

Intelligence MEMOS



From: Lawrence Herman
To: Canadians Concerned About Trade
Date: May 11, 2023
Re: **KEEPING TRADE REMEDIES ON THE RADAR SCREEN**

Even if not front of mind, there have been critical developments in Canada's trade remedy system that reflect a more expansive – indeed aggressive – Canadian trade policy, warranting closer attention by business, not least because of the economic impact these changes have throughout the supply chain.

Among the changes are two key ones: first, the enhanced role of organized labour in the trade remedy process and, second, the expanded authority of Canadian trade agencies to combat circumvention of anti-dumping and countervailing (AD/CV) duty orders by foreign exporters trying to get evade Canadian duties on their shipments.

These duties are ordered by the Canadian International Trade Tribunal (CITT) following complaints by a Canadian industry about foreign dumping or subsidies that reduce the price of goods these exporters ship here, injuring Canadian production of the same or directly competitive goods. The process comes under the *Special Import Measures Act*, following rules set down by the World Trade Organization Agreement.

As of 2023, a total of 46 such duty orders are on the books, covering a wide spectrum of products and sectors. Of the 46, more than half – 28 in all – concern steel products of one kind or another. For decades, the largest user of the system has been the Canadian steel industry. The remainder mostly concern other types of commodity products such as like copper tubing, wheat gluten, refined sugar or gypsum board. Because of their cascading price effects, the economic impact can extend throughout the supply chain and well beyond the particular goods in question.

Commodity producers have traditionally been the system's major users. But recent trade cases have also involved consumer products (e.g., upholstered domestic seating and mattresses). Whether this foreshadows more complaints in the consumer products sector, especially focused on China, remains to be seen and bears watching.

While historically there had been relatively little direct union involvement in the trade remedy process, this has recently changed notably. The United Steelworkers, for example, have participated vigorously in support of Canadian steel producers in virtually all trade remedy cases in the last several years.

In response to this, along with other factors, the 2022 federal budget announced the government's intention "to strengthen and improve access to Canada's trade remedy system." The laws were amended, first, to allow unions to qualify as complainants in launching trade actions and, second, to require the CITT to specifically take account of the impact of dumped or subsidized imports on workers in affected industries. The enshrining of labour's rights in law is one of the most important developments in Canadian trade remedies over the last decade.

The second key development is increased authority for governmental agencies to combat the circumvention of AD/CV orders, which is a frequent tactic of exporters in shifting their production to countries not covered by those orders and then exporting the same goods to Canada. This technique has been increasingly used, especially by exporters from China and other East Asian countries to the frustration of Canadian agencies and domestic producers alike. Industrial modernization has facilitated this, making it easier to move production lines to a different country or to use existing facilities in that country (or countries) to produce the goods in question.

To respond to this phenomenon, 2018 amendments to SIMA gave the Canada Border Services Agency (CBSA) authority to launch circumvention investigations when it gets evidence that this has been occurring. Regulatory changes in 2022 expanded this authority. If the CBSA finds circumvention – based on factors set out in the legislation – it notifies the CITT. On receipt of such notice, the Tribunal must amend its existing AD/CV orders to extend to imports coming from the country under investigation.

Anti-circumvention authority has added significant powers to the CBSA's fact-finding and decision-making role. To date there is no public record of a circumvention investigation being initiated, so it remains to be seen how the agency will discharge its expanded role. But given the likelihood of increased production shifting, circumvention investigations could become a regular part of the Canadian trade remedy universe.

Overall, there are a couple of takeaways. The first is that Canadian trade cases cover ever-expanding spheres of domestic production, with potential impacts throughout the supply chain. The second is that Canadian trade laws have been robustly expanded, reflecting what seems to be a more aggressive trade remedy policy. In an era of intense international competition and new imperatives towards supply chain consolidation, the question is what other changes might be made given the 2022 budget pledge "to strengthen and improve access to Canada's trade remedy system."

Businesses need to keep abreast of these developments to assess the potential impact – and risk – of these and future changes to the trade remedy system on their operations.

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