevertheless, the risk of an exporter being confronted with aggressive use of trade action by the US is relatively high, and familiarity with that country's procedures is therefore important for every sector and business in international trade. Indeed Vietnam is currently in the top 10 countries targeted by US trade remedies. In addition, much of the original TPP, now transposed into the CPTPP was influenced by U.S. as the dominant Party in the negotiations from 2010 to 2016.

2.1. Canada

The Special Import Measures Act ("SIMA") is the principal legislation in Canada that serves to protect the Canadian industry from imports of dumped and subsidized goods. The Canada Border Services Agency ("CBSA") and the Canadian International Trade Tribunal ("Tribunal") are the two federal agencies that divide the jurisdiction for the administration of SIMA: the CBSA conducts investigations to determine whether goods have been dumped or subsidized, while the Tribunal makes determinations concerning whether the dumped or subsidized goods have caused material injury to the Canadian domestic industry producing those goods. Where the CBSA has found dumping or subsidization to have occurred and the Tribunal has found that such dumping/subsidization has caused injury to the Canadian industry, duties will be applied against such imports into Canada for an initial five-year period, and may be renewed for subsequent five-year periods. Once initiated, an investigation normally takes seven months to conclude.

2.2. United States

U.S. antidumping measures are authorized in domestic law by the Tariff Act of 1930. If a U.S. industry believes that it is being injured by dumping or subsidization of an imported product, it may request the imposition of antidumping or countervailing duties by filing a petition with both the Department of Commerce (more accurately, the Enforcement and Compliance Branch of the International Trade Administration within Commerce) and the United States International Trade Commission (USITC).

Like Canada, the U.S. has established a bifurcated system. The International Trade Administration at

the Department of Commerce (ITA/DoC), an arm of the Executive Branch of the US Government, is responsible for the determination of dumping/subsidization. The USITC, a quasi-judicial arm's length agency, decides whether material injury exists and whether it is caused by the dumping or subsidy found by the ITA. The ITA investigates specific foreign producers and governments to determine whether dumping or subsidization has occurred and calculates the amount of dumping or subsidies. Like the case of Canada, the question whether injury is caused by dumping or subsidization is for a separate administrative court to decide. The USITC carries out this role by conducting an economic investigation examining detailed aspects of the domestic and foreign industries and markets involved. An investigation in the U.S. normally takes 12 to 18 months to complete.

2.3. AD and CVD Investigations - Summary

All WTO members are subject to the terms of the GATT and the WTO Antidumping Agreement (ADA), as well as the WTO Agreement on Subsidies and Countervailing Measures (SCM). These agreements allow the imposition of duties in cases where dumped or subsidized imports "cause or threaten material injury

to an established industry in the territory of a contracting party or materially retard the establishment of a domestic industry." The ADA elaborates on the basic principles established in the GATT by providing more detailed rules on several issues, including how WTO members may determine whether dumping or subsidies are occurring, how they determine whether there has been an injury to a domestic industry, what kinds of evidence can be used, and other issues. WTO members whose antidumping or antisubsidy laws or practices violate the terms of the WTO may be subject to WTO dispute settlement proceedings.

The trade remedies provisions of the CPTPP underscore the importance of the WTO agreements in members' systems: "Each Party retains its rights and obligations under Article VI of GATT 1994, the [Antidumping] Agreement and the [Subsidies and Countervailing Measures] Agreement." As is the case for the Vietnam-European Union Free Trade Agreement, the CPTPP in fact requires very few changes to the parties' trade remedy systems. The CPTPP also exempts trade remedies measures from its dispute settlement provisions. Disputes about the proper application of trade measures must be settled as before by way of the WTO dispute settlement system.



A large container ship is docked at a port, with several cranes visible in the background. The ship is loaded with many colorful shipping containers. The water is blue and the sky is clear.

3. INITIATION – COMPLAINT/PETITION

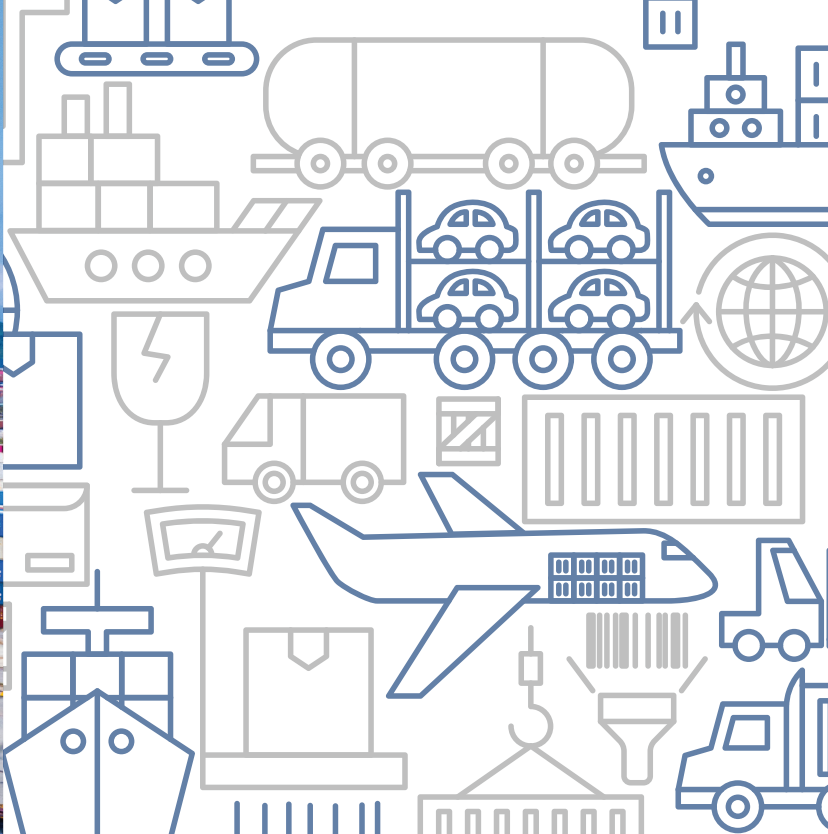
3.1. Canada

Under Canadian law, there are three situations where the investigating authority responsible for dumping (CBSA) is required to initiate an investigation into the dumping or subsidizing of goods. These situations are:

- where the CBSA concludes, either on its own initiative or in response to a complaint made by or on behalf of Canadian industry, that there is evidence of dumping or subsidizing causing injury to Canadian production;
- the CBSA may initiate an investigation on receipt of a notice from the Tribunal that, in its opinion, there is evidence that imported goods which closely resemble goods for which a preliminary determination has already been made are being dumped or subsidized and are causing injury; and
- the CBSA, even though a Complaint from the domestic industry has not been received, may initiate an investigation where there is evidence, gained perhaps from a related ongoing investigation, of injury to the Canadian industry of the kind normally provided in a written complaint.

