In a Victory for Rules-Based Trade, Canadian International Trade Tribunal Largely Rejects Steel Safeguards

April 04, 2019

The Canadian International Trade Tribunal (the Tribunal) released its report on April 3, 2019 in its inquiry into whether Canada should maintain safeguards (tariffs or quotas) on any of seven categories of imported steel. For the most part, the Tribunal recommended that it should not.

This was the first Canadian safeguard proceeding in 15 years and, as the Tribunal noted, one of the most complex inquiries it has ever conducted, involving over 38,000 pages of documents and 119 participants, including Canadian and foreign producers, importers, trade unions and foreign and provincial governments.

Last October, the Canadian Government (the Government) imposed safeguards provisionally for 200 days, claiming that they were warranted by the prospect of serious injury to the domestic steel industry caused by a surge of imports diverted into the Canadian market because of U.S. section 232 tariffs and global oversupply. The Tribunal was directed by the Government to conduct an inquiry and to make findings as to whether there had been a surge in imports causing or threatening serious injury. If the Tribunal's serious injury findings were affirmative, it was directed to recommend whether the provisional safeguards should be made "definitive", meaning that they could be maintained for four years or more (inclusive of the 200 day provisional safeguards).

The Tribunal recommended that no tariffs or quotas be imposed on imports of five of the seven categories: hot-rolled sheet, pre-painted steel, concrete reinforcing bar, wire rod, and energy tubular products. The Tribunal recommended the imposition of a tariff-rate-quota on imports of heavy-plate and stainless steel wire, but not on imports of those products from Korea and certain other countries.

The Tribunal's report, more than 130 pages in length, represents a triumph of rules-based trade over political and economic opportunism. Its recommendations are grounded in the evidence before it on trade flows and the performance of the domestic industry and consistent with the stringent requirements for imposing a safeguard under Canadian and World Trade Organisation (WTO) law.

What Happens Next?

The Government must decide by May 13, 2019 whether to accept or reject the Tribunal's recommendations. The Department of Finance has advised importers that provisional safeguards on imports of concrete reinforcing bar, energy tubular products, hot-rolled sheet, pre-painted steel and wire rod will cease to apply beginning April 28, 2019 and that it is reviewing the Tribunal's findings and recommendations regarding imports of heavy plate and stainless steel wire. Provisional safeguards on these latter two categories of products will remain in force until May 12, 2019.

The Department of Finance also has advised that Canada intends to refund any provisional safeguard surtaxes paid by importers of concrete reinforcing bar, energy tubular products, hot-rolled sheet, pre-painted steel and wire rod, as it is required to do by the WTO Agreement on Safeguards in light of the Tribunal's determinations. However, the Department of Finance has yet to indicate whether Canada also will refund surtaxes paid on imports of heavy plate and stainless steel wire originating in countries that were excluded from the Tribunal's affirmative safeguard recommendations.

While the Government has not yet communicated whether it will impose definitive safeguards on imports of either group of products the announcements by the Department of Finance suggest that it will accept the Tribunal's recommendations. The delay in addressing refunds for imports of heavy plate and stainless steel wire likely is due to additional complexities in administering those refunds. It would be exceptionally difficult for the Government to justify imposing safeguards on products or countries where the Tribunal has now recommended against doing so and would leave Canada highly exposed to successful legal challenges (and potentially damaging trade retaliation) by its trading partners, at the WTO or under regional free trade agreements.

Nevertheless, with a federal election looming and in the face of major regional and global trade uncertainties, including the future of the USMCA, U.S.-China trade tensions and the fate of the U.S. sec. 232 tariffs on Canadian steel, we expect that the Government will face considerable pressure from the domestic steel industry to find new ways to insulate it from import competition.

While the provisional safeguards remain in effect, importers must continue to apply for shipment-specific import permits for, or pay surtaxes on, covered steel products. Quota volumes for heavy plate, pre-painted steel, and wire rod already are nearly exhausted.

Our Role

BLG's International Trade law team led the way in the inquiry process on behalf of major steel importers, downstream Canadian users, and foreign producers, successfully opposing safeguard recommendations on concrete reinforcing bar, hot-rolled sheet, heavy-plate from Korea, and energy tubular products. We will continue to defend our clients' interests as the government considers its response to the Tribunal's report.

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