

Regulatory Instruments for formulation & implementation of an effective Trade Policy and Development Strategy

DIRECTORATE GENERAL OF TRADE REMEDIES,
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GOVT. OF INDIA
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Integrating Trade Policy Towards Achieving National Development Objectives

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- ▶ Calibrate trade policy to balance domestic industry interests, including protection against unfair trade practices with imperatives of consumer interest, efficiency and competitiveness
- ▶ Ease of goods movement and competitiveness required to integrate with Global Value Chains: goods flow frictions / unviable units will lead to failure to integrate
- ▶ Secure and vibrant manufacturing in strategic sectors duly supported by trade policy necessary for job creation, economic development & prevention of 'economic blackmail'
- ▶ Need to include domestic stakeholders in trade policy-making process
- ▶ Need for policy and institutional coordination amongst stakeholders

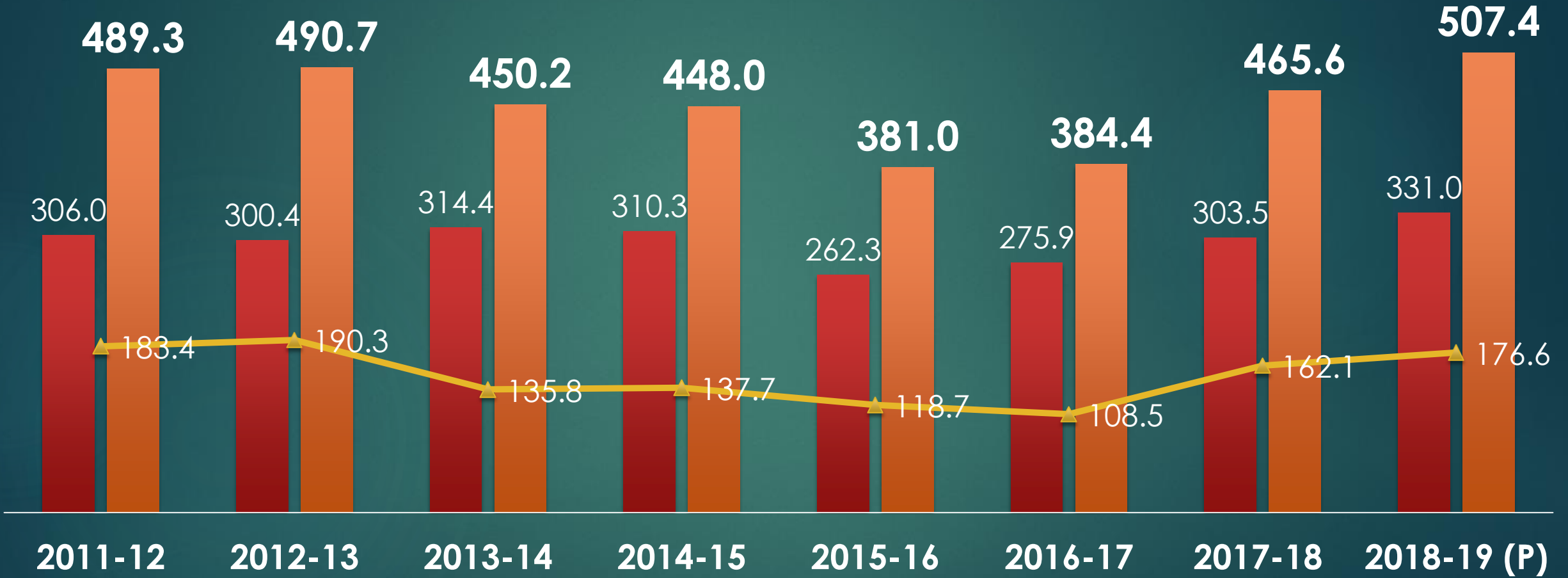
The Indian Scenario

- ▶ India has a huge consumer base with a skilled labour force and a potentially competitive environment, which could promote domestic production
- ▶ Domestic manufacturing units compete with imports on quality as well as price parameters
- ▶ Cost competitiveness in form of optimum sourcing of raw materials, intermediate products & capital goods at most competitive rates necessary for survival of these units
- ▶ Indian industry requires prudent use of Tariff Measures, Non Tariff Measures as well as Trade Remedial Measures
- ▶ Indian exports too have been subject to Tariff Measures, Non Tariff Measures as well as Trade Remedial Measures

