

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

DIRECTORATE GENERAL OF TRADE REMEDIES,  
DEPARTMENT OF COMMERCE,  
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

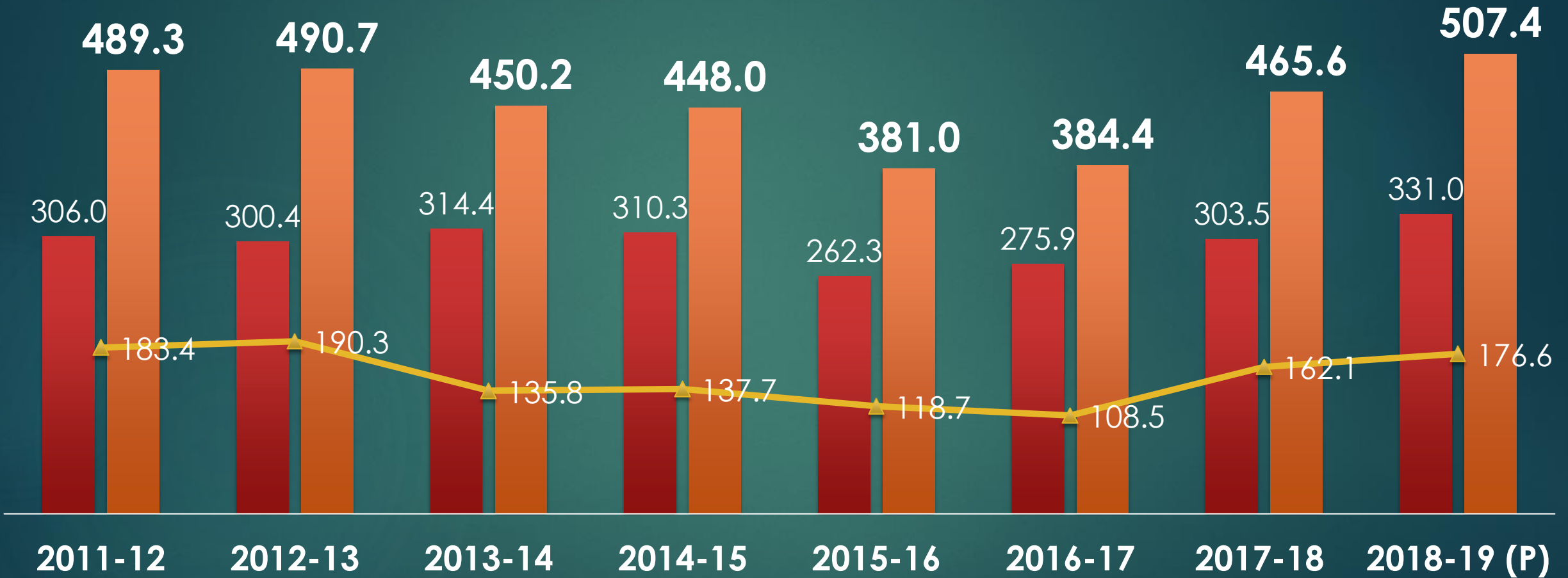
# The Indian Scenario

- ▶ 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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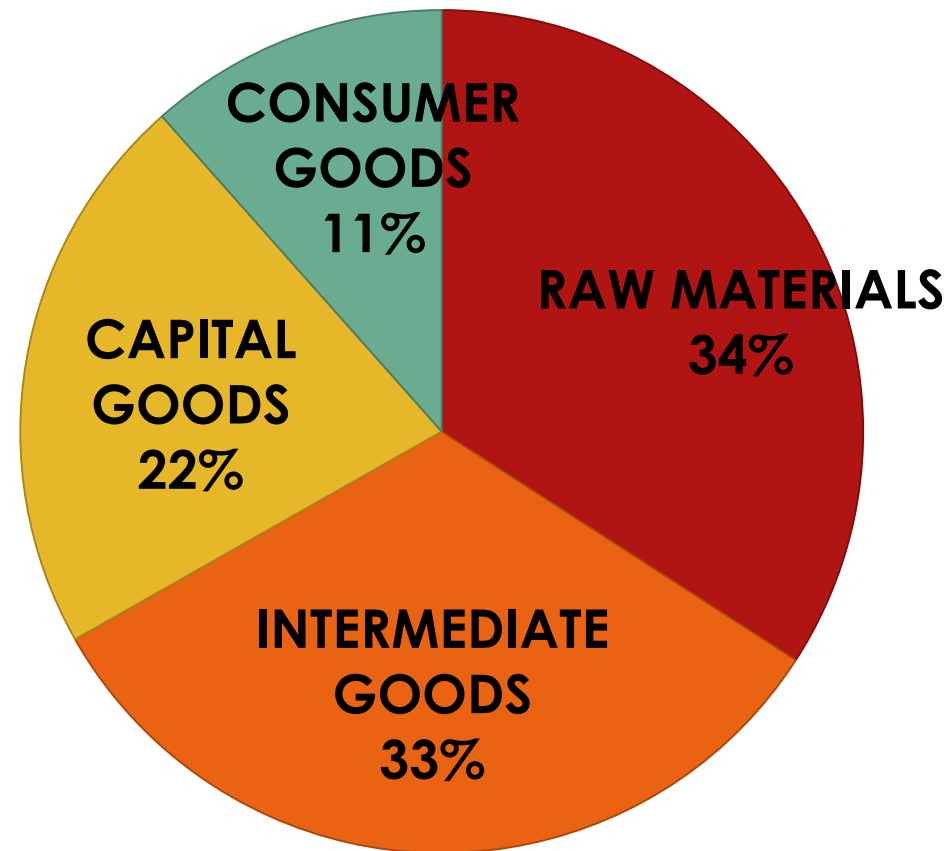
■ Exports ■ Imports ▲ Trade Deficit



Source: DGCI&S, (P) Provisional

# Type of Imports-% distribution

5



# India's Top Trade Partners

FY 2018-19

US \$ Billion

6

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	<b>China</b>	16.7	70.3	87.1	<b>-53.6</b>
4	UAE	30.1	29.8	59.9	0.3
5	<b>Saudi Arabia</b>	5.6	28.5	34.0	<b>-22.9</b>
6	Hong Kong	13.0	18.0	31.0	-5.0
7	Singapore	11.6	16.3	27.9	-4.7
	India's Total	<b>331.0</b>	<b>507.4</b>	<b>844.1</b>	<b>-176.6</b>

Source: DGCI&S

# Trade Policy Instruments

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- ❖ 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.....

