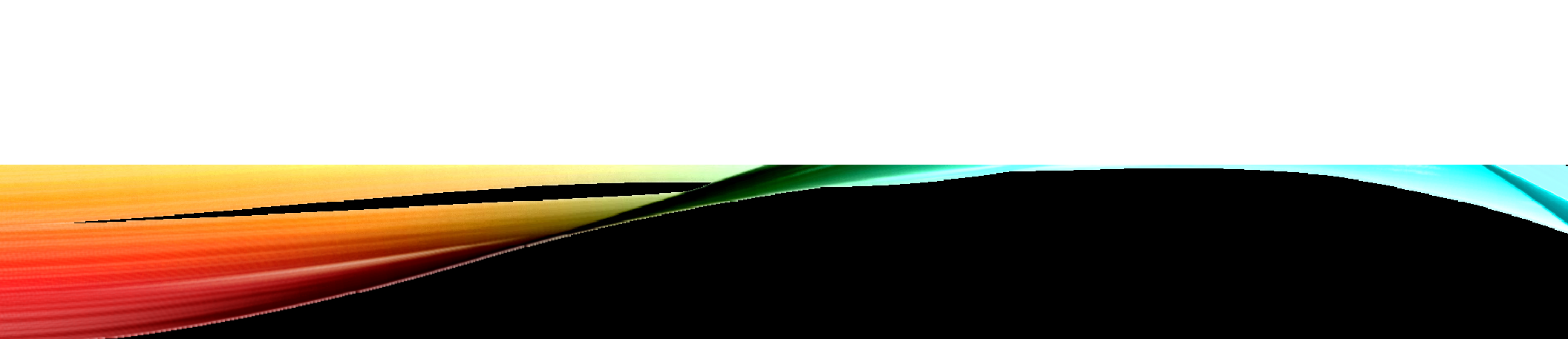




# QUEEN'S TRADE POLICY INSTITUTE

Kathleen Claussen

November 2019



What do you do when another country is engaged in acts, policies, or practices that are contrary to free-trade rules?

What might those acts, policies, or practices be?

How do I know what qualifies before I take action?