India's Merchandise Trade

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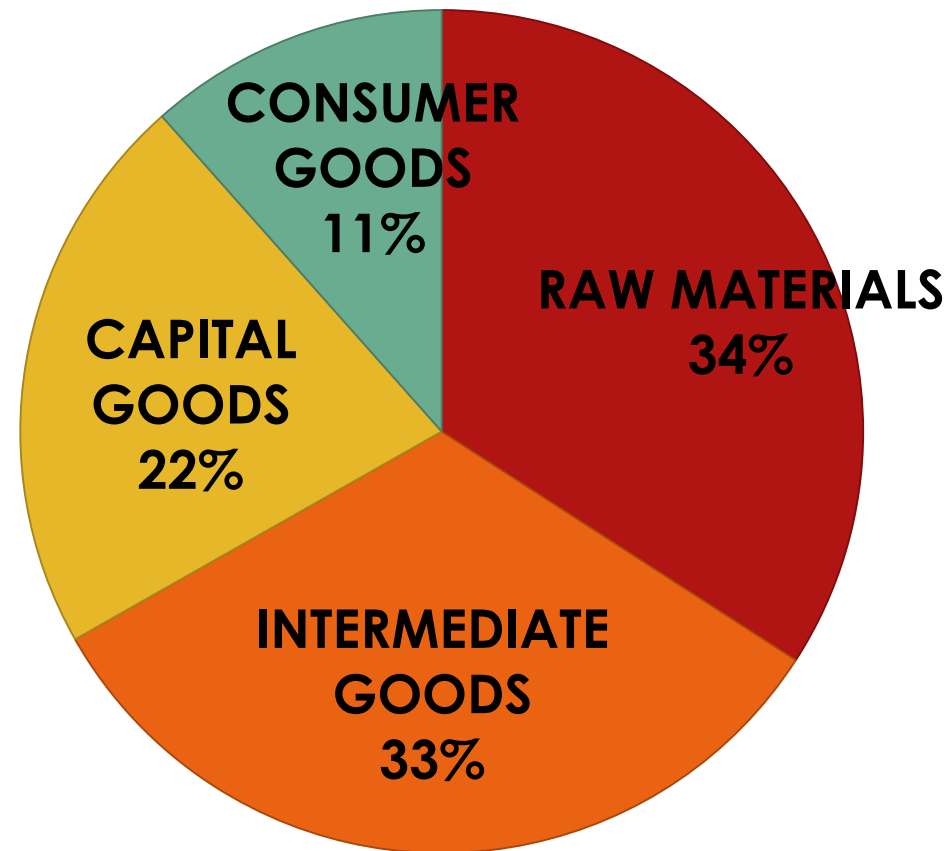
Exports Imports Trade Deficit



Source: DGCI&S, (P) Provisional

Type of Imports-% distribution

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India's Top Trade Partners

FY 2018-19

US \$ Billion

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Rank	Country	Export	Import	Total Trade	Trade Balance
1	EU	57.2	58.4	115.6	-1.2
2	USA	52.4	35.5	88.0	16.9
3	China	16.7	70.3	87.1	-53.6
4	UAE	30.1	29.8	59.9	0.3
5	Saudi Arabia	5.6	28.5	34.0	-22.9
6	Hong Kong	13.0	18.0	31.0	-5.0
7	Singapore	11.6	16.3	27.9	-4.7
	India's Total	331.0	507.4	844.1	-176.6

Source: DGCI&S

Trade Policy Instruments

- ❖ Tariff Measures
- ❖ Non Tariff Measures
- ❖ Trade Remedial Measures

Tariff Measures

- ▶ Tariffs have been decreasing due to trade liberalization through
 - WTO
 - regional & bilateral trade agreements
- ▶ MFN rates – Bound rates & Applied rates
- ▶ India's average WTO bound tariff rate is 48.5%
- ▶ India's average applied tariff rate is 13.4%
- ▶ Gap between bound rate and applied MFN rates available for import management
- ▶ Scope to raise tariff up to bound rate in various tariff lines
- ▶ Administrative Ministries can take up with Department of Revenue, Ministry of Finance to raise tariff in such cases if domestic industry is hurt on account of lower tariff rates

Tariff Measures.....

Issue of Inverted Duty Structure

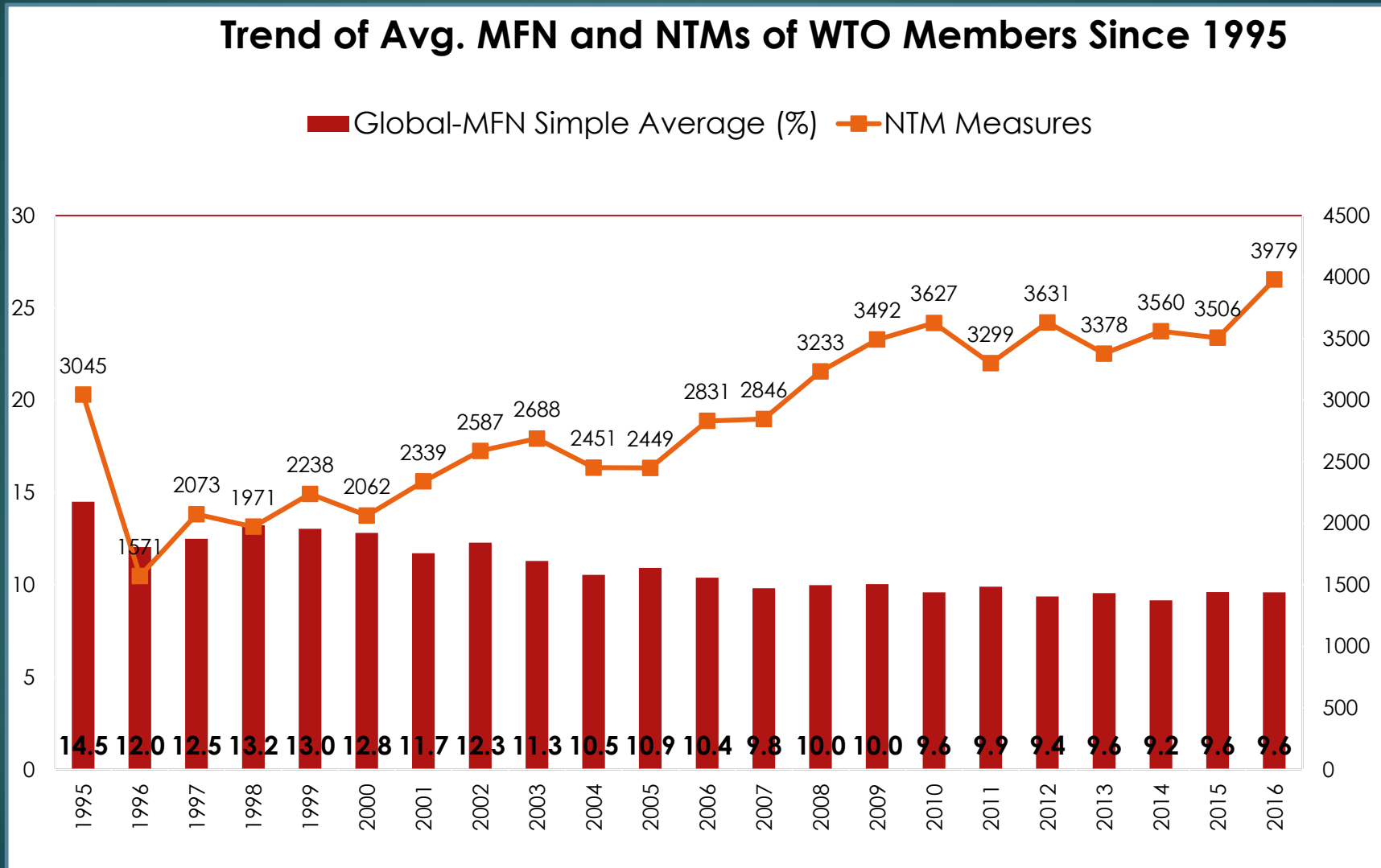
- ▶ An inverted duty structure is one in which
 - import duty on finished goods is lower than that on raw materials / intermediates / components that go into making such a product,
 - thus acting as a major disincentive for local manufacturing
- ▶ Problem of Inverted Duty Structure is more acute in following sectors:
 - Capital Goods
 - Cement
 - Electronics and Electricals
 - Rubber
 - Textiles
- ▶ Sometimes duty inversion also results on account of various regional / bilateral Free Trade Agreements / Preferential Trade Agreements
- ▶ Administrative Ministries may examine cases of duty inversion & take up with Ministry of Finance

