

# Canada Border Services Agency

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Internal Audit and Program Evaluation Directorate

## CBSA Anti-dumping and Countervailing Program - Evaluation Report

June 2016

### Note

[\*] An asterisk appears where sensitive information has been removed in accordance with the *Access to Information Act* and the *Privacy Act*.

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## Acronyms and Abbreviations

### AD

Anti-dumping

### ADCV

Anti-dumping and countervailing

### AMPS

Administrative Monetary Penalty System

### ARL

Accounts Receivable Ledger

**ATSSC**

Administrative Tribunal Support Service of Canada

**BSO**

Border Services Officer

**CARM**

CBSA Assessment and Revenue Management

**CBSA**

Canada Border Services Agency

**CITT**

Canadian International Trade Tribunal

**CRA**

Canada Revenue Agency

**CVD**

Countervailing Duty

**DAS**

Detailed Adjustment Statement

**FCA**

Federal Court of Appeals

**FIN**

Department of Finance Canada

**FTE**

Full Time Equivalent

**FY**

Fiscal Year

**GAC**

Global Affairs Canada

**GATT**

General Agreement on Tariffs and Trade

**GC**

Government of Canada

**IO**

Internal Order

**MiF**

Measures in Force

**MOU**

Memorandum of Understanding

**NAFTA**

North American Free Trade Agreement

**NHQ**

National Headquarters

**OGD**

Other Government Department

**O&M**

Operation and Maintenance

**PED**

Program Evaluation Division (of the CBSA)

**POE**

Port of entry

**SIMA**

*Special Import Measures Act*

**SME**

Small and Medium Enterprise

**SOTC**

Senior Officer Trade Compliance

**TPP**

Trans-Pacific Partnership

**USDOC**

United States Department of Commerce

**WCA**

## Written Collaborative Arrangements

### **WTO**

World Trade Organization

## **Glossary of Terms**

### **Anti-dumping duty**

A duty imposed to offset the injury caused by the dumped goods. Duty equal to the margin of dumping on the goods.

### **Circumvention**

Any action taken by a party in order to avoid the imposition of anti-dumping or countervailing duties.

### **Countervailing duty**

A duty imposed to offset the injury caused by the subsidized goods. Duty equal to the amount of subsidy on the goods.

### **Dumping**

When goods are sold to importers in Canada at a price lower than selling price of comparable goods in the country of export or at unprofitable prices.

### **Export price**

Selling price of goods to importers in Canada

### **Injury**

A material injury to a domestic industry such as loss of sales, loss of profit, price depression, or reduction of employment

### **Margin of Dumping**

Amount by which the normal value exceeds the export price

## **Named Country**

A country specifically identified in a CBSA MiF, and/or CITT ruling or order. Duties from an order or finding will only apply to subject goods from that country

## **Normal Value**

The selling price of a good in an exporter's domestic market or the total cost of the good plus an amount for profit

## **Subsidies**

Financial contributions by a foreign government that confer a benefit on imported goods.

## **Subject goods**

Goods of the same description as those named in product definition at initiation of the SIMA investigation.

## **Undertaking**

A formal agreement accepted by the CBSA President which suspends the dumping or countervailing investigation in which exporters or foreign governments agree to price changes to eliminate the dumping, subsidizing or injury.

# **Executive Summary**

## **Program Profile**

Anti-dumping and Countervailing (ADCV) programs have existed in Canada since 1904 to provide a domestic redress mechanism against unfair trade practices by foreign companies. Dumping refers to when goods are sold to domestic importers at a lower price than the selling price of those goods in the country of export (or that they are sold in Canada for an unprofitable price). In addition, foreign governments may subsidize their exports to gain an unfair market advantage; in response, Canada may impose countervailing duties (CVD) equal to the amount of subsidy on the goods to ensure a fair market price.

Canada's ADCV system involves several federal institutions including the Canada Border Services Agency (CBSA), the Canadian International Trade Tribunal (CITT), the CITT Secretariat within the Administrative Tribunal Support Service of Canada (ATSSC), the Department of Finance Canada (FIN), the Canada Revenue Agency (CRA), and Global Affairs Canada (GAC). The *Special Import Measures Act* (SIMA)

underpins Canada's ADCV system, and reflects the World Trade Organization's (WTO) <sup>1</sup> Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) and the Agreement on Subsidies and Countervailing Measures. SIMA is administered jointly by the CBSA and CITT. The ADCV Program within the CBSA determines whether there is dumping or subsidizing; if so, the CITT adjudicates on whether the dumping or subsidizing caused injury to domestic producers. FIN holds the legislative authority for SIMA. Finally, both FIN and GAC may be involved in negotiating international trade agreements and dealing with foreign appeals against Canada's ADCV system.

## Evaluation Purpose

The purpose of the evaluation is to determine the degree to which the ADCV Program within the CBSA supports the delivery of the Government of Canada and CBSA trade remedy-related priorities and the performance, efficiency and economy of the ADCV program based on the logic model for the program in place at the time of the evaluation. A new logic model is currently under development and may reflect different outcomes and/or indicators in future evaluations. The evaluation is part of the Agency's 2014–2019 Five-Year Program Evaluation Plan. This is the first evaluation of the ADCV Program.

## Summary of Findings

### Continued Need

The evaluation found that dumping and subsidizing of goods is a persistent problem in Canada, and around the world. In 2015, there were ADCV-specific regulations/legislations in place in 75 WTO member states, <sup>2</sup> to protect the home countries from unfair trade practices that would threaten their domestic industries. Between 1995 and 2014, Canada was the ninth most frequent user of anti-dumping (AD) measures and the third most frequent user of CVD measures. <sup>3</sup> In Fiscal Year (FY) 2014–2015, the ADCV program had 44 Measures in Force (MiF) – an increase of 18 since FY 2010–2011. <sup>4</sup> Measure(s) in Force (MiF) indicate that there is a finding of dumping/ subsidizing against a specific imported good, and that there were duties assessed on that good. The presence of MiF—and their recent increase—demonstrates that dumping and subsidizing persists in the Canadian market, and consequently, there is an ongoing need for the ADCV Program.

### Alignment with Government Priorities

The 2015 Budget included an expanded trade agenda which focused on fostering domestic conditions to allow Canadian manufacturers and producers to thrive. The ADCV Program supports these priorities by ensuring a fair domestic trade remedy process, through investigations, preliminary determinations and compliance monitoring of CBSA and CITT determinations.

### Alignment with Federal Roles and Responsibilities

The *Canada Border Services Agency (CBSA) Act*, the *Customs Act* and SIMA give the CBSA the legislative authority to administer ADCV measures. The activities of the ADCV Program align with the

Federal roles and responsibilities of regulating international trade and commerce, and by supporting an effective domestic trade remedy system through the administration of SIMA.

## Achievement of Expected Outcomes

### Outcome #1: Effective partnerships are formed to deliver the SIMA program to stakeholders

The co-administration of SIMA, between the CBSA and the CITT, functions well. Clarifying the CBSA information-sharing processes with the CITT and the CITT Secretariat could enhance the overall flow of cases. The relationship between the CBSA and its other federal partners involved in the ADCV system also operates smoothly. Establishing service standards for sharing data and responding to information requests through formal Written Collaborative Arrangements (WCA) could further improve the ADCV system.

### Outcome #2: Stakeholders are aware of Canada's trade requirements

Overall, private sector stakeholders are aware of, and use, information regarding SIMA and the ADCV Program via the CBSA website or ADCV Program staff. In the early 2000s, the ADCV Program created a Small and Medium Enterprise (SME) Unit to respond to requests for information and provide assistance to these businesses. However, the Program does not track and report on the operation of the SME Unit or other ADCV Program pre-initiation activities, to determine whether they are meeting the needs of the external stakeholder community.

### Outcome #3: Appropriate and timely Investigative decisions are rendered

A detailed analysis of comparable cases in Canada and the United States between 2010 and 2015 found that both countries reached the same decision in these cases, demonstrating that these countries apply the WTO Agreements (in the same North American market) in a congruent way. Furthermore, during this five-year period, only two cases were presented to the Federal Court of Appeal and only three complaints were submitted to the Minister of Finance (and none to the Minister of Public Safety) regarding the interpretation of SIMA by the ADCV Program. External stakeholders reported that CBSA personnel are professional and collaborative in carrying out their work, and responded to enquiries quickly; however, they would like more transparency regarding how ADCV decisions are made. The ADCV Program met all its legislative timeframes in each of the past five years by re-balancing resources among investigations, re-investigations and other activities.

### Outcome #4: SIMA duties are assessed in a timely manner

SIMA duties are imposed on specific "subject goods" from named countries. 5 The timely assessment of SIMA duties is important to: 1) provide immediate protection to Canadian producers (i.e., quickly detect and impose duties on dumped/subsidized imports); 2) allow importers to adjust the resale value of the dumped/subsidized goods and avoid the shock of a large assessment of duties owed months or years after importation; and, 3) avoid companies quickly filing for bankruptcy, which results in lost revenues of duties owed to Canada. While the Agency tracks the total value of SIMA duties assessed, it does not track the timeliness of this activity. In 2015, the ADCV Program established an internal service standard, where 100% of SIMA findings/orders will be enforced within four months, and the Agency will report on this data in

FY 2016–2017.

### **Outcome #5: Anti-dumping and/or countervailing duties are imposed on importers who have imported dumped and/or subsidized goods**

The total value of SIMA duties assessed in FY 2014–2015 was \$42M. However, the evaluation was unable to determine what proportion this represents of the total value of SIMA duties owing. In addition, other subject goods may have entered Canada but were not assessed due to errors (e.g., wrong country of origin noted), misclassification of the goods or other factors. As such, this evaluation cannot determine the assessment rate of subject goods (i.e., percent of total assessed duties on SIMA goods). Further, at the time of this evaluation, there was no formal, regular reporting mechanism to determine the proportion and amount of SIMA duties assessed, which are subsequently collected. The CBSA recently instituted an Accounts Receivable Ledger (ARL) which will track this information in the future.

### **Outcome #6: Canada's economic interests/position are advanced domestically and internationally**

ADCV measures are in place to mitigate the effect of foreign dumped and subsidized imports on the Canadian economy. However, Canada is the only country that attempts to link the impact of its ADCV activities to overall economic performance. Although the ADCV system involves the coordination of multiple federal institutions, there is no horizontal governance, logic model or Performance Measurement Framework in place, by which to measure this outcome.

## **Efficiency**

The ADCV Program does not track certain program activities and financial data, which limits the ability to determine the effectiveness and efficiency of the overall program. Second, the efficiency of the ADCV Program is difficult to convey due to the year-to-year changes in the volume and complexity of the investigations (e.g., a single case may involve multiple products, multiple countries). The highly specialized and technical nature of this work also means that the ADCV Program cannot quickly hire new staff to address a sudden increase in investigations. Despite the data limitations, comparing the use of resources by the United States versus Canadian ADCV programs showed that the full-time-equivalent (FTE) utilization per case activity of the CBSA ADCV Program is comparable to that of the US ADCV Program. Moreover, over the past five years, the FTE utilization per case for the Canadian program declined while program activities increased, suggesting an increase in efficiency.

## **Recommendations and Management Response**

### **Recommendation 1:**

The Vice-President, Programs Branch, strengthen information-sharing protocols with both the Canadian International Trade Tribunal (CITT) and the CITT Secretariat within the Administrative Tribunal Support Service of Canada (ATSSC) to facilitate planning. This would include identifying criteria of what information can be shared, by whom and under what conditions.

### **Management Response:**

Management accepts this recommendation. The MOU between the CBSA and CITT that was implemented in 2014 laid the groundwork for ongoing collaboration but was limited in scope. The CBSA will work with the CITT and the ATSSC (CITT Secretariat) to expand the MOU to include information sharing-protocols and other possible measures to strengthen collaboration and efficiency.

### **Recommendation 2:**

The Vice-President, Programs Branch, develop an action plan to improve transparency and demonstrate consistency to external stakeholders regarding SIMA decisions and determinations, while safeguarding protected information as per SIMA.

### **Management Response:**

Management accepts this recommendation. It will actively consider options to improve transparency and consistency in its investigative and compliance activities and develop an action plan to implement options that are approved.

### **Recommendation 3:**

The Vice-President, Programs Branch, enhance the tracking, recording and reporting of key program activities as identified in the performance measurement framework (PMF) and develop efficiency indicators linked to these activities.

### **Management Response:**

Management accepts this recommendation.

