

BUDGET 2022 AMENDS LEGISLATION TO TACKLE UNFAIRLY TRADED IMPORTS

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Canadian laws protect Canadian manufacturers from unfair competition resulting from subsidies from foreign governments and from unfair pricing by foreign companies.

If a Canadian producer believes that it is being injured by dumped or subsidized imports, it may request that Canadian authorities investigate and impose antidumping or countervailing (subsidy) duties at the border to offset that unfair advantage.

The 2022 Federal Budget announced changes to relevant laws, namely the *Special Import Measures Act* and the *Canadian International Trade Tribunal Act*. The changes would make it easier for Canadian producers to tackle unfairly traded imports, and would require importers and foreign exporters to exercise greater caution in seeking to defend themselves against claims of unfair trade.

The Budget announced five changes that will affect these trade investigations, as follows:

1. The Canada Border Services Agency will create a dedicated Trade Remedy Counselling Unit that will assist companies in trade remedy proceedings, with a focus on small and medium-sized enterprises. This would assist Canadian producers in preparing anti-dumping and countervailing duty complaints, while also offering help to importers seeking product exclusion requests and duty assessment determinations. The proposed change may lead to a greater number of trade complaints by Canadian producers that might otherwise have thought the trade remedy process was out-of-reach.
2. Trade unions will be able to file complaints against unfair trade. This right is currently afforded only to domestic producers. **Workers' interests** will also be further considered by the Canadian International Trade Tribunal when assessing the injury suffered by the domestic injury in the face of the unfairly traded imports. These proposed changes increase the likelihood of additional complaints and may increase the likelihood of their eventual success;
3. The Canada Border Services Agency will be provided with additional discretion to address any **circumvention** of existing duties. When there is a reasonable indication that goods are circumventing existing duties, those could be extended to capture those goods. This could arise in the case where

goods are entering Canada in a manner that is circumventing existing anti-dumping or countervailing duties by being completed or assembled in Canada or in a third country. The proposed changes may lead to existing trade remedy measures affecting more imports, and will create additional risk for exporters and Canadian importers who seek to reorganize their supply chains in response to trade remedy duties;

4. The Canadian International Trade Tribunal will be required to assess whether retroactive duties should be applied in the presence of massive importations, and the criteria for imposing this form of **retroactive duties** will be amended. The proposed changes will likely create a greater chilling effect on the market once a trade investigation complaint is filed, and reduce the likelihood of imports entering Canada prior to the imposition of duties;
5. The process to continue duties in place beyond the original five years will be simplified, by removing the requirement of an expiry notice process prior to conducting an **expiry review**. The proposed change will likely reduce the administrative burden on all parties and fast-track the duty renewal process;

McMillan LLP's International Trade Group is the go-to market leader for all aspects of international trade law in Canada. McMillan has been counsel in 10 of the 13 Canadian trade remedy investigations initiated in 2020 - 2022 and in most of the Canadian trade remedy investigations initiated since 2015. Our lawyers have been actively involved in the development of these proposals and remain available to assist market participants.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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