Non- Tariff Measures (NTMs)

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- ▶ Policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both (UNCTAD, 2009)
- ▶ Overall use of Non- Tariff Measures is increasing
- ▶ Non-tariff measures – key determinants to market access
- ▶ Non-tariff measures with “protectionist intent”- barriers to trade
- ▶ NTMs affect largest number of products & trade

Relevance of Non- Tariff Measures (NTMs)



UNCTAD Classification of Non-Tariff Measures

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**SANITARY AND
PHYTOSANITARY MEASURES**

**TECHNICAL BARRIERS TO
TRADE**

**PRE-SHIPMENT INSPECTION
AND OTHER FORMALITIES**

**CONTINGENT TRADE-
PROTECTIVE MEASURES**

**NON-AUTOMATIC LICENSING,
QUOTAS, PROHIBITIONS AND
QUANTITY-CONTROL
MEASURES OTHER THAN FOR
SPS OR TBT REASONS**

**PRICE-CONTROL MEASURES,
INCLUDING ADDITIONAL
TAXES AND CHARGES**

FINANCE MEASURES

**MEASURES AFFECTING
COMPETITION**

**TRADE-RELATED INVESTMENT
MEASURES**

DISTRIBUTION RESTRICTIONS

**RESTRICTIONS ON POST-SALES
SERVICES**

**SUBSIDIES (EXCLUDING
EXPORT SUBSIDIES UNDER P7)**

**GOVERNMENT PROCUREMENT
RESTRICTIONS**

INTELLECTUAL PROPERTY

RULES OF ORIGIN

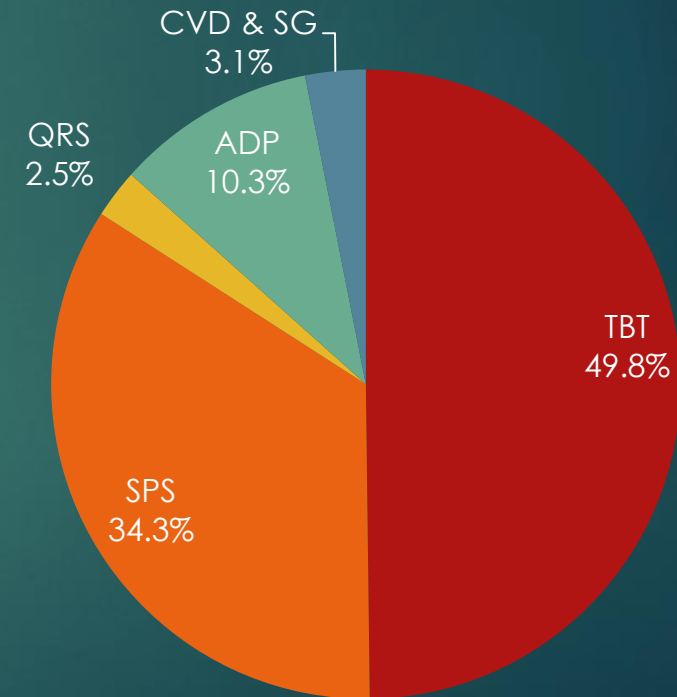
EXPORT-RELATED MEASURES

Global Use of Non-Tariff Measures

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- ▶ Most commonly used NTMs are SPS & TBT measures
- ▶ 93 SPS & nearly 163 TBT measures worldwide in a month
- ▶ Of the total NTMs initiated, only 33% are in force
- ▶ TBT measures impact 30% of products & trade
- ▶ SPS measures impact 15% of trade
- ▶ Pre-shipment inspections affect 20% of trade & products

