

PUBLIC Exhibit 6-10

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Canada Gazette, Part I, Volume 153, Number 29: Regulations Amending the Special Import Measures Regulations

July 20, 2019

Statutory authority

Special Import Measures Act

Sponsoring department

Department of Finance

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Issues

In light of the situation affecting global steel trade, concerns have been raised by the Canadian steel industry and its workers regarding the effectiveness of Canada's trade remedy system and its ability to address unfairly traded imports. On April 26, 2019, the Government of Canada announced an intensive 30-day consultation with the industry and its workers in order to determine what further protections are required to protect Canadian jobs and industry from unfair trade practices. These proposed amendments follow from certain of the recommendations made by this working group in relation to the calculation of appropriate dumping margins in anti-dumping investigations.

Background

Under World Trade Organization (WTO) rules, when domestic producers are injured by imports that are dumped (i.e. exported at a price lower than prices in the exporter's home market or at a price that is below costs) or that have benefited from certain types of government subsidies, anti-dumping or countervailing duties may be imposed to remedy the injury.

In Canada, domestic producers may seek to have anti-dumping and countervailing duties imposed pursuant to the *Special Import Measures Act* (SIMA) following investigations by the Canada Border Services Agency (CBSA), to determine whether imports were dumped or subsidized, and the Canadian International Trade Tribunal (CITT), to determine whether such imports injured or threaten to injure Canadian producers. These investigations are conducted in an independent, impartial and transparent manner.

In recent years, concerns had been raised by Canadian producers, most notably in the steel industry, that improvements were required to enhance the effectiveness of the trade remedy system. In particular, concerns were raised regarding the need to adopt additional mechanisms to ensure that anti-dumping and countervailing duties properly address dumped and unfairly subsidized imports that are causing injury. In response to these concerns, in April 2018, the Government made amendments to SIMA and the *Special Imports Measures Regulations* (SIMR), to better align the Act and Regulations with the policies and practices of some of Canada's key trading partners and to strengthen Canada's trade remedy system. These amendments included the introduction of anti-circumvention and scope proceedings, as well as ways to address price distortions in case of a particular market situation.

More recently, the global steel trade environment has been particularly challenging in light of continuing overcapacity in steel production globally, as well as measures that a number of countries have taken to restrict imports of steel into their markets. The Government announced, on April 26, 2019, an intensive 30-day consultation with industry and its workers. The objective of the consultations was to determine what further protections may be required to enhance the effectiveness of the trade remedy system in protecting Canadian producers and workers against the impacts of unfairly traded imports, while maintaining a fair and balanced approach to trade remedies and respecting Canada's legal and trade obligations.

Two of the recommendations were to amend the SIMR, in order to clarify certain elements related to the calculation of the costs of production in anti-dumping investigations (to address situations where inputs were acquired from associated parties at prices below cost or below a representative benchmark and to provide further scope to address cost distortions created by a particular market situation).

Objective

The objective of these amendments would be to enhance the effectiveness of Canada's trade remedy system to protect Canadian producers and workers against the impacts of unfairly traded imports.

Description

In anti-dumping investigations, dumping margins are normally calculated by comparing the prices of the goods when sold in the domestic market of the exporting country with the prices of goods when sold for export to Canada. However, alternative methodologies may be appropriate for calculating dumping margins if domestic prices in the exporting country do not allow for a proper comparison (i.e. they are distorted). This may arise because the producer of the goods sent to Canada has purchased inputs for these goods from an associated party at a price below cost or below a representative benchmark or because of the presence of a particular market situation (e.g. where government intervention results in price distortions, or when factors such as significant macroeconomic volatility affect the prices and input costs in the market). In such cases, the CBSA may calculate an alternative price for the goods through a constructed costs methodology, where the price of the goods is determined as the cost of production in the country of origin,

plus a reasonable amount for administrative, selling and general costs, as well as profits. The proposed amendments to the SIMR would provide a method for the CBSA to determine an appropriate amount for the cost of production in the two instances below.

Transactions between associated parties

The proposed amendments would provide the CBSA with flexibility in calculating the costs of production when inputs are supplied by an associated supplier (e.g. a subsidiary or affiliated company). The proposed amendment would specify that the CBSA may use, for this cost, the highest of the transfer price between parties, the actual costs to the supplier, or a reasonable benchmark determined in the country of export if such information is available.