# **Anti-dumping and Countervailing Program – Evaluation Report**

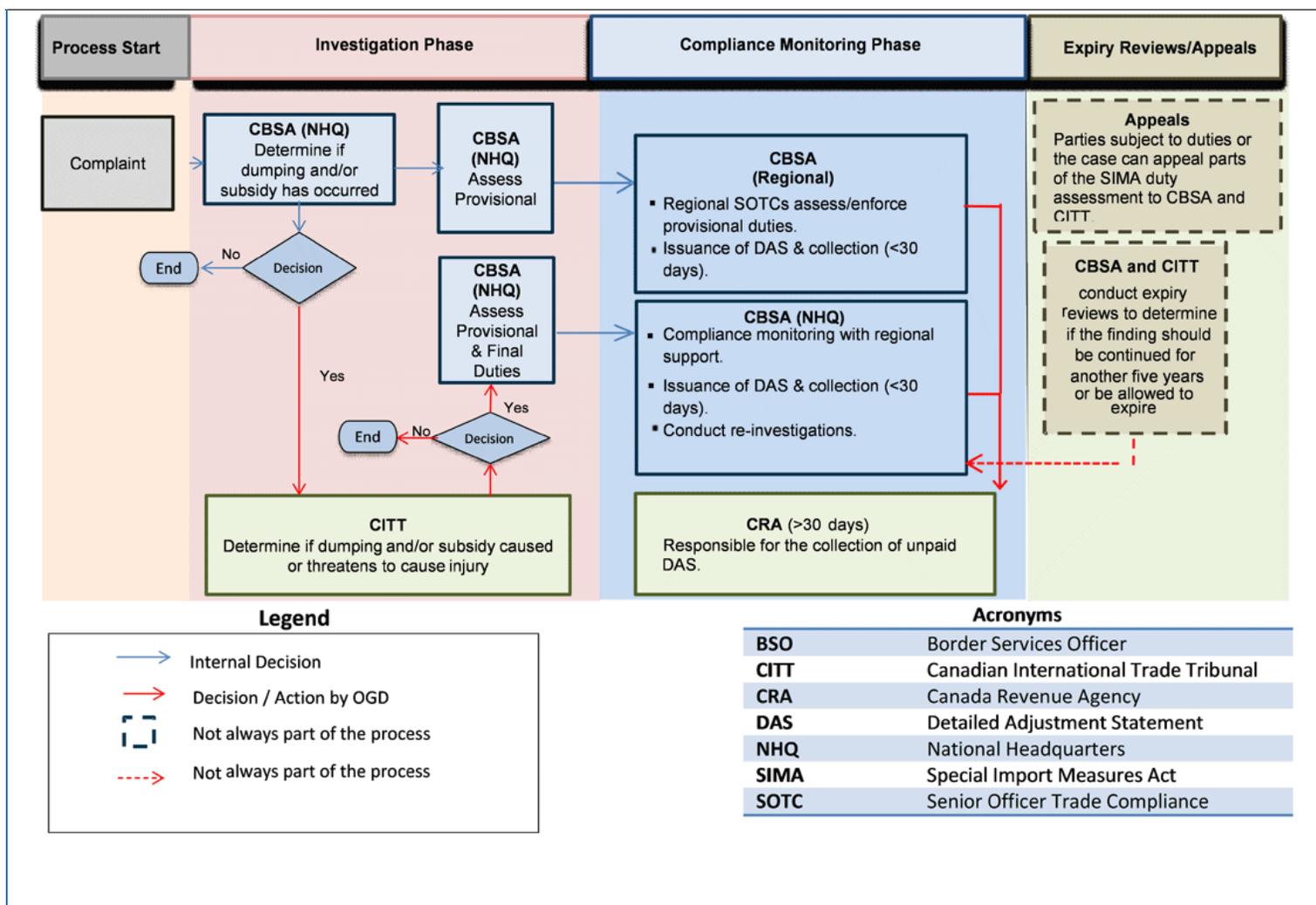
## **Introduction and Context**

The coordination and administration of Canada's Anti-dumping and countervailing (ADCV) system involves multiple federal institutions (Exhibit 1). These include the Canada Border Services Agency (CBSA), the Canadian International Trade Tribunal (CITT), the Administrative Tribunal Support Service of Canada (ATSSC), the Department of Finance Canada (FIN), the Canada Revenue Agency (CRA), and Global Affairs Canada (GAC). The purpose of Canada's ADCV system is to provide a domestic redress mechanism against unfair trade practices by foreign companies.

The *Special Import Measures Act* (SIMA) reflects Canada's implementation of the World Trade Organization's (WTO) <sup>6</sup> Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT) (i.e., the anti-dumping provisions) and the Agreement on Subsidies and Countervailing Measures. Other legislation and regulations also direct the activities and responsibilities of key partners (see Appendix D). The legislative responsibility for SIMA rest with FIN, and is administered jointly by the CBSA (through the ADCV Program) and the CITT. Both FIN and GAC are involved in negotiating international trade agreements and dealing with foreign appeals against Canada's ADCV system.

As shown in Exhibit 1, when a properly documented complaint is received (e.g., from a domestic producer), the CBSA investigates whether dumping or subsidizing occurred and if so, calculates the extent of dumping or subsidizing (i.e., margin of dumping or the amount of subsidy). Once a preliminary determination of dumping and/or subsidizing is made, provisional duties are imposed and collected by the CBSA. The ADCV Program then has 90 days to make a final determination of dumping or subsidizing. Concurrently, the CITT conducts a parallel review of the complaint to determine whether the dumping or subsidizing has caused or threatens to cause material injury to Canadian industry that produces like goods. If there is a determination of no injury, or of threat of injury, the provisional duties are refunded. If the CITT does finds injury or threat of injury, the CBSA then enforces the finding through the imposition of anti-dumping (AD) or countervailing duties (CVD). Importers are expected to be in compliance with the CITT findings. Importers may self-assess their duties at the time of accounting. If the importer does not self-assess, the CBSA will issue a Detailed Adjustment Statement (DAS) identifying the duties owing. If the party involved does not pay its DAS <sup>7</sup> within 30 days of the DAS issuance, the file is turned over to the CRA for collection.

## Exhibit 1. Phases of Canada's Anti-dumping and Countervailing Process <sup>8</sup>



There are various redress mechanisms available to parties who wish to challenge a decision (e.g., the start of an investigation) or determination (e.g., the finding of an investigation) made by the CBSA. In general, these appeal rights are available to any party with a specific interest in the case (e.g., importers, exporters, domestic industry or foreign government). The appeal mechanisms include, for example, CBSA re-determinations, Section 61 <sup>9</sup> appeals to CITT, the Federal Court of Appeal (FCA) <sup>10</sup>, and the North America Free Trade Agreement (NAFTA) Binational Panel or through the WTO dispute settlement process.

<sup>11</sup>

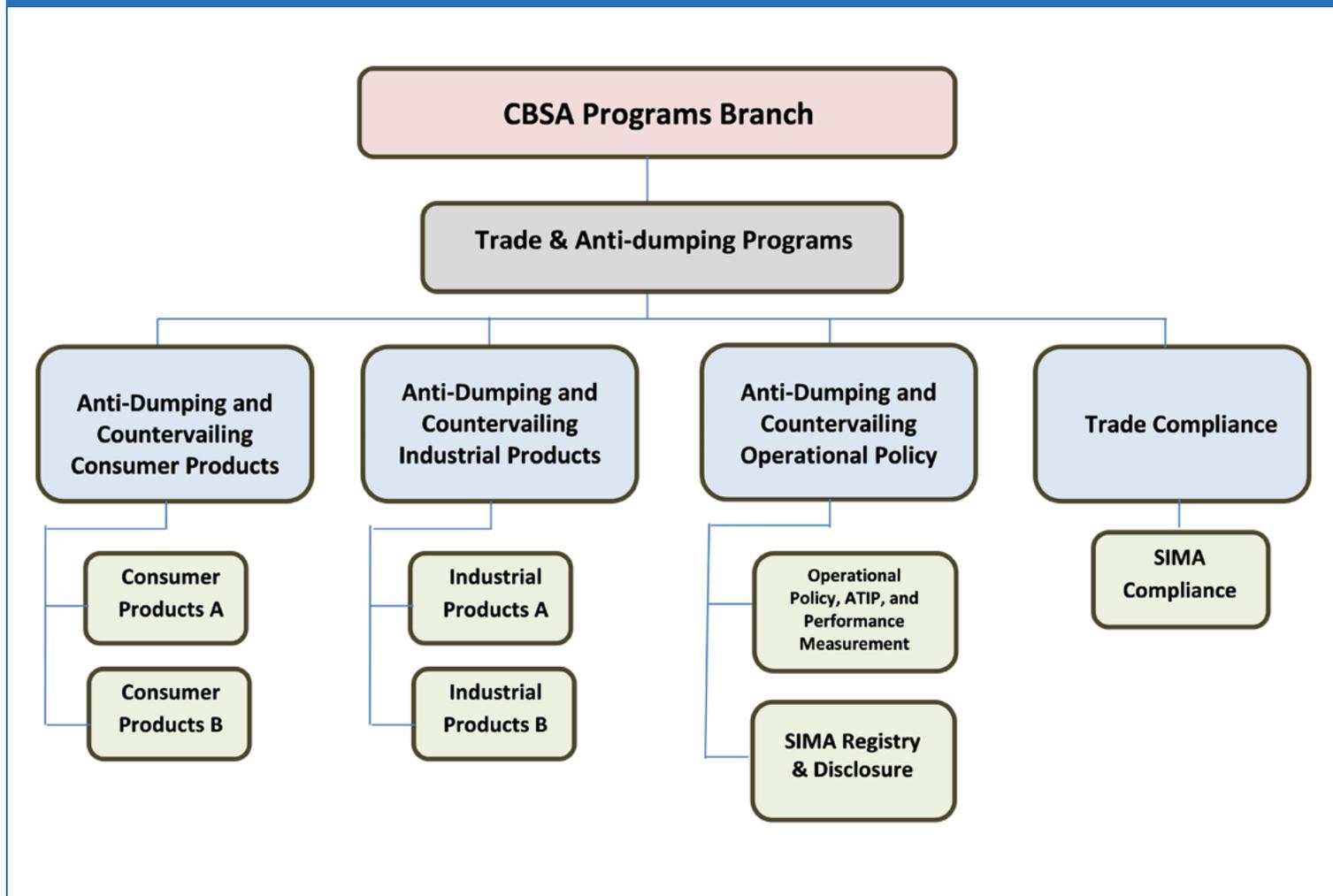
The CBSA also conducts ongoing compliance monitoring and periodic re-investigations to ensure accurate normal values and amounts of subsidy. The CBSA and the CITT also conduct expiry reviews every five years to determine if the Measure(s) in Force (MiF) (i.e., CITT finding) should be continued for another five years or be allowed to expire.

## ADCV Program Structure

Anti-dumping and Countervailing programs have existed in Canada since 1904. The ADCV Program is currently located within the Programs Branch of the CBSA (see Exhibit 2), and is aligned with the sub-program 1.7 Revenue and Trade Management in the 2014–2015 Program Alignment Architecture. <sup>12</sup>

<sup>12</sup>

## Exhibit 2: Organizational structure of the ADCV Program in the CBSA



### Evaluation Purpose and Scope

This evaluation follows the guidelines established by the Treasury Board of Canada Secretariat. The purpose of the evaluation is to determine the degree to which the ADCV Program supports the delivery of the Government of Canada (GC) and CBSA trade remedy-related priorities and the achievement of the ADCV Program outcomes as per the ADCV Program logic model. It also examines the efficiency and economy of the program. This evaluation is part of the Agency's 2014–2019 Five-Year Program Evaluation Plan, and the scope for this evaluation was approved by the Executive Evaluation Committee in February 2015. This is the first evaluation of the ADCV Program.

### Methodology

Research for this evaluation was conducted between June 2015 and February 2016 (see Appendix C for details). The evaluation analyzed key CBSA program, human resource and financial data extracted by the program areas, CBSA documentation (e.g., Departmental Performance Report and external sources (international data on other countries using ADCV measures and the WTO). Evaluators conducted interviews with representatives from other government departments (OGDs), ADCV program staff (at National Headquarters (NHQ) and in the regions), and with select external stakeholders (e.g., legal counsel, producers). The team also conducted in-depth reviews of 10 ADCV cases, and on-site

observation (i.e., job shadowing) of ADCV Officers at NHQ.

## Methodological Limitations

In August 2015, a federal election was called and resulted in a temporary cessation of all Public Opinion Research. Consequently, the evaluation team was not able to contact any external stakeholders until November 2015. This limited the time available to contact external stakeholders. Instead of the planned survey, the evaluation team conducted key informant interviews with select external stakeholders (a list of key contacts was provided by the ADCV Program). Attempts were made by evaluators to reach external stakeholders from a range of perspectives. Within this limited timeframe the evaluation team was unable to obtain feedback from legal counsel representing small and medium enterprise, exporters, Canadian importers who import goods to re-sell, and Canadian importers who import goods as inputs to the manufacturing of other items. As such, certain stakeholder interests and experiences may not be fully reflected in this evaluation.

## Findings and Recommendations

### Continued Need

This evaluation found that the dumping and subsidizing of goods is a persistent problem, both globally and in Canada. Currently, there are domestic and WTO ADCV-specific regulations/legislations in place in approximately 75 countries, to protect home countries from unfair trade practices that would threaten their domestic industries. <sup>13</sup> Over the past decade traditional users of AD and CDV measures (like Australia, Canada, the European Union and the United States) were joined by a large and growing number of new ADCV users from developing and emerging economies. <sup>14</sup> Between January 1995 and December 2014, China was the subject of 1,052 AD investigations worldwide (22.1% of all WTO AD initiations) and the target for 90 CVD investigations (23.7% of total WTO CVD initiations). Other key AD and CVD investigations included Korea, United States, Chinese Taipei, Thailand, India, Japan, Indonesia and the Russian Federation. <sup>15</sup>

According to the WTO, Canada was the ninth most frequent user of AD measures (Exhibit 3) and the third most frequent user of CVD measures (Exhibit 4) between 1995 and 2014. <sup>16</sup> External stakeholders cited how the global economic downturn from 2008 to present caused a worldwide excess supply of certain types of commodities (e.g., steel pipe, steel plate) <sup>17</sup>, which resulted in foreign companies attempting to dump their excess capacity into the Canadian market.