NTM Notifications to WTO

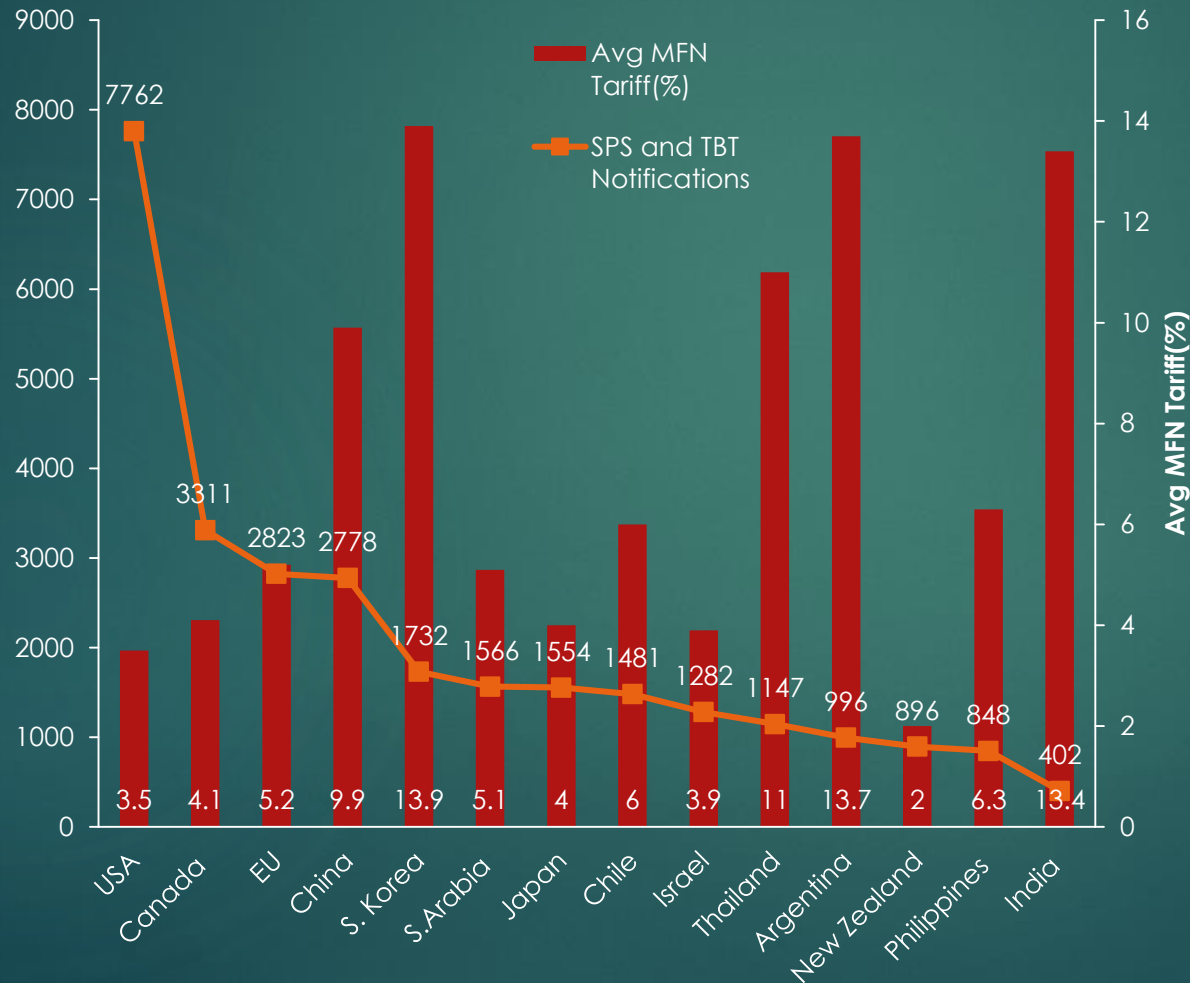


SPS and TBT coverage- 84%

Tariffs, SPS & TBT Notifications: Global Trend

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Relation between total no of notifications & Avg. MFN tariff rate
(as of Dec. 2018; Source: WTO)



- **Countries with low tariff have generally issued more notifications; US tops the list**
- **Export aggressive countries like China, and South Korea use both high tariff and notification**

UNCTAD (2018): Impact of NTMs - Key Findings

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- ▶ TBT- most frequent form of NTMs (affecting 40 % of product lines and 65 % of world imports)
- ▶ SPS measures cover 20 % of world imports
- ▶ 6 products out of 10 face at least one TBT if exported to a developed country
- ▶ Only 2-3 products out of 10 face at least one TBT in developing and least developed countries
- ▶ Largest users of NTMs are developed countries

NTMs Impact on Cost:

- ▶ Technical measures (TBT&SPS)- Ad Valorem Equivalent (AVE) is 11 %
- ▶ Other types of NTMs- AVE is 9%
- ▶ Agricultural products:
 - NTMs add costs of 20% in simple average terms and 6% on weighted basis
 - Sectors of oils & fats, vegetable& animal products - highest AVEs with a simple average above 20 %
- ▶ Non-agricultural goods:
 - NTMs add costs of 4% in simple average terms and 2% on weighted basis
 - Sectors of apparel, motor vehicles, electrical machinery, communication equipment, wood & paper - high AVEs with simple average above 5%

Non-Tariff Measures by China..