Particular market situation

The CBSA already has the ability to disregard sales in the domestic market of the exporting country, if they are affected by a particular market situation. In those cases, the CBSA has the ability to use alternative methodologies, such as constructed costs, when calculating margins of dumping. The proposed amendments would further specify that in determining the costs of production where a particular market situation has been found, alternative options can be used to determine the cost of inputs, if they do not allow for a proper comparison between the sale of goods in the country of export and the sale of goods exported to Canada. The amendments would provide a hierarchy of alternatives to be used to determine the costs of inputs, depending on the information available and whether the alternative would allow for such a proper comparison. For instance, if such information is available, the CBSA could use the price of a similar input produced in the country of export and sold to the exporter or other producers in the country. Other alternatives include referring to published prices in trade publications, with price adjustments to be made as necessary to reflect the actual cost of the input in the country of export.

Regulatory development

Consultation

These proposed amendments follow recommendations made to the Minister of Finance by a joint working group between federal government officials and the Canadian steel industry and workers' representatives, on actions that could be taken if there is a desire to strengthen Canada's trade remedy regime. The Canadian steel industry and workers have indicated strong support for these proposed amendments, as they will increase the effectiveness of Canada's trade remedy system and offer additional protection against unfairly traded imports.

Further consultations were carried out with other groups of stakeholders, including provincial and territorial governments, industry associations (including those representing downstream industries and steel importers), and other stakeholders that are users of the trade remedy system or that have participated in previous consultations on trade remedy issues.

Modern treaty obligations and Indigenous engagement and consultation

Constitutional and modern treaty implications were considered and none have been identified.

Instrument choice

Paragraphs 97(1)(e) and (e.1) provide the authority for the Governor in Council, on the recommendation of the Minister of Finance, to make regulations prescribing the manner of calculating the cost of production of goods.

Regulatory analysis

Cost and benefits

These proposed amendments would enhance protection for Canadian producers and workers from the impacts of unfairly traded imports and would improve the effectiveness of Canada's trade remedy system by ensuring that appropriate margins of dumping may be calculated in anti-dumping investigations. More specifically, they would allow the CBSA to better account for the transactions between associated parties and the effects of particular market situations when determining the costs of production in anti-dumping investigations. As a result, margins of dumping would better take into account these potential distortions.

These measures would provide Canadian producers with access to similar mechanisms as those available to the producers of trading partners who are also major users of trade remedies (e.g. Australia, the European Union and the United States). This would ensure that Canada's trade remedy system is able to offer comparable levels of protection for domestic producers from the injurious effects of unfair trade, while maintaining a fair and balanced approach to trade remedies in accordance with Canada's legal and trade obligations.

The amendments would provide the CBSA with additional methodologies to calculate the costs of production of imported goods in certain anti-dumping investigations. This would make some investigations more complex and could result in an increase in the number of applications to which the CBSA would need to respond. However, this is not expected to have significant resource implications for the CBSA.

Small business lens

The proposed amendments would enhance the CBSA's ability to calculate margins of dumping; no small businesses would be directly impacted by these changes or required to comply with new regulatory requirements. Therefore, the small business lens does not apply. However, to the extent that small businesses make use of Canada's trade remedy system, they could benefit from the enhanced protections from unfair trading practices and the increased effectiveness of the trade remedy system that would result from the proposed amendments.

One-for-one rule

The one-for-one rule does not apply to these proposed amendments given that they would not result in any change in administrative burden for Canadian businesses.

Regulatory cooperation and alignment

The proposed amendments do not have a regulatory cooperation component.

Strategic environmental assessment

In accordance with the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, a preliminary scan concluded that the proposed amendments would not have a positive or negative environmental impact; therefore, a strategic environmental assessment is not required.

Gender-based analysis plus

No gender-based analysis plus (GBA+) impacts have been identified for this proposal.

Implementation, compliance and enforcement, and service standards

The CBSA will administer and interpret these amendments as part of anti-dumping investigations, in the course of its administration of SIMA.

Contact

Léticia Villeneuve
International Trade Policy Division
Department of Finance Canada
90 Elgin Street
Ottawa, Ontario
K1A 0G5

Email: fin.simaconsult-lmsiconsult.fin@canada.ca (<mailto:fin.simaconsult-lmsiconsult.fin@canada.ca>)

PROPOSED REGULATORY TEXT

Notice is given that the Governor in Council, on the recommendation of the Minister of Finance, pursuant to paragraphs 97(1)(e) ^a and (e.1) ^b of the *Special Import Measures Act* ^c, proposes to make the annexed *Regulations Amending the Special Import Measures Regulations*.