### Exhibit 3: Anti-dumping initiations by countries, Top 10 (1995-2014)

Rank	Country	Total Number of AD initiations
1	India	740

2	United States	527
3	European Union	468
4	Brazil	369
5	Argentina	316
6	Australia	289
7	South Africa	229
8	China	218
9	Canada	196
10	Turkey	180
	TOTAL WORLD	4757

Source: PED calculations using WTO Statistics on Anti-dumping. Anti-dumping Initiations: By Reporting Member 01/01/1995 - 31/12/2014. Retrieved from [https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_InitiationsByRepMem.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf) (Accessed on April 14, 2016)

#### Exhibit 4: Countervailing duty initiations by country, Top 10 (1995-2014)

Rank	Country	Total Number of CVD initiations
1	United States	156
2	European Union	74
3	Canada	49
4	Australia	18
5	South Africa	13
6	Brazil	10
7	Egypt	10

8	Peru	8
9	China	7
10	Chile	6
	TOTAL WORLD	380

Source: PED calculations WTO Statistics on subsidies and countervailing measures. Countervailing Initiations: By Reporting Member 01/01/1995 - 31/12/2014. Retrieved from [https://www.wto.org/english/tratop\\_e/scm\\_e/CV\\_InitiationsByRepMem.pdf](https://www.wto.org/english/tratop_e/scm_e/CV_InitiationsByRepMem.pdf) (Accessed on April 14, 2016)

The ADCV Program is a complaints-driven process; as such, the number of cases and MiF will fluctuate from one year to the next due to a variety of internal and external market conditions. In Fiscal Year (FY) 2014-2015, the ADCV program had administered 44 MiF – an increase of 18 since FY 2010-2011. <sup>18</sup> The ongoing presence – and recent increase – of MiF demonstrates that injurious dumping and subsidizing persist in the Canadian market, and there is an ongoing need for the ADCV Program.

The ADCV Program addresses a continued need, by providing a domestic redress mechanism against dumped or subsidized imported goods which cause injury to Canadian industry.

## Alignment with Government Priorities

According to the 2013 Speech from the Throne, <sup>19</sup> and budgets tabled over each of the past five years, <sup>20</sup> a top priority of the GC is to create jobs and to promote the domestic economy. The 2015 Budget included an expanded trade agenda which focused on fostering domestic conditions to allow Canadian manufacturers and producers to thrive. The ADCV Program supports these priorities by ensuring an equitable trade remedy process, through investigations, preliminary determinations and compliance monitoring of CBSA and CITT determinations. Through these activities, the ADCV program also contributes to the GC Economic Affairs outcome area "a fair and secure marketplace" as laid out in the Whole of Government Framework. <sup>21</sup> The Whole of Government Framework outlines the financial and non-financial contributions of federal organizations which have been allocated federal funding by aligning program activities with high level outcomes (Appendix B). <sup>22</sup>

The ADCV Program activities support the priorities of the Government of Canada to promote a strong economy and domestic market, by determining if imports are being dumped or subsidized, assessing applicable duties and monitoring the compliance of Canadian importers with SIMA.

## Alignment with Federal Roles and Responsibilities

Under the Canadian Constitution, the Federal government has the legislative authority to regulate trade and commerce, <sup>23</sup> and as part of this authority, the GC may participate in international organizations or enter into agreements on these issues. The trade remedy provisions within SIMA are consistent with both Canada's obligations as a signatory to the WTO requirements and NAFTA.

The *Canada Border Services Agency (CBSA) Act*, the *Customs Act* and SIMA, give the CBSA the legislative authority to administer SIMA AD and CVD measures. In addition to establishing the Agency, the CBSA Act stipulates the Agency's mandate to facilitate the free flow of persons and goods in accordance with all program legislation requirements (section 5.1). Program legislation, according to this Act, includes the administration and enforcement of both the *Customs Act* and SIMA (CBSA Act, paragraph 2(a)). In its role as an administrator and enforcer of the *Customs Act*, the CBSA is responsible for the enforcement and collection of duties and taxes on imported goods, including those subject to SIMA (*Customs Act*, section 2.1). Lastly, SIMA delegates the roles, duties and authority of the President of the CBSA. Specifically, SIMA outlines the President's role and authority in the assessment of a complaint, the determination of dumping and/or countervailing, and normal values and export price.

Canada's trade remedy system falls within the purview of the federal government. Assessing and collecting duties on behalf of the GC is a responsibility of the CBSA. The ADCV Program supports this role by determining whether imports are being dumped and/or subsidized and assessing SIMA duties that are payable.

The activities of the ADCV Program align with the federal roles and responsibilities to regulate trade and commerce, by supporting an effective domestic trade remedy system through the administration of SIMA.

## Achievement of Expected Outcomes <sup>24</sup>

According to the ADCV Program logic model <sup>25</sup> in place at the time of the evaluation, the expected outcomes for the program are the following:

- Effective partnerships are formed to deliver SIMA Program to stakeholders;
- Stakeholders are aware of Canada's trade requirements;
- Appropriate and timely investigative decisions are rendered;
- SIMA Duties are assessed in a timely manner;
- Anti-dumping and/or countervailing duties are imposed on importers who have imported dumped and/or subsidized goods; and,
- Canada's economic interests/positions are advanced domestically and internationally.

### Outcome #1: Effective partnerships are formed to deliver the SIMA program to stakeholders

Canada's ADCV system involves the coordination of several federal institutions. The CBSA's primary partner in the administration of the ADCV Program is the CITT. For the most part, the roles and responsibilities of the CITT versus the CBSA are identified in SIMA. In addition, in October 2014, a

Memorandum of Understanding (MOU) was implemented between the CBSA and CITT to address issues pertaining to the notification of a properly documented complainant; however, this MOU does not include guidelines on delivery service standards or other issues. For instance, representatives from the CITT Secretariat indicated they would like more notice regarding upcoming cases in order to better prepare and organize resources to prepare cases for the CITT. There would be no conflict or breach of confidentiality if certain information were provided in advance.

The CITT, CITT Secretariat, and ADCV Program staff were positive about the overall working relationship between the CBSA and the CITT. <sup>26</sup> The CITT and the CITT Secretariat indicated that the ADCV Program responded quickly to all their requests. However, both groups expressed an interest in formalizing their working arrangements (e.g., introducing regular management-level working groups) in order to streamline the process and share best practices. For example, the CITT uses an electronic filing system where case information can be filed over a secure line via the internet while the CBSA does not have this capability. The CITT and the CITT Secretariat indicated that a discussion at the management level might facilitate the harmonization of these systems.

The co-administration of SIMA, between the CBSA and the CITT, functions well. The CBSA's current interpretation of the confidentiality provisions of SIMA is impeding optimal information-exchange among key partners. Clarification of the information-sharing processes could enhance the overall flow of cases.

The three other key partners involved in the delivery of SIMA to stakeholders are FIN, Global Affairs and the CRA. FIN has the legislative responsibility for SIMA, ensuring that the legislation and policy remain up-to-date with emerging WTO jurisprudence and other trade agreements. The ADCV Program and FIN also work together to identify the administrative and enforcement implications of new trade agreements. FIN indicated that the ADCV Program was responsive to their high priority requests for information (e.g., for foreign governments involved in a case) but indicated the time to receive non-priority requests has somewhat lengthened. <sup>27</sup> One issue raised by stakeholders is that there could be improvement in the alignment between certain provisions of SIMA legislation (enacted in 1984) and the WTO Agreements. <sup>28</sup> The last comprehensive review of SIMA was undertaken in 1996 by the two House of Commons sub-committees. <sup>29</sup>

When the CBSA receives a properly documented subsidy complaint, the Agency notifies the implicated foreign government and advises it to contact GAC (a contact name is provided) if it wishes to have consultations as per the WTO Agreement on Subsidies and Countervailing Measures. If the foreign government contacts GAC and indicates they want consultations, GAC notifies FIN and they both participate in the consultation process (FIN takes the lead). The CBSA may be contacted by the OGDs to keep them apprised of developments and to provide assistance in the planning for the consultations, but the CBSA does not become directly involved in the proceedings. This chain is in place to maintain the independence of the investigative function of the ADCV Program. The ADCV Program also prepares and shares with GAC a semi-annual report on anti-dumping and countervailing actions in Canada as well as Briefing Notes as required. GAC indicated that the ADCV Program was very responsive, professional and helpful. The ADCV Program relies primarily on informal professional relationships to coordinate their

activities with both FIN and GAC. These relationships would benefit from formalization through Written Collaborative Arrangements (WCAs), so that there are clear guidelines for information-sharing.

Finally, as per an MOU <sup>30</sup> between the CBSA and the CRA, the CRA is responsible for collecting outstanding duties assessed by the CBSA (including SIMA duties). One issue raised by ADCV officers is that the CBSA does not know whether the overdue duties were collected (and the value of those duties), unless an officer makes a request about a specific case to the CRA. Similarly, staff at the CRA would like notification when a DAS for a large monetary amount is issued so that they can prioritize that case, before a company can file for bankruptcy, which has occurred in the past. <sup>31</sup> As with the OGDs mentioned above, the relationship between CRA and the CBSA could be optimized with the implementation of WCAs or establishing service standards between them for key deliverables.

Overall, OGDs relationships function smoothly. Establishing formal WCAs could optimize the administration of the ADCV system across government, by establishing service standards for sharing data and responding to information requests.

## It is recommended that:

**Recommendation 1:** The Vice-President, Programs Branch, strengthen information-sharing protocols with both the Canadian International Trade Tribunal (CITT) and the CITT Secretariat within the Administrative Tribunal Support Service of Canada (ATSSC) to facilitate planning. This would include identifying criteria of what information can be shared, by whom and under what conditions.

## Outcome #2: Stakeholders are aware of Canada's trade requirements

For this outcome, the evaluation measured "awareness" by investigating how the ADCV Program conducts and tracks its outreach activities, and, whether greater awareness led to an increased use of the ADCV Program.

### Awareness

The primary outreach mechanism for the ADCV Program is the CBSA/SIMA website. <sup>32</sup> The website provides information on cases, Statement of Reasons, frequently asked questions on importing and filing complaints, as well as contact information for officers at NHQ and in the regions. The website also provides specific information directed to small and medium-sized enterprises (SMEs). The ADCV Program also organizes presentations for stakeholders, such as brokers associations, upon request.

The SIMA Registry and Disclosure Unit is responsible for posting all public versions of disclosure documents on the website. In early 2015, stakeholders reported missing documents, delays in document posting and other issues with the system. <sup>33</sup> However, they indicated that the functionality of the site had improved somewhat since December 2015. <sup>34</sup> ADCV personnel indicated that delays in posting

materials were due to several factors, including changing standards by the GC for web postings and multiple internal steps required for posting documents (i.e., converting large documents into accessible web-compatible formats, sending document to CBSA Communications E-Commerce Unit, Corporate Affairs Branch for review prior to posting). External stakeholders also indicated that case continuity is difficult to track on the CBSA website: a section organized by case, with a history of the proceedings would be useful.

Both external stakeholders and ADCV Program personnel indicated that much of their outreach work is via email, web-enquiries and phone calls (at both NHQ and in the regions). Stakeholders were very positive about the quality of the advice and information they received from ADCV Program staff. While regional staff (i.e., Senior Officers Trade Compliance (SOTC)) log these interactions with stakeholders, ADCV staff at NHQ do not; as such evaluators were unable to assess the extent to which and whether all types of stakeholders were accessing the ADCV Program (i.e., small and medium enterprise or SMEs, importers, exporter, brokers).

Overall, private sector stakeholders are aware of, and use, information regarding SIMA and the ADCV Program. The primary sources for SIMA-related information are the CBSA website, SIMA Registry and Disclosure Unit and staff at NHQ and in the regions.

A 2002 audit <sup>35</sup> of SIMA found that SMEs were particularly disadvantaged from using SIMA due to: the cost and time needed to file a complaint; the complexity of the process and difficulty in gathering relevant information; and the need to work together with other small producers to meet the minimum threshold for share of market production. The Office of the Auditor General recommended that the CBSA implement measures to ensure that no industry sector or size of business has an advantage over another in gaining access to the SIMA process.

In response, the ADCV Program created a "virtual" SME Unit which can be contacted through the CBSA website. The website provides the contact numbers of six unit members to answer questions and provide guidance on the preparation and filing of SIMA complaints. The CBSA does not proactively promote or market the SME unit to business associations or directly to SMEs, or offer any specialized services to them. This contrasts with the US Department of Commerce (USDOC) and the United States International Trade Commission which make certain services available only to SMEs such as, tariff and trade data and informal legal support – areas that are difficult for SMEs to access on their own and which can pose a barrier to accessing the SIMA program (Exhibit 5) <sup>36</sup>.

### Exhibit 5: ADCV support provided to small and medium enterprises, Canada versus US (2016)

Canada	US
"Virtual" SME unit – online links to resource officers and relevant	USDOC - AD/CVD Petition Counseling and Analysis Unit.

SIMA documentation.

SME requirements are clearly outlined on the website

Compliance assistance is available to any US company to prepare and review draft dumping or subsidy petitions.<sup>[1]</sup>

Tariff and trade data is made available to SMEs from various US agencies.

Technical assistance in the form of informal advice and assistance, including informal legal support <sup>[2]</sup> is made available to eligible small entities includes.