In order for a domestic industry to cause initiation of an investigation into alleged dumping or subsidization, a valid complaint must be filed with the CBSA. A complaint is typically filed by or on behalf of a significant proportion of the Canadian industry by an individual company or a group of Canadian producers. As required by WTO rules, a complaint must be supported by one or more domestic producers whose combined production represents 25% or greater of the Canadian production of the goods at issue. In addition, the total production of domestic producers who would actively oppose a complaint may not exceed the total production of domestic producers in support of the complaint. The complaint must contain substantial information, supported by appropriate evidence (e.g., invoices, price offers, statistics, etc.), showing that the subject goods are being exported to Canada at dumped or subsidized prices, and that they are causing injury to the domestic producers. Mere allegations or isolated examples of low foreign pricing are not sufficient.

The CBSA will evaluate the complaint and decide whether to initiate an investigation by considering: (i) whether the complaint has been made by the domestic industry and has the necessary support; (ii) whether the complaint contains sufficient evidence to support allegations of dumping or subsidization; and (iii) whether there is a reasonable indication that dumping or subsidization causes or threatens injury to the domestic industry.



3.2. USA

Under US law, the International Trade Administration (ITA) of the Department of Commerce can initiate antidumping investigations either on its own initiative or, far more frequently, in response to a petition filed by a representative of a domestic industry with the USITC and the ITA. If the ITA receives a petition, it must normally initiate an investigation within 20 days after it receives a petition and determines that the petition contains sufficient evidence justifying the imposition of antidumping or countervailing duties.

Petitions may be filed by domestic industry, including a manufacturer or a union within the domestic industry producing the product which competes with the imports to be investigated. The ITA is required to ensure that there is sufficient support by the domestic industry for the investigation, which under the same WTO rules requires that the petitioners must represent at least 25% of domestic production and 50% of the domestic production produced by that portion of the industry expressing support or opposition to the petition. As in other countries, the petition must contain sufficient information, including details about the U.S. market and the domestic industry, as well as evidence of dumping or subsidization benefitting imports from the countries sought to be investigated.

3.3. Initiation-Complaint/Petition Summary

The WTO Agreements give little guidance on the character or extent of information practically required by these trade remedy systems. In fact, authorities require extensive details on all aspects of the case, including:

- The exact description of the imported goods to be investigated sufficient to enable enforcement and administration of the duties to be applied, their origin, production, tariff classification,
- The competing goods produced by the domestic complaining industry, bearing in mind that injury caused by the imported goods must be sharply focused on the domestically produced comparable ("like") goods,
- Sufficient details about all domestic producers of the like goods so that the percentages of support and opposition to the case can be calculated,
- The identity of each known foreign producer or exporter of the allegedly dumped or subsidized product in the identified countries of export,
- Estimates of foreign producers' costs of production, home market prices, export prices and profit must be developed so that the existence and degree of dumping or subsidy can be assessed,

- Evidence of the existence of subsidies that are available to the foreign exporters, that confer a benefit to those exporters, and that are “specific,” in law or in fact, to those export industries,
- Evidence of “material injury” to the members of the domestic industry, such as employment losses, shutdowns or idling of production, lost sales, lower profits or greater losses, price reductions and financial injury, and
- Threat of injury factors, including foreign inventories, foreign unused or imminent production capacity, declining price trends of imports, and increasing volumes of imports.

The preparation of an adequate complaint is only the first of many significant demands on company personnel’s time and effort that trade remedies cases require. Of course, since investigating authorities of government are also extensively involved in prosecuting a case, trade actions impose substantial burdens on governments as well, both in the conduct of the trade case and in the administration of resulting duty orders, duty levies and refunds, reinvestigations of dump and subsidy margins, and WTO-mandated five year (“sunset”) reviews.

The CPTPP adds a requirement on the investigating Authority receiving a Complaint from a domestic industry to notify in writing any other CPTPP Party whose imports are to be investigated at least 7 days before initiating the investigation.

4. PRELIMINARY & FINAL DETERMINATIONS

Trade remedies investigations, because they concern allegations of competitive and financial harm to domestic production, are considered matters of urgency. For this reason the WTO authorizes a two-stage procedure: the imposition of provisional measures under a lower standard of proof, prior to the conclusion of a full investigation and, if dumping

or subsidization, and injury, are finally made out, definitive duties following the provisional period.

4.1. Canada

Where a complaint documents evidence of dumping or subsidy, and injury caused to the complainant by the dumping or subsidy, the CBSA initiates a 90 day (with a possible 45 day extension) preliminary investigation directed to quantifying the dumping or amount of subsidy, and at the same time the Canadian International Trade Tribunal initiates a 60-day inquiry into whether the complainant’s evidence shows a reasonable indication of injury. Where the evidence discloses a reasonable indication of injury, the Tribunal will make a preliminary determination of injury and the CBSA’s investigation will continue until it is terminated or a preliminary determination of dumping or subsidizing is made. If the Tribunal determines that the evidence does not disclose a reasonable indication of injury, the preliminary injury inquiry, as well as the CBSA’s investigation will be terminated. In practice, the evidentiary requirements for a positive preliminary injury determination are so low that the Tribunal almost always finds “a reasonable indication of injury” and the investigation continues.

Upon initiation the CBSA issues lengthy questionnaires called Requests for Information to obtain detailed information from all known exporters and importers, and the governments in a subsidy investigation, to determine if the goods are in fact being sold to importers in Canada at dumped or subsidized prices. Responses are due from exporters within the WTO-mandated 37 day deadline. This stage often represents the first and most difficult step for exporters, because of the time (hundreds of hours of company time) and expense (the complexity of the data demanded requires foreign legal counsel help).

Incomplete responses are rejected, and these respondents receive a prohibitive duty markup. Complete responses are analyzed, normal values and export prices are calculated, and margins of dumping and subsidy are estimated. If margins or volumes of product are minimal (dump margins less than 2%, subsidy less than 1%, or volumes less than 3%), the investigation is terminated at the 90-day mark. If dumping or subsidization is found,



and product volumes dumped or subsidized are not negligible, a Preliminary Determination of dumping and/or subsidization is made, and provisional duties are applied to imports on and after that date.

