

Intelligence MEMOS



From: Lawrence Herman
To: Trade War Watchers
Date: May 22, 2025
Re: REFORMING CANADA'S TRADE REMEDY SYSTEM FOR TURBULENT TIMES

In four short months, Donald Trump's second presidency has disrupted the circulatory system of global trade.

In addition to the toll so far and potential further costs of his tariff war, which has closed off the US market to a large swath of Canadian products, is the exposure faced by Canadian manufacturers to a flood of foreign-made goods, also shut out of the United States, searching the globe for any port in a tariff storm.

The real danger is that many of these goods will be unfairly priced – dumped or subsidized by their home government – threatening even more commercial harm to Canadian companies.

Canada has laws that allow manufacturers redress in the form of anti-dumping and countervailing duties. Called trade remedies, those laws generally follow the provisions of the 1994 World Trade Organization Agreement, which incorporates the rules laid down in the 1947 General Agreement on Tariffs and Trade (GATT), as well as subsequent WTO agreements.

These laws – most enacted decades ago – now have to meet the new global reality; not only Trump's trade war but China's aggressive state-subsidized export policies. There is concern that the existing system may be too slow, too cumbersome, and too expensive for the Canadian companies that need to use it.

The question is how to equip it better while keeping within the basic strictures of the [World Trade Organization Agreement](#), [CUSMA](#) and Canada's other trade agreements that incorporate those international rules.

Here's an overview of how Canada's trade remedy system works. It's governed by the [Special Import Measures Act](#) (SIMA) and starts with an investigation by the Trade and Anti-Dumping Programs Directorate within the Canada Border Services Agency (CBSA) after it receives a "properly documented" industry complaint about dumped or subsidized imports entering the country. The CBSA has jurisdiction as the department collecting regular import duties and, over time, has inherited the added responsibility of dealing with anti-dumping and countervailing duty cases as well.

After a preliminary determination, the case goes to the [Canadian International Trade Tribunal](#) (CITT), which holds an inquiry to determine whether these imports are actually causing, or threatening to cause, material injury.

There are some fairly straightforward ways to improve the system, some of which I recently [outlined](#), that would not depart from existing agreements. For example, the government could easily issue regulations to reduce complex technical and procedural hurdles that have evolved over years and have added substantially to the costs private parties have to bear.

Another fairly straightforward change would be to amend statutes such as SIMA to clarify that the overriding mandate of Canada's trade remedy agencies is to protect Canadian companies and their employees from low-priced imports flooding into the country, especially dumped and subsidized ones. Currently, there is no clear direction in the governing statutes.

There are, however, other more substantial changes to be considered to adapt Canada's trade law system to a radically changed global trading environment.

For example, the Department of Innovation, Science and Economic Development (ISED), which deals most directly with the manufacturing sector, is not involved in the trade remedy process directly or indirectly.

The government should consider moving the Trade and Anti-Dumping Programs Directorate as the trade remedy investigation arm from the CBSA into ISED, which has the direct linkages to Canadian industry, as opposed to it being a kind of stand-alone orphan operating within the CBSA structure.

The other structural adjustment involves a bit of inside baseball but one that has a bearing on overall system effectiveness. Under changes legislated in 2014, the CITT is serviced by the [Administrative Tribunals Support Service of Canada](#) (ATSSC), an agency created 11 years ago to consolidate services to a number of federal tribunals, including the Canada Industrial Relations Board, the Canadian Cultural Property Export Review Board, the Canada Agricultural Review Tribunal among others.

While the ATSSC process has been working reasonably well and is staffed with dedicated professionals, the result is a bifurcation of functions, with the CITT as the central decision-maker having no control over the staff that provides the support so critical to its operations. That includes collecting and analyzing information from parties, issuing reports that backstop tribunal inquiries and providing general legal and technical advice.

To remedy this disconnect, all staffing functions and operations should be returned to the CITT – including all hiring – so it has direct staff control and can ensure that legal, economic and other support is geared to its particular needs.

Coupled with an effort to remove or simplify many process requirements that have accumulated over the years, these two structural changes would ensure the CITT can meet the challenges of a radically new trading environment.

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A version of this Memo first [appeared](#) in Policy Magazine.