[1] Source: United States Department of Commerce, International Trade Administration, Enforcement and Compliance, "Antidumping (AD) and Countervailing Duty (CVD) Petition Counselling and Analysis Unit" <http://enforcement.trade.gov/petitioncounseling/index.html> (Accessed on March 7, 2016).

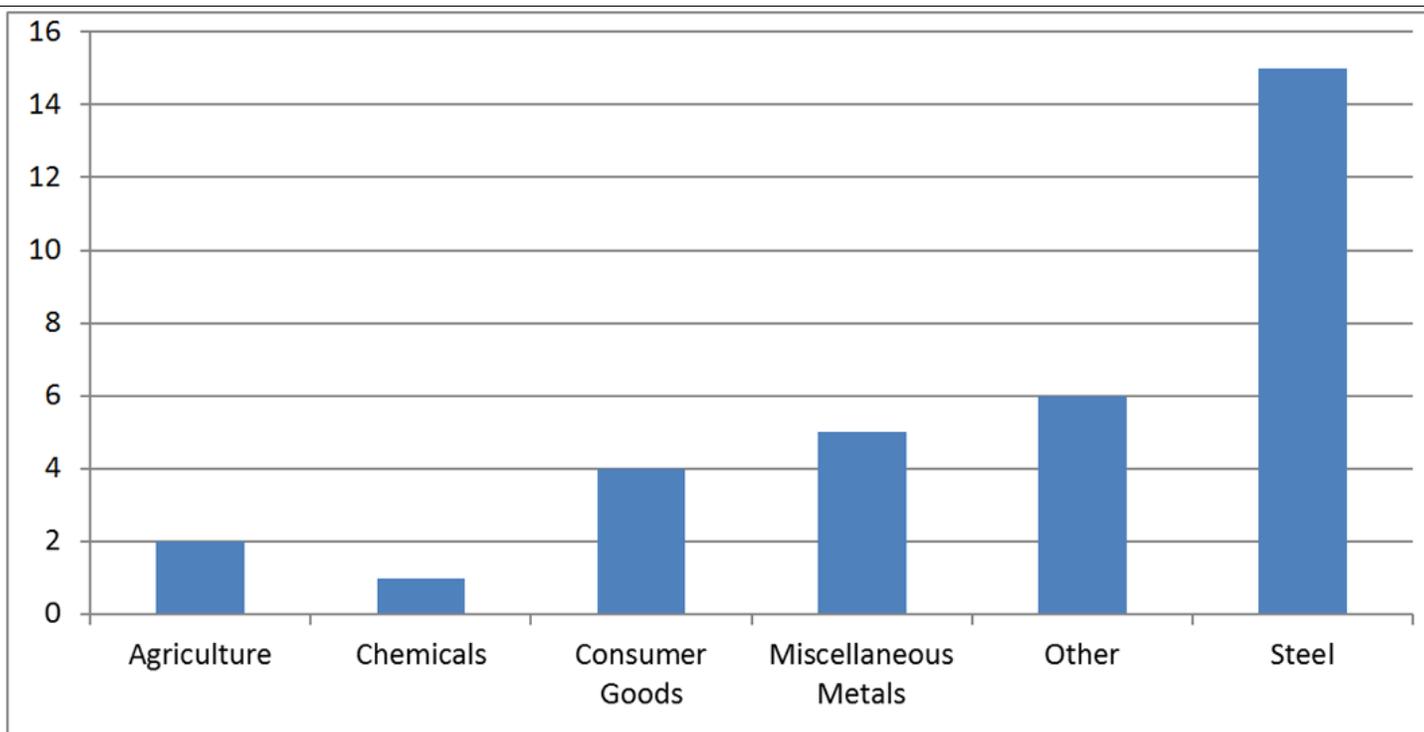
[2] Source: United States International Trade Commission, Trade Remedy Assistance Program, [http://www.usitc.gov/trade\\_remedy\\_assistance\\_program.htm](http://www.usitc.gov/trade_remedy_assistance_program.htm) (Accessed on March 7, 2016)

## Use of SIMA by industry

The ongoing presence of properly documented complaints filed with the ADCV Program indicates that domestic industries are using the ADCV Program to address dumping and/or subsidizing concerns. The total volume of investigations initiated per year will be influenced by variety of factors (e.g., economic downturn), but ranged from two to 12 cases within the past five FY. Exhibit 6 summarizes the number of investigations initiated by the ADCV Program between 2005 and 2015, by industry.

As noted in Outcome #2, the ADCV Program implemented a SME Unit to assist smaller industries navigate the SIMA process. However, as shown by Exhibit 6, and through an in-depth review of 10 ADCV cases, the primary users of SIMA continue to be big industries in the manufacturing sector. 37 The logic model in place at the time of this evaluation did not reflect pre-complaint initiation assistance provided by the ADCV program (including support to SMEs). As a result the program did not collect information on the number of times SMEs (or other industries) contacted the ADCV Program for guidance and information initially, and later decided not to proceed with a formal documented complaint that would result in an investigation.

## Exhibit 6: Total ADCV Program investigation initiations by industry (2005–2015)



Note: Other includes Cross-linked Polyethylene Tubing, Polyisocyanurate Thermal Insulation Board, Liquid Dielectric Transformers, Unitized Wall Modules (twice), and Photovoltaic Modules and Laminates. Many of these initiations include both anti-dumping and countervailing investigations and involve more than one country. Data provided by ADCV Program, April 2016.

Staff at NHQ indicated that they can spend up to 30 percent of their time on these support activities; <sup>38</sup> however, the Program does not collect data on the amount of time and resources expended on these activities. <sup>39</sup> In contrast, other similar organizations internationally, such as the US Department of Commerce (USDOC), track and monitor the number of AD and CVD petition counselling sessions which took place in the FY and include this in the USDOC Congressional Budget Submission. <sup>40</sup>

In the early 2000s, the ADCV Program created a SME Unit to respond to requests for information and provide assistance to this sector. However, there are no indicators to track and report on the operation of the SME Unit and other ADCV Program pre-initiation activities.

### Outcome #3: Appropriate and timely Investigative decisions are rendered

For the purpose of this evaluation, "appropriate decisions" <sup>41</sup> were defined as: ADCV decisions aligned with SIMA and WTO agreements, and the fairness of the process (e.g., standards in place, appeals process, and oversight mechanisms in place). Timely was measured as meeting all legislated timeframes (e.g. initiation of an investigation "within 30 days after date on which the President notifies complainant that the complaint is properly documented" or Preliminary determination of dumping or subsidization "made either within 90 days or, in exceptional cases, within 135 days of the date of initiation of the investigation,

and causing the injury inquiry to continue"). <sup>42</sup>

## Alignment with key legislation

To determine the degree of alignment of CBSA activities with SIMA legislation, the evaluation looked at the number and types appeals of ADCV processes and decisions over the past five years.

The ADCV Program has Compliance Officers at NHQ specifically dedicated to addressing certain types of appeals: Section 56 allows for appeals to a designated officer (e.g., the importer would be appealing whether their imported product is the subject good <sup>43</sup> in the finding, the export price or normal value); Section 59 allows a complainant to go a level higher and appeal to the President for a re-determination; and, Section 61 would be an appeal to the CITT. <sup>44</sup> A review of legal proceedings involving ADCV cases between 2010 and February 2016 showed 55 legal applications filed; of these, 33 were dismissed, discontinued or withdrawn (60 percent). <sup>45</sup> Thirty-one appeals were filed with the CITT. <sup>46</sup>

Between 2010 and 2015, only two cases were presented to the Federal Court of Appeal (FCA) regarding the CBSA's administration of SIMA. In general this would suggest that the way that the CBSA carries out its work is consistent with the provisions identified in SIMA. However, external stakeholders noted that the difficulties involved in filing a case with the FCA—including cost, time, complexity and low success rate—also factor into their decision whether or not to file an appeal with the FCA. <sup>47</sup> This barrier is even greater for smaller businesses with fewer resources (financial, legal). <sup>48</sup> As such, evaluators also looked at the number of complaints filed with key Ministers (which is cost-neutral), and found that the Minister of Finance received three complaints about the ADCV Program between 2010 and 2015 and the Minister of Public Safety received none. <sup>49</sup>

A detailed analysis of comparable cases in Canada and the US between 2010 and 2015 found that both countries reached the same decision in similar dumping situations. Since both Canadian and US anti-dumping and countervailing laws are based on the WTO Agreements, occur within the same North American market and similar business conditions, and use a comparable bifurcated ADCV model, the resulting similar decisions in these cases reflects consistency in their interpretation and application of the law. <sup>50</sup>

A review of Canada and US decisions on similar cases demonstrated comparable application of WTO Agreements in the same North American market. In addition, very few complaints or appeals were made against the CBSA regarding their interpretation of SIMA in the past five FYs. However, the cost and complexity of filing a formal legal appeal may be a factor in the low appeal rate.

## Fairness

The evaluation assessed the fairness of the process through the presence of standards, appeals process, oversight mechanisms in place, and the perceptions of stakeholders involved. The ADCV Program has established Standard Operating Procedures, a SIMA Handbook, a Statement of Administrative Practices, D-Memos and other reference documents to guide the work of ADCV officers. <sup>51</sup> In addition, there are multiple avenues of appeal for industry, and the appeal instructions are readily available on the CBSA

website under "Frequently Asked Questions".

Overall, external stakeholders were generally positive about the administration of the ADCV Program, and indicated that ADCV Program staff were responsive to their requests. However, some industries and stakeholders had concerns regarding the fairness of the overall trade remedy process, which they raised in sector-specific papers sent to government Ministers [52](#), as well as in recent media articles. [53](#)

#### □ **Best Practice #1: Apprenticeship Program**

The ADCV program has designed and implemented an innovative Apprenticeship Program to help recruit and train staff for the program. Due to the complex and specialized nature of the ADCV program it is necessary to hire staff with pre-requisite knowledge and abilities and provide training so that they are able to meet the demands of a working level program officer.

For ongoing training, the ADCV program officers use a modern online web-based training tool designed by technical staff with the help of CBSA HR and consultants. This training tool covers all different areas of the program and is accessible to all staff members and other interested parties.

The ADCV Program employs an apprenticeship training program as one way to standardize investigative activities and procedures (see Best Practice #1: Apprenticeship Program). However, external stakeholders perceived variations in how CBSA officers carried out their investigative work, with more experienced officers being better at interpreting SIMA and allowing reasonable flexibility when necessary (e.g., submitting data in different format) than newer officers who were more likely to take a literal approach.

External stakeholders also would like to understand how the CBSA arrives at margins of dumping and which normal values are used for calculations. They noted that the "Statement of Reasons" on the CBSA website posted different margins assessed for various exporters for similar or same products. [54](#) It is possible that disclosure of how the CBSA conducts its quality control and quality assurance processes (rather than the specific information used to make the calculation/determination) may alleviate some concerns about perceived officer-specific differences (See Best Practice #2: Day 65 Meetings). Unlike the US, in Canada there is no way for an exporter, importer, or producer to validate the data used to make these decisions, as the current disclosure process only provides access to the data they submitted (i.e., they are not privy to all data submitted and considered or CBSA calculations and work sheets). [55](#) A 2006 case presented to the Federal Court of Appeal (FCA) challenged the non-disclosure of CBSA verification reports. The Court reached the decision in 2012 that the documents in question did not fall within the category of information referred to in SIMA, which the President is required to disclose. [56](#) However, this decision did not indicate that the CBSA could not disclose this information if it so chooses, as long as it does so under disclosure undertakings, which is the present practice.

#### □ **Best Practice #2: Day 65 Meetings**

The program uses a peer-review process for every ADCV case. On day 65, prior to the preliminary and final determinations of dumping or subsidizing and permitting sufficient time to make any necessary revisions, officers and managers from the Investigative and Operational Policy Divisions meet to ensure that:

- The case is aligned with SIMA and international WTO guidelines;
- All the processes and administrative practices were adhered to in a consistent manner;
- The proposed recommended decisions have been thoroughly examined before being sent to CBSA Senior Management for approval.

Evaluators also noted that in contrast to other countries, documents such as post-travel reports are not available on the website. <sup>57</sup> However, the Trans-Pacific Partnership (TPP), which Canada is in the process of ratifying, has a provision in chapter 6 that requires signatories to issue a verification report that "describes the methods and procedures followed in carrying out the verification and the extent to which the information provided by the respondent was supported by the documents reviewed during the verification." As such, this will be a future requirement for the ADCV Program if the TPP is ratified as proposed. Currently, other ADCV administrations, such as the US and Australia, also prepare public and confidential versions of the verification reports, and post the public version on their websites. Further, in the US, the confidential version of the verification reports and internally-prepared dumping and subsidy calculations and methodologies are made available to legal counsel under disclosure orders. This provides the parties in a US AD or CVD investigation the opportunity to understand what the verification covered and what deficiencies or problems might have been discovered in respect to the data which had been supplied by the parties being verified. Likewise, the disclosure of internally-prepared calculations and methodologies help the parties understand how the dumping and subsidy determinations were made in respect of each exporter. Under US law, the disclosure process is mandatory. Program staff indicated that such engagement may not be possible given the much shorter legislative timelines for investigations in Canada. <sup>58</sup> As a result, CBSA current practices have limited transparency, particularly in comparison with other countries where stronger disclosure practices are in place.