# FORMS OF PROTECTIONISM

**Border  
measures**

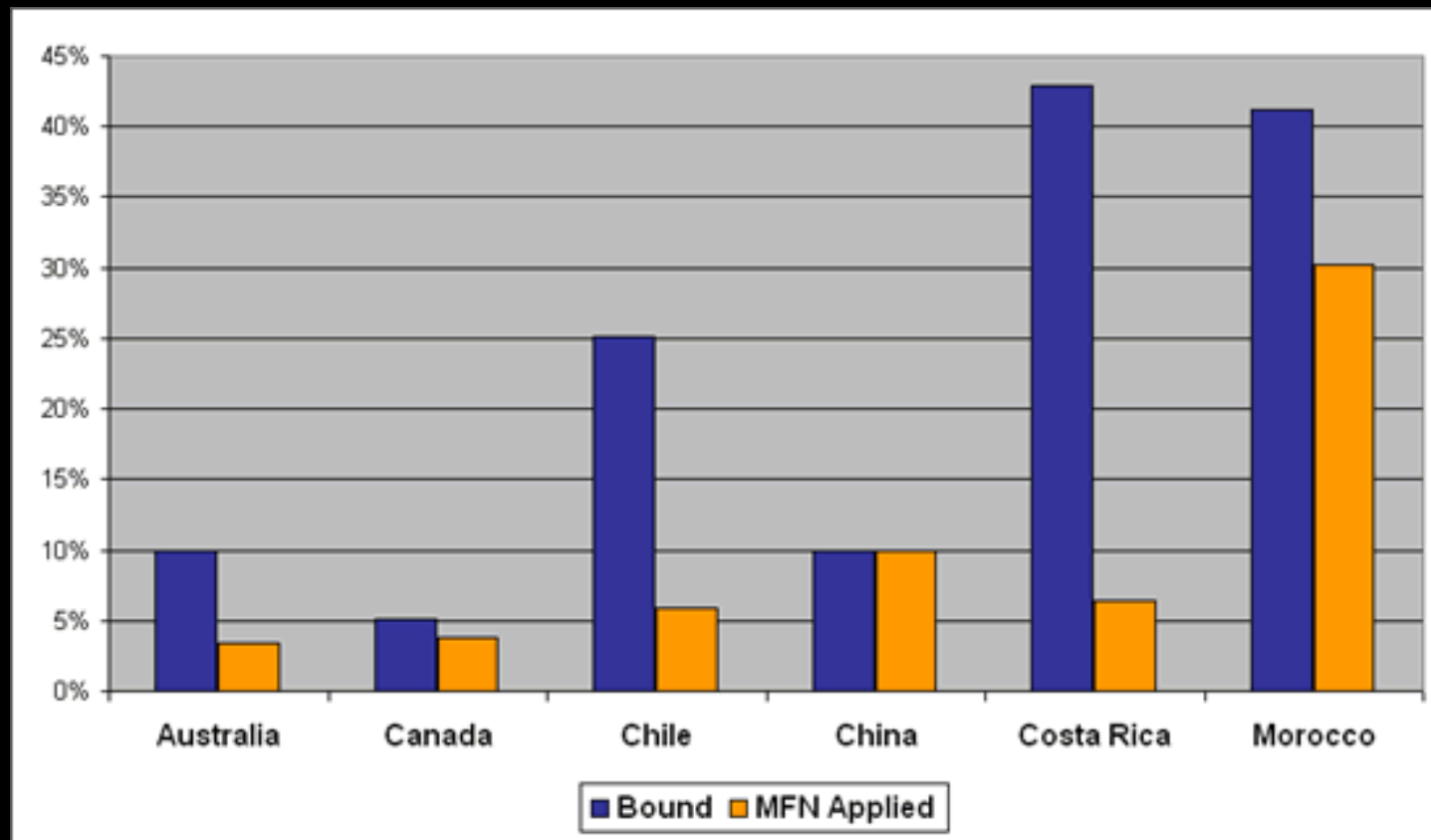
**Non-border  
measures**



WTO  
rules

# BORDER MEASURES

Measure	Legality	Frequency of use
Tariffs / tariff rate quotas (within bindings)	Legal	Very frequent





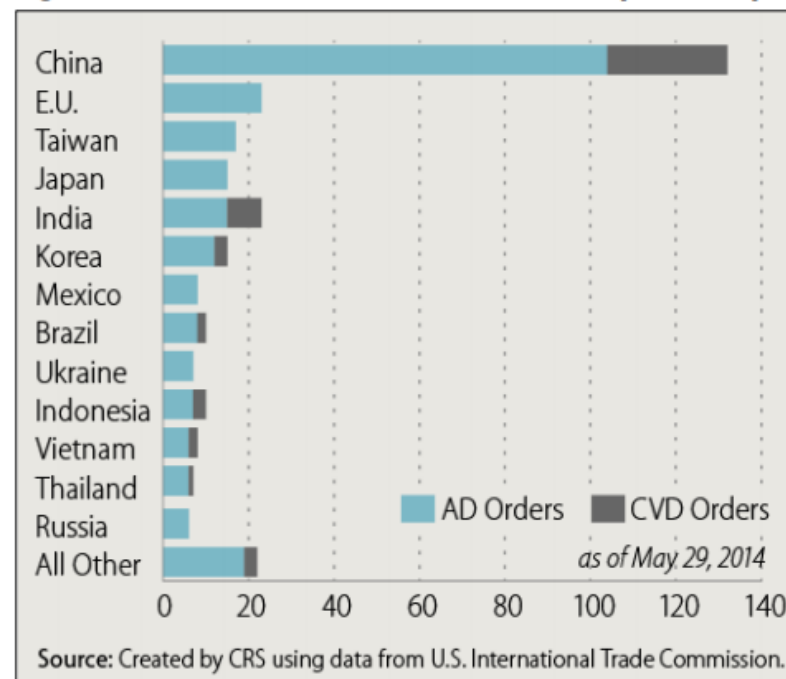
# BORDER MEASURES

Measure	Legality	Frequency of use
Tariffs / tariff rate quotas (within bindings)	Legal	Very frequent
Anti-dumping and countervailing duties	Legal	Frequent

