THE PAUSE ON THE TARIFF WAR: HOW BUSINESSES CAN USE THE REPRIEVE WISELY

Posted on February 5, 2025

Categories: Insights, Publications

Late in the day on Monday, President Trump and Prime Minister Trudeau reached an agreement pausing the imposition of the 25% tariffs each country had threatened to impose. While the reprieve is a welcome one, many uncertainties remain, and Canadian businesses should continue to prepare for the new tariff implementation date, set for **March 4, 2025**.

Below, we briefly explain the scope of the US tariffs on Canadian goods, as well as Canada's initial proposed response. We also outline potential avenues of relief for Canadian importers should the tariffs on US goods come into effect and conclude with potential risk mitigation measures Canadian businesses should consider going forward.

The U.S. Tariffs on Canadian Goods

On February 1, President Trump signed an Executive Order Imposing Duties to Address The Flow of Illicit Drugs Across Our Border ("**Executive Order**") which set in motion sweeping tariffs initially planned to take effect against Canada on February 4, 2025. On February 3, President Trump issued another Executive Order stating that these tariffs will be paused and will not take effect until March 4, 2025. Assuming no revisions are made to the Executive Order, on March 4, 2025, the United States will impose the following tariffs:

- 25% on all imports from Canada and Mexico;
- 10% on all energy imports (including oil, natural gas, electricity, and critical minerals) from Canada; and
- 10% on all imports from China.

The Executive Order is sweeping: there are few exceptions,[1] the tariffs will apply to Canadian imports valued less than $800 (which are currently duty free and receive *de minimis* treatment), and duty drawbacks (read: refunds, including where goods are re-exported from the United States) are expressly not available under the Executive Order.

Canada's Plan for Retaliatory Tariffs

In response, Canada announced that it would impose 25% tariffs on $155 billion worth of US-origin goods in a two-phased approach:

- Phase 1 (originally planned for February 4, 2025, now paused): $30 billion in imported US-origin goods including orange juice, peanut butter, wine, spirits, beer, coffee, appliances, apparel, footwear, motorcycles, and cosmetics, among other goods. A detailed list of the goods planned to be covered in Phase 1 is available on the Department of Finance's website. Canada planned to implement Phase 1 through the United States Surtax Order (2025).
- Phase 2 (anticipated after consultation period): Additional $125 billion in imported US-origin goods. A full list of these goods was expected after a 21-day public consultation period prior to implementation and is expected to include products such as passenger vehicles and trucks (including electric vehicles), steel and aluminum products, certain fruits and vegetables, aerospace products, beef, pork, dairy, trucks and buses, recreational vehicles and recreational boats.

Many levels of governments, including at the provincial and municipal level also announced plans to introduce non-tariff measures should the US continue to impose tariffs on Canadian goods. These measures included imposing bans on US contractors bidding on procurement opportunities, pulling American alcohol from shelves, and reducing interprovincial trade barriers.

The Unknowns That Lie Ahead: Timing and Additional Measures

- Will the tariffs go into effect at all? The Executive Order pausing the tariffs indicates that the tariffs were paused because "the Government of Canada has taken immediate steps designed to alleviate the illegal migration and illicit drug crisis through cooperative actions." In theory, it is possible for President Trump to deem that Canada has taken "sufficient action to alleviate the crisis" at the border, and therefore abate the threat that "justifies" the tariffs. It may also be the case that this pattern of threats and negotiation continues.
- Will Canada maintain its two-phase approach? It is unclear whether Canada will maintain its two-phased approach or whether it will continue with consultations on additional goods to cover under retaliatory tariffs and implement these tariffs at once on March 4.
- If the tariffs do go into effect, how long will the tariffs be in place? An end-date for these tariffs is unknown. President Trump stated that the tariffs will remain in effect until he is satisfied that Canada has sufficiently addressed the 'national emergency' concerns outlined in the Executive Order. Canada has been clear that tariffs will remain in place until the President removes US tariffs on Canadian goods. While President Trump's announced surtaxes will already have significant consequences in Canada as is, the US Administration has signaled that further trade pressure points are still being considered such as targeted tariffs on critical goods such as copper, steel and aluminum.