In part because of the significant screening of complaints by CBSA, and its stipulation that strong evidence is required to begin an investigation, the vast majority of cases begun in Canada proceed to Preliminary Determinations of injury, and Preliminary Determinations of dumping/subsidy.

Provisional duty is equal to the exporter's margin of dumping and/or amount of subsidy, expressed as a percentage of the export price of the goods. In some situations, specific estimated normal values, or amounts of subsidy, are provided to all exporters that provided complete responses to the CBSA in the preliminary investigation. If the exporter sells at prices below the estimated normal values, provisional duty is assessed in an amount equal to the difference between the estimated normal value and the export price. For subsidized goods, the amount of the provisional duty is the estimated amount of subsidy.

Within 90 days of its preliminary determination the CBSA must make a Final determination of dumping or subsidization. At this stage the CBSA





issues supplementary requests for information to exporters, and two officers attend in person for two to four days at the premises of exporters to audit responses for accuracy ("on-site verification"). At the end of the Final Determination period, if the CBSA determines that no dumping or subsidization has occurred or that the margin of dumping or subsidization is insignificant, the investigation is terminated, and provisional duties that were collected through the provisional period are refunded.

Commencing on the date of the CBSA Preliminary determination, the Tribunal has 120 days to complete its final injury inquiry and determine whether the dumping or subsidization has caused or threatens material injury to the domestic industry. In conducting its inquiry, the Tribunal distributes questionnaires, prepares a Staff Report on the matter and holds public hearings usually lasting from two to four days at which parties are permitted to present evidence and arguments and to question witnesses. Interested parties include Canadian producers, importers and foreign exporters, as well as governments.

4.2. US

At the Preliminary Injury stage, the USITC considers whether there is a reasonable indication of an injury or likely injury to a domestic industry. On

the rare occasions that the USITC's preliminary determination is negative or the USITC determines that imports of the product are negligible, that terminates the proceedings. In most circumstances, the USITC makes a preliminary determination no later than 45 days after initiation.

If the USITC finds a reasonable indication of injury, the Commerce ITA begins its preliminary investigation to determine whether dumping exists. The ITA must make its determination within 140 days or within 190 days at the petitioner's request or if the case is complicated.

If the ITA's preliminary determination finds that dumping or subsidy exists, then ITA also estimates a weighted-average dumping or subsidy margin for each exporter or producer individually investigated and an "all-others rate" for all other exporters of that Party. The ITA then orders U.S. Customs and Border Protection (CBP) to delay the final calculation of all duties on imports of the targeted merchandise (called "suspend liquidation") until the case is resolved and to require the posting of cash deposits, bonds, or other appropriate financial security to cover the duties (plus the estimated dumping and subsidy margin) for each subsequent entry into the U.S. market.

If the ITA finds no dumping or subsidization, it nevertheless continues the investigation to the final

stage (without ordering a suspension of liquidation of further imports), and the USITC continues its investigation as well. Because this is a preliminary determination, the authorities may not have obtained all possible evidence, and this continuance gives a further opportunity to interested parties to put additional information and evidence before them.

The ITA must make its Final determination within 75 days of the Preliminary determination. Between the preliminary and final determinations, the ITA conducts a verification of the data submitted by each respondent. This verification consists of an on-site visit by Commerce analysts, and in some cases, accountants to spot-check the respondent's submitted data. Respondents are asked to provide documentation for the sales-specific data submitted and to reconcile that data to the company's audited books and records. Verification of sales data often lasts a full week, while a cost verification (when below-cost sales are being investigated) often lasts a second full week.

Following verification, but before the final determination, both petitioners and respondents have an opportunity to submit briefs and participate in a public hearing. The hearing affords an opportunity for parties to make arguments regarding the ITA's interpretation of respondents' data and its analysis of those data.

If the ITA's Final determination finds no dumping or subsidization, the proceedings, and any suspension of liquidation is terminated, bonds are released, and deposits paid are refunded. If the ITA's Final determination is affirmative, it orders the suspension of liquidation and directs CBP to continue or resume (if provisional measures expired) suspension of liquidation and collection of cash deposits at the rate determined in the ITA's final determination.

4.3. Summary – Preliminary and Final Determinations

Canadian and the US trade remedy systems are almost completely transparent. All interested parties have, via their counsel, access to all confidential information supplied by other parties. Counsel can argue the case on this basis (without disclosure to their clients). Through this system

there is much more control by interested parties over what the investigating authorities do with the information supplied. This also means that the system is burdensome and costly and leads to more litigation, because all information submitted by parties is subject to challenge and the submission of contradicting facts by other parties, which must be considered, decided upon and justified with reasons by the authority.

The CPTPP proposes, without formally requiring, certain procedural measures for authorities in the conduct of a trade remedies investigation, directed mainly to fairness and transparency. First, authorities planning to conduct on-site verifications must give 10 days' notice of the date for the verification visit, 5 days' notice for the verification agenda and documents required, and provide to all parties a post-verification written report outlining their conclusions from the verification.

Second, if a firm or government being investigated submits incomplete information, the investigating authority should provide notice of the deficiencies, and an opportunity to correct those deficiencies. If satisfactory correction does not occur, the authority should give a written explanation of its reasons for rejecting the information.

Third, before the authority issues its Final determination, it should disclose to interested parties the public factual basis for the Final determination to come. In Canada's case, the factual basis for the dumping or subsidy determination is disclosed in CBSA's Preliminary determination, and the factual basis for the final injury determination in the Tribunal's extensive record made available to participants, in a way that affords parties an opportunity to respond with information of their own.

In the course of conducting a dumping or subsidy investigation, authorities collect a large amount of confidential and public information from their domestic industries, importers, foreign exporters under investigation, and in the case of subsidies, foreign governments. The CPTPP proposes that investigating authorities maintain a public file available for inspection or download, which includes all public information as well as public summaries of confidential information in the investigation record.



5. UNDERTAKINGS, SUSPENSIONS AND TERMINATIONS

Under WTO rules, at any stage during the investigation process, if the authorities of the importing country have preliminary or final determinations of dumping or subsidy, and injury, then instead of imposing duties they may at their discretion accept a price undertaking from the exporter or government concerned, i.e. an undertaking to increase the price of the product(s) concerned by enough (but no more than necessary) to eliminate the margin of dumping, or an undertaking to end the offending subsidy. Undertakings result in a suspension of the investigation and thus may provide a more expeditious and less costly solution than proceeding with the completion of the investigation.

