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Tax Alert – Canada

Canada to impose retaliatory tariffs on certain US origin products starting 1 July 2018

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

Effective 1 June 2018, the United States followed through on its announcement to impose general tariffs on certain imports of Canadian steel and aluminum products. In response, Canada proposed retaliatory measures against CDN\$16.6 billion worth of US imports of steel, aluminum and many finished goods.

Background

Effective 1 June 2018, the United States followed through on its announcement to remove the Canadian exemption from the global “national security” interest tariffs imposed on US imports of steel and aluminum products at the rates of 25% and 10%, respectively. These tariffs were based on a previous finding by the Department of Commerce under section 232 of the *Trade Expansion Act of 1962*, which concluded that the import of Canadian steel and aluminum products threatened US “national security” interests.

In response, Canada proposed a dollar-for-dollar retaliatory measure, in the form of surtaxes or similar trade-restrictive countermeasures, against CDN\$16.6 billion worth of US imports of steel, aluminum and many finished goods. These retaliatory measures were announced in the Department of Finance’s *Notice of Intent to Impose Countermeasures Action Against the United States in Response to Tariffs on Canadian Steel and Aluminum Products*. They are scheduled to take effect on 1 July 2018, unless the US exempts Canada from the tariffs.

The Department of Finance has launched a consultation process for interested parties to comment on the proposed countermeasures. In addition to these countermeasures, Canada requested World Trade Organization (WTO) dispute consultations on 6 June and also announced it intends to launch dispute-settlement proceedings under NAFTA Chapter 20.

Proposed countermeasures

Canada's *Notice* proposes to target two categories of US origin goods as identified according to their Harmonized System tariff classification at the heading, subheading or tariff item level.

The *Notice* proposes a 25% surtax on certain iron and steel products classified in chapters 72 and 73 of the Customs Tariff Schedule (see **Table 1** attached). The Department of Finance also proposes a 10% surtax on aluminum products, as well as a range of finished goods, including foods, hygiene products, household appliances and articles, recreational goods and certain plywood, paper and paperboard products (see **Table 2** attached).

The surtaxes will apply to US origin goods based on the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations* (essentially US Tariff NAFTA origin goods). Non-US origin goods transiting through the US to Canada and non-US origin goods distributed from the US to Canada will not be subject to the surtaxes or any other countermeasures.

It is noted that "surtaxes" are a customs "duty" under the *Customs Act* (Canada) based on the value for duty of the goods in question. Importantly, they can be subject to drawback (refund) if not consumed in Canada (e.g., exported or destroyed before consumption or use in Canada) or, in other situations, subject to interpretation under section 89 of the *Customs Tariff* (Canada). The applicability of any particular duties relief program will depend on the definition of "duty" under that program.

Relationship to NAFTA negotiations

The US tariffs and Canadian countermeasures were preceded by a tense NAFTA negotiating round that failed to resolve the current impasse. Canada was initially exempted from the US steel and aluminum tariffs by the US in an attempt to reach a deal on NAFTA by the end of May. However, Canada has stated that it would rather see NAFTA collapse than accept US demands such as the proposed five-year sunset clause, the high-US Regional Value Content automotive requirement scheme proposed by the US, or the abolition of the state-to-state dispute resolution process.¹

Implications for businesses

Canada's proposed countermeasures are not final and may be subject to change as part of the Canadian consultation process, and importers, particularly manufacturers, can submit requests for exclusion to the Department of Finance. The number of goods targeted may increase or decrease, the form and severity of the countermeasures may change from the

¹ <https://www.bloomberg.com/news/articles/2018-05-29/canada-would-rather-have-no-nafta-than-a-bad-deal-trudeau-says>

proposed surtaxes, and there is a possibility that the US will rein back its escalating trade action before Canadian countermeasures take effect on 1 July.

It is clear that since the decision to open NAFTA renegotiations, tensions in US-Canada trade relations have grown considerably and will likely remain significant for the near future. On 23 May 2018, the US Department of Commerce initiated a section 232 investigation on whether imports of automobiles, including SUVs, vans and light trucks, and automotive parts into the United States threaten to impair US national security.² The fate of Canada's supply management system remains in the NAFTA crosshairs as well.³ The Trump administration has been consistently vocal about its protectionist trade policy, and it seems that it considers trade an essential element of US national security strategy and national security interests.⁴ It appears now that Canada's close economic and cultural ties to the US do not discourage US trade restrictive measures in any meaningful way.

Given the current instability and uncertainty, importers and exporters across all industries engaged in US-Canada cross-border activity would benefit from reviewing their supply chains and sourcing patterns. Several other countries are subject to US tariffs and are potential candidates for additional trade actions, which will only further complicate matters for businesses with multinational supply and sourcing structures. In today's uncertain and volatile international trade environment, importers and exporters will require the ability to accurately map their supply chains and use data to make the critical decisions that will enable them to survive today's unstable trade environment while lesser-prepared competitors go by the wayside.

