

# CLIENT ALERT

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1

## INTERNATIONAL TRADE

### **PRESIDENT TRUMP ANNOUNCES TARIFFS ON CANADIAN STEEL AND ALUMINUM, CANADA QUICKLY RETALIATES WITH TARIFFS ON U.S. IMPORTS: AN UNPRECEDENTED TRADE WAR LOOMS**

by Brenda Swick, Partner and Carly Walter, Summer Associate

On May 31, 2018, by way of two Presidential Proclamations, President Trump imposed tariffs on Canadian exports of steel, which will be subject to a 25% tariff, and Canadian exports of aluminum, which will be subject to a 10% tariff. This move follows President Trump's March 1, 2018 announcement that he intended to impose global tariffs on these products. The announcement stands in contrast with President Trump's previous statements that Canadian products could remain exempt.

These Proclamations are:

1. [Presidential Proclamation Adjusting Imports of Steel into the United States](#); and
2. [Presidential Proclamation Adjusting Imports of Aluminum into the United States](#).

Canada's Department of Finance has indicated that it will retaliate to President Trump's Tariffs by imposing countermeasures against imports of steel, aluminum and other goods originating in the United States. Canada's tariffs on U.S. goods will total up to \$16.6 billion CAD (\$12.8 billion USD) representing the value of the impact that President Trump's steel and aluminum Tariffs will have on Canadian exports. Canada will impose tariffs on U.S. steel at a rate of 25%, and aluminum and various other items at a rate of 10%.

In addition to the tariffs, Canada is launching disputes at the World Trade Organization and under Chapter 20 of the North American Free Trade Agreement (NAFTA).

#### How Did We Get Here

On May 31, 2018, President Trump unilaterally issued these two Presidential Proclamations under the authority of Section 232 of the *Trade Expansion Act of 1962*, as amended, section 301 of title 3, *United States Code*, and section 604 of the *Trade Act of 1974*, as amended. The measures were implemented directly from President Trump and are not considered to be safeguarding measures.

#### Products Affected

The Trump Steel Tariffs and Aluminum Tariffs cover a wide range of steel and aluminum products, defined on the Harmonized Tariff Schedule (HTS) (See [Presidential Proclamation on Adjusting Steel Imports Into the United States](#) (March 8, 2018) and [Presidential Proclamation Adjusting Imports of Aluminum into the United States](#)).

Canada's retaliatory tariffs will affect steel and aluminum that originate in the U.S. Other goods that will be affected by retaliatory tariffs include plywood, veneer, boats, playing cards, beer kegs, whisky/bourbon, coffee, orange juice, strawberry jam, tomato ketchup, mustard, mayonnaise, maple syrup, licorice candy, soup, gherkins and cucumbers, toilet paper, dishwasher detergent, candles, hair lacquers, combined refrigerators/freezers, laundry-type washing machines, dishwashers, water heaters, mattresses, sleeping bags, lawn mowers, ballpoint and felt-tip pens, etc. (See <https://www.fin.gc.ca/activty/consult/cacsap-cmpcaa-eng.asp>).

Canadian Foreign Affairs Minister Chrystia Freeland has said that "the list has been put together with a few considerations in mind. One has been to support and defend the Canadian steel and aluminum industries that are now facing unfair barriers in their exports to the United States. It is appropriate that their U.S. competitors face equivalent barriers in exporting to Canada." The list of goods is also believed by some to be strategically targeting industries in states that voted for Trump's protectionist message in 2016 during the election.

The Tariffs will impact products that originate in the United States