- Will the US escalate its tariffs in response to Canadian retaliation? The Executive Order includes a 'No Retaliation Clause' which means that, should Canada proceed with its retaliatory tariffs, the US may increase its tariffs in turn. Further, as noted in our previous bulletin, the "America First Trade Policy" Executive Order triggered an investigative review into the causes of US trade deficits and any related economic and national security implications. The investigation will be summarized in a report presented to the President by April 1, 2025, which could mean that Canada could be subject to further trade actions or heightened scrutiny on imports by the US.

Potential Relief for Canadian Importers: Exceptions, Duty Drawbacks and Remission Orders

Relief may be available for Canadian businesses that import US-origin goods covered by Canada's retaliatory tariffs.

- "US Origin": Canada's retaliatory tariffs only covered goods that "originate in the United States" pursuant to the *Determination of Country of Origin for the Purpose of Marking Goods (CUSMA Countries) Regulations*. Accordingly, it is not enough that the goods are physically shipped from the United States or are under US ownership. There is a specific legal meaning to US-origin goods in this situation and companies should ascertain whether goods they may import meet this legal definition of US-origin.
- Exceptions: The Canada Border Services Agency ("**CBSA**") issued Customs Notice 25-03 (which has since been archived) indicating that there are certain exceptions to the application of the retaliatory tariffs. For instance, the surtaxes will not apply to goods that are temporarily imported for repair in Canada or re-imported into Canada after being exported for repair. Should the tariffs come into effect, exceptions may be available for Canadian importers to reply on to avoid duty liability.
- Duty Drawbacks: The same Customs Notice indicated that duty drawbacks may be available for eligible imports. Duty drawbacks are available when the imported goods are later exported as-is, or when goods are used to produce other goods for export. Canadian manufacturers importing inputs for products that are later exported from Canada may be able to avail themselves of the CBSA's Duty Drawback process.
- Remission Applications: Canadian importers may be able to request remission of tariffs that apply to goods from the United States, including those covered in the retaliation list. Remission is distinct from duty drawback in that it is not limited to goods that are ultimately exported (whether as an input or not). The Department of Finance published a notice outlining the process for applying for remission of duties on US-origin goods. It stated that remission would only be considered in "exceptional and compelling circumstances". The notice has since been removed, but nevertheless this may be an avenue for relief for certain importers.

Key Takeaways & How McMillan and McMillan Vantage Can Help

Our team previously published a bulletin about Preparing for Potential US Tariffs: Key Dates and Strategic Considerations, summarizing key mitigation steps in navigating US trade policy changes. We provided a list of considerations for businesses that want to proactively address the effects of the tariffs. Given the uncertainties, Canadian businesses should give serious consideration to pro-active measures that will help weather the trade storm:

- **Monitor key Canadian/US government announcements & implementation dates** to anticipate any further disruptions to your business operations and consider the scope of impact.
- **Engage with customers & suppliers** to clarify duty liability, negotiate shorter-dated contracts, and avoid pricing disputes.
- **Review contracts and Incoterms** to determine tariff responsibilities and ensure clarity on duty liability.
- **Optimize Transfer-Pricing Arrangements** to reduce duty costs, including in a manner that reduces the underlying value of the good to which the tariff is applied.
- **Advocate with governments** to secure financial support or exemptions.
- **Diversify trade** to reduce over-dependency on the US market and safeguard domestic opportunities.

McMillan's International Trade team is available to help your business navigate these potential tariffs and develop strategies to minimize their impact. McMillan Vantage, a full-service, national public affairs firm, can assist with government engagement regarding tariff support and mitigation.

Please contact us for assistance with contract reviews, trade compliance, or advocacy efforts.

[1] The Executive Order does not cover "postal, telegraphic, telephonic, or other personal communication which does not require the transfer of anything in value", certain donations, imports of informational materials, or imports associated with travel (e.g. personal luggage).

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A Cautionary Note