5.1. Canada

Undertakings in Canada are only considered after a preliminary determination has been made by the CBSA, and generally remain in force for a five year period. No antidumping duties or countervailing duties are applicable while valid undertakings are in effect.

Undertakings may take different forms to remedy the issues which prompted initiation of the investigation. The exporter may promise to raise

prices on exports to Canada by the amount of the estimated margin of dumping; the exporter may in the alternative promise to raise prices on exports to Canada to offset the estimated amount of injury caused by dumping; the exporter may promise to raise prices on exports to Canada by the amount of subsidy received from its government; or the government of the exporting country may agree to reduce or eliminate the subsidy in relation to the exporters' exports to Canada, or to set quantity limits on its exporters' shipments to Canada.

A number of conditions imposed by the CBSA on acceptable undertakings significantly reduce their use in practice. First, to be acceptable, the undertaking must account for 85% of the exports under investigation. This requires the coordination of potentially large numbers of exporters, especially in a multi-country investigation. The undertaking must be made by each exporter individually, within 60 days of a Preliminary determination, and can not for example be made by a trade association on behalf of its member exporters.

Second, an undertaking must be agreed to by the complaining industry, which may prefer formal duties enforced at the border to exporter promises and surveillance of compliance it might require.

Where the product under investigation fluctuates in price frequently, the undertaking may be rejected for being too difficult to monitor and enforce.

Industries which contain a large number of exporters may also be considered too complex to monitor. For these reasons, undertakings are comparatively rare, and have usually arisen in cases with one subject country and one or two exporters.

5.2. US

The ITA or the USITC may terminate an investigation if the petitioner withdraws the petition, or on its own accord if the ITA self-initiated the investigation. Additionally, the ITA may, in certain circumstances, suspend an antidumping investigation in favor of an agreement with foreign exporters (known in the US as “suspension agreements”) that either eliminates the margin of dumping, or the injurious effect of those sales.

The acceptability of a suspension agreement in dumping or subsidy investigations falls under the purview of the ITA, and follows similar guidelines to Canada. To be acceptable a suspension agreement may eliminate sales to the US, or it may eliminate sales below normal value (“less than fair value”), or it may raise prices to eliminate injury to the US industry. In a subsidy case, a suspension agreement may arise from the foreign government eliminating the subsidy to exporting beneficiaries, or those beneficiaries undertake to refuse the subsidies, or subsidies are offset by an export tax on the product, or the foreign government imposes an export quota

on product for the US market, effectively eliminating the injurious effect of the subsidy by limiting quantities imported. The ITA must be satisfied that the suspension agreement is in the public interest, and it consults with the domestic industry to obtain its views before accepting a suspension agreement. Moreover, the suspension agreement must, as in Canada, account for substantially all the trade in the investigated product. The ITA can consider suspension agreements before a Preliminary determination, but must make a Preliminary determination if an agreement is reached.

5.3. Summary - Undertakings, Suspensions and Terminations

The significant benefits to undertakings and suspension agreements are mainly in the great efficiencies they bring to the process, in time and cost savings for all parties concerned. They suspend the investigations and cease the application of duty measures. They shift some of the burden of monitoring prices and/or product volumes onto the exporters or their government, and they reduce the likelihood of legal appeals or challenges to the validity of antidumping or countervailing duty orders.

In practice, however, less than 2% of US investigations are settled by way of suspension agreements, and the proportion is even smaller than that for Canada, for the reasons already given.



6. SUNSET OR EXPIRY REVIEWS

The WTO Antidumping Agreement requires WTO members to allow antidumping duties to remain in force for “as long as and to the extent necessary” to offset injurious dumping. It also sets an automatic 5-year termination date unless they are extended beyond five years upon the authorities determining that their expiry “would be likely to lead to continuation or recurrence of dumping and injury,” in review proceedings initiated before that date. Reviews conducted pursuant to Article 11.3 are known as “sunset reviews” in the US and “expiry reviews” in Canada.

6.1. Canada

Under Canadian law, the Tribunal must initiate (not conclude) an Expiry review within five years of the date of the Final injury determination. About two months before the fifth anniversary of the Final determination, the Tribunal issues notice to previous participants, requesting views on whether an Expiry review ought to be held or whether the duties should be allowed to lapse. In virtually all cases, the domestic industry requests a review in order to maintain the duty Order in place, and the Tribunal formally initiates the proceeding.

As a reflection of Canada’s two-branched system, the CBSA has 150 days to decide whether the expiry of the order is likely to result in the continuation or resumption of dumping or subsidizing by the covered countries. If, after receiving responses to its questionnaires and submissions from interested parties, the CBSA determines that the expiry is likely to do so, the Tribunal then has 160 days to consider whether the expiry is likely to result in injury to the domestic industry. The Tribunal also issues questionnaires to interested parties on the prospective issue i.e., will cessation of the duties threaten injury to the domestic industry. If it finds in the negative, proceedings and duties are terminated, and duties paid after the fifth anniversary are refunded to importers.



If, alternatively, injury is found to be likely to resume or continue, the Order and duties are continued for a further five years. The Order will again be subject to review in a further five years when the same Expiry review process will be repeated.

6.2. US

Sunset reviews must be conducted on each AD order no later than once every five years after the Order’s publication. In a US sunset review, the ITA determines whether dumping or subsidization would likely continue or resume if an order were to be revoked or a suspension agreement were terminated, and the USITC conducts a parallel review to determine whether injury to the domestic industry would be likely to continue or resume. If both authorities conclude in the affirmative, the duty or suspension agreement remains in place. If either authority makes the determination in the negative, the Order is revoked, or the suspension agreement is terminated, and enforcement ceases.

The US Sunset review process is begun with a notice by the ITA at least 30 days before the fifth anniversary of the duty Order, which solicits information for both the ITA and USITC. If no one responds to the notice of initiation, the ITA issues a final determination within 90 days of revoking the order. If interested parties provide some, but inadequate responses to an agency notice of initiation the ITA may issue a final determination based on the facts available. Such reviews result



in the ITA issuing expedited determinations within 120 days after initiation of the review and the USITC issues expedited determinations within 150 days after such initiation, based on the existing record supplemented by staff research and historical enforcement data from Customs.

