

ALUMINUM TARIFF DEJA VU? WHAT IS DIFFERENT THIS TIME.

Posted on August 19, 2020

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The United States has imposed a 10% tariff on imports of Canadian non-alloyed unwrought aluminum^[1] effective August 16, 2020.^[2] This announcement came just over one month after the coming into force of the *Canada United-States and Mexico Agreement* (“CUSMA”)^[3] and restores some of the tariffs imposed in 2018 and removed in 2019. However, the retaliatory measures that Canada is designing for adoption on September 16, 2020 will be more focused on aluminum-related products.

We’ve Been Down This Road Before

In June 2018, the US imposed tariffs of 10% on imports of Canadian aluminum and 25% on imports of Canadian steel. The tariffs were purportedly imposed based on national security grounds pursuant to section 232 of the US Trade Expansion Act of 1962. Canada (along with Mexico, which was affected by similar US measures) challenged the tariffs at the WTO.

In July 2018, after a rapid consultation period during which interested parties could express concern or support for various possible counter-measures, Canada retaliated with surtaxes. The surtaxes were designed to match the estimated total dollar amount of the US’ tariffs and were imposed on a wide range of products imported from the US including steel, aluminum, and consumer goods like orange juice, whiskey and dish detergent.^[4]

Ceasefire Was Only Temporary

In May 2019, the US and Canada issued a joint statement (“**Joint Statement**”) agreeing to eliminate the tariffs and surtaxes.^[5] Both parties also agreed to terminate all pending litigation at the WTO regarding the tariffs and retaliatory measures.

The Joint Statement contains two important qualifications. First, it left open the possibility for the United States to impose duties where “imports of aluminum or steel products surge meaningfully beyond historic volumes of trade over a period of time.” The new US aluminum tariffs are being imposed based on this escape clause, even though there are different viewpoints as to whether a surge has occurred overall or in respect of particular products.^[6]

Second, the Joint Statement requires that any retaliatory measures be undertaken in sectors affected by the

imposed duties. Therefore, unlike 2018, Canada's retaliation will be limited to counter-measures in respect of aluminum and aluminum-containing products imported from the US.

Canada Is Inviting Prompt Input on 2020 Counter-measures

Canada has announced its intention to act "forcefully" and impose dollar-for-dollar retaliation on aluminum and aluminum-containing products imported from the US.^[7] Surtaxes on selected products will take effect on September 16, 2020.

The consultation period in which affected businesses can provide views on the scope of the counter-measures is open until September 6, 2020. As a starting point, the Department of Finance has provided a list of potential aluminum and aluminum-containing products that may be subject to a 10% surtax (see this [link](#) for the list). The list includes some consumer products that contain aluminum, such as washing machines, refrigerators, and bicycles. However, it focuses primarily on aluminum products that are inputs that would be used by Canadian businesses in various sectors, and such businesses may want to ensure that the Government fully considers the harm that may result from such surtaxes.

In 2018, certain products (e.g. prepared mustard, beer kegs, and sailboats) were removed from the list of products targeted for retaliation based on the inputs received. Interested companies and industries have until September 6, 2020 to submit written comments and should focus on specific concerns with (or, if applicable, provide support for) particular proposed counter-measures based on the impact on Canadian economic or strategic interests.

Companies that expect to import goods found on the proposed list of aluminum and aluminum-containing products to be surtaxed may also want to consider importing required quantities before September 16, 2020 to avoid duties. Note that the surtaxes will not apply to US goods that are in transit to Canada as of September 16, 2020.

Will Duty Relief be Available?

Any counter-measures that are imposed will likely pose a challenge for Canadian businesses that rely on US import sources. For businesses that face this challenge, avenues of relief that may be available include the Duty Drawback Program, the Duty Relief Program, and duty remissions under the *Customs Tariff Act*. The Duty Drawback Program allows for a refund of paid surtaxes and the Duty Relief Program allows applications for relief from paying surtaxes at importation. Both of these programs are available only where goods are imported for subsequent export, either as-is or after being further processed. Duty remissions under the *Customs Tariff Act* allow for duty relief or a refund where the materials to be imported are not available from Canadian producers.^[8]

During 2018-2019, the Department of Finance recognized the negative impact the surtaxes had on Canadian businesses and implemented a revised remissions request process along with additional guidance on submitting remissions requests. It indicated that requests for remissions would be considered in the following circumstances:

- To address situations of short supply in the domestic market, either on a national or regional basis.
- Where there were pre-existing contractual requirements for Canadian businesses to use US steel or aluminum in their products or projects.
- To address, on a case-by-case basis, other exceptional circumstances that could have severe adverse impacts on the Canadian economy.

In addition to meeting the above qualifications, remissions requests require detailed information including an outline of the company's operations, evidence demonstrating inability to source the imported product, or substitutes, from Canadian or non-US suppliers, and information on the effect of remission on employment, volume of production, investment, or other relevant aspects of operations.

This process was discontinued once the 2018-2019 surtaxes were eliminated. However, the Department of Finance will likely handle remissions requests regarding the new aluminum surtaxes similarly.

Concluding Observations

The economic and trade policy environment for Canada is likely to be challenging and unpredictable in the coming months. Canadian businesses that may be affected by the US aluminum tariffs and Canadian counter-measures have a few weeks in which to seek to influence the Canadian response. After that, duty relief and remissions avenues may be available in some limited circumstances. McMillan's trade lawyers and the McMillan Vantage government relations team are available to assist businesses with these options.

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[1] The tariffs apply to aluminum products imported under HS code 7601.10. See online [here](#) and [here](#). [ps2id id='1' target='']

[2] Office of the United States Trade Representative, Statement on the Presidential Proclamation, 6 August 2020, [online](#). [ps2id id='2' target='']

[3] See our previously published bulletin on the implementation of CUSMA [here](#). [ps2id id='3' target='']

[4] For more information on how Canada responded to the 2018 US tariffs, see our previously published bulletin [here](#). [ps2id id='4' target='']

[5] Joint Statement by Canada and the United States on Section 232 Duties on Steel and Aluminum, online; At the same time, the United States and Mexico announced a parallel agreement. See Joint Statement by the

United States and Mexico on Section 232 Duties on Steel and Aluminum, [online](#).^[ps2id id='5' target='']

[6] According to the Office of the United States Trade Representative, imports have surged above historical levels and “the surge has intensified in recent months, despite a contraction in US demand.” See Office of the United States Trade Representative, Statement on the Presidential Proclamation, 6 August 2020, [online](#). The United States Aluminum Association, which represents the vast majority of American aluminum producers (but not the two producers that sought the tariff protection), has stated that “reports of a ‘surge’ of primary aluminum imports from Canada are grossly exaggerated” and that the section 232 tariffs are an “ill-advised action on a key trading partner [that] undermines the [CUSMA’s] benefits at a time when US businesses and consumers can least afford it.” See: The Aluminum Association, *Reinstating Section 232 Aluminum Tariffs the Wrong Approach for U.S. Industry*, 6 August 2020, [online](#).^[ps2id id='6' target='']

[7] Government of Canada – Department of Finance, Notice of intent to impose countermeasures, [online](#).^[ps2id id='7' target='']

[8] For more information on each of these relief avenues, see our previously published bulletin [here](#).^[ps2id id='8' target='']

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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