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- China uses a complex set of inspections, product testing and quality certification requirements to curb imports
- Chinese experts inspect Indian factories. Cost is borne by Indian side & clearance seldom comes
- Only Chinese labs allowed to conduct product testing & no appeal allowed on their decisions
- Punitive product testing requirements ensure that India cannot export buffalo meat to China
- No appeal allowed on decisions by Chinese Authorities
- Issuance of quarantine certificates for fruits or vegetables may take 3 years
- Indian IT firms cannot take part if tender size is more than \$100 million
- Long list of restrictions

NTMs by Other Countries

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- ▶ Developed countries use NTMs as a Trade Policy Instrument
- ▶ India's exports widely affected by NTMs
 - Agricultural exports – quality certification by specified labs
 - Dairy exports – size of dairy farms
 - Pharmaceutical exports – registration, clinical trials
 - Marine products; Bovine Meat – issue of quality certification, OIE clearance
 - Chemicals – compulsory licensing of importers
 - Carpets – Child labour
- ▶ Countries are coming up with new & imaginative forms of NTMs

NTM status in India

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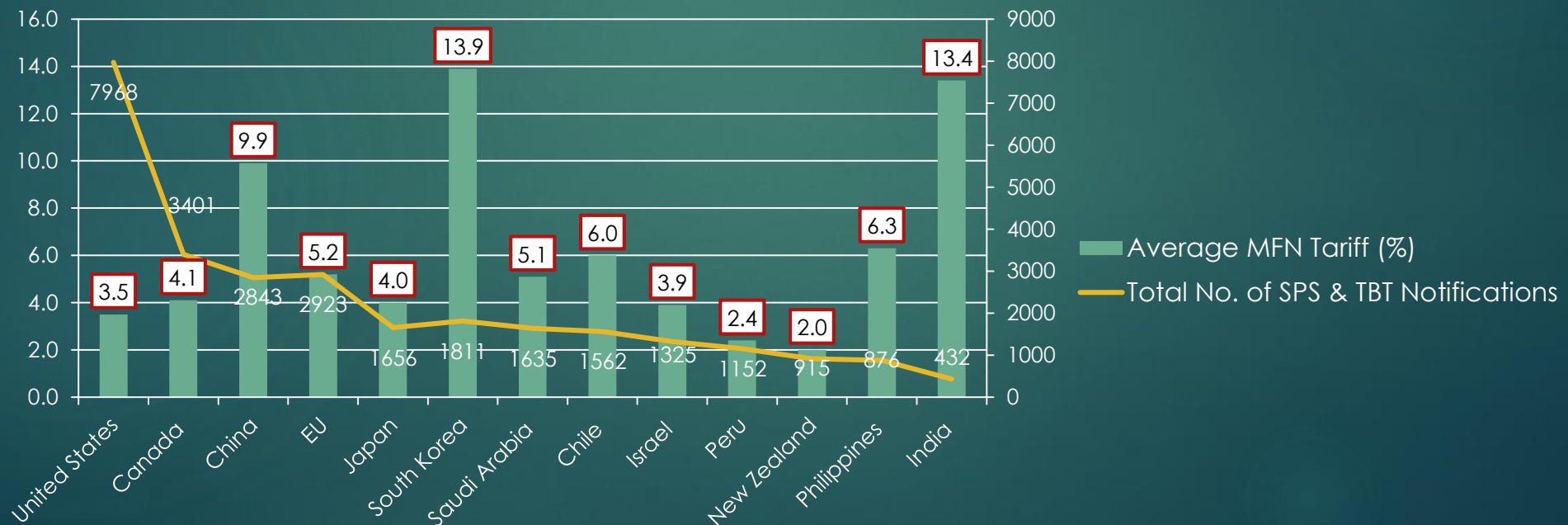
- ▶ 36 Departments / Ministries regulate 11559 HS Code lines at 8 digit
- ▶ Not more than 10% of total lines regulated
- ▶ India's total Notifications to WTO (SPS & TBT) –(as of May 2019)
 - TBT : 167 (0.48%)
 - SPS : 257 (1.04%)
- ▶ Total Notifications by all WTO members
 - TBT : 35087
 - SPS : 24625
- ▶ India's TBT & SPS notifications just 0.48% & 1.04% respectively of total notifications
- ▶ Even Thailand, Philippines have much higher NTM notifications

India's Regulatory Gap with respect to Quality Eco-system

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- ❖ India's National Tariff Lines: 11,559 HS Code lines (HS 2017). About 10% regulated
- ❖ Regulatory gap supports a system where sub-standard products can be imported or manufactured domestically
- ❖ TBT (non-agri) tariff lines- Regulatory gap is stark

Tariffs, SPS & TBT Notifications: Global Trend



Recommendations- To Bridge the Existing Regulatory Gap

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- ▶ With global tariff reduction, critical to bring out more regulations to regulate and control imports
- ▶ Focused engagement with regulators in sectors where there is a serious deficit in technical regulations - creation of core group
- ▶ Bridge Regulatory Gap – increase NTM coverage from 10% to 40%
- ▶ Line Ministries are now empowered to develop their own TRs (BIS Act, Section 16(2) and 25)
- ▶ Fixing regulatory gaps in agricultural lines – aid in gaining market access in foreign markets
- ▶ Strengthen the existing regulatory quality eco-system specifically in terms of surveillance and enforcement mechanisms.
- ▶ Role of concerned Ministries / Regulators
 - Must actively take lead in formulation of regulations
 - Nodal Officer at Joint Secretary level in all Ministries to: a) Review work on technical regulations and b) carry out regulatory impact assessment on both domestic industry as well as imports

