



**FINANCIAL POST    7 May 2025**

## **Our trade laws need to be made Trump-shape**

**Lawrence L. Herman**

Canada's trade laws need serious reform, not just tinkering, to deal with Donald Trump's aggressive tariff war and the reality of a shattered global trading order. Drafted decades ago to conform to the rules of the *General Agreement on Tariffs and Trade (1947)* and the *World Trade Agreement (1994)*, our laws are now out of step with an international trade order that lies in ruins thanks to Donald Trump.

The core problem is that Canada faces an influx of foreign goods that, shut out of the American market, are now flooding the globe. One recent analysis says "billions of dollars in trade are being rerouted, with a tidal wave of diverted goods now headed for markets around the world." Those markets include Canada.

Canada shouldn't and won't put up omnibus tariff walls against the whole world to try to counter imported products, as Trump has done. As a country that depends on trade, it's in our interest to maintain our relatively open market. But that creates a danger of being flooded with diverted goods from abroad.

This is where “trade remedy law” enters the picture. It comes in three varieties: “anti-dumping,” which Canada can lay claim to having invented (in 1904), which works against imports that foreign companies sell here at less than cost; “countervailing duties,” which our government can impose to offset foreign subsidies in the production of imported goods; and “safeguard relief,” where duties can be applied even if imports are neither dumped nor subsidized but are disrupting the Canadian market.

GATT/WTO rules allow these interventions because imports that are subsidized or sold below cost are market-distorting, depress prices, take sales away from domestic companies and ultimately destroy jobs. Safeguard procedures recognize that, even when sold at unsubsidized prices that fully cover producers’ costs, imports can create short-term havoc in domestic markets that may erode support for open international trade.

Like ordinary civil litigation, Canada’s trade remedy laws put the burden on private parties to launch a trade action. The Special Import Measures Act (SIMA) governs anti-dumping and anti-subsidy actions. A domestic industry has to file a complaint, which the Canada Border Services Agency then investigates. If it confirms the dumping margins or amount of foreign subsidizing, the case goes to the Canadian International Trade Tribunal (CITT), which then holds an inquiry to determine if the targeted imports are causing or threatening to cause “material injury” to the complaining industry. In the case of safeguard relief, the CITT receives the industry complaint directly, reviews it and ultimately holds an inquiry to decide if relief is warranted.

The system has worked reasonably well for years, though it's mainly used by larger corporations, which can more easily afford its high costs. For example, the CBSA's perfectly reasonable requirement that industry complaints be "properly documented" has expanded to the point where complaints and supporting documentation can reach thousands of pages. And when the matter gets to the tribunal, CITT questionnaires can involve seemingly endless demands for financial and other corporate data, which compounds the cost of the proceedings.

Even when the industry succeeds and duties are ordered, the CITT allows importers to file requests to exclude items from those duties because the identical item may not be made by the domestic industry. These exclusion requests, which can run to hundreds of pages, have to be answered in detail by the domestic industry, to the point where this process can dominate the proceedings.

The laws need to be simplified and the process made less cumbersome, faster and — above all — less costly for the industries and their employees that the system is supposed to protect. Lowering costs is especially important for small and medium-sized companies, who aren't deep-pocketed. Processes should be simplified and fast-tracked even more for their sectors and industries.

It's equally important that the Carney government, while holding to the basic requirements of GATT/WTO rules, provide statutory direction that the

overriding duty of Canada's trade agencies is to protect Canadian producers and their employees from dumped and subsidized imports or from other foreign goods flooding into our market. Nothing in the statutes currently does that.

All of this will entail serious adjustment. But the new government needs to recognize that making Canada's trade remedy system responsive to the needs of Canadian companies and workers is a national priority.

\*\*\*

*Lawrence L. Herman, international counsel at Herman & Associates and senior fellow at the C. D. Howe Institute, is past chair of the Canadian International Trade Tribunal's advisory committee.*