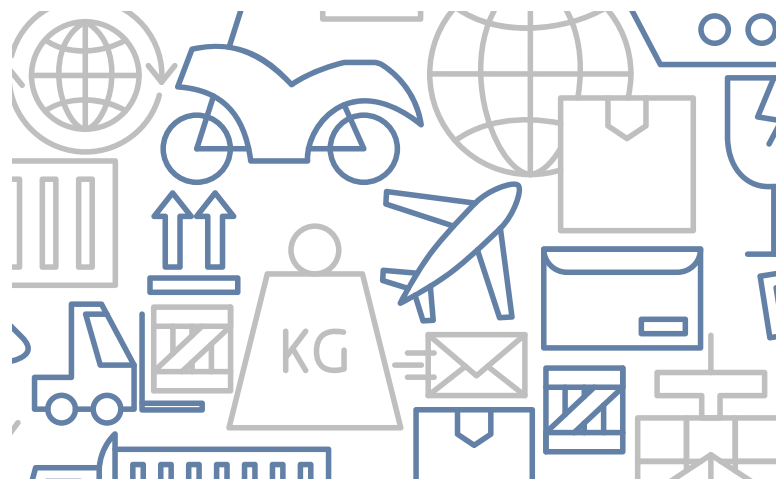
More often, interested parties' responses are adequate, and both the ITA and USITC will conduct a full review. The ITA makes its final determination in a full review within 240 days after initiation of the review and, if that determination is affirmative, the Commission under normal circumstances will make its final determination within another 120 days, concluding 360 days after initiation. In complex cases these timelines are subject to extension by up to 90 days.

6.3. Summary – Sunset or Expiry Reviews

The WTO Agreements contemplate that sunset or expiry reviews are prospective in nature, that is, they focus on the likelihood of the continuation or recurrence of dumping and injury, in case definitive duties are removed. With respect to the question whether dumping is likely to occur in the event that the definitive duties are removed, the investigating authorities may consider relevant economic facts that suggest a strong incentive on the part of exporters or potential exporters to export large quantities because of market contraction, loss of alternative export markets, or other export market seeking.

With respect to the injury determination, if the definitive duty has had the desired effect, the condition of the domestic industry would be expected to have improved during the period the definitive duty was in effect. Therefore, the assessment whether injury will continue, or recur, would seem to entail a counter-factual analysis of hypothetical future events, based on projected levels of dumped imports, prices, and impact on domestic producers. The question to be addressed by the investigating authorities may thus be whether the domestic industry is likely to be materially injured again, if duties are lifted.

The WTO Agreements establish that the procedural and evidentiary rules set in relation to original injury inquiries (discussed below) are equally applicable to expiry reviews.





7. CALCULATION OF ANTI-DUMPING MARGIN AND AMOUNTS OF SUBSIDY

7.1. Normal Value and Export Price

Dumping concerns the sale of goods to overseas markets at prices (i.e. export price) lower than the selling prices of 'like' products in the domestic market, or those products' full costs (i.e. normal value). The calculation of normal value and export price, therefore, is central to the determination of dumping, the magnitude of dumping margins and the antidumping duties to be levied.

When it is impossible to obtain a comparable domestic price because there are no or low volume sales in the ordinary course of trade in the domestic market, a "constructed value" is used as normal value. A "constructed value" is so called because it is constructed from the sum of the cost of production in the country of origin, plus a reasonable amount for administrative, selling and general costs, plus an amount for profits.

All these costs are calculated according to the information submitted by the exporting producer concerned, with the only exception provided by the

WTO Antidumping Agreement, applicable when the administrative, selling, and general costs and profit cannot be determined on the basis of 'actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation.' Then the amounts may be determined, among the others, on 'any reasonable method', which includes the possibility of using data from third countries, though because of difficulties obtaining cooperation from third countries without a direct financial stake in the outcome, and questions of reliability of any third country information actually obtained, are very rarely used.

Similarly, when the export price is found to be unreliable because it is not arrived at on a commercial arm's length basis, the price at which the product is first resold to independent buyers in the country of import, or another price according to a reasonable basis determined by the authorities, may be used in the price comparison.

Each country has developed detailed rules for determining the individual elements of normal value and export price, which are beyond the scope of this Guide.

7.2. Amount of Subsidy

The WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) sets forth rules and

out on an individual sale-by-sale basis. As a result, the normal value established for individual sales by individual exporters is compared with the export price of individual sales by individual exporters, from which a weighted average margin of dumping is calculated.

The calculation of the margin of subsidization attributable to exported goods is begun by first aggregating the individual subsidies received in the period investigated in relation to all goods imported into the investigating country on a per unit basis. The total subsidization is the sum of the subsidies allocated to each unit multiplied by the number of units imported by the subsidized exporter, and is usually expressed as an amount per unit in the exporter's currency.

7.3.1. Canada – Non-Cooperating Exporter

Where sufficient information to calculate normal values, export prices, or the amounts of subsidy under the specific provisions of SIMA has not been furnished or is not available, the values are determined in the manner that the Minister specifies in what is commonly referred to as a Ministerial specification. This situation arises where an exporter, producer, importer or foreign government may not have supplied sufficient information to determine the normal value, export price or the amount of subsidy after being requested to do so by the CBSA. In other instances, sufficient information may have been provided, however, upon verification, the CBSA may determine that some or all of the information cannot be relied on to determine the specific values.

In such circumstances, the normal values, export prices or amounts of subsidy will be established by a ministerial specification for purposes of the final decisions, taking into consideration all relevant information on the record. This could include information obtained from exporters, foreign producers, foreign governments, vendors, domestic producers, and importers; information provided in the complaint; and information from other independent sources (e.g. trade publications, trade statistics).

The CBSA's reasons for its final decisions will explain the basis for the methodologies in the ministerial specification (i.e. what information was considered



and why the information chosen was the most appropriate).

7.3.2. US – Non-Cooperating Exporter

Where a party does not cooperate, or supplies incorrect, incomplete or misleading information, the US apply "facts available", as allowed by the WTO Agreement. These are facts alleged in the petition/complaint, data from other cooperative parties or from public sources. In certain situations, the margins of dumping or subsidization may be calculated on the basis of "adverse" facts available, which can lead to punitively high duties. By this is meant that the investigating authority takes the highest dumping margins found for any transaction as the basis to calculate the margin for non-cooperative producers. The reason for this is that an investigating authority of one country has no investigative jurisdiction in the country of other parties; a penalty for non-cooperation (such as adverse facts available) is considered the only way to persuade foreign producers to cooperate in the proceedings. The practices in this regard differ between investigating authorities. But both the US and Canada apply very strict rules in situations of failures to comply with demands for information, and punitive levels of duty based on the facts available, facts which often originate from parties opposed in interest to the exporters.