Interested persons may make representations concerning the proposed Regulations within 15 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be addressed to the International Trade Policy Division, Department of Finance, 90 Elgin Street, Ottawa, Ontario K1A 0G5 (fin.simaconsult-lmsiconsult.fin@canada.ca (<mailto:fin.simaconsult-lmsiconsult.fin@canada.ca>)).

Ottawa, July 15, 2019

Julie Adair
Assistant Clerk of the Privy Council

Regulations Amending the Special Import Measures Regulations

Amendments

1 The long title of the *Special Import Measures Regulations* ¹ is replaced by the following:

Special Import Measures Regulations

2 Section 1 of the Regulations and the heading before it are repealed.

3 The portion of paragraph 11(1)(a) of the Regulations before subparagraph (i) is replaced by the following:

- (a) subject to sections 11.2 and 12 of these Regulations, the expression **cost of production**, in relation to any goods, means the aggregate of all costs that are

4 The portion of paragraph 11.1(a) of the Regulations before subparagraph (i) is replaced by the following:

- (a) the cost of production, in relation to any goods, shall, subject to subsection 11.2(1) and section 12, be calculated by aggregating all costs that are

5 The Regulations are amended by adding the following after section 11.1:

11.2 (1) For the purposes of subparagraphs 11(1)(a)(i) and 11.1(a)(i), if an input used in the production of the goods is acquired by the exporter or producer from an associated person and is a significant factor in the production of the goods, the cost of that input in the country of export is considered to be the greater of the following amounts:

- (a) the price paid in respect of that input by the exporter or producer to the associated person;
- (b) the cost incurred by the associated person in the production of that input, including the administrative, selling and all other costs with respect to that input; and
- (c) the price in the country of export of the same or substantially the same inputs, if sufficient information is available to enable the price to be determined on the basis of
 - (i) the selling prices of those inputs in the country of export, in the same or substantially the same quantities, between parties who are not associated persons; or
 - (ii) the published prices of those inputs in the country of export.

(2) For the purposes of subparagraph 11(1)(a)(i), if the President is of the opinion that, under paragraph 16(2)(c) of the Act, a particular market situation exists which does not permit a proper comparison of the sale of like goods with the sale of the goods to the importer in Canada, such that the acquisition cost of an input used in the production of the goods does not reasonably reflect the actual cost of that input, the cost of that input in the country of export shall be considered to be the first of the following amounts that reasonably reflect the actual cost of the input so as to permit a proper comparison of the sale of like goods with the sale of the goods to the importer in Canada:

- (a) the price of the same or substantially the same inputs that are produced in the country of export and sold to the exporter or to other producers in the country of export;
- (b) the price of the same or substantially the same inputs that are produced in the country of export and sold from the country of export to a third country;
- (c) the price of the same or substantially the same inputs determined on the basis of the published prices of those inputs in the country of export;

(d) the price of the same or substantially the same inputs that are produced in a third country and sold to the exporter or to other producers in the country of export, adjusted to reflect the differences relating to price comparability between the third country and the country of export; or

(e) the price of the same or substantially the same inputs determined on the basis of the published prices of those inputs outside the country of export, adjusted to reflect the differences relating to price comparability with the country of export.

Coming into Force

6 These Regulations come into force on the day on which they are registered.

Footnotes

a S.C. 1999, c. 12, s. 51(2)

b S.C. 1994, c. 47, s. 184(3)

c R.S., c. S-15

1 SOR/84-927

Government of Canada activities and initiatives

#YourBudget2018 – Advancement



(https://www.budget.gc.ca/2018/docs/themes/advancement-advancement-en.html?utm_source=CanCa&utm_medium=Activities_e&utm_content=Advancement&utm_campaign=CABdgt18)
Advancing our shared values

#YourBudget2018 – Reconciliation



(https://www.budget.gc.ca/2018/docs/themes/reconciliation-reconciliation-en.html?utm_source=CanCa&utm_medium=%20Activities_e&utm_content=Reconciliation&utm_campaign=CAbdgt18)

Advancing reconciliation with Indigenous Peoples

#YourBudget2018 – Progress



(https://www.budget.gc.ca/2018/docs/themes/progress-progres-en.html?utm_source=CanCa&utm_medium=Activities_e&utm_content=Progress&utm_campaign=CAbdgt18)

Supporting Canada's researchers to build a more innovative economy