As discussed earlier in this report, SMEs are disproportionately affected by lack of access to key information (e.g., foreign and domestic pricing, subsidies maintained by foreign governments and trade statistics) in order to prepare a properly documented complaint. <sup>59</sup> The US and Australia maintain a publically-available list of subsidy registries/libraries on their websites, which is particularly helpful for these smaller industries. <sup>60</sup> These sites provide information concerning the subsidy program and how the subsidies in question were treated in US and Australian countervailing investigations. There are no similar measures in the European Union or Canada.

External stakeholders reported that CBSA personnel are professional and collaborative in carrying out their work, and responded to enquiries quickly. However, industry would like more transparency and consistency regarding how ADCV decisions are made.

## It is recommended that:

**Recommendation 2:** The Vice President Programs Branch develop an action plan to improve transparency and demonstrate consistency to external stakeholders regarding SIMA decisions and

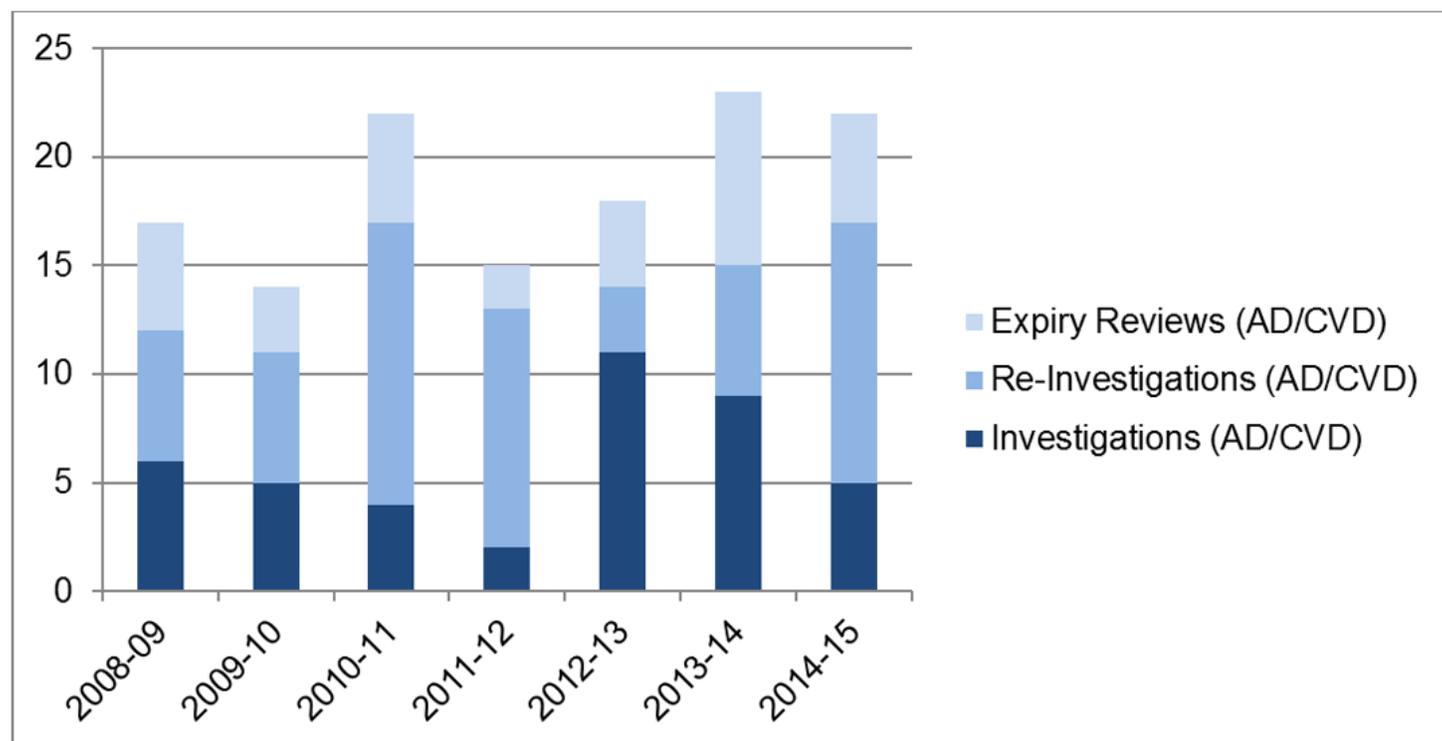
determinations, while safeguarding protected information as per SIMA.

For the five-year review period of this evaluation, there were no court cases filed against the ADCV Program for missing legislative timelines and no stakeholder complaints sent to government ministers [61](#) related to missed timelines. According to CBSA data [62](#), the ADCV Program is "Meeting Statutory Timeframes in SIMA 100% of the Time" for each of the last five FYs (see Appendix B - ADCV Priorities and Performance Targets). Job shadowing of the ADCV staff at NHQ revealed a structured and formal process was applied for every case, to ensure they meet the mandatory timelines (See Appendix C).

ADCV Program investigations met all legislative timelines over the past 5 years.

Although the CBSA met all its SIMA-legislated timelines, historically, there has been a trade-off between meeting legislated investigations timelines and conducting non-mandatory re-investigations (i.e., to update normal values, export prices and amount of subsidy). With fewer staff, resources were shifted to ensure that legislative timeframes were met, which resulted in fewer re-investigations. Exhibit 7 shows the inverse relationship between investigations and re-investigations: when there are more investigations or expiry reviews underway (mandatory), there are fewer re-investigations (flexible), and when there are fewer investigations, the number of re-investigations goes up.

### Exhibit 7: ADCV Program activities, by FY



Note: Program activities covers AD and CVD actions concluded in each Fiscal year (investigations, re-investigations

and expiry reviews). Source: ADCV Program Dashboard, "# of Investigations, Re-investigations and Expiry Reviews completed by the ADCV Directorate (Data as of period ending last quarter FY 2014-2015).

However, staff expressed concern that fewer re-investigations may result in normal values (i.e., the selling price of a good in an exporter's domestic market price or the total cost of the good plus an amount for profit) and calculated subsidies becoming outdated and ADCV findings becoming ineffective. This was also echoed by external stakeholders in interviews. <sup>63</sup>

#### **Outcome #4: SIMA duties are assessed in a timely manner**

SIMA duties are imposed on subject goods from named countries. <sup>64</sup> The timely assessment of SIMA duties is important to: 1) provide immediate protection to Canadian producers (i.e., quickly detect and impose duties on dumped/subsidized imports); 2) allow importers to adjust the resale value of the dumped/subsidized goods and avoid the shock of a large assessment months or years after importation; and, 3) avoid companies quickly filing for bankruptcy, which results in lost revenues of duties owed.

Under SIMA, assessments of duty must normally be undertaken within two years of a determination made by a CBSA officer. In 2015, the ADCV Compliance Unit adopted an internal measure for this activity that 100% of SIMA findings/orders have up-to-date enforcement ("up-to-date" is defined as within four months).

<sup>65</sup> As this measure was only recently implemented, there is no historical or current data available.

The timely assessment of duties is important to promote compliance with SIMA. The ADCV Program established an internal service standard in 2015 and will begin collecting internal compliance data in FY 2015-2016.

#### **Outcome #5: Anti-dumping and/or countervailing duties are imposed on importers who have imported dumped and/or subsidized goods**

This outcome seeks to determine whether SIMA duties assessed are paid by the importers of subject goods from named countries. This evaluation also looked at whether the CBSA Administrative Monetary Penalty System (AMPS) (Appendix E) <sup>66</sup> and/or other consequences could be imposed on non-compliant importers and what impact that may have on compliance.

In FY 2014-2015, the total value of SIMA duties (including self-assessed and assessed by the CBSA) was over \$42M (Exhibit 8). However, this evaluation was unable to determine what proportion this value represents of overall SIMA duties owing. In addition, this number only represents the duties assessed on those SIMA goods known to the CBSA. It is possible that other subject goods have entered Canada but were not assessed due to errors (e.g., wrong country of origin noted), misclassification of the goods or possible or other factors. As such, this evaluation cannot determine the assessment rate of subject goods (i.e., percent of overall total SIMA good assessed duties).

### **Exhibit 8: Total SIMA duties assessed, by FY**

Type	Fiscal Year				
	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Assessed by CBSA	\$10,628,863	\$38,276,092	\$24,030,851	\$13,968,066	\$12,266,898
Self-Assessed	\$15,382,265	\$13,890,848	\$14,585,965	\$24,996,402	\$29,738,462
Total	\$26,011,128	\$52,166,940	\$38,616,816	\$38,964,468	\$42,005,360

Source: ADCV Program data, provided February 2016

Interestingly, since FY 2013-2014, the amount collected through self-compliance exceeds that assessed by the CBSA (Exhibit 8). Studies on compliance models [67](#) show that increased awareness of legislative requirements (e.g., SIMA), increases overall self-compliance – and are more effective and economical than solely enforcement-oriented (punitive) mechanisms to encourage compliance.

Although Exhibit 8 demonstrates that SIMA duties are assessed, it does not convey whether these duties were collected. CBSA statistics only reflected the total of all duties assessed by the CBSA. Further, the evaluation, was unable to assess the timeliness of collection of DAS sent to the CRA (i.e., for accounts more than 30 days past-due), as there is no formal reporting mechanism between the CRA to the CBSA on duties collected. Without this information, the evaluation cannot determine whether SIMA measures are fully implemented, and if the imposition of duties is having an effect on dumped/subsidized imports. In January 2016, the CBSA instituted the Accounts Receivable Ledger (ARL) component of CBSA Assessment and Revenue Management project (CARM) [68](#) which will track this information from this point forward.

The total value of SIMA duties assessed in FY 2014-2015 was \$42M. At the time of this evaluation, there was no formal, regular reporting mechanism between the CRA and the CBSA to determine what proportion and amount of SIMA duties assessed, are subsequently collected. The CBSA recently instituted an ARL which will track this information in the future.

The CBSA has the mandate to ensure that non-compliant importers, exporters, brokers and other entities bringing goods into Canada comply with the rules and regulations in place. The purpose of the AMPS (Appendix E) is to provide CBSA officers with a means to deter non-compliance of importers that fail to provide complete, accurate and timely information to be used in determining the applicability of SIMA duties. Interviews with regional Senior Officer Trade Compliance (SOTCs) indicate that there is a willingness and effort being made in the regions to use Administrative Monetary Penalties (AMPs) to

correct importer errors in reporting goods subject to SIMA duties (e.g., incomplete data). However, the use of AMPs varies from one officer to the next, in part as SOTCs primarily learn their job through on-the-job shadowing and by using ADCV resources (internal and external web-based resources). SOTCs also noted a lack of support from NHQ for the use of AMPs, and when AMPs are issued they may be overturned by the Recourse Directorate when an importer appeals it. <sup>69</sup> [\*]

External stakeholders conveyed that there is a perception that Canada is less strict than the US in punishing continually non-compliant entities, and that AMPs could help deter dumping. <sup>70</sup> Furthermore, a study <sup>71</sup> of different compliance models indicated that penalties such as AMPs can help raise awareness regarding inadvertent errors made by importers and allow them to self-correct through the use of a penalty that is not too punitive. On the other hand, if AMPs are not severe enough and/or are not enforced, then there is little motivation for non-compliant companies to amend their ways, and they may continue to dump, subsidize, divert or circumvent CBSA processes. Finally, inconsistent application of AMPs across the regions may also bring into question the fairness of the ADCV program. As discussed earlier, recent training measures implemented by the ADCV Program may be able to address this.

### **Outcome #6: Canada's economic interests/position are advanced domestically and internationally**

A review of the 75 WTO member states with an ADCV program revealed that, Canada is the only country which attributes the impact of its ADCV Program on the economic performance, employment, domestic production, sales or profitability of that country. <sup>72</sup> <sup>73</sup> Most countries use output-oriented indicators. Further, ADCV is a domestic trade remedy system delivered by multiple federal institutions. Some of the confusion or concerns raised about the ADCV Program <sup>74</sup> are in fact related to a lack of understanding of the different roles of the institutions involved within the ADCV system. It is difficult to measure the outcome of the government-wide ADCV system without an evaluation of the multiple federal institutions involved and how they work together.

ADCV measures are in place to mitigate the effect of foreign dumped and subsidized imports on the Canadian economy. However, Canada is the only country that attempts to link the impact of its respective ADCV activities to overall economic performance. Currently, there is no horizontal governance, logic model or Performance Measurement Framework (PMF) for the overall ADCV system, to reflect the impact of all OGDs involved.