8. INJURY DETERMINATIONS

As a precondition to levying antidumping or countervailing duties, the WTO Agreements require investigating authorities to conduct an objective examination of the volume of dumped imports and the effect of the dumped or subsidized imports on prices in the domestic market for like products, and the consequent impact of those imports on domestic producers. The causal link between dumped or subsidized goods and material injury to the domestic industry must be based on an examination of all relevant positive evidence and “[i]t must be demonstrated that the dumped (or subsidized) imports are, through the effects of dumping (or subsidy)...causing injury within the meaning of this Agreement.” Authorities must also examine “any known factors other than the dumped (subsidized) imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped (subsidized) imports.”

However, the WTO Agreements give less guidance on the question of injury than on the calculation

of margins, so there is great variation between countries on how the injury analysis is carried out. The following is a general sketch of procedures that have succeeded in satisfying WTO dispute panels.

The authority must, at a minimum, and in order to defend its decision, have regard to the WTO enumerated factors: “actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes.”

Where the injury determination is based on threat of injury, i.e. while injury has not yet been caused by dumping or subsidy, such injury is “clearly foreseen and imminent.”

As a preliminary step, the authority must consider the time period it will examine in order to fairly evaluate the evolution of import volumes and pricing, the financial performance of the domestic industry, and other aspects of the market being examined. The period chosen will be brief enough to be able to be considered in detail, but long enough to study the effect of imports over time, and their effect on domestic production and profits. It will also encompass the time period in which dumping



or subsidization was found to occur, so that a causal link can be assessed.

In assessing the existence of a causal link between dumping or subsidy and injury, the Agreements direct the authority to consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing Member. Concerning price effects, the authority is directed to assess “whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree.”

The persons at least initially in possession of evidence of injury are members of the complaining industry. For this reason, the authority requires considerable injury evidence to be filed at the outset of the industry’s complaint. Assuming there is adequate injury evidence in the complaint to justify starting an investigation, along with documentary support (industry sales and financial results, increased volumes of imports, low prices available from importers and the like), the authority issues questionnaires to the industry, importers, exporters and purchasers designed to obtain more information on the state of pricing and competition in the domestic market. At this stage, it is usually considered appropriate to issue a preliminary report on the evidence received, as well as preliminary conclusions about causation.

Also at this stage, the WTO Agreements authorize the start of provisional measures in the form of estimated duties to interrupt any injury which may be caused by dumping or subsidy before further injury to the domestic industry can occur.

After distributing its preliminary report, the authority may then invite comment on the report, further information from the participants in the investigation, verify responses, and possibly hold a hearing to refine the accuracy and completeness of the record in relation to injury and causation. With this additional evidence, it will then prepare a final report, including an analysis of whether the dumping or subsidy caused material injury, and give reasons why other, non-dumping or non-subsidy factors were not the only reasons for the domestic industry’s difficulties.

9. PARTICULAR MARKET SITUATIONS/ NON-MARKET ECONOMIES

The methods and procedures described above are authorized by the WTO Antidumping Agreement in the context of typical market economies. Thus, when a product is imported from, or originates in, a country considered a market economy, the normal value is established on the basis of the domestic price in the exporting country of the like product in the ordinary course of trade. The WTO Agreement, however, authorizes much fewer disciplines on the treatment of non-market economies. Where there are insufficient sales in the ordinary course of trade in the exporting country, or when a “particular market situation does not allow a proper comparison” between an exporter’s home market sales and its export sales, authorities are permitted to reject home market sales and instead use alternative methods to determine normal value.

A wide range of factors may be taken into account to justify finding the existence of a particular market situation, including the supply of inputs or finance by state-owned enterprises, government regulation of prices, tax policy, or other government intervention in aspects of the market for the goods investigated. Once a particular market situation is found to exist, the investigating authority will consider calculating normal value using constructed cost, as outlined above. Where, however, the particular market situation distorts input costs of the product under investigation, the constructed cost method will also be rejected, and the Agreement permits the use of that exporter’s sales to a third country as a surrogate, or “any other method.” As a result, complaining domestic industries may allege that a particular market situation exists which distorts input costs in the target country, in order to persuade the investigating authority to calculate normal values in a way which inflates them and increases the margin of dumping.



10. CPTPP AND SAFEGUARD MEASURES

10.1. WTO Basis

The WTO Agreement on Safeguards relates to a situation where a product is being imported into a country in such increased quantities that it causes, or threatens to cause, serious injury to the domestic industry that produces “like or directly competitive” products.

The Safeguards agreement is the third branch of contingent trade measures permissible under WTO rules. The agreement largely reflects the experience of the 1980s, when rapid growth in exports of manufactures from Japan and the Newly Industrialised Countries of East Asia led major trading partners, and notably the US, to adopt arbitrary measures, following pressure from domestic lobbies to restrict imports. These included “Voluntary Export Restraints”, a practice whose most visible manifestation was that car exporters, notably from Japan, “agreed” to limit exports to certain quantities.

These measures were fundamentally arbitrary, non-transparent and trade distorting – often their effect was to increase market prices of the restricted goods and, perversely, to increase profits of the exporters. The underlying philosophy of the safeguards agreement reflected a pragmatic but

systematised approach as an alternative to these arbitrary measures.

Recognising that trade policy is vulnerable to protectionist pressures, the Safeguards Agreement seeks to ensure that measures responding to these pressures could be subject to disciplines in the form of objective criteria that determine when a domestic industry can be sheltered. To ensure that any measures taken were transparent and the least trade-distorting, the Agreement shows a preference for price-based tariff measures over quantitative limitations.

Under the Safeguards Agreement, the relevant authorities of the importing country must conduct a thorough investigation that complies with procedural requirements, to determine if serious injury is found have occurred or likely to occur. “Serious injury” is defined as “a significant overall impairment in the position of a domestic industry.” This higher standard of injury means that safeguard actions are harder to prove, and is one of the reasons that they are comparatively rare.

Once this inquiry has been conducted, the authorities can impose either special import duties or quantitative restrictions on imports. In the latter case, they may only reduce imports of the goods in question to the average annual quantity calculated over the latest 3 years for which statistics are available. Since the purpose of a Safeguard is to temporarily shelter a domestic industry without having identified “wrongdoing” by an exporter or government, it must be implemented on a global basis (i.e. against all imports of like or directly competitive goods), and is therefore called a global safeguard.

