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## ARTICLE

# Canada Announces Consultation On Provisional Steel Safeguards

On Tuesday, August 13, 2018, the Canadian Government announced a 15 day consultation period on the potential implementation of global safeguard measures, including provisional safeguard measures, on steel products imported into Canada. Following the consultation period, the Government will decide whether to impose provisional tariffs, quotas, or some combination of both on steel imports. The list of products potentially affected by the safeguards includes steel plate, concrete reinforcing bar, energy tubular products, hot-rolled sheet, pre-painted steel, stainless steel wire, and wire rod. The notice provides a further description of each category of steel products, including relevant HS classifications.

As the consultations begin we answer five fundamental questions about the potential safeguards, including what you should do if your business may be affected by them.

### 1. What is a safeguard measure?

A safeguard is a temporary trade measure applied by a government on an emergency basis to address a surge in imports that is causing or threatening to cause serious injury to like or directly competitive domestic goods. Unlike duties to address dumped or subsidized imports, safeguards are exceptional measures that target *fairly traded* imports. Therefore, the rules of the World Trade Organization impose strict disciplines on the use of safeguards, including their use against imports from developing countries. Other free trade agreements to which Canada is a party, including the NAFTA, impose even more stringent requirements for using safeguards against the parties to those agreements.

The proposed Canadian safeguard measures could take the form of an import surtax (tariff), import restriction (quota), or some combination of both.

- An ad valorem tariff would increase the cost to import goods by a percentage based on its value. For example, a 10 per cent tariff on \$100 worth of steel would mean it costs an additional \$10 to import the steel into Canada. The safeguard tariff would be imposed in addition to any existing tariff and HST/GST would be calculated on the total price of the imported good plus customs and safeguard duties.
- A quota would set a maximum amount of goods, typically on a unit or weight basis, which could be imported into Canada.
- A tariff-rate-quota (TRQ) would allow the importation of the subject goods up to a maximum amount (the quota limit). A tariff would apply to imports above the quota limit.

A quota could be allocated on a first-come, first-serve basis or on a country-by-country basis.

### 2. What is a "provisional safeguard"?

A provisional safeguard is one that is imposed *prior to* the investigation into whether imports are causing or threatening to cause serious injury. Under WTO rules, provisional safeguards may be imposed only in "critical circumstances" and only for 200 days. In the event that the Government decides to impose provisional safeguards, the Canadian International Trade Tribunal (CITT) will conduct an inquiry to determine whether safeguards should be continued past the 200-day provisional period as a definitive safeguard.

### 3. How long can safeguards be in place?

Under WTO rules, if Canada imposes a safeguard it could remain in place for up to four years and could be extended for a further four years. The WTO rules require that if a safeguard remains in place for longer than one year it is to be progressively liberalized; that is, the tariffs should decline or quotas become less restrictive over the duration of the safeguard.

### 4. Has Canada used safeguards before?

Not since the WTO Agreement came into force in 1995. Canada seriously considered implementing safeguards twice in the WTO era: in 2002/2003 on steel and in 2005/2006 on bicycles. On both occasions the CITT conducted hearings that found injury or threat of injury, but the Government ultimately decided not to impose safeguards.

Notably, in neither case did the Government implement *provisional safeguards*, which is what the Government is currently considering.

Lawyers in our trade group were engaged in the previous steel safeguard inquiry on behalf of a number of large steel-using companies. At that time, the inquiry was the most complex ever conducted by the CITT, involving over 175 parties, 80,000 pages of documents, and 17 days of hearings.

### 5. What happens next and what should you do about it?

The Government's notice indicates that it will accept submissions from interested parties until August 29, 2018 regarding whether to impose safeguards.

The targeted goods cover a vast array of steel products and will impact Canadian companies ranging from the construction sector to the energy sector, potentially affecting thousands of Canadian businesses. Companies should first assess whether their inputs are covered by the product definitions outlined by the Department of Finance and whether their goods are properly classified under the *Customs Tariff*.

Companies that import or use steel products covered by the notice should consult experienced trade counsel regarding the merits of making submissions to the Government during the consultation period. If the Government does ask the CITT to conduct an inquiry into the imposition of definitive safeguards — likely early this autumn — companies that may be affected should engage expert trade counsel to represent them in the inquiry process.

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