Learn more

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² <https://www.commerce.gov/news/press-releases/2018/05/us-department-commerce-initiates-section-232-investigation-auto-imports>

³ <https://www.bloomberg.com/news/articles/2018-06-04/trudeau-takes-heat-from-dairy-farmers-for-opening-door-to-trump>

⁴ <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>

Table 1	
Tariff heading, subheading or item*	Description**
72.06	Iron and non-alloy steel in ingots or other primary forms (excluding iron of heading 72.03)
72.07	Semi-finished products of iron or non-alloy steel
72.08	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated
72.09	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated
72.10	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated
72.11	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated
72.12	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, clad, plated or coated
72.13	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel
72.14	Bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling
72.15	Other bars and rods of iron or non-alloy steel
72.17	Wire of iron or non-alloy steel
72.18	Stainless steel in ingots or other primary forms; semi-finished products of stainless steel
72.19	Flat-rolled products of stainless steel, of a width of 600 mm or more

Table 1

Tariff heading, subheading or item*	Description**
72.20	Flat-rolled products of stainless steel, of a width of less than 600 mm
72.21	Bars and rods, hot-rolled, in irregularly wound coils, of stainless steel
72.22	Other bars and rods of stainless steel; angles, shapes and sections of stainless steel
72.23	Wire of stainless steel
72.24	Other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel
72.25	Flat-rolled products of other alloy steel, of a width of 600 mm or more
72.26	Flat-rolled products of other alloy steel, of a width of less than 600 mm
72.27	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel
72.28	Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel
72.29	Wire of other alloy steel
7216.10	U, I or H sections, of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded, of a height of less than 80 mm
7216.21	L sections, of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded, of a height of less than 80 mm
7216.22	T sections, of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded, of a height of less than 80 mm
7216.50	Other angles, shapes and sections, of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded

Table 1

Tariff heading, subheading or item*	Description**
7216.99	Other angles, shapes and sections, of iron or non-alloy steel
73.05	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, of iron or steel
73.06	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel
7301.10	Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements
7302.40	Railway or tramway track construction material of iron or steel: fish-plates and sole plates
7302.90	Other railway or tramway track construction material of iron or steel
7304.11	Line pipe of a kind used for oil or gas pipelines: of stainless steel
7304.19	Line pipe of a kind used for oil or gas pipelines: other
7304.24	Casing or tubing, of a kind used in drilling for oil or gas: of stainless steel
7304.29	Other casing or tubing, of a kind used in drilling for oil or gas
7304.31	Tubes and pipes, of circular cross-section, of iron or non-alloy steel: cold-drawn or cold-rolled (cold-reduced)
7304.39	Other tubes and pipes, of circular cross-section, of iron or non-alloy steel
7304.41	Tubes and pipes, of circular cross-section, of stainless steel: cold-drawn or cold-rolled (cold-reduced)
7304.49	Other tubes and pipes, of circular cross-section, of stainless steel
7304.51	Tubes and pipes, of circular cross-section, of other alloy steel: cold-drawn or cold-rolled (cold-reduced)

Table 1

Tariff heading, subheading or item*	Description**
7304.59	Other tubes and pipes, of circular cross-section, of other alloy steel
7304.90	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel

*Where listed at the heading or subheading level, coverage includes all tariff items under that heading or subheading.

**Descriptions are included for illustrative purposes and do not necessarily reflect Harmonized System nomenclature.

Table 2

Tariff heading, subheading or item*	Description**
0403.10	Yogurt
0901.21	Coffee, roasted: not decaffeinated
1602.32.11	Prepared meals: of spent fowl, specially defined mixtures
1602.32.92	Other: specially defined mixtures, other than in cans or glass jars; spent fowl other than in cans or glass jars
1602.50.10	Prepared meals, of bovine
1602.50.99	Other prepared or preserved meat of bovine, other than in cans or glass jars
1702.20	Maple sugar and maple syrup
1704.90.20	Liquorice candy; toffee
1704.90.90	Other sugar confectionery (including white chocolate), not containing cocoa
1806.31	Other chocolate, in blocks, slabs or bars: filled

Table 2

Tariff heading, subheading or item*	Description**
1806.32	Other chocolate, in blocks, slabs or bars: not filled
1905.90.51	Pizza and quiche
2001.10	Cucumbers and gherkins
2007.99.10	Strawberry jam
2007.99.90	Nut purées and nut pastes, berry purées, other fruit purées other than banana purée, other jams, jellies
2009.12	Orange juice: not frozen, of a Brix value not exceeding 20
2103.10	Soya sauce
2103.20	Tomato ketchup and other tomato sauces
2103.30.20	Prepared mustard
2103.90	Mayonnaise, salad dressing, mixed condiments and mixed seasonings, other sauces
2104.10	Soups and broths and preparations therefor
2202.10	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured
2208.30	Whiskies
3304.30	Manicure or pedicure preparations
3305.30	Hair lacquers
3307.10	Pre-shave, shaving or after-shave preparations
3307.49	Preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites, not elsewhere specified (nes)