Along with its OGD partners, the ADCV Program is involved in protecting Canada's interest on the world stage. Specifically, the ADCV Program provided extensive support to FIN and GAC on previous trade negotiations and legal cases. Typically, these resources come from the Operational Policy Division and normally involve very experienced senior officers and Managers. The CBSA is typically requested to review trade remedy provisions of current negotiations. <sup>75</sup> For at least the past five years, the CBSA has not been represented at the semi-annual meetings at the WTO of the Committee on Anti-dumping Practices and the Committee on Subsidies and Countervailing Measures. The lack of physical presence by the CBSA at WTO may weaken Canada's cases presented (e.g., expertise, nuance, details). <sup>76</sup>

### **Other impacts of ADCV measures**

AD measures restrict foreign imports, which in turn may increase the price of the goods in Canada, affecting downstream Canadian users of foreign components which can translate into reduced quantity and increase prices of certain goods. <sup>77</sup> One example is where the provincial government of British Columbia (BC) had planned on a billion-dollar investment project requiring rebar, a product with MiF. However, the BC government argued the costs of this project was driven up by provisional duties assessed on the required imports needed for construction. <sup>78</sup>

Another impact is trade diversion. A legal example of trade diversion includes "source switching" where importers stop sourcing the subject goods from the named country or countries and start sourcing the goods from non-named countries. Producers in the named country could also move production to a country not named in the finding, and no longer be subject to current MiF when they subsequently export those goods to Canada. Domestic producers lose the benefit of the MiF or CITT finding when dumping/subsidy resumes from the new location, requiring a new AD or CVD complaint. <sup>79</sup>

ADCV measures can also give rise to circumvention whereby parties attempt to avoid the imposition of the measure, often through activities such as customs fraud (e.g. importers intentionally falsifying import declarations such as the origin of the goods or the description of the goods). Such activities become an issue of trade enforcement by the customs authorities in terms of detection and prosecution. For example, in February 2015, the United States Department of Justice announced the successful prosecution of several companies which had conspired to avoid anti-dumping and countervailing duties in respect of aluminum extrusions from China. The importers in question had to pay over \$3 million to settle false claims. <sup>80</sup>

Circumvention is viewed as a growing concern resulting in widespread interest in the issue. In this regard, government officials and representatives of the steel industry in Canada, US and Mexico have been meeting to discuss and develop recommendations concerning customs fraud and other forms of circumvention and evasion of anti-dumping and countervailing duties. <sup>81</sup> [\*] The US and other European countries publically highlight their anti-fraud activities on their respective websites. <sup>82</sup> The CBSA does not publicize its anti-fraud activities in contrast with the United States and the European Union. This leads to the perception among some stakeholders that fraud related to anti-dumping and countervailing measures is not a priority for the CBSA. <sup>83</sup>

The imposition of ADCV measures can also give rise to circumvention and diversion trade practices, whereby parties attempt to avoid the imposition of SIMA measures. Consequently, dumping and subsidizing of subject goods may continue, and have an impact on domestic producers.

## Demonstration of Efficiency and Economy

Generally the efficiency of a program is determined by comparing resources expended versus outputs and impact of those investments. Determining the efficiency of the ADCV Program is difficult, as it is characterized by fluctuations and variability in investigative activity and affected by the varying degree of complexity of the ADCV cases. Given the highly specialized and technical nature of this work, the ADCV Program cannot easily hire new staff in response to workload variability. By necessity, the ADCV Program

must maintain a minimum resource level in order to adequately carry out its statutory and administrative responsibilities (including enquiries, investigative activities and duty enforcement). As a result, there will be variations in rates of resource utilization per case activity when examined on an overall program basis (i.e. total resources expended compared to total program activity outputs).

The ADCV Program does not have costing models for various program activities to measure efficiency (e.g., resource allocation models (RAM)). Information such as the average expenditure of FTEs, hours, salaries and Operations and Maintenance costs (O&M), linked to key program activities such as outreach, investigations, re-investigations, and expiry reviews was not available. Further, ADCV Program statistics are overly-broad in nature: 1) Each AD or CVD investigation is treated as equivalent, regardless of the number of countries, producers, exporters, and importers included in each investigation (which increases the complexity of and length of time for an investigation); <sup>84</sup> and 2) There is no systematic tracking of pre-initiation and consultative activities, which field research revealed, could consume a considerable amount of an officer's time and workload. The ADCV Program uses only four Internal Order (IO) Codes: Investigations, compliance, operational policy and management. <sup>85</sup> The data provided did not allow any analysis at the sub-activity level. For example the IO code for "investigations" will include pre-initiation activities, investigation, re-investigation, expiry reviews, registry and disclosure. Other missing information included average travel costs per case and average cost of an appeal.

ADCV does not track certain program activities and financial data, which limits the ability to determine the overall effectiveness and efficiency of the overall program.

### It is recommended that:

**Recommendation 3:** The Vice President Programs Branch enhance the tracking, recording and reporting of key program activities as identified in the performance measurement framework (PMF) and develop efficiency indicators linked to these activities.

Between FY 2010-2011 and FY 2014-2015, the ADCV Program spent between \$6M-\$7.5M annually. However, it was not possible to reconcile budget data provided by the Program and those provided by Comptrollership Branch. <sup>86</sup> According to ADCV Program data, the program met all mandated timelines - with a 43 percent decline in FTEs per completed program activity - between FY 2011-2012 (at 2.57 FTEs) and FY 2014-2015 (falling to 1.47 FTEs). <sup>87</sup> These same data showed that completed program activities are generally increasing over the past three FY. <sup>88</sup> The ADCV Program met all of its mandated and internal service standards (see Appendix B), in spite of the varying levels of staff. This was partly accomplished by re-aligning resources as needed to prioritize functions with legislated timeframes (as per SIMA) (i.e., investigations, expiry review) before taking on other activities (e.g., re-investigations, outreach). <sup>89</sup> OGDs representatives noted that it takes longer to receive a response from the ADCV Program on non-urgent requests for information, which may reflect the reduction of ADCV staff available to

respond to these requests or the prioritization of Program activities. In looking at the core activities related to the ADCV program, evaluators also found that it is possible that resource constraints prevent certain activities from supporting the Program in other ways (e.g., comprehensive outreach program regarding SIMA, ramping up support to SMEs).

Currently, there are SOTCs assigned to the ADCV Program in the Quebec, Greater Toronto Area (which also covers Southern Ontario), Prairie, and Pacific regions to support local clients. Interviews with SOTCs found them to be well-engaged with the local client community responding to specific enquiries and requests for SIMA-related information or assistance. SOTCs indicated that they also provide trade-remedy information and support to their CBSA colleagues in the regions (inland and at the border). <sup>90</sup> Each region collected detailed information on its outreach activities, and generated regular reports to regional management <sup>91</sup>, which could be used by NHQ to better understand the stakeholder engagement activities and outcomes. However, program staff at NHQ indicated that they had limited understanding of what activities the SOTCs do. <sup>92</sup>

An analysis of publically-available data demonstrated that the CBSA ADCV Program is generally comparable to the US ADCV Program in terms of the ratio of staff to number of program activities undertaken (AD and CVD investigations, re-investigations and expiry reviews). In 2014, the USDOC ratio of FTEs/Program Activity was 1.64 while the ADCV Program was 1.65. <sup>93</sup> The US ADCV Program has a higher budget proportionate to the number of investigations than the CBSA ADCV Program, but no detailed information is available to make a direct comparison <sup>94</sup> by line item to clarify the differences.

An analysis of US versus Canada ADCV programs showed that the FTE utilization per case activity of the CBSA ADCV Program is comparable to that of the US ADCV Program. Moreover, over the past five years, the FTE utilization per case activity declined while program activities increased, demonstrating an increase in efficiency.

## Appendix A – Management Response [\*]

### Recommendation 1

The Vice President Programs Branch strengthens information-sharing protocols with both the Canadian International Trade Tribunal (CITT) and the CITT Secretariat within the Administrative Tribunal Support Service of Canada (ATSSC) to facilitate planning. This would include identifying criteria of what information can be shared, by whom and under what conditions.

### Recommendation #1: Management Response

Management accepts this recommendation. The MOU between the CBSA and CITT that was implemented in 2014 laid the groundwork for ongoing collaboration but was limited in scope. The CBSA will work with the ATSSC (CITT) to expand the MOU to include information sharing-protocols and other possible measures to strengthen collaboration and efficiency. [\*]

## Recommendation 2

The Vice President Programs Branch develop an action plan to improve transparency and demonstrate consistency to external stakeholders regarding SIMA decisions and determinations, while safeguarding protected information as per SIMA.

### Recommendation #2: Management Response

Management accepts this recommendation. It will actively consider options to improve transparency and consistency in its investigative and compliance activities and develop an action plan to implement options that are approved. [\*]

## Recommendation 3

The Vice President Programs Branch enhance the tracking, recording and reporting of key program activities as identified in the performance measurement framework (PMF) and develops efficiency indicators linked to these activities.

### Recommendation #3: Management Response

Management accepts this recommendation. [\*]

## Appendix B – ADCV Priorities and Performance Targets

### Exhibit c-1: ADCV Program Performance Targets, FY 2014-2015

Expected Results	Performance Indicator	Targets	Actual Results
Canadian industry is protected from economic injury caused by the subsidizing and dumping of imported goods	Value of Canadian production protected as the result of applying the <i>Special Import Measures Act</i> (SIMA)	\$7 billion	\$7.7 billion

Source: CBSA 2014-15 Departmental Performance Report <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/dpr-rmr/2014-2015/report-rapport-eng.html>.

### Exhibit c-2: ADCV Program, Performance Targets, FY 2015-2016

Expected Results	Performance Indicator	Targets	Actual Results
Canadian industry is protected from economic injury caused by the subsidizing and dumping of imported goods	Number of Canadian jobs protected as a result of applying the <i>Special Import Measures Act</i> (SIMA)	33,000	38,618

Source: CBSA 2015-16 Report on Plans and Priorities Part III - Departmental Expenditure Plans <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/rpp/2015-2016/report-rapport-eng.html>.

### Exhibit c-3: Anti-dumping and Countervailing Program Dashboard 2014-2015

Expected Results	Performance Indicator	Targets	Actual Results
Protecting Canadian industry for unfairly dumped and/or subsidized goods	# of Measures in Force	30	44

Source: Trade and Antidumping Directorate Program Dashboard 2014-15.

### Exhibit c-4: Anti-dumping and Countervailing Program Performance Measurement Framework Strategy

Expected Results	Performance Indicator	Targets	Actual Results
Appropriate SIMA investigative	% of SIMA investigative decisions not being overruled by a court in relation	100%	In the five-year scope of the evaluation, Program decisions

decisions are made	to annual activities		were contested in the FCA twice.
Timely decisions are rendered	% of decision points where legislative timeframe was met	100%	100%
Timely Assessment of SIMA duties	% of SIMA findings/orders for which enforcement is up-to-date (defined as within four months)	100%	Reporting will start in FY 2016–2017
SIMA findings are effectively enforced	% of VFD of potentially subject good that was reviewed as part of ongoing enforcement	80%	Unable to validate based on data provided

Source: Antidumping & Countervailing Performance Measurement Strategy Framework 2015.

## Appendix C – Evaluation Methodology

The evaluation used a multi-method research approach to generate multiple lines of evidence. Data and findings were recorded in an evidence matrix, and only findings that could be triangulated with multiple lines of evidence were used in the final evaluation report. The following research methods were used:

### Calibration

The evaluation team reviewed past and planned evaluation and audit studies (internal and external) related to Canada's trade remedy program to mitigate duplication and ensure an effective use of resources. Where possible, past findings and recommendations were incorporated into the evaluation to assess the degree to which issues remain and/or the recommendations were implemented.

### Review of Documents

The evaluation team reviewed program documentation including the program logic model and performance measurement framework, Canada Border Services Agency (CBSA) Departmental Performance Reports and Reports on Plan and Priorities as well as internal "dashboard" reports to track program activities and performance. The team reviewed key domestic and international legislation, regulations, as well as academic articles pertinent to the area. The Program Evaluation Division (PED) also conducted a media study, analysis of Anti-dumping Countervailing (ADCV)-related legal challenges (Federal Court and WTO) and reviewed correspondence to key Ministers on this topic over the past five years.

### Limitations

- It is not possible to establish direct attribution of program activities to the economic indicators that are collected by the ADCV program. These include: number of Canadian jobs protected as a result of

applying SIMA and value of Canadian production protected as a result of ongoing enforcement.

## **Review of Operational, Performance and Financial Data**

The evaluation team worked closely with the ADCV Program to collect and review key performance and activity information to demonstrate the extent to which the ADCV program is achieving its expected outcomes. For example:

- Meeting legislative timelines;
- Timeliness of response to meet industry needs;
- Timeliness and quality of information exchange between the CBSA, CITT, ATSSC, FIN, GAC and CRA;
- Number of cases that are overturned as a result of complaints;
- Number of measures in force; and
- Accuracy of calculation of duties and taxes.

A comprehensive review of the ADCV program financial data was completed between August 2015 and February 2016, including reviewing salary and O&M expenditures from fiscal year (FY) 2010–2011 and FY2014–2015 to ascertain costs and trends for the overall CBSA anti-dumping and countervailing program, budgeted versus actual (regional and NHQ), and calculation of variances. Financial data was examined to ascertain amounts and spending trends for SIMA Operational Policy, SIMA Policy, SIMA Compliance (NHQ and Regional).

### **Limitations**

- PED encountered issues related to the data including: missing/incomplete values, questionable values (amounts too high or too low) and SIMA Compliance expenditures that were not tracked from 2012–2014.

## **Case File Review and Job Shadowing (Observations)**

Through job shadowing, formal and informal discussions with program management, the evaluation team: observed the day-to-day activities of ADCV officers; conducted an in-depth file review of 10 cases to identify results, type of cases and trends; and followed select case files at key procedural decision points to identify any procedural, systems or training challenges and best practices.

### **Limitation**

- Due to time constraints, Investigation Officers were not shadowed. However, two Investigation managers were shadowed and interviewed.

## **Key Informant Interviews and Focus Groups**

Key informant discussions were used to gather in-depth information of program design and delivery,

performance measurement, program impacts, and areas for improvement (Exhibit d-1). Interviews complemented evidence gathered as part of the evaluation, as they provided qualitative information that clarified and contextualized data collected through other methodologies. Internally, interviews were held with relevant managers, supervisors, directors, and specialized personnel in the regions and with National Headquarters (NHQ) Programs Branch, and NHQ Operations Branch.