Trade Remedial Measures

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- ▶ Trade Remedial Measures available (over and above BCD and Additional Duty) available for addressing trade distortions and creating level playing field for Domestic Industry
 - ▶ Anti-Dumping Duty
 - ▶ Anti Subsidy (Countervailing Duty)
 - ▶ Safeguard Measures – Safeguard Duty – Quantitative Restrictions
 - Global Safeguard Measures
 - Bilateral Safeguard Measures
- India is signatory to the Agreements with respect to aforesaid Trade Remedy Measures
- Detailed Investigation procedure as per the WTO provisions to be followed before imposition of any of the aforesaid Duties

Legal Framework

WTO PROVISIONS

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- Anti-Dumping Agreement
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards

National Laws & Rules

- Customs Tariff Act, 1975
- Customs Tariff (Identification, Assessment and Collection of dumped articles and for determination of Injury) Rules, 1995 (“AD Rules”)
- Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (“CVD Rules”)
- Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997
- Foreign Trade (Development and Regulation) Act, 1992, amended in 2010, and the Safeguard Measures (Quantitative Restrictions) Rules, 2012

Global Statistics On Use Of Trade Remedial Measures

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Measure	Initiations	Percentage share in TRM	Measures imposed	Percentage share in TRM
Anti-Dumping	5,725	87%	3,805	89%
Countervailing Duty	541	8%	285	7%
Safeguards	347	5%	172	4%
Total	6,613	100%	4,262	100%

1.1.1995 - 31.12.2018

Anti-Dumping

Against specific producer/ exporter /countries

Dumped Imports

Material Injury or its Threat/ Material Retardation

Causal link between injury and dumped imports

Discriminatory pricing / unfair competition from foreign exporters, individual rates

Countervailing

Against Specific Country(ies)

Subsidised imports

Material Injury or its Threat/ Material Retardation

Causal link between injury and subsidized imports

Subsidies granted by Government of the exporting country, individual rates

Safeguards

Against WORLD

Surge in imports

Serious Injury or Threat of Serious Injury

Causal link between injury and surge in imports

Sudden surge in imports, unforeseen circumstances, non-discriminatory measure

Trade Remedy Measures

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	Anti-Dumping Measures	Countervailing Duty Measures	Safeguard Measures
	Imports at dumped prices	Subsidised imports	Surge in imports
Injury	Causing material injury / material retardation to domestic Industry	Causing material injury to domestic Industry	Causing serious injury to domestic industry
Duration of investigation	Investigation must be concluded within 1 year from date of initiation and in any case not more than 18 months	Investigation must be concluded within 1 year from date of initiation and in any case not more than 18 months	Investigation must be concluded within 8 months from date of initiation
Duration of Measure	Maximum 5 years at a time	Maximum 5 years at a time	Maximum 4 years at a time but with Progressive liberalization of duties
Coverage	imports from specific country	imports of specific country	Global - Measure is imposed against global imports subject to exemptions for LDCs

Examination of Material injury for **Anti-Dumping Investigations** includes an evaluation of all relevant economic factors having a bearing on the state of domestic industry **including**

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S. No.	Factor	S. No	Factor
1	Actual and potential decline in sales	9	Negative effects on cash flows
2	Profits	10	Magnitude of margin of dumping
3	Output	11	Inventories
4	Market share	12	Employment
5	Productivity	13	Wages
6	Return on investment	14	Growth
7	Utilization of capacity	15	Ability to raise capital
8	Factors affecting domestic prices		

In addition to price effect, volume effect, price undercutting, price underselling, injury margin etc.

Examination of Material injury for **CVD Investigations** includes an evaluation of all relevant economic factors having a bearing on the state of domestic industry **including**

S.No.	Factor	S.No	Factor
1	Actual and potential decline in output	9	Negative effects on cash flows
2	Profits	10	Inventories
3	Sales	11	Employment
4	Market share	12	Wages
5	Productivity	13	Growth
6	Return on investment	14	Ability to raise capital
7	Utilization of capacity	15	Increased burden on Government Support Prog. in case of Agriculture
8	Factors affecting domestic prices		

In addition to price effect, volume effect, price undercutting, price underselling, subsidy margin, injury margin etc.

Examination of Serious injury for **Safeguard Investigations** includes an evaluation of all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry **including**

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S.No.	Factor
1	Rate and Amount of Increase in imports in absolute and relative terms
2	The Share of the Domestic Market taken by increased imports
3	Changes in the Level of Sales
4	Changes in the Level of Production
5	Productivity
6	Profit & Losses
7	Utilization of capacity
8	Employment

Bilateral Safeguard

- Bilateral Safeguard notifications issued in case of following FTAs
 - India –Korea CEPA
 - India – Japan CEPA
 - India – Malaysia CECA
 - India – Singapore CECA
 - SAARC Free Trading Agreement
 - Asia Pacific Trade Agreement

Transition Safeguard Measures

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- ❖ Suspension of further reduction of BCD rate for the subject goods; OR
- ❖ Increase of the BCD rate on the subject goods to a level not exceeding the lesser of:
 - ✓ the MFN applied BCD rate on subject goods in effect at the time the SG measure is taken
 - ✓ the MFN applied BCD rate on subject goods in effect on the day immediately preceding the date of entry into force
- ❖ Quantitative restrictions implicitly not allowed
- ❖ Prevalence of global safeguard measure
 - ✓ No bilateral safeguard measure when global safeguard measure in force
 - ✓ When global SG measure taken – bilateral SG measure to be terminated

