

USE EXISTING TRADE LAWS TO BENEFIT CANADA'S INTERESTS

Issue

The trade tensions Canada experiences for four years during the presidency of Donald Trump will not go away overnight. On the contrary, President Joe Biden has made some policy decisions that have negatively impacted the Canadian economy, cost Canadian jobs, and undermined the already fragile trade relationship between Canada and the United States. Canada must utilize every tool in its international trade tool chest to show its determination in putting the interest of Canadian and our economy at the forefront. One such tool is using our existing trade laws Section 53 of the Custom Tariff.

Background

The United States has a powerful economy. It is one that has been built from amassing wealth, natural resource extraction, open borders, and intricate financing, among a plethora of other contributing factors. As the richest nation in the world, it has developed a trade imbalance with its trading partners. It has developed policies to ensure that all trading relationships will be of benefit to their industry. These policies include Section 201 (safeguards) and Section 301 (imports restrictions on intellectual property and technology) of the United States Trade Act of 1974¹ and Section 232 (surcharges) of the Trade Expansion Act.²

Section 201, Section 301, and Section 232 have been abundantly used by the United States in the last four years by former President Trump. They have been used against the European Union (the EU) China, and, more pertinently, used or threatened to be used against Canada for a variety of reasons. The use has destabilized various markets in Canada.

Section 232 gives the president the executive authority to apply tariff surcharges or other restrictions for national security reasons in times of genuine international emergency. Originally intended to be used to open markets by reducing tariffs, Trump used Section 232 against imports from China, the EU, and Canada for the opposite effect.

Section 301 was similarly enacted to liberalize trades and forge relationships to reduce foreign trade barriers that impede the United States from doing trading in different countries. The Act gives the president the authority, such as using tariffs and non-tariff forms, to make a foreign country to remove any act, policy or practice that violates an international trade agreement that burdens or restricts US commerce.

Canada has utilized the World Trade Organization to settle any trade disputes. This leads to lengthy and costly negotiations that sometimes have no beneficial resolution. Instead, Canada should look to use Canadian law to ensure that foreign actors are not jeopardizing Canada's domestic and international economic interests. While the US has a plethora of trade statutes, Canada has one that can provide cabinet the means to retaliate effectively and efficiently: Section 53 of the Customs Tariff.³

Section 53 says:

¹ <https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg1978-2.pdf>

² <https://www.govinfo.gov/content/pkg/STATUTE-76/pdf/STATUTE-76-Pg872.pdf>

³ <https://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/menu-eng.html>

Notwithstanding this Act or any other Act of Parliament, the Governor in Council may, on the recommendation of the Minister and of the Minister of Foreign Affairs, by order, for the purpose of enforcing Canada's rights under a trade agreement in relation to a country or of responding to acts, policies or practices of the government of a country that adversely affect, or lead directly or indirectly to adverse effects on, trade in goods or services of Canada, do either of the following:

- *suspend or withdraw rights or privileges granted by Canada to any country under a trade agreement or Act of Parliament,*

or

- *make goods that originate in any country . . . or a class of such goods . . . subject to a surtax in an amount, in addition to the customs duty provided in this Act and the duties imposed under any Act of Parliament or in any regulation or order made under any Act of Parliament, for those goods or that class of goods;*

Cabinet is able to implement countermeasures without the need of parliamentary or WTO approval, similar to Sections 232 and 301 in the US. The Minister of Finance and Minister of Foreign Affairs must make the recommendation, though, which follows an order from the cabinet. Section 53 can also be used when a foreign government enacts policies that are detrimental to Canada, whether they impact trade or otherwise. This Section can be used when humanitarian atrocities are being carried out by governments, condemning those actions and upholding Canadian values.

The Canada-US Relation Committee would carry out many duties because our relationship with the US is complex and interconnected on many levels. Additionally, Buy American orders by President Biden may be a cause for concern. The Committee would need to apprise government and the public on how this will impact Canadian industries, trade access, and Canadian jobs.

The Federal Government had established a committee, which has not been active in recent years⁴. This committee should be restarted and should include presentations from relevant stakeholders and provincial governments.⁵

Canada has used Section 53 when the US imposed steel and aluminum tariffs in 2018. The use resulted in tariffs remaining until May 2019 after negotiations. The Trump administration then used Section 232 tariffs on aluminum in June 2020, which Canada responded to with a promise to impose Section 53 on September 16, 2020. Due to this threat, the Trump administration removed the tariffs a day before Section 53 was to take effect.

Short of a public display of power, as the US has done in the past, it is difficult to discern when policies are enacted that disadvantage Canadian interests. There used to be a publication of foreign trade barriers to Canadian companies. This tool could be utilized by the government to understand when Canadian companies are experiencing difficulty in trading abroad. Global Affairs should publish this annual report once again. While an annual report on the state of Canada's trade performance is issued by Global Affairs⁶, there is no longer a separate report listing foreign trade barriers faced by Canadian

⁴ <https://www.ourcommons.ca/Committees/en/CAAM/StudyActivity?studyActivityId=11159195>

⁵ <https://www.ctvnews.ca/politics/mps-agree-to-form-special-canada-u-s-relations-committee-1.5311327?cache=yes>

⁶ <https://www.international.gc.ca/gac-amc>

exporters of goods and services. The Trade Commissioner Service has a facility allowing Canadian exporters to register trade barriers but there is no comprehensive public disclosure of those obstacles.

THE CHAMBER RECOMMENDS

That the Federal Government:

1. Reinststate the annual publication on foreign trade barriers submitted by Canadian companies;
and
2. Continue to use Section 53 of the Custom Tariffs Act to combat tariffs and other policies that impede Canadian trade interests where appropriate and deemed advantageous in the long-term to Canadian interests
3. Restart the Canada-US Relations Committee and include consultations from relevant stakeholders, such as the Boards of Trades/Chambers of Commerce, and the provincial governments in its mandate.

Submitted by the Surrey Board of Trade