## List of products from Canada

Case No	Product Name
<a href="#">A-122-855</a>	Certain Polyethylene Terephthalate Resin
<a href="#">A-122-857</a>	Certain Softwood Lumber Products
<a href="#">C-122-858</a>	Certain Softwood Lumber Products
<a href="#">A-122-853</a>	Citric Acid And Citrate Salt
<a href="#">A-122-503</a>	Iron Construction Castings
<a href="#">A-122-863</a>	Large Diameter Welded Pipe
<a href="#">C-122-854</a>	Supercalendered Paper

**Figure 2. U.S. AD/CVD Orders In Force by Country**





# BORDER MEASURES

Measure	Legality	Frequency of use
Tariffs / tariff rate quotas (within bindings)	Legal	Very frequent
Anti-dumping and countervailing duties	Legal	Frequent
Safeguards	Legal	Occasional



Politics

## Canada reveals final trade safeguards for heavy plate, stainless steel wire



Trade tribunal report recommended against protections for other steel products

[Janyce McGregor](#) · CBC News · Posted: May 10, 2019 4:20 PM ET | Last Updated: May 13





# BORDER MEASURES

Measure	Legality	Frequency of use
Tariffs / tariff rate quotas (within bindings)	Legal	Very frequent
Anti-dumping and countervailing duties	Legal	Frequent
Safeguards	Legal	Occasional
National security measures	Unclear	Rare

# United States Announces Deal with Canada and Mexico to Lift Retaliatory Tariffs

---

05/17/2019

*Washington, DC* –Today, the United States announced an agreement with Canada and Mexico to remove the Section 232 tariffs for steel and aluminum imports from those countries and for the removal of all retaliatory tariffs imposed on American goods by those countries. The agreement provides for aggressive monitoring and a mechanism to prevent surges in imports of steel and aluminum. If surges in imports of specific steel and aluminum products occur, the United States may re-impose Section 232 tariffs on those products. Any retaliation by Canada and Mexico would then be limited to steel and aluminum products. This agreement is great news for American farmers that have been subject to retaliatory tariffs from Canada and Mexico. At the same time, the Agreement will continue to protect America's steel and aluminum industries.



# BORDER MEASURES

Measure	Legality	Frequency of use
Tariffs / tariff rate quotas (within bindings)	Legal	Very frequent
Anti-dumping and countervailing duties	Legal	Frequent
Safeguards	Legal	Occasional
National security measures	Unclear	Rare
Unilateral trade action	Unclear/it depends	Rare

OFFICE *of the* UNITED STATES TRADE REPRESENTATIVE  
EXECUTIVE OFFICE OF THE PRESIDENT

**FINDINGS OF THE INVESTIGATION INTO  
CHINA'S ACTS, POLICIES, AND PRACTICES  
RELATED TO TECHNOLOGY TRANSFER,  
INTELLECTUAL PROPERTY, AND INNOVATION  
UNDER SECTION 301 OF THE TRADE ACT OF 1974**



March 22, 2018



# BEHIND THE BORDER MEASURES

Measure	Legality	Frequency of use
Regulatory action	Legal under certain circumstances	Very frequent







# BEHIND THE BORDER MEASURES

Measure	Legality	Frequency of use
Regulatory action	Legal under certain circumstances	Very frequent
Other informal action	Unclear	Common among certain states