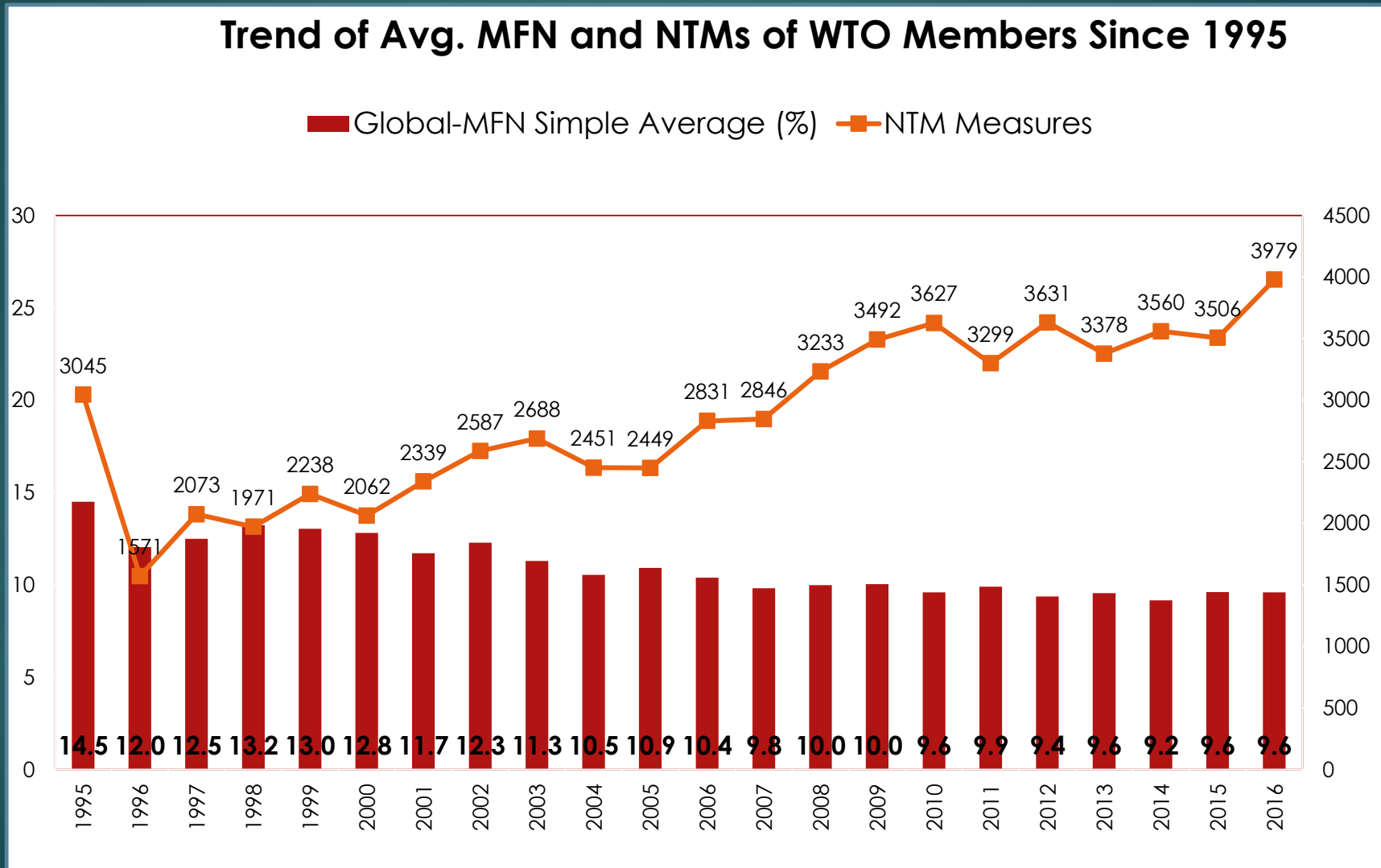
## Issue of Inverted Duty Structure

- ▶ 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)

