

June 2018

Tit for Tat

Canada Responds to U.S. Duties on Steel and Aluminum

In response to the American announcement of the imposition of duties on Canadian steel and aluminum products, the Canadian Government has issued an announcement that it intends to impose reciprocal surtaxes or similar trade-restrictive countermeasures. These measures will take effect as of July 1, 2018, subject to prior consultations conducted by the Department of Finance. Comments are due by June 15, 2018.

The Department has provided guidance on specific considerations these comments should address to help influence the scope of retaliation, including whether a listed product should not be the target of retaliatory duties, or whether a currently unlisted product should become a target for retaliatory duties.

The list of items for potential retaliatory measures may be found [here](#).

The Department of Finance has proposed two tiers of response. Table 1 sets out a 25% surtax on American steel imports including semi-finished steel, flat-rolled steel products, rebar, steel pipes, wire and structural steel.

Table 2 proposes a 10% duty on a wide range of foodstuffs, consumer products and assorted other goods, as well as aluminum products.

The American measures were imposed under the guise of protecting national security after an investigation pursuant to section 232 of the U.S. *Trade Expansion Act of 1962* (as amended).

The decision of the United States to impose duties on Canadian steel is difficult to understand. The burden on automotive production will be significant as steel goods may cross the border several times in processing before being installed in an automobile. The imposition of 25% duties is going to severely hamper the supply chain for automotive producers throughout North America.

The imposition of duties on Canadian steel is further perplexing since there is an approximate balance in the steel trade between Canada and the U.S. Canadian retaliation will hit significant American imports. In the year to date, American steel products comprise over 75% of steel plate imports, 85% of hot-rolled steel imports, 80% of cold-rolled steel imports, and over two-thirds of galvanized steel imported into Canada. The United States is also the largest exporter to Canada of rebar for construction, oil country tubular goods, structural steel and alloy steel bars.

The proposed measures should be beneficial to Canadian steel producers, providing that there is not a surge of imports from other countries that have been displaced from the American market by the duties imposed under section 232.

The second level of retaliation proposes 10% duties on a wide range of foodstuffs, consumer products and assorted other goods in addition to aluminum products. Duties on non-aluminum goods expand the scope of retaliation to approximate the total impact on the value of lost sales of Canadian goods to the United States. These measures also are aimed at politically sensitive products exported from the United States.

As noted above, these measures are projected to go into effect on July 1, 2018, subject to any adjustments the Government might make in response to the submissions that have been requested by June 15.

Similar retaliatory measures have been announced by the European Union, and by the Government of Mexico.

As an aside, an interesting question relates to the legality of both U.S. measures and retaliatory measures under international trading rules. The duties under section 232 were claimed to be measures taken under the national security exemption of Article XXI of the GATT 1994. The European Union has already indicated its intention to challenge this position in the WTO Panel process. Canada's Foreign Minister Chrystia Freeland has suggested that Canada will also challenge the American measures at the WTO (and under NAFTA). The broad scope of the national security exemption claimed by the United States will be difficult to justify, in its entirety, under WTO Panel proceedings.

At the same time, immediate retaliation is not the method of challenging trade-restricting measures under the WTO regime. The WTO dispute resolution process contemplates consultations, followed by Panel review and potentially further review by the Appellate Body. If measures which are found to be non-compliant are not promptly withdrawn, a successful WTO Member must then request the right to withdraw up to an equivalent amount of concessions it had made under previous trade agreement negotiations, and pursue this objective through arbitration proceedings if the magnitude of the retaliation is contested.

Given that the entire WTO challenge procedure can take a few years, the practical reality is that reciprocal measures may be more effective than waiting for the WTO process to reach a conclusion. The United States could also attempt to challenge retaliatory measures implemented by Canada or other countries through the WTO process, but that too would take a few years to complete. At the end of the day, the retaliatory measures could be withdrawn without penalty.

A trade war is never a good thing and will inevitably have an impact on consumers everywhere. Nevertheless, the inherent unfairness of allowing American companies free access to other markets when such access is being denied to the American market, does make retaliation a politically attractive short-term response

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[a cautionary note](#)

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