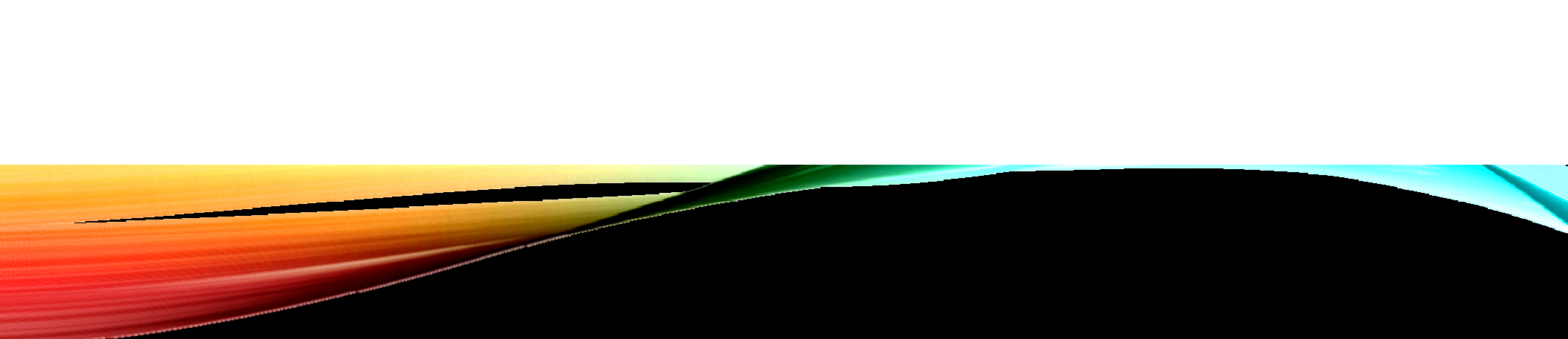






# INSTRUMENTS TO RESPOND TO PROTECTIONISM

- Domestic procedures
- WTO committees
- Negotiation
- Dispute settlement (WTO / FTA)
- Unilateral action / retaliation

- 
- What options should Canada or other WTO members have to respond to harmful trade practices that are not covered by the WTO rules?
  - What options should Canada or other WTO members have to respond to harmful trade practices that may be violations of WTO rules but cannot effectively be proven to breach those rules under the WTO dispute settlement system?
  - What options should Canada or other WTO members have when facing a trading partner such as China with an institutional market structure that the rules seemingly do not accommodate?



# FACTORS GOVERNMENTS MAY CONSIDER IN CHOOSING INSTRUMENTS

- Effectiveness
- Timeliness
- Impact on own economy
- Impact on relationship with trading partner(s)
- Impact on the rules-based system
- Impact on bargaining leverage



# CASE STUDY



# RESPONDING TO CHINA

	Effective- ness	Timeliness	Impact on economy	Relationship	Rules-based system	Bargaining leverage
Domestic action	✗	?	+	+	+	+
WTO Council/ Committee	✗	+	+	+	+	+
Dispute settlement	?	✗	+	+	+	+
Negotiation (specific)	+	+	?	+	?	✗
Negotiation (broader)	+	+	?	+	?	✗
Retaliation	?	+	✗	✗	✗	+

# RESOURCES I MENTIONED

All of these are available on my SSRN page (specific links below). See also @Claussen\_K

- Trade's Security Exceptionalism (discussing hard/soft security exceptions in US law allowing the president to raise tariffs)
  - [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3439705](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3439705)
- The Other Trade War (discussing the WTO AB issue and 4 causes):
  - [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3278391](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3278391)
- Forgotten Statutes: Trade Law's Domestic (Re)turn (discussing the Section 301 and the three questions in slide 19):
  - [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3395291](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3395291)

## Not mentioned but possibly of interest

- Reimagining a new way forward for trade and labor in USMCA, etc.:
  - [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3258639](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3258639)
- Discussing path dependence in certain trade agreement chapters:
  - [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3200105](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3200105)