Regional Senior Officers Trade Compliance (SOTCs) in Quebec, SOR, GTA, PRA and PAC regions were invited to participate in a telephone focus group. The duration of each focus group was approximately 90 minutes and was mediated by a member of the evaluation team.

Representatives from the CITT, the CITT Secretariat, FIN and GAC were also interviewed for their perspective on what functions well and what could be improved to enhance the ADCV Program. External stakeholders interviewed included: Legal counsel representing Canadian producers, legal counsel representing foreign exporters, and large Canadian producers.

Key informant responses were analyzed using a qualitative software program, and were used to supplement other quantitative data in this report. Further, the qualitative data were the best method to capture the first-hand experience of stakeholders interacting with the various ADCV Program processes and systems.

## Limitations

- Originally a broader stakeholder survey was planned for this evaluation; however, in August 2015, a Federal election was called, resulting in a temporary cessation of all Public Opinion Research. Although efforts were made to replace the survey with a representative selection of key interviews following the election in November 2015, the evaluation was unable to obtain feedback from all relevant sectors (e.g., legal counsel representing small and medium enterprise, exporters, Canadian importers who import goods to re-sell, and Canadian importers who import goods as inputs to manufacturing other items) due to time constraints or lack of interest on the part of the stakeholder.

**Exhibit d-1: Number of Key Informant Interviews**

<b>Role</b>	<b>Total number of participants</b>
Directors and Directors General, Managers (NHQ)	6
ADCV Program Officers (NHQ)	14
Regional staff (SOTCs, Managers, Directors)	6
External stakeholders	9
OGDs	6

## Appendix D – Legislation and Regulations

### Exhibit h-1: Legislation and Regulation related to the ADCV Program

Organization	Legislation related to ADCV
World Trade Organization (WTO)	<p><b>Anti-dumping Investigations</b> Article VI of the <i>General Agreement on Tariff and Trade (GATT)</i> provides for the right of contracting parties to apply anti-dumping measures, i.e., measures against imports of a product at an export price below its 'normal value' (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party.</p> <p><b>Countervailing Duty Investigations</b> Part V of the <i>Agreement on Subsidies and Countervailing Measures</i> sets forth certain substantive requirements that must be fulfilled in order to impose a countervailing measure, as well as in-depth procedural requirements regarding the conduct of a countervailing investigation and the imposition and maintenance in place of countervailing measures.</p>
Department of Finance (FIN)	<p><i>Special Measures Import Act (SIMA)</i> and corresponding Regulations provides: a legislative framework in Canada to implement the rights and obligations established under the auspices of the WTO. The Minister of Finance is the legislative authority as stipulated under the <i>Table of Public Statutes and Responsible Ministers</i>.</p> <p>The role of the Canada Border Services Agency (CBSA) and the Canadian International Trade Tribunal (CITT) in the implementation of SIMA is specified by the Minister of Finance within the text of SIMA legislation.</p>
Canada Border Services Agency (CBSA)	<p><i>CBSA Act</i> para. 5(1)(a): specifies the CBSA's mandate to implement program legislation which includes responsibility to administer or enforce program legislation which includes amongst others SIMA (set out at paragraph (a) of "program legislation").</p> <p><i>Customs Act</i> specifies: CBSA's role to administer and enforce the <i>Customs Act</i> which includes the collection and enforcement of duties and taxes on imported goods, including those subject to SIMA legislation.</p>
Canadian International Trade Tribunal (CITT)	<p>The <i>CITT Act</i> and <i>Canadian International Trade Tribunal Rules</i> provide: rules and procedures for the conduct of investigations under SIMA. These include a listing of what is expected from the President of the CBSA and what the CITT will provide the CBSA during the conduct of a SIMA investigation.</p>

Canada Revenue Agency (CRA)	<i>CRA Act</i> para. 5(1)(a): specifies the CRA's mandate to implement program legislation which includes responsibility to administer or enforce program legislation which includes amongst others the <i>Customs Act</i> (set out at paragraph (a) of "program legislation").
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## Appendix E – Administrative Monetary Penalty System (AMPS) pertinent to the ADCV Program

Contravention Number and Legislative Authority	Contravention	Penalty
C004 <i>Customs Act</i> 7.1	<p>Person failed to provide true, accurate and complete information required under the <i>Customs Act</i>, the <i>Customs Tariff</i> or SIMA or under any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods.</p> <p>When a <a href="#">SIMA code</a> was not completed correctly for goods imported seven days or more after a preliminary determination was made and after the importer was notified in writing, and ending when the SIMA action is terminated by Canada Border Services Agency (CBSA) or the Canadian International Trade Tribunal (CITT).</p>	1st - \$150 2nd - \$225 3rd and Subsequent - \$450
C223 <i>Customs Act</i> 7.1	Non-CSA importer failed to provide a detailed product description in respect of goods liable for review under the <i>Special Import Measures Act</i> , after the importer has been notified in writing.	1st - \$150 2nd - \$225 3rd and Subsequent - \$450
C224 <i>Customs Act</i> 40(1)	<p>CSA importer failed to provide the detailed product description within the period specified in respect to goods liable to a SIMA action.</p> <p>Assessed 21 days after detailed product description requested.</p>	1st - \$150 2nd - \$225 3rd and Subsequent - \$450
C225 <i>Customs Act</i> 40(1)	Importer failed to keep prescribed records for goods subject to SIMA action.	Flat rate - \$25,000

Source: Canada Border Services Agency, 2015. <http://www.cbsa-asfc.gc.ca/sima-lmsi/amps-rsap/menu-eng.html>  
(Accessed on March 7, 2016).

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## Footnotes

- 1 The WTO provides a framework for pursuing trade remedy objectives on a global scale by outlining such things as: rules for determining whether an imported good has been dumped or subsidized; initiating and conducting investigations; and the implementation/duration of duties (among other details).
- 2 This includes market and non-market countries (e.g. China and Vietnam). The European Union handles ADCV for all of its 28 member states (administered by the European Commission). Source: World Trade Organization, Statistics on subsidies and countervailing measures, Countervailing initiations by reporting member (01/01/1995 – 31/12/2014).
- 3 Source: Calculated from, World Trade Organization, Committee on Anti-Dumping Practices and Committee on Subsidies and Countervailing Measures, Competent Authorities – Notifications Pursuant to Articles 16.5 and 25.12 of the Agreements, G/ADP/N/14/Add. 40, 26 October 2015.
- 4 Source: Trade and Anti-dumping Programs Directorate Dashboard.
- 5 These are countries specifically identified in a CBSA MiF, and/or CITT ruling or order. Duties from an order or finding will only apply to specific subject goods from that country.
- 6 The WTO provides a framework for pursuing trade remedy objectives on a global scale by outlining such things as: rules for determining whether an imported good has been dumped or subsidized; initiating and conducting investigations; and the implementation/duration of duties (among other details).
- 7 A DAS is an assessment or reassessment of SIMA duties (through CBSA forms called B2s and B3s). If a DAS is issued, it indicates that the initial duties declared (i.e., either through self-assessment or through Provisional duties assessed a CBSA officer) were incorrect. The DAS will indicate if importer must pay more or will receive a full or partial refund depending on the results of the investigation, re-investigation or appeal.
- 8 Note: This is an illustration of the ADCV process across departments in the Government of Canada. Some steps have been collapsed to provide an overview of major stages in the overall governmental process. The Department of Finance is the lead on SIMA legislation. Both the CBSA and CITT are responsible for the implementation of the Legislation. GAC may be involved in foreign government liaison. Commercial Border Services Officers at ports of entry (POE) may collect SIMA duties if importers self-assess or seek information at the POE.

- [9](#) Re-determinations made by the CBSA President in respect of normal values, export prices, amounts of subsidy or product subjectivity can be appealed to the Canadian International Trade Tribunal (CITT) pursuant to section 61 of the *Special Import Measures Act* Source: Paragraph. 38 – 39 of D-Memorandum D14-1-3 "Redeterminations and Appeals Under the *Special Import Measures Act*". See: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-3-eng.pdf> (Accessed April 5, 2016).
- [10](#) For CBSA decisions not specifically covered in sections 62 and 96.1.
- [11](#) Informally, a complainant may also write directly to a representative of the government (e.g., local representative, Minister of Finance, etc.).
- [12](#) Source: Internal CBSA documentation.
- [13](#) Source: Calculated from, World Trade Organization, Committee on Anti-Dumping Practices and Committee on Subsidies and Countervailing Measures, Competent Authorities – Notifications Pursuant to Articles 16.5 and 25.12 of the Agreements, G/ADP/N/14/Add. 40, 26 October 2015.
- [14](#) From 1980-1990 traditional users were responsible for bringing 90% of AD cases worldwide; between 1985 and 1992 that dropped to 80%. Source: Bhala, Raj, "Rethinking Antidumping law" (1995), Faculty Publications, Paper 842.
- [15](#) Source: Calculated from, World Trade Organization, Statistics on anti-dumping, Anti-dumping initiations by exporting country (01/01/1995 – 31/12/2014) and World Trade Organization, Statistics on subsidies and countervailing measures, Countervailing initiations by exporting country (01/01/1995 – 31/12/2014).
- [16](#) Based on WTO information from October 2015, approximately 75 WTO Member states have ADCV Programs. This includes market and non-market countries (e.g. China and Vietnam), and the European Union handles ADCV for all of its 28 member states (administered by the European Commission). Source: World Trade Organization, Statistics on subsidies and countervailing measures, Countervailing initiations by reporting member (01/01/1995 – 31/12/2014).
- [17](#) See the Canadian Steel Producers Association "2016 Pre-Budget Submission to the Standing Committee on Finance".
- [18](#) Source: Trade and Anti-dumping Programs Directorate Dashboard.
- [19](#) Source: Government of Canada. (October 16, 2013). Speech from the Throne: 'Seizing Canada's Moment: Prosperity and opportunity in an Uncertain World'. Retrieved from <http://www.pco-bcp.gc.ca/index.asp?>

[lang=eng&page=information&sub=publications&doc=aarchives/sft-ddt/2013-eng.htm](http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2016/adcv-dac-eng.html) (Accessed on March 7, 2016).

- 20 Source: Government of Canada. June 6, 2011). The Next Phase of Canada's Economic Action Plan A Low-Tax Plan for Jobs and Growth. Retrieved from Source: Government of Canada. June 6, 2011). The Next Phase of Canada's Economic Action Plan A Low-Tax Plan for Jobs and Growth. Retrieved from <http://www.budget.gc.ca/2011/plan/Budget2011-eng.pdf> (Accessed on Mar 7, 2016). Government of Canada. (March 29, 2012). Jobs Growth and Long-term Prosperity Economic Action Plan 2012. Retrieved from <http://www.budget.gc.ca/2012/plan/pdf/Plan2012-eng.pdf> (Accessed on March 7, 2016). Government of Canada. (March 21, 2013). Jobs Growth and Long-term Prosperity Economic Action Plan 2013. Retrieved from <http://www.budget.gc.ca/2013/doc/plan/budget2013-eng.pdf> (Accessed on March 7, 2016).
- 21 The purpose of this framework is to map the financial and non-financial contributions of federal organizations receiving appropriations by aligning their program activities to a set of high level outcome areas defined for the government as a whole. Source: Treasury Board Secretariat (June 20, 2013) Whole-of-government Framework. Retrieved from <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/rpp/2015-2016/index-eng.html> (Accessed on July 15, 2015).
- 22 Source: Canada Border Services Agency. (2015). 2015-16 Report on Plans and Priorities. Retrieved from <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/rpp/2015-2016/report-rapport-eng.html#a2a> (Accessed July 15, 2015).
- 23 Source: Constitution Acts, 1867 to 1982 VI. Distribution of Legislative Powers, Powers of the Parliament, Legislative Authority of Parliament of Canada. Part 2 The Regulation of Trade and Commerce. Retrieved from <http://laws-lois.justice.gc.ca/eng/const/page-4.html#docCont> (Accessed July 22, 2015).
- 24 The Government of Canada defines outcomes as, "An external consequence attributed, in part, to an organization, policy, program or initiative. Outcomes are not within the control of a single organization, policy, program or initiative; instead they are within the area of the organization's influence. Outcomes are usually further qualified as immediate, intermediate, or ultimate (final), expected, direct, etc.", Results-based Management Lexicon, Treasury Board Secretariat, Retrieved from <http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/ae-ve/cee/pubs/lex-eng.asp> (Accessed on April 6, 2016).
- 25 At the time of this report, the ADCV Program Logic Model was under revision by the Corporate Reporting and Planning Directorate. The Directorate consulted with both the program area and the CBSA Program Evaluation Division on developing new indicators and measures. It is expected that a new version will be formalized in FY 2016-2017.