In cases of extreme urgency measures may be imposed provisionally for a period not exceeding



200 days while a proper investigation is conducted. In any case the duration of safeguard measures must not exceed 4 years unless it can be clearly shown that there is a need to extend the measures for one further period, which in no case may exceed a further 4 years. This time-limited application is a further reason for their infrequent use—antidumping and subsidy measures, in contrast, may be renewed every five years indefinitely and may stay in force for decades. A further requirement discouraging the use of safeguards is that the country imposing the safeguard must compensate other WTO members affected by the measure with concessions of equivalent value, perhaps by tariff reductions in other, less vulnerable sectors. No compensation is payable in relation to antidumping or countervailing measures.

Safeguard measures taken against developing countries are suggested to be used more sparingly, while developing countries that initiate safeguard measures of their own may apply them for up to 10 years. Disputes over the proper application of the Agreement, which cannot be settled by consultation, are referred to the WTO dispute settlement system.

10.2. CPTPP and Additional Safeguards

10.2.1. Transitional Safeguards

The CPTPP leaves the rights of its parties free to bring global safeguard actions under the WTO undisturbed, as is the case for the other trade remedies discussed. It does, however, permit a

CPTPP members exclude other Parties from any global safeguard measure if the other Parties' goods are not themselves a cause of serious injury.

The CPTPP authorizes two additional types of general safeguard measures, as well as a safeguard action applicable to textiles and apparel, although a Part may use only one type of safeguard at a time.

A “transitional safeguard” is so called because it can be used only during the transition period of the CPTPP. The transition period is the period beginning with the entry into force of the CPTPP (for Vietnam, January 14, 2019) and ending either in three years, or when the tariff for the product in question is entirely eliminated under its particular elimination schedule, whichever is earlier. This measure is an attempt to enable importing Parties to cushion the effect of tariff reductions in the event of injurious surges of specific products into the territory.

The threshold test for the use of a transitional safeguard is the same as for a global safeguard, that is, where a good from another CPTPP Party or Parties is being imported in such increased quantities, in absolute terms or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry that produces a like or directly competitive good.

If serious injury has, or threatens to occur, the Party may increase the tariff on the good, from the injuring source up to a maximum of the tariff rate prevailing before the CPTPP came into force. Such a measure may only be used once for a particular good and can



be maintained for up to three years, or to the end of the tariff reduction staging for that good, whichever occurs first.

In addition to the time-limited nature of the remedy, a Party using it is also under an obligation to pay compensation to affected CPTPP Parties of “substantially equivalent trade effects, or equivalent to the value of the additional duties expected to result from the transitional safeguard measure.” If affected Parties are dissatisfied with the concessions made, they may retaliate by suspending substantially equivalent concessions.

10.2.2. Existing Safeguards

CPTPP Parties were permitted to include as part of their tariff reduction commitments the continuation of safeguard measures already in place at the time the CPTPP entered into force, provided these were disclosed in the Party’s tariff commitments schedule. Of the CPTPP signatories, only Japan did so (in relation to certain agricultural goods and forest products), and accordingly, no additional safeguard actions can be brought by it in relation to those goods.

10.2.3. Textiles and Apparel Emergency Action

The CPTPP has created a modified safeguard system specifically for textiles and apparel goods, which alters the terms of inquiry, the threshold for instituting an action, the duration of the measure and various procedural requirements that would apply to global and transitional safeguards. It refers to this modified system as an emergency action

The first distinction is that the Party investigating whether a textile action is appropriate must determine first whether a textile or apparel good is being imported “in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof.” This language is drawn from the WTO Textiles and Clothing Agreement (TCA) and, therefore would likely be interpreted in a dispute context by reliance on WTO decisions made under the TCA, although that Agreement terminated in 2005.

The CPTPP specifies that the importing party must consult with affected exporting parties, must have procedures for investigation published, before starting the action, must publish notice of the investigation and the factors it will take into account, must conduct an investigation into the economic factors stipulated in the CPTPP to decide whether emergency action is warranted, and must not take into account changes in technology or consumer preference in making a decision. It must show that the serious damage was, or will be, caused by the increased imports as a result of the tariff reductions resulting from the CPTPP.

Where serious damage or threat is found, the remedy may only remain in effect for 4 years, and can not exceed restoration of the duty rate for that item in effect in January 2019, or the current non-preferential rate, whichever is less. In addition, no emergency action can be taken at all more than five years after the end of duty elimination for the textile or apparel product in question.

Finally, as is the case for transition safeguards, a Party instituting emergency action must provide agreed-upon compensation to affected exporting Parties, normally in the textile and apparel sector. If the Parties involved cannot agree on the amount of compensation due, the affected exporting Party can take “tariff action” (impose a duty increase) against any product of the Party, taking emergency action up to an equivalent amount in value. Further disputes on amounts would proceed to dispute resolution under the CPTPP.



11. PROS AND CONS – ADVANTAGES AND DISADVANTAGES IN TRADE REMEDIES CASES FOR PRODUCERS AND EXPORTERS

It can be seen from all of the above that trade remedies cases are lengthy, burdensome and complex, to a degree consistently underestimated by both sides of a dispute. Careful consideration should be given before participating in or before starting a trade remedy proceeding. The following is only a brief, summary list of factors to consider before both initiating a case, and before participating in a foreign investigation of the domestic industry.

- Estimate the time required, including time to be invested by both senior company officers and clerical staff in finance, accounting, sales, and logistics. When bringing a case, the time required of this personnel, from assembling data in preparation of the complaint through to the conclusion of the final injury determination, can take 16 to 20 months. In defending against a foreign case, the time required may be shorter, ranging from 8 to 12 months, but with less predictability since the company investigated will have to respond to multiple questionnaires under strict deadlines, participate in desk and in-person audits of responses by foreign investigating officers, instruct foreign counsel, review foreign complainants' evidence and allegations, and produce one's own evidence and legal submissions. Under either situation, this routinely amounts to thousands of hours of person-time.
- Conduct a practical assessment of the financial costs involved. Due to the complexity and continuing development of the law in this area, this would, at a minimum, include the cost of obtaining specialist legal counsel and, often, economic analysis assistance. When responding to a foreign case, foreign counsel fees can range from one hundred thousand dollars for a small case to over a million dollars for the defence of a large US proceeding.
- Recognize that whether as complainant or respondent, full details of company information, including complete financial, banking, sales, production, customer and competitor records for the previous four years of the product



concerned, will have to be disclosed to domestic and foreign government officials and foreign counsel. Although such information is treated confidentially by foreign parties and there is little risk of leaks, some information may be made available to, for example, intermediaries in the company's supply chain because of duty assessments.

