

### Updating Canada's Trade Remedies to Better Equip Canadian Companies

Lawrence L. Herman

May 14, 2025

In six 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 American 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 U.S., searching the globe for any port in a tariff storm.

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

Canada has laws that allow our manufacturers to counter these unfairly traded imports 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 in turn incorporates the rules laid down in the 1947 *General Agreement on Tariffs and Trade* (GATT). The question is whether these laws — enacted decades ago — are up to meeting the new global reality, not only Trump's trade war but China's aggressive state-subsidized export policies. There is concern that system may be too slow, too cumbersome and too expensive for the Canadian companies that need to use it.

The question then is how to make it better equipped to respond to this changed global environment, at the same time keeping within the basic strictures of the WTO Agreement, the *Canada-US-Mexico Agreement* (CUSMA) and Canada's other trade agreements that incorporate those international rules.

Here's an overview of how Canada's system works. It's governed by the [\*Special Import Measures Act \(SIMA\)\*](#) and starts with an investigation by the Trade & Anti-dumping Programs Directorate in the [\*Canada Border Services Agency \(CBSA\)\*](#) after it receives a "properly documented" industry complaint about dumped or

subsidized imports entering the country. The CBSA handles these complaints because it's the department that collects regular import duties and, over time, was given the added responsibility of dealing with anti-dumping and countervailing duty cases as well. The CBSA is part of the Department of Public Safety.

After the CBSA issues a preliminary determination in its investigations, 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 to the complaining industry. While it's an independent trade agency, the Tribunal reports to the Finance Minister, who's department is responsible for tariff policy and for the trade remedy system under SIMA.

There are some fairly straightforward ways to improve the system, some of which I outlined in a recent opinion piece (*Financial Post*, 7 May 2025), that would not depart from the WTO Agreement or the CUSMA or Canada's other trade agreements. For example, I proposed that 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.

***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.***

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), the federal department that deals most directly with the manufacturing sector, is not involved in the trade remedy process directly or indirectly. (ISED was once known as Industry Canada, originally called the Department of Trade & Commerce. As its title indicated, it was responsible for government policies affecting industry. Today, ISED carries that function.)

The government should consider moving the Trade & Anti-Dumping Programs Directorate as the trade remedy investigation arm from the CBSA into ISED – that is, to the federal department with direct linkages to Canadian industry, as opposed to it being a kind of stand-alone orphan operating within the CBSA structure. In other words, move the agency responsible for investigating unfair import activity to the department most directly connected to the manufacturing sector.

The other structural adjustment involves a bit of inside baseball but one that has a bearing on the system's overall effectiveness. Under changes legislated in 2014, the CITT is serviced by an independent agency called the [Administrative Support Services of Canada](#) (ATSSC), created to centralize and consolidate services to large number of federal tribunals, including the Canada Industrial Relations Board, the Canadian Cultural Property Export Review Board, the Canada Agricultural Review Tribunal and several 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 information from parties, analyzing that data, issuing the reports that backstop Tribunal inquiries and providing general legal and technical advice to Tribunal members. There's a disconnect here. To remedy this, all staffing functions and operations should be returned to the CITT – which includes all hiring – so that, through its chair, the Tribunal has direct staff control and can ensure that legal, economic and other support is geared to its particular needs and concerns in its trade inquiries. The process would work more effectively as a result.

Coupled with an effort to remove or simplify a lot of the process requirements that have crept into the system willy-nilly over the years, these two structural changes would ensure the Tribunal can meet the challenges of a radically new trading environment and that Canadian companies that are most in need of trade remedy assistance in today's complex world have better and less costly access to the system.

***Lawrence Herman is an international lawyer with Herman & Associates, a senior fellow at the C.D. Howe Institute in Toronto and former Chair of the Canadian International Tribunal's Advisory Committee.***