Anti-Circumvention Investigations

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- Anti-circumvention provisions for Anti-dumping were introduced in Customs Tariff Act, 1975 and relevant Anti-Dumping Rules in 2012
- India has conducted 5 Anti-circumvention investigations so far –
 - *Diclofenac Sodium (DFS)* by imports of “Indolinone”, an unfinished form of “DFS”, originating in or exported from China PR
 - *Cold Rolled Flat Products of Stainless Steel* originating in or exported from South Korea, European Union, South Africa, Taiwan, Thailand, China PR & USA
 - *Glass Fibre- “Chopped Strand Mat (CSM)”* produced by Asia Composite Materials (Thailand) Co, Thailand
 - *O-Acid* from China PR
 - *Jute Sacking Cloth* from Bangladesh
- Anti-circumvention provisions for CVD measures introduced in Customs Tariff Act through Finance bill 2019
- CVD rules for Anti-circumvention likely to be notified shortly

Suo-Moto Trade Remedial Initiations

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- Sub—Rule (4) of Rule 5 of Anti-Dumping Rules, 1995 provides for initiation of a Trade Remedy Investigation on suo-motto basis
- Information received from the Commissioner of Customs or from any other source should show that there is sufficient evidence regarding:
 - existence of dumping; (or subsidy in case of anti-subsidy investigations)
 - existence of injury;
 - causal link between the alleged imports and alleged injury.
- Similar provisions are enshrined in Sub-Rule (4) of Rule 6 of CVD Rules 1995

Role of Industry Associations & Administrative Ministries :

Industry Associations & Administrative Ministries must provide:

- Information on technical specifications of the product
- Details of Domestic Companies involved in production of the product involved
- Information relating to Total Demand, Company-wise Installed Domestic Capacities and Domestic Production, Company wise Sales
- Relevant Economic indicators of Domestic Industry having a bearing on the state of domestic industry including those specifically provided under the Rules
- Injury details like Cost details and Financial Statements of the domestic Industry

Trade Defence Wing

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Set up in April 2016

- Assists in investigations against India
- More than 42 CVD Investigations since it's inception

Functions

- Coordinates with Government departments for data & inputs
- Coordinates with Legal Counsel for drafting & filing submissions

Challenges

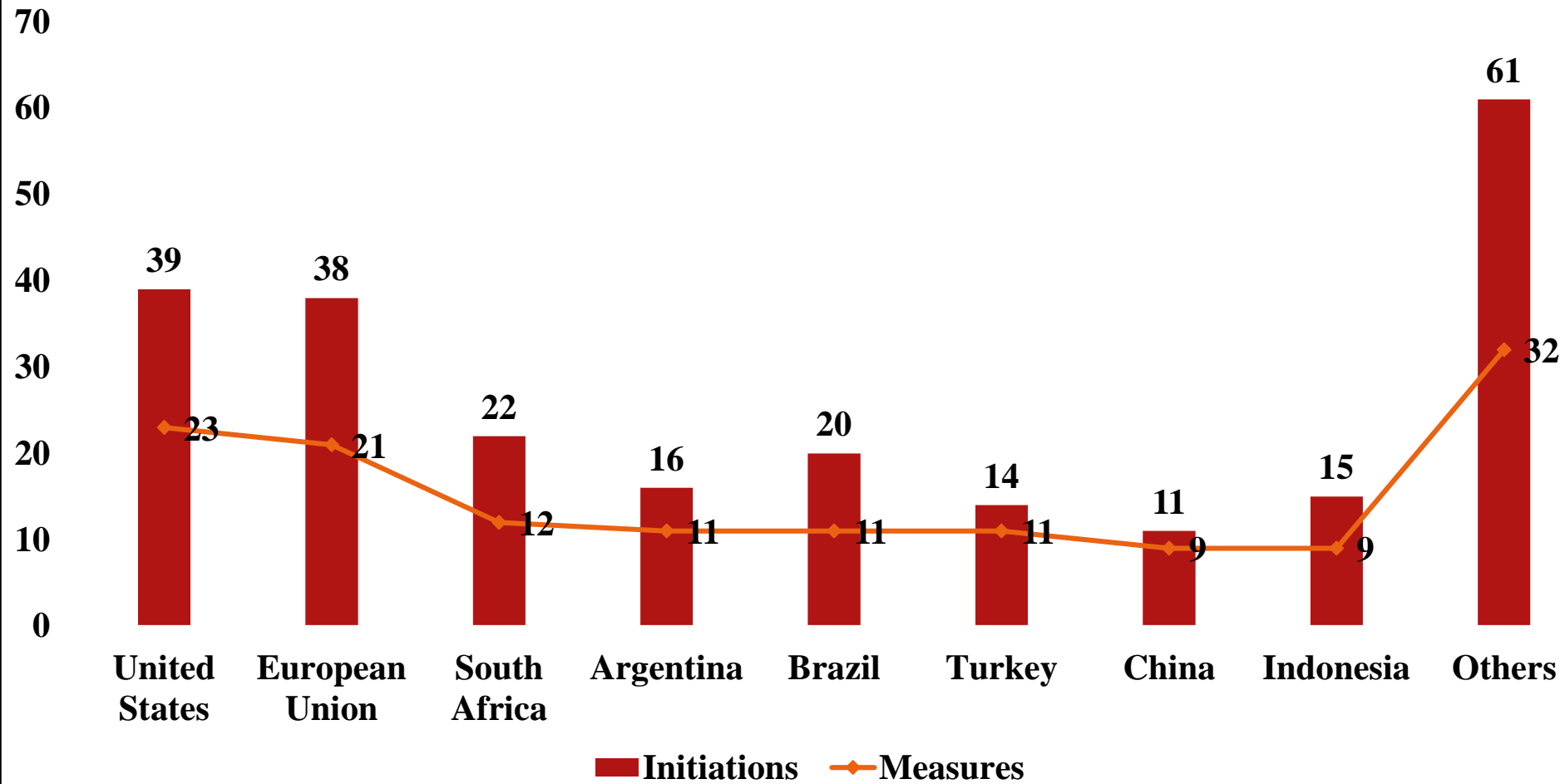
- Stringent timelines
- Comprehensive information
- Language of filing