- If bringing a case against foreign imports, include a consideration that the work and expense estimated as above must be essentially repeated every five years to maintain duty protection. If responding to a foreign case, there will be periodic (every 2-3 years) reviews of normal values, export prices, amounts of subsidy involving again detailed questionnaires and demands for financial and sales information by the foreign government.
- If deliberating whether to bring a proceeding against foreign competitors' imports, estimate the risks of retaliation by producers in the target country, possibly in a related or downstream sector.
- Finally, estimate the chances of success weighed against the costs above, as well as the benefit to be obtained by successful participation.





12. ANNEX – OUTLINE OF SELECTED CPTPP MEMBER TRADE REMEDY SYSTEMS

12.1 – Malaysia

Legislation: Safeguards Act 2006; [Countervailing and Antidumping Duties Act 1993](#).

Trade Remedies Authority: [Ministry of International Trade and Industry \(MITI\), Trade Practices Section](#)

Countervailing and Antidumping Procedures Overview: [Antidumping and Countervailing Measures](#)

Safeguards Overview: [Safeguard Measures](#)

Since 2010, Malaysia has become a frequent user and target of trade remedy investigations, particularly in the steel products sector. Recent cases include antidumping and safeguard actions against imported hot rolled coils, cold-rolled coils, steel wire rods, rebars, galvanised iron, galvanized sheet, prepaint and stranded steel wire. Polyethylene terephthalate and cement sheet have also been subject to antidumping measures. Ceramic tile and steel wire rod have recently been subject to safeguard investigations.

Malaysia has to date not initiated any countervail actions.

Principal countries targeted by Malaysia in 2020-21 are China, Vietnam, Korea, and Indonesia.

Countries targeting Malaysian exports in the last 5 years include Canada, India, the United States, Australia, Vietnam, the EU and Turkey.

Malaysia exports and imports may be monitored at the [Malaysia External Trade Development Corporation](#). This is recommended before entering into commitments to export significant volumes to Malaysia, particularly in the steel sector.

12.2 – Australia

Trade Remedies Legislation: [Customs Act 1901](#); [Customs Tariff \(Antidumping\) Act 1975](#); [Customs Tariff \(Antidumping\) Regulation 2013](#); additional legislation.

Antidumping and Countervailing Procedures Overview: [Dumping and Subsidy Manual](#)



Safeguard Measures: [Procedures for Safeguard Investigations, Gazette No. S 297 of 25 June 1998](#); Productivity Commission Act 1998

Australia is among the world's most significant users of trade remedies, with steel and other metals accounting for 70% of the cases currently in place. Measures in place against imports are monitored and published quarterly by the agency responsible for administering trade remedies, the Australian Antidumping Commission. Of the 22 countries (84 cases) currently targeted by dumping and countervailing measures, China (26), Malaysia (7), Thailand (7), Taiwan (6), South Korea (5), Indonesia (4), Philippines (3), Japan (2) and Vietnam (2) comprise the majority.

Preliminary dumping duties on Aluminium zinc coated steel and final duties on aluminum extrusions from Vietnam are in effect. Decisions in two further cases against galvanized steel and copper tube from Vietnam are expected in early 2022.

Australia's exports and imports are published by the [Australian Bureau of Statistics](#) and can be obtained on a commodity basis.

12.3 – Chile

Trade Remedies Legislation: [Law 18,525](#) Rules on the Importation of Goods; Decree No. 1314/2013 on [Anti-Distortion Regulations](#)

Safeguards Legislation: [Law No. 19,612](#) Amending

Law No. 18,525 on Import Price Distortions for the Purpose of Establishing a Safeguards Procedure

Antidumping and Countervailing Procedures Overview: Customs Ordinance, the Compendium of Customs Regulations and the Chile Tariff Code

Chile's trade remedy regime is administered by the [National Commission in Charge of Investigating the Existence of Distortions in the Price of Imported Goods](#).

Chile is only a very infrequent user of trade remedies and has no current antidumping, countervailing or safeguard cases in effect. Antidumping measures can not be in effect for longer than one year, and safeguard measures are limited to two years.

12.4 – Japan

Trade Remedies Legislation: Foreign Exchange and Foreign Trade Act; [Customs Tariff Act](#); [Cabinet Order Relating to Antidumping Duty](#) (Japanese) ([English](#)); Cabinet Order Relating to Countervailing Duty; [WTO Notifications](#) ([English](#))

Safeguards Legislation: Regulations to Govern Emergency Measures to be Taken in Response to an Increase in Importation of Goods; Cabinet Order Relating to Emergency Duties

Antidumping Procedures Overview: [The Guidelines for Procedures Relating to Antidumping Duty](#) (Japanese) ([English](#)) ([English Amendment](#))



Japan's trade remedy laws are administered by the Ministry of Economy, Trade and Industry (METI) and the Ministry of Finance.

Japan has made sparing use of trade remedies, and has measures in effect against Potassium Hydroxide from China and South Korea and Potassium Carbonate from South Korea. Japan currently has only one product under antidumping investigation, galvanized steel wire from China and South Korea.

12.5 – New Zealand

Trade Remedies Legislation: [Trade \(Antidumping and Countervailing Duties\) Act 1988](#)

Safeguard Legislation: [Trade \(Safeguard Measures\) Act 2014](#)

Trade Remedy Procedures Overview: [Trade remedies application and investigation Guide](#)

New Zealand's trade remedy measures are administered by the Ministry of Business, Innovation and Employment and the New Zealand Customs Service. New Zealand has taken very few trade remedy actions, averaging two to four investigations per year, and currently has only 5 dumping orders in place against galvanized wire from China and Malaysia, and peaches from Greece, Spain and South Africa. After an investigation into dumping of galvanized steel from Taiwan and Korea, a provisional antidumping order was made against Korea, and is due to be completed in March of 2022. New Zealand has no countervail or safeguard actions pending or in effect.



This Guide is
intended to increase
understanding of the
Trade Remedies (Anti-dumping,
Countervail or Anti-subsidy, and
Safeguard) measures authorized by
the Comprehensive and Progressive
Agreement for Trans-Pacific Partnership,
with a view to their limited and
appropriate use in enhancing the
economic and social welfare of
business and consumers of
Vietnam.



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