Latest developments in foreign investment control

Canada fortifies investment screening framework amid escalating trade tensions

Charles McConnell
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Canada is tightening its foreign investment rules to protect key industries from opportunistic takeovers amid escalating trade tensions with the US – a crisis experts have likened to the covid-19 pandemic.

Innovation minister François-Philippe Champagne announced **updated guidelines** for the Investment Canada Act yesterday, adding economic security as a key factor in reviewing inbound transactions. The move came one day after President Donald Trump's 25% tariffs on Canadian goods took effect.

Champagne said "a rapidly shifting trade environment" could lead to a decline in the valuation of some domestic companies, making them vulnerable to "opportunistic or predatory investment behaviour" by foreign entities.

"When these businesses are important to Canada's economic resiliency due to their size, their impact on the innovation ecosystem, or their place in Canadian supply chains or those of allies on whom we rely, it would run counter to Canada's interests to allow them to fall victim to this type of behaviour to the detriment of Canada's economic security," he said.

While Canada continues to promote foreign investment, Champagne said the new measures will ensure that acquisitions benefiting the broader economy proceed while those that pose risks to Canadian workers, industries or national security are stopped.

"The timing of the statement just one day after the imposition of US tariffs is telling," said Toronto-based Goodmans counsel Kate McNeece. But the policy shift may be more about reinforcing existing policy than introducing something entirely new – with the guidelines simply codifying the government's approach in practice, she added.

"The national security provisions of the Investment Canada Act have increasingly been used to address investments that may be injurious to Canada's economic security – notably, investments in critical minerals companies," she said.

While US investments have traditionally faced less scrutiny under national security laws, that may now change, McNeece said. "The minister's statement could mean that US investors into Canada are more likely to find themselves in the penalty box on economic security issues," she said.

Mark Katz, a partner at Davies Ward Phillips & Vineberg in Toronto, said the current dispute is shaping up to be "the most intensive confrontation between the countries since the War of 1812."

"It certainly has mobilised the Canadian political class in a way that now sees every level of government scrambling to announce policies that are held out as defending Canadian political and economic sovereignty against the incursions – actual or feared – of the US," Katz said.

Drawing comparisons to the pandemic-era restrictions on foreign takeovers, Katz said Ottawa may view the trade dispute as an equally-disruptive economic crisis. However, he noted that it remains unclear whether a wave of predatory foreign acquisitions – feared but never fully realised during the pandemic – will actually materialise in the current environment.

Some experts were unsurprised by the announcement, given the economic pressure caused by new US tariffs on Canadian goods.

"The government is concerned that the tariffs will both force down the value of the Canadian dollar and will make it more costly for American customers to buy Canadian-made products," said Josh Krane, a Toronto-based partner at McMillan.

Canada's manufacturing sector is critical to the broader economy and the prospect of plants shuttering and production moving to the US could have significant impacts on jobs and the tax base, he said.

Krane also pointed to parallels with previous government responses. "Canada revised its national security guidelines at the beginning of the covid-19 pandemic also in response to potential investments in health businesses," he said.

For Toronto-based Blake Cassels & Graydon partner Julia Potter, the move is part of a broader trend in how Canada approaches economic security. She noted that there has been speculation about how the ICA would be used in the ongoing trade discussions and negotiations.

"While Minister Champagne's statement does not address the trade discussions directly, it does confirm Canada's willingness to consider trade issues and maintain Canada's economic security as part of its national security assessment relating to foreign investments."

Potter also highlighted how the concerns mirror those seen during the pandemic, when the federal government also sought to shield domestic businesses from being purchased at a time of low valuations.

"In the trade context, there would similarly be a concern that Canadian businesses struggling because of the imposed tariffs may be bought out by foreign companies – particularly companies from the US – at a time when Canada is interested in protecting its businesses," she said.

While Canada has previously used the ICA to address evolving economic and security concerns, Potter noted the speed of this latest update – comparable to measures the government took for deals related to health infrastructure and PPE during the pandemic.

While the government has changed its approach and guidance to deal with investments in **critical minerals** and **interactive digital media**, "those developments were not as fast as this most recent change to the national security review guidelines," she said.

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