- [26](#) Source: Key informant interviews with OGDs (2015).
- [27](#) Source: Key information interview with OGDs (2015).
- [28](#) Source: Key informant interviews with Internal and External Stakeholders (2016).
- [29](#) They were the House of Commons Subcommittee on the Review of the *Special Import Measures Act* of the Standing Committee on Finance, and the Subcommittee on Trade Disputes of the Standing Committee on Foreign Affairs and International Trade. Source: Office of the Auditor General. (2002). *Special Import Measures Act: Protecting Against Dumped or Subsidized Imports, Report of the Auditor General of Canada to the House of Commons* (p. 1-30). Retrieved from <http://www.oag-bvg.gc.ca/internet/docs/20021203ce.pdf> (Accessed on March 7, 2016).
- [30](#) The MOU between CBSA and CRA outlines the transfer of branches and portions of the CRA to the CBSA, costing and recoveries, confidentiality and the use and security of information effective April 1, 2004. 7, 2016).
- [31](#) Source: Key informant interviews with OGDs (2015).
- [32](#) Source: Canada Border Services Agency Antidumping and Countervailing website. Retrieved from <http://www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html> (Accessed on March 7, 2016).
- [33](#) Source: Key informant interviews with External stakeholders (2016).
- [34](#) Source: Key informant interviews with external stakeholders (2016).
- [35](#) Source: Office of the Auditor General. (2002). *Special Import Measures Act: Protecting Against Dumped or Subsidized Imports, Report of the Auditor General of Canada to the House of Commons* (p. 1-30). Retrieved from <http://www.oag-bvg.gc.ca/internet/docs/20021203ce.pdf> (Accessed on March 7, 2016).
- [36](#) Source: CBSA Analysis.
- [37](#) Source: ADCV Program case file review (2015).
- [38](#) Source: Key informant interviews with ADCV Program staff at NHQ (2015).
- [39](#) CBSA investigation officers do not track their time against specific codes which would make this possible. Source: Job shadowing of ADCV Program staff (2015).
- [40](#) Source: International Trade Administration, Department of Commerce, United States of America "Budget Estimates, Fiscal Year 2016, Congressional Submission", page ITA-42. Retrieved from:

[http://www.osec.doc.gov/bmi/budget/FY16CJ/ITA\\_FY\\_2016\\_CJ.pdf](http://www.osec.doc.gov/bmi/budget/FY16CJ/ITA_FY_2016_CJ.pdf) (Accessed March 7, 2016).

41 At the time of this evaluation, the Program did not have working measures in place to define "appropriate decision".

42 Source: "*Special Import Measures Act (SIMA) Investigative Process and Timeframes*", CBSA website. Retrieved from: <http://www.cbsa-asfc.gc.ca/sima-lmsi/flowchart-eng.html>. Accessed on May 19, 2016.

43 This refers to goods of the same description as those named in product definition at initiation of the SIMA investigation.

44 Source: *Special Import Measures Act* (1985). Retrieved from <http://laws-lois.justice.gc.ca/PDF/S-15.pdf> (Accessed on March 7, 2016).

45 CBSA Legal Services data, provided February 2016.

46 Email correspondences with CITT, May 10, 2016.

47 Source: Key informant interviews with External stakeholders (2016).

48 Source: External stakeholder (2016) and OGD key informant interviews (2015) indicate that the cost of the trade remedy process continues to be a barrier for smaller businesses who may want to file a complaint; the necessity of legal representation and expertise in filing a complaint, preparing evidence and presenting the case before the CITT all drive up the cost of participating in the ADCV remedies process. Due to the limitations in conducting an external survey which could have included SMEs, the evaluation team is unable to directly confirm these insights with SMEs.

49 Source: review of Ministerial correspondence.

50 Source: CBSA analysis.

51 Source: Job shadowing of ADCV Program staff (2015).. Source: Anti-Dumping and Countervailing Program Standard Operating Procedures (no date). This document identifies roles and responsibilities, and the primary activities of the ADCV Program. ADCV "Statement of Administrative Practices" (no date).

52 See: Canadian Steel Producers Association. (December 2015). Legislative Implementation Proposal: Trade Remedy Improvements.(\*confidential\*)

53 See: "Canada needs to play tough, old-time hockey to protect domestic industries", *The Globe and Mail*, Feb. 27, 2016. Retrieved from <http://www.theglobeandmail.com/report-on->

[business/rob-commentary/canada-needs-to-play-tough-old-time-hockey-to-protect-domestic-industries/article28930546/](#) (Accessed on March 7, 2016).

54 Source: Key informant interviews with external stakeholders (2016).

55 Source: Job shadowing of ADCV Program staff (2015).

56 Specifically "7(c) the right of a complainant to access the President's worksheets and calculations". Federal Court of Appeal, Franke Kindred Canada Limited v. Gacor Kitchenware (Ningbo) Co. Ltd., 2012 FCA 316 Retrieved from: <http://caselaw.canada.globe24h.com/0/0/federal/federal-court-of-appeal/2012/11/29/franke-kindred-canada-limited-v-gacor-kitchenware-ningbo-co-ltd-2012-fca-316.shtml>. (Accessed on May 19, 2016).

57 Source: CBSA analysis

58 US timeline vs Canadian timeline for investigations: The CBSA has 180 days from initiation to make a final determination of dumping or subsidizing with the possibility of 45 day extension to the preliminary determination. In contrast, the United States has an investigative timeframe that can extend up to 345 days with the normal timeframe being 280 days. Source: CBSA analysis.

59 Source: Office of the Auditor General. (2002). *Special Import Measures Act: Protecting Against Dumped or Subsidized Imports, Report of the Auditor General of Canada to the House of Commons* (p. 1-30). Retrieved from <http://www.oag-bvg.gc.ca/internet/docs/20021203ce.pdf> (Accessed on March 7, 2016). Source: United States Government Accountability Office (June 2013) Key Challenges to Small and Medium-Sized Enterprises' Pursuit of the Imposition of Trade Remedies".

60 Source: CBSA analysis.

61 Source: Ministerial Correspondence 2010-2015, Department of Public Safety and FIN. This evaluation did not request this information from the CRA.

62 Source: Trade and Antidumping Directorate Program Dashboard (Data as of period ending last quarter FY 2014-2015) (no date on file). Source: Canada Border Services Agency SIMA website <http://www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html> (Accessed on March 7, 2016).

63 Source: Key Informant Interviews with ADCV Program (2015) and key informant interview with external stakeholders (2016).

64 Countries specifically identified in a CBSA MiF, and/or CITT ruling or order. Duties from an order or finding will only apply to subject goods from that country.

- 65 Source: ADCV Performance Measurement Framework Strategy 2015.
- 66 It is the policy of the Canada Border Services Agency (CBSA) to use the Administrative Monetary Penalty System (APMS) as its main enforcement tool in addition to seizure and ascertain forfeiture in certain circumstances and for certain commodities.
- 67 Source: Murphy, Kristina (November 2004) "Moving towards a more effective model of regulatory enforcement in the Australian Taxation Office" Centre for Tax System Integrity, Working Paper 45, p. 19. This study looked at the relevant benefits of punishment versus persuasion and found that providing the right mix of persuasion and enforcement will drive up self-compliance, and have the net result of increased efficiency: an increase in net taxes collected, but fewer resources required to obtain those taxes. The Australian Tax Office Compliance Model is pyramid-shaped, with the goal to move from primarily sanction-based to self-regulated.
- 68 CARM will modernize the revenue management and assessment systems and processes of the CBSA as well as automate many of the current manual processes required to collect, assess, manage and report on these revenues. Source: CBSA internal website [http://atlas/istb-dgist/carm-gcra/index\\_eng.asp](http://atlas/istb-dgist/carm-gcra/index_eng.asp) (Accessed March 6, 2016).
- 69 Source: Key informant interviews with SOTCs (2016).
- 70 Source: Key informant interviews with external stakeholders (2016).
- 71 Source: Murphy, Kristina (November 2004) "Moving towards a more effective model of regulatory enforcement in the Australian Taxation Office" Centre for Tax System Integrity, Working Paper 45.
- 72 According to the logic model for the program in place at the time of this evaluation (Appendix B), the performance indicators by which this outcome is measured are: Canadian jobs protected and value of Canadian production.
- 73 A review of Canada, US, Australia, European Union data showed no major market country links ADCV outcomes to economic performance. See: United States: United States Department of Commerce, International Trade Administration, *Budget Estimates Fiscal Year 2016*, Congressional Submission, pages ITA-41 to ITA-44. Retrieved from: [http://www.osec.doc.gov/bmi/budget/FY16CJ/ITA\\_FY\\_2016\\_CJ.pdf](http://www.osec.doc.gov/bmi/budget/FY16CJ/ITA_FY_2016_CJ.pdf) (Accessed on March 11, 2016). Australia: Australian Government, Department of Industry, Innovation and Science, Corporate Plan, Performance Framework (Web-based Only) – Competitive Marketplace. (<http://industry.gov.au/AboutUs/CorporatePublications/Corporate-Plan/Performance-Framework/Pages/default.aspx> and <https://industry.gov.au/AboutUs/CorporatePublications/Corporate-Plan/Performance-framework/Activities/Pages/Activity-2-1-Competitive-marketplace.aspx#content>) (Accessed

March 7, 2016).

- 74 Source: "Canada needs to play tough, old-time hockey to protect domestic industries", *The Globe and Mail*, Feb. 27, 2016. Retrieved from <http://www.theglobeandmail.com/report-on-business/rob-commentary/canada-needs-to-play-tough-old-time-hockey-to-protect-domestic-industries/article28930546/> (Accessed on March 7, 2016).
- 75 Current trade negotiations include the Canada and European Union Comprehensive Economic and Trade Agreement (February 29, 2016) and the Trans-Pacific Partnership (February 4, 2016).
- 76 Source: Key informant interviews with OGDs (2015).
- 77 Source: Bhala, Raj, "Rethinking Antidumping Law" (1995), Faculty Publications, Paper 842. As well, Section 45 of SIMA provides that the CITT can recommend the reduction or elimination of AD/CVD if it would be in the public interest.
- 78 Source: Hunter, Justin. (2014). B.C. to battle central Canada over bid to levy duty on rebar. *Globe and Mail*. Retrieved from <http://www.theglobeandmail.com/news/british-columbia/bc-to-battle-central-canada-over-bid-to-levy-duty-on-rebar/article21984197/> (Accessed on March 11, 2016).
- 79 Historically, "source switching" has been seen with certain steel products. There have been MiF in 7 steel plate cases. For example, in Steel Plate 6 (2010), Ukraine was found to be committing injurious dumping of steel into the Canadian market. The Tribunal noted in its Expiry Review of Steel Plate 6 five years later (2015), that after the CITT finding and SIMA duties against Ukraine were put in place, there was an increase in Russian and Indian steel on the Canadian market. Six months later, an investigation against Russian and Indian steel was initiated (present day Steel Plate 8) Source: Canada Border Services Agency. (2016). Measures in Force. Retrieved from <http://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev-eng.html> (Accessed on March 11, 2016); and, Canadian International Trade Tribunal. (2015). HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH LOW-ALLOY STEEL PLATE Expiry Review No. RR-2014-002. Retrieved from <http://www.citt.gc.ca/en/node/7166> (Accessed on March 11, 2016).
- 80 See: United States Department of Justice, "Three Importers to Pay Over \$3 Million to Settle False Claims Act Suit Alleging Evaded Customs Duties". Retrieved from: <https://www.justice.gov/opa/pr/three-importers-pay-over-3-million-settle-false-claims-act-suit-alleging-evaded-customs> (Accessed March 7, 2016).
- 81 Source: Steel Import Customs Fraud, Circumvention and Evasion (FCE) "NASTC Approach to Addressing and Eliminating These Illegal and Unfair Trade Practices" Retrieved from: <http://www.steelnet.org/new/20110504.pdf> (Accessed on March 7, 2016) and "Wiley Rein Hosts Major NAFTA Event on Steel Customs Fraud, Circumvention, and Evasion" (April 10, 2014)

Retrieved from: <http://www.wileyrein.com/newsroom-pressreleases-793.html> (Accessed on March 7, 2016).

[82](#) Source: CBSA analysis.

[83](#) Source: Key informant interviews with external stakeholders (2016).

[84](#) Source: Calculated from ADCV Dashboard and "CBSA Human Resources Report – Anti-dumping and Countervailing Hours 2011 – 14 (ADCV Operational Activity Codes)".

[85](#) Source: Calculated from ADCV Dashboard and "CBSA Human Resources Report – Anti-dumping and Countervailing Hours 2011 – 14 (ADCV Operational Activity Codes)".

[86](#) There is no detailed break-down of O&M expenditures, including costs related to travel. Difficulties with the financial data were compounded by the fact that the SIMA Compliance Unit was re-located from the ADCV Directorate to the Trade Programs Directorate for about two years (2012-2014); evaluators were unable to obtain O&M, Salary and FTE data for this Unit during this timeframe.

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[88](#) Source: Calculations based on Activity/IO Code 721 which includes all operational ADCV activities (i.e. SIMA enquiries, investigations, re-investigations, expiry reviews plus all of the activities of the SIMA Registry and Disclosure Unit), from the "CBSA Human Resources Report – Anti-dumping and Countervailing Hours 2011 – 14 (ADCV Operational Activity Codes)".

[89](#) The WTO provides a framework for pursuing trade remedy objectives on a global scale by outlining such things as: rules for determining whether an imported good has been dumped or subsidized; initiating and conducting investigations; and the implementation/duration of duties (among other details).

[90](#) Source: Job shadowing of ADCV Program staff (2015). Staff indicated that they will share officers between groups as needed and if available.

[91](#) Source: Key informant interviews with SOTCs (2016).

[92](#) Source: Documentation from SOTCs (2016).

[93](#) Source: CBSA analysis

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There is no publically-available breakdown of the US budget by line item. It is probable that the USDOC ADCV budget may contain provisions for expenses that are not included in CBSA budgets (or perhaps only at the Agency level). In addition, the USDOC may have higher employee benefit costs such as US health insurance which are not factors in the ADCV Program budget.

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