Country-wise CVD Investigations Initiated Against India

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Sl. No.	Country	No. of Cases	Broad Category of Products
1.	USA	25	Steel, Chemical, Plastic,
2.	Canada	5	Steel, Plastic
3.	European Commission	8	Steel, Chemical,
4.	Mexico	3	Chemicals
5.	Australia	1	Steel
6.	China	2	Chemicals
7.	Brazil	1	Steel
8.	Pakistan	1	Textiles
	Total	46	

INDIA AS A TARGET OF AD MEASURES



*From 01.01.1995 – 31.12.2018; Source WTO

Trade Defence Wing

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CHALLENGE

- ▶ Trade protectionism being adopted by many large economies.
- ▶ Increasing use of trade remedial measures by other countries.
- ▶ Comprehensive and complex information requirements with strict timelines
- ▶ MSMEs may find difficult to hire experts
- ▶ Language of filing

ACTION

- ▶ Nodal point for assisting Indian exporters against trade remedy investigations initiated by other countries
- ▶ Coordination with concerned Departments, State Government, Export Promotion Councils in collecting, compiling information for defending Indian Exports
- ▶ Coordinates with Legal Counsel for drafting and filing submissions
- ▶ Preparation & forwarding of formal response prepared by Trade Defence Wing to Trade Counsellors in concerned Indian Embassies for submission before Appropriate Authority
- ▶ Plans for participation by Indian Embassy Officials during investigations on behalf of Government of India

Outcome of TDW participation

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S.N.	Particulars	No. of cases	Country
1	Cases where No Duty imposed & CVD investigation Terminated	5	USA (2), Canada (1), Brazil (1) & Pakistan (1)
2	Cases where Duty reduced from Preliminary Findings or earlier investigation	9	USA (6), European Commission (2) & Canada (1)
3	Cases where duty continued or increased	19	USA (10), European Commission (2), Canada (3), Mexico (2), China (1) & Australia (1)
4	Sub Total	33	
5	Ongoing investigations	13	USA (7), European Commission (4), Mexico (1) & China (1)
6	Total	46	

Steps taken by TDW

- ▶ TDW provides free legal assistance
- ▶ *Handbook of Operating Procedures of Trade Defence Wing* prepared
- ▶ Check points prepared & sent to EPCs for circulation to exporters facing Anti-Dumping investigations
- ▶ After receipt of case specific feedback, TDW will prepare suitable written submission to be filed by India's Trade Counsellor before concerned Authority
- ▶ Nodal Officers of GoI Departments & State Governments to coordinate & lead the initiative
- ▶ TDW has also made representation in four Safeguard investigations

Help Desk in DGTR

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- Trade remedial measures critical for nascent Domestic Producers and MSMEs facing threat from dumped / subsidised imports
- Small manufacturers generally not aware of available trade remedies & requisites for filing well documented trade remedy applications
- No availability of Experts in remote locations
- DGTR has established a **Help Desk / Facilitation Centre** to assist domestic industry
- Facilitation Centre to provide advice regarding suitable measures to MSMEs
- An e-filing system for trade remedial petitions - ARTIS being launched shortly
- It will facilitate filing of petitions from remote locations
- Details of Help Desk are as under:
 - ❖ Helpline No. 1800 111 808
 - ❖ Email: helpdesk.dgtr@gov.in

Trade Remedial Measures -Way Forward

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- ▶ Quasi judicial process
- ▶ Final Findings subject to review by Appellate Forum –CESTAT, High Courts, Supreme Court & WTO Dispute Settlement Mechanism
- ▶ Adm. Dept. may nominate Nodal Officer for coordination with DGTR on all TRMs
- ▶ Expert opinion of specialized agencies often required to understand issues relating to Product Under Consideration and Like Articles
- ▶ Understanding of Value Chain with support of Adm. Dept. can help improve quality of investigation
- ▶ Industry Associations can undertake study of Govt. subsidies / grants in select countries
- ▶ Close cooperation required for timely filing of submissions before Authorities in ongoing CVD cases against Indian companies

Conclusion

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- ▶ Need to effectively use all available Trade Policy Instruments
- ▶ NTMs most widely used trade policy instrument – about 65% of trade
- ▶ Trade Remedial Measures affect only 8% of trade & 5% of products
- ▶ Administrative Departments, Industry Associations, EPCs, DoC & agencies like DGTR, DGFT, CBIC & Dept. of Revenue need to work in close coordination
- ▶ Sharing of EXIM data, quick & effective analysis & action required
- ▶ Gaps in collection of authentic product wise domestic capacity & production data need to be plugged
- ▶ Specialised / expert bodies, industry associations for different sectors to provide necessary support to DGTR
- ▶ Effective use of NTMs can provide quick solution in certain situations
- ▶ Trade Remedial Measures can also be effectively used subject to adherence to procedural & legal requirements

Thank You