

CHARGING FORWARD ON TARIFFS: THE GOVERNMENT OF CANADA LAUNCHES CONSULTATIONS ON TARIFFS ON CHINESE ELECTRIC VEHICLES

Posted on July 3, 2024

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1. Overview

On July 2, 2024, the Government of Canada formally initiated a 30-day consultation period to evaluate the potential imposition of tariffs on Chinese electric vehicles (“EVs”). This move indicates the government's commitment to addressing a series of alleged unfair trade practices and protecting Canadian workers and supply chains.

Canadian and global automakers, as well as dealers, suppliers and supply chain partners should strongly consider providing views as part of this consultation to shape the government's policy and legal response.

2. Purpose and Scope of the Consultation

The consultation solicits feedback on potential actions to counteract Chinese “unfair trading practices.” The government has not predetermined the outcome of this consultation and is exploring various options.^[1] Depending on the findings, tariffs may be implemented as early as late summer or in the fall, while other measures may take longer to come into effect.

According to the government, Canadian auto workers and the auto sector currently face unfair competition from China's state-directed policy of overcapacity and lack of rigorous labour and environmental standards. Chinese producers are generating a global oversupply that will erode the profit incentives of EV producers around the world, including in Canada.

The consultations document, released July 2 and available online,^[2] shows that there has already been an initial influx of imports of EVs made in China into the Canadian market. According to the consultation document, there were \$2.2 billion of imports in 2023, up from only \$84 million in 2022, a 26-fold increase.

3. Potential Policy Actions

The government likely has three primary mechanisms for addressing stated concerns:

1. **A Surtax on Chinese EVs:** Canadian legislation empowers the government to impose special tariffs to enforce Canada's rights under trade agreements or respond to foreign policies that negatively impact Canadian trade. Section 53 of the Customs Tariff provides for the application of trade measures, including surtaxes, to respond to acts, policies or practices of other countries that adversely affect Canada's trade interests. Unilateral tariffs imposed under Section 53 may raise issues with World Trade Organization ("WTO") agreements and could possibly be contested by China at the WTO. The consultation specifically requests that parties provide reasons for support for, or concern with, a potential surtax, including detailed information substantiating any expected impact.
2. **Safeguard Investigation:** This option would involve a formal investigation by the Canadian International Trade Tribunal ("CITT") to determine if safeguard measures, such as tariff-rate quotas or duties at the border are warranted. Although the consultations document does not specifically request comments on the appropriateness of a safeguard investigation, safeguards have long been used to counter surges in imports. Safeguards may form part of the government's legal and policy response, and the government does specifically welcome comments on any measure that restricts imports and could potentially have an impact on the price and/or selection of EVs available in Canada.
3. **Antidumping/Countervailing ("AD/CVD") Investigation:** As with a safeguard, an AD/CVD investigation was not expressly referred to in the consultation, though such an investigation appears to be an obvious option that the government may be considering. This option could be initiated by the Canada Border Services Agency ("CBSA") on its own initiative, or at the request of Canadian producers, to assess the impact of any dumping or subsidies on the Canadian industry. Following an established legislative process, AD/CVD investigations may lead to duties to offset the injury or threat of injury to domestic producers caused by the unfair trade. The consultations document specifies that the government is welcoming additional information from stakeholders on Chinese policies causing overcapacity and accelerating exports of EVs from China. This includes information on subsidies, including subsidies on key production inputs such as critical minerals, steel and aluminum, as well as "problematic environmental or labour practices" or any other non-market policies and practices.

The consultations document also seeks comments on:

1. **Excluding China from incentive programs for EVs:** whether to exclude zero-emission vehicles made in China from eligibility under Incentives for Zero-Emission Vehicles ("iZEV") Program and Incentives for Medium- and Heavy-Duty Zero-Emission Vehicles ("iMHZEV") Program, including views on how Canada should implement such a restriction. The iZEV Program is currently set to end by March 31, 2025, while the iMHZEV Program is set to end by March 31, 2026.
2. **Investment restrictions:** whether additional actions and restrictions relating to transactions and

investment from Chinese sources in the Canadian EV supply chain are required or would be desirable to safeguard net benefits to Canadians and Canadian national security. The consultations document notes that Chinese companies could seek to establish facilities to manufacture EVs within Canada (e.g., to access the North American market in light of potential tariff measures). Currently, the Investment Canada Act requires prior approval of large foreign acquisitions of Canadian companies for likely economic net benefit, and all foreign investments into Canada are potentially subject to national security review regardless of value, including new project investments and non-controlling minority investments. In November 2022, the government announced a new policy that investments by Chinese companies in the critical minerals sector (including lithium and other materials that are critical for EV batteries) would normally not be permitted.^[3]

3. **Cyber and data security issues in connected vehicles:** noting that connected vehicles with technology from China could pose cyber and data security risks, along with associated privacy considerations, whether there are risks and concerns related to connected vehicles and on global supply chains for information and communications technology and services (“ICTS”) developed, manufactured, or supplied by China.
4. **Other measures:** whether there are other potential policy responses that stakeholders may wish to propose, including proposals related to protecting Canada’s broader EV supply chains, including steel and aluminum.

The government intends to review any measures applied following this consultation process within a year of implementation, and notes that any measures could be further extended and supplemented as appropriate.

4. Context: US and EU Measures on EVs

The Canadian government’s consultation comes on the heels of similar measures taken by the United States and the European Union. The US has implemented tariffs on Chinese EVs and related components as part of broader trade disputes with China and initiatives to support domestic manufacturing. Similarly, the European Union initiated investigations into Chinese subsidies for EVs, aiming to ensure fair competition and protect its automotive industry. As a result, duties are now applicable in both the US and the EU.

These actions by the US and EU reflect a growing trend among major economies to address perceived unfair trade practices by China, particularly in the rapidly expanding EV market. Canada's potential measures are aimed at alignment with these international efforts to safeguard local industries and ensure a level playing field.

5. Legal and Trade Implications

The possible application of a surtax through the invocation of Section 53 of the Customs Tariff suggests an

aggressive stance by the government and possible tension between domestic law and international legal commitments. Such a surtax raises risks of potential unilateral retaliation by China (as China has done against recent unilateral US tariffs) or potential WTO challenges that could arise from the imposition of unilateral tariffs. Alternative processes for tariff imposition, including safeguards or AD/CVD investigations may carry reduced risk of retaliation given that they are well established legal avenues and are specifically provided for under WTO agreements.

6. Contact Information

This bulletin provides general information about the current consultation on potential tariffs and other measures related to Chinese EVs and the possible legal and trade ramifications. For specific and tailored advice and strategic support, please contact McMillan's International Trade Group. Our team of experts include former Government of Canada trade officials, including former trade counsel to the government and a former member of the CITT, as well as leading international trade advisors and litigation lawyers.

[1] See: Deputy Prime Minister of Canada, Press Release, [Canada announces consultation to protect Canadian workers and electric vehicle supply chains from unfair Chinese trade practices](#), June 24, 2024.

[2] Department of Finance Canada, [Consultations on potential policy responses to unfair Chinese trade practices in electric vehicles](#), July 2, 2024.

[3] See earlier bulletin: [Foreign Investment in Canada: Minerals are Critical and Annual Report Released](#), November 2022,

<https://mcmillan.ca/insights/foreign-investment-in-canada-minerals-are-critical-and-annual-report-released/>

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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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