- ▶ 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**

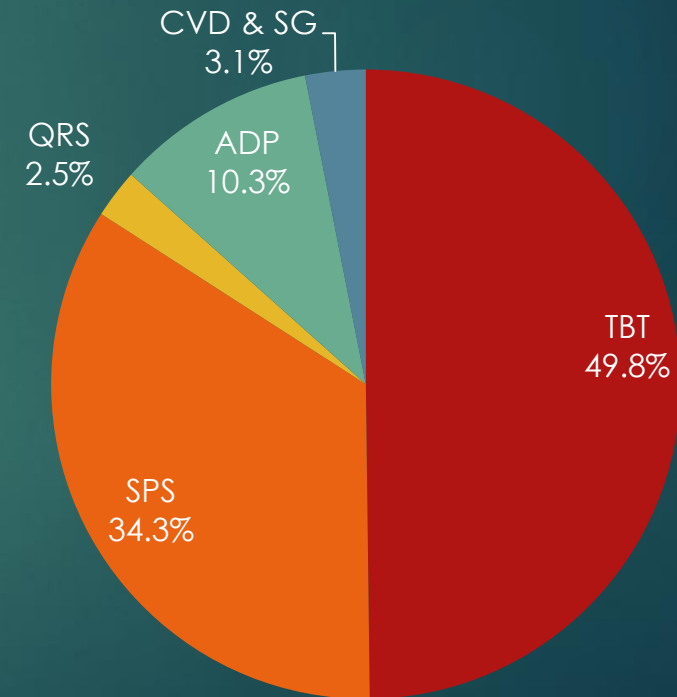
**EXPORT-RELATED MEASURES**

# 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

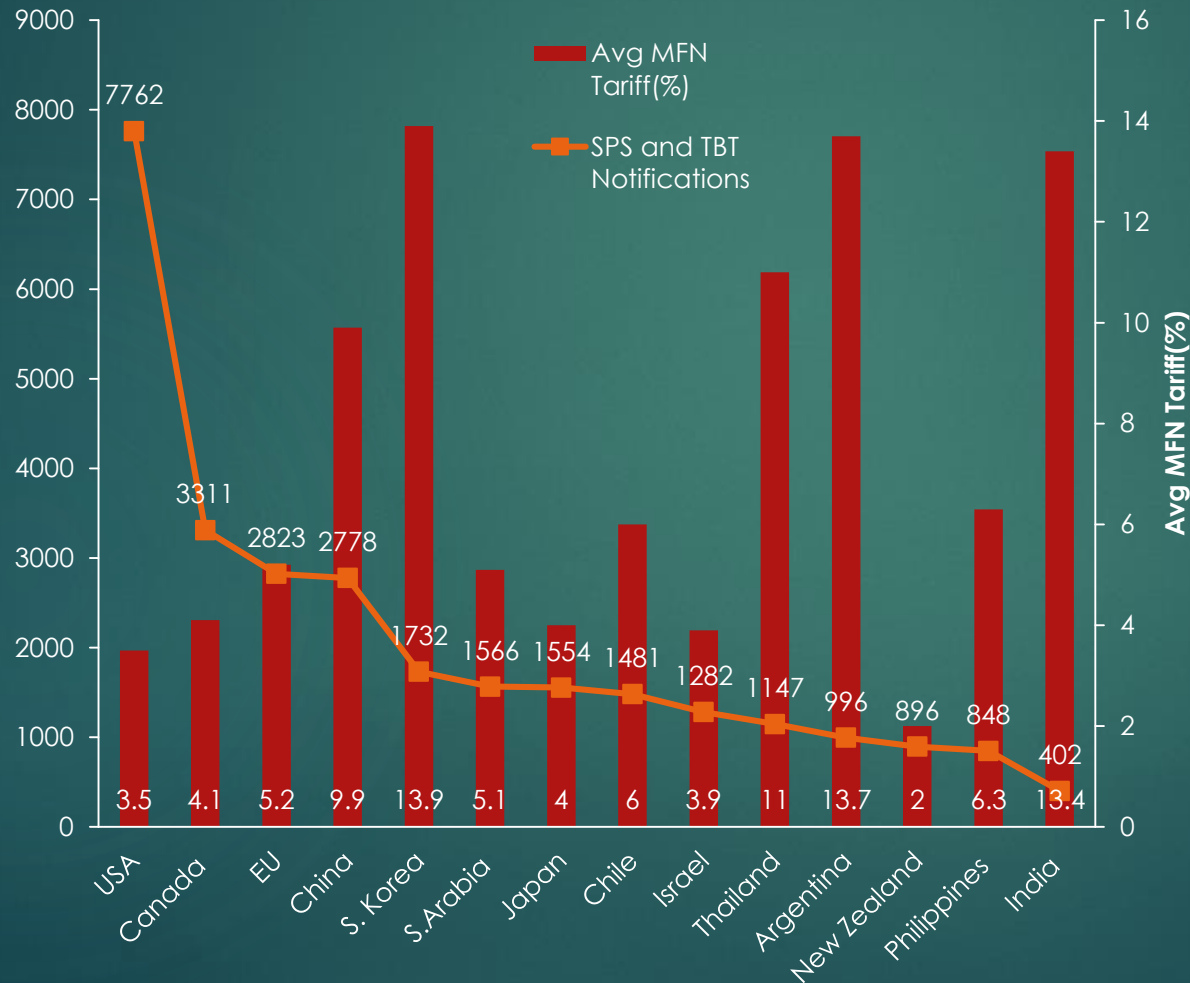


SPS and TBT coverage- 84%

# 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

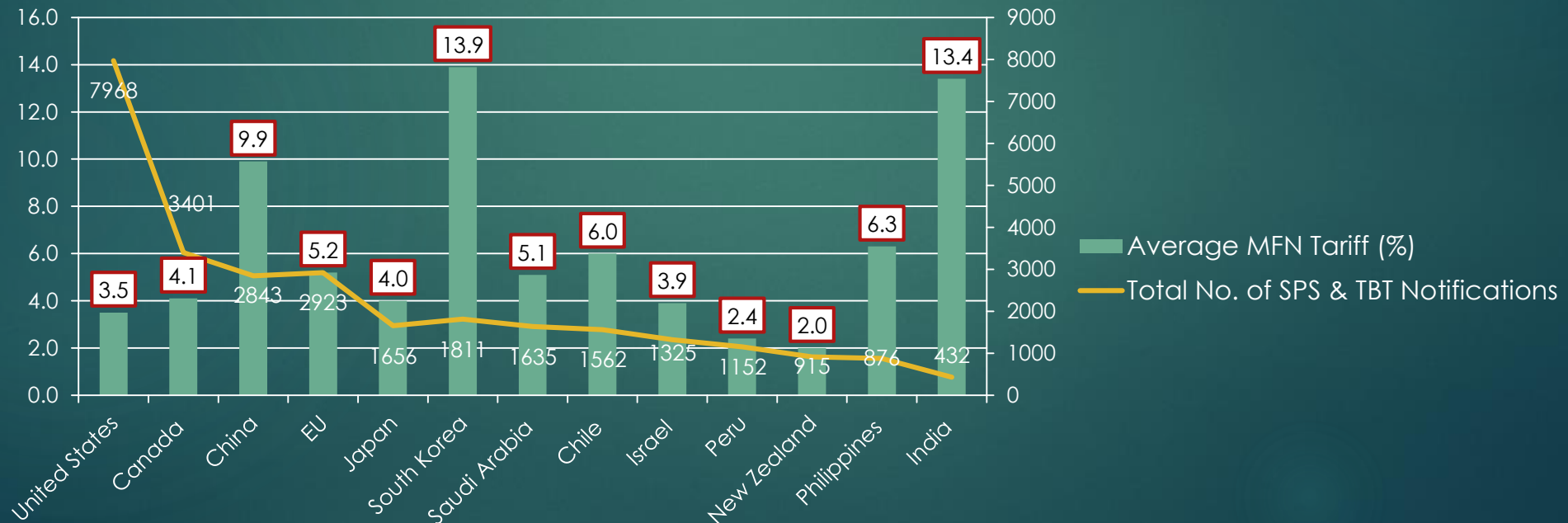
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- ▶ 36 Departments / Ministries regulate 11559 HS Code lines at 8 digit
- ▶ Not more than 10% of total lines regulated
- ▶ India's total Notifications to WTO (SPS & TBT) –(as of May 2019)
  - TBT : 167 (0.48%)
  - SPS : 257 (1.04%)
- ▶ Total Notifications 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

- ❖ 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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<b>Measure</b>	<b>Initiations</b>	<b>Percentage share in TRM</b>	<b>Measures imposed</b>	<b>Percentage share in TRM</b>
<b>Anti-Dumping</b>	5,725	87%	3,805	89%
<b>Countervailing Duty</b>	541	8%	285	7%
<b>Safeguards</b>	347	5%	172	4%
<b>Total</b>	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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	<b>Anti-Dumping Measures</b>	<b>Countervailing Duty Measures</b>	<b>Safeguard Measures</b>
	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