Table 2

Tariff heading, subheading or item*	Description**
3401.30	Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap
3402.20.10	Automatic dishwasher detergents
3406.00.90	Other candles and tapers and the like not including those for birthdays, Christmas or other festive occasions
3506.10	Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg
3808.91.10	Insecticides: in packages of a gross weight not exceeding 1.36 kg each
3808.92.10	Fungicides: in packages of a gross weight not exceeding 1.36 kg each
3808.93.10	Herbicides, anti-sprouting products and plant-growth regulators: in packages of a gross weight not exceeding 1.36 kg each
3923.21.90	Other sacks and bags (including cones) of polymers of ethylene
3923.29.90	Other sacks and bags (including cones) of other plastics, nes
3924.10	Tableware and kitchenware
3924.90	Household articles and hygienic or toilet articles, of plastics
4412.39	Plywood, consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm thickness: other, with both outer plies of coniferous wood
4412.99.90	Other plywood, veneered panels and similar laminated wood
4802.56	Other paper and paperboard, not containing fibres obtained by a mechanical or chemi-mechanical process or of which not more than 10% by weight of the total fibre content consists of such fibres: weighing 40 g/m ² or more but not more than 150 g/m ² , in sheets

Table 2

Tariff heading, subheading or item*	Description**
	with one side not exceeding 435 mm and the other side not exceeding 297 mm in the unfolded state
4811.59	Other paper and paperboard coated, impregnated or covered with plastics (excluding adhesives)
4818.10	Toilet paper
4818.20	Handkerchiefs, cleansing or facial tissues and towels
4818.30	Tablecloths and serviettes
4822.10	Bobbins, spools, caps and similar supports of a kind used for winding textile yarn, of paper pulp, paper or paperboard (whether or not perforated or hardened)
4822.90	Other bobbins, spools, caps and similar supports of paper pulp, paper or paperboard (whether or not perforated or hardened)
4909.00	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.
7310.10	Beer kegs, of iron or steel, of a capacity of 50 litres or more
7310.29	Beer kegs, of iron or steel, of a capacity of less than 50 litres
7321.90	Parts of iron or steel, of stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbeques, braziers, gas-rings, plate warmers and similar non-electric domestic appliances
76.04	Aluminum bars, rods and profiles
76.05	Aluminum wire
76.06	Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm

Table 2

Tariff heading, subheading or item*	Description**
76.07	Aluminum foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm
76.08	Aluminum tubes and pipes
76.09	Aluminum tube or pipe fittings (for example, couplings, elbows, sleeves)
76.10	Aluminum structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminum plates, rods, profiles, tubes and the like, prepared for use in structures
76.11	Aluminum reservoirs, tanks, vats and similar containers, for any material (other than compressed or liquefied gas), of a capacity exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment
76.12	Aluminum casks, drums, cans, boxes and similar containers (including rigid or collapsible tubular containers), for any material (other than compressed or liquefied gas), of a capacity not exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment
76.13	Aluminum containers for compressed or liquefied gas
76.14	Stranded wire, cables, plaited bands and the like, of aluminum, not electrically insulated
76.15	Table, kitchen or other household articles and parts thereof, of aluminum; pot scourers and scouring or polishing pads, gloves and the like, of aluminum; sanitary ware and parts thereof, of aluminum
76.16	Other articles of aluminum

Table 2

Tariff heading, subheading or item*	Description**
8418.10	Combined refrigerator-freezers, fitted with separate external doors
8419.19	Instantaneous or storage water heaters, non-electric: other than instantaneous gas water heaters
8422.11.90	Dish washing machines, of the household type, other than counter-top electric or portable (of a width not exceeding 46 cm)
8433.11	Mowers for lawns, parks or sports-grounds: powered, with the cutting device rotating in a horizontal plane
8450.11	Household or laundry-type washing machines, each of a dry linen capacity not exceeding 10 kg: fully automatic machines
8450.20	Household or laundry-type washing machines, each of a dry linen capacity exceeding 10 kg
85.37	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading 85.17
8903.10	Inflatable boats
8903.91	Sailboats, with or without auxiliary motor
8903.92	Motorboats, other than outboard motorboats
8903.99.90	Outboard motorboats, other vessels for pleasure or sports, nes
90.32	Automatic regulating or controlling instruments and apparatus
9401.61	Other seats, with wooden frames: upholstered
9404.21	Mattresses of cellular rubber or plastics, whether or not covered
9404.29	Mattresses of other materials

Table 2

Tariff heading, subheading or item*	Description**
9404.30	Sleeping bags
9404.90	Other bedding and similar articles, nes
9504.40	Playing cards
9608.10	Ballpoint pens
9608.20	Felt-tipped and other porous-tipped pens and markers

*Where listed at the heading or subheading level, coverage includes all tariff items under that heading or subheading.

**Descriptions are included for illustrative purposes and do not necessarily reflect Harmonized System nomenclature.

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