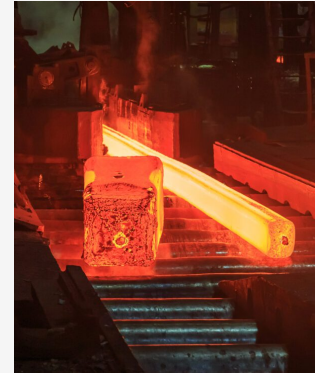


Steel safeguards...without the safeguards?

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This past Saturday, March 22, hours before calling an election, the Canadian federal government announced a 30-day consultation on “possible trade measures to protect against the threat of diversion of steel products from third countries into the Canadian market as a result of the recent trade measures by the U.S.”

Background

On the one hand, the announcement was predictable. In 2018, Canada held consultations on potential safeguard measures on seven categories of steel imports (heavy plate, rebar, energy tubular products, hot-rolled sheet, pre-painted steel, stainless steel wire and wire rod), shortly after the first Trump administration imposed 25% tariffs on steel imported into the United States (including Canadian steel) under section 232 of the *Trade Expansion Act* of 1962.

At the time, the Canadian domestic industry expressed concerns that potential diversion of third-country exports from the United States to Canada threatened the Canadian industry. Following those consultations, the Canadian government imposed provisional safeguard duties on those seven categories of steel (although it failed to disclose the preliminary determination and “clear evidence” required by the WTO Agreement on Safeguards).

In 2019, the Canadian International Trade Tribunal (CITT) found that safeguards beyond the provisional period (200 days) were warranted on two of those categories of imports (heavy plate and stainless steel wire) but not on the other five. The first Trump administration subsequently agreed to suspend the section 232 tariffs on steel imports from Canada, eight other countries and the European Union. However, the second Trump administration lifted those suspensions, effective March 12, 2025. This raised the prospect that the domestic industry would again ask the Canadian government to take action against third-country imports.

On the other hand, the actions the Canadian government proposes to take, and the countries against which it may take them, are less clear this time. Notably, the March 22 announcement does not mention “safeguards”.

Safeguard measures

Safeguard measures are an exception under the WTO Agreement to prohibitions against members imposing quantitative restrictions on imports or raising duties on those imports above the “bound” rates to which they agreed. A WTO member may take a safeguard action — a temporary import restriction such as additional duties or quantitative restrictions — to protect a specific domestic industry against an unforeseen increase in imports that is causing or threatening serious injury to its domestic industry. The evidentiary threshold for imposing a safeguard measure is high, and “definitive” or “final” safeguards may only be imposed following an inquiry of the sort that the CITT conducted in 2018–2019.

Whether Canada could meet that threshold is an open question, particularly when the March 12 action of the Trump administration simply removed the suspension of its section 232 steel tariffs on certain countries. The large majority of steel-producing countries were and are already subject to those tariffs, and have been since 2018.

Furthermore, because the domestic steel industry is the most prolific user of Canada’s trade remedy laws, steel imports into Canada from a wide range of countries are the subject of extensive anti-dumping and countervailing duty measures and, as the March 22 announcement acknowledges, Canada has already imposed 25% retaliatory surtaxes on U.S. steel products and has maintained a 25% surtax on Chinese steel (and aluminum) products since last October. Finally, there is little evidence to date that Canada is experiencing an increase in imports or a threat of diversion of steel from the eight other countries and the E.U. as a result of the U.S. trade measures.

The Canadian government might prefer not to subject itself to the procedural and evidentiary burdens that a safeguard action entails (and that it agreed to as a WTO member) and has the legislative tools to impose unilateral trade measures outside of a safeguard action. However, any alternative measure would be highly vulnerable to a WTO challenge by Canada’s trade partners and could prompt eventual trade retaliation against key sectors of the Canadian economy, such as agriculture. It would signal, too, an ambivalence to international trade rules that contrasts with long-standing Canadian policy.

In addition, the other countries that are now subject to section 232 steel tariffs as of March 12 — Argentina, Australia, Brazil, the European Union, Japan, Mexico, South Korea, Ukraine and the United Kingdom — are countries with which Canada has free trade agreements (with the exceptions of Brazil and Argentina, with which Canada has been trying, intermittently, to negotiate one). Many free trade agreements have specific limitations on safeguard measures, which could further tie Canada’s hands. Most are also countries that could be expected to feature in a Canadian trade diversification strategy, including requests to open their markets even further to Canadian non-steel exports, in the face of “America First” protectionism.

Conclusion

With the foregoing considerations in mind, we expect the government — regardless of the results of the upcoming federal election— will need to proceed cautiously with any new steel trade measures, balancing the request to insulate the domestic steel industry from potential sudden changes to import volumes with the now-critical need to expand trade and market access with non-U.S. trade partners.