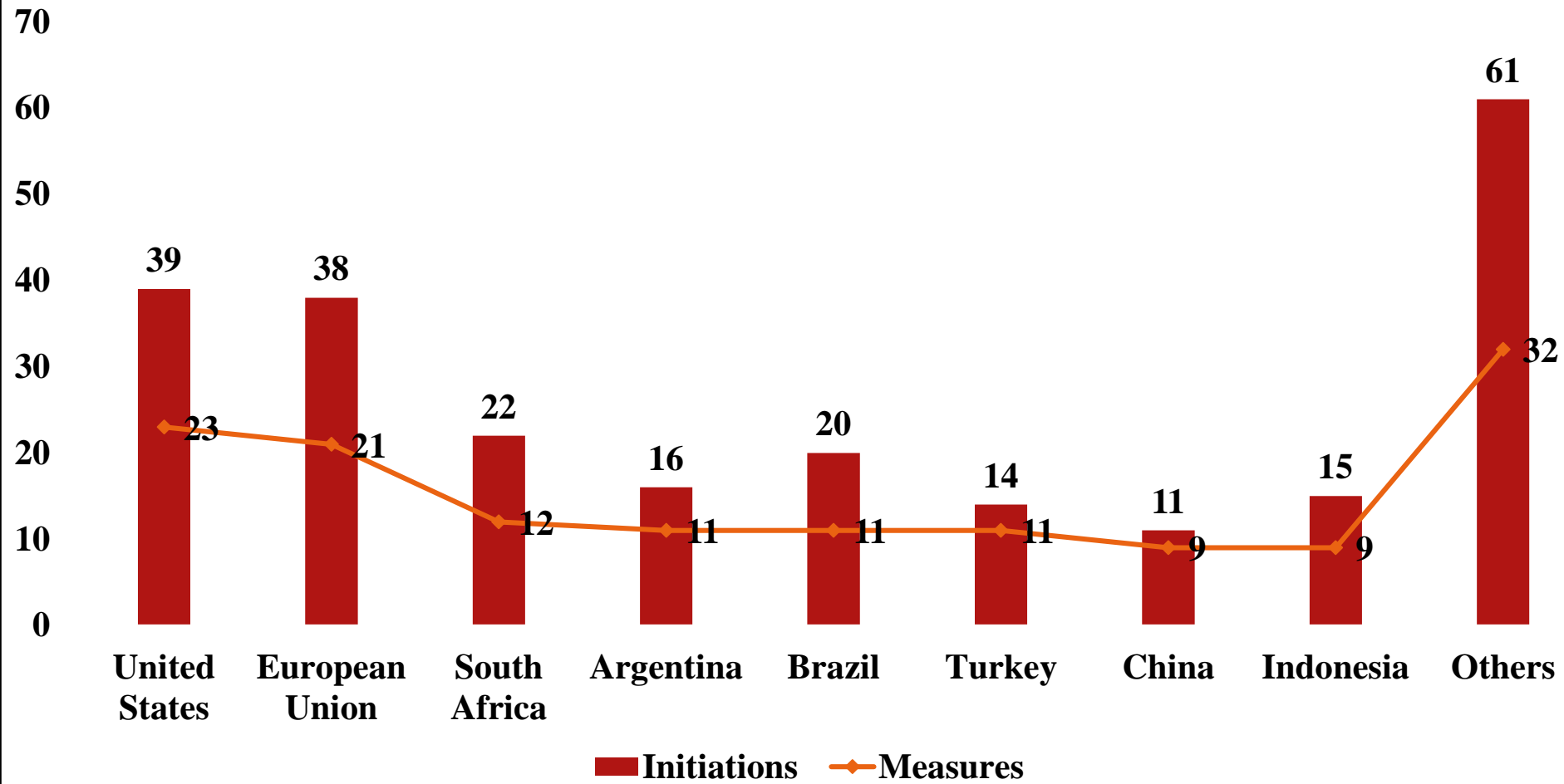
- Stringent timelines
- Comprehensive information
- Language of filing

# 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
	<b>Total</b>	<b>46</b>	

## 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	<b>Sub Total</b>	<b>33</b>	
5	Ongoing investigations	13	USA (7), European Commission (4), Mexico (1) & China (1)
6	<b>Total</b>	<b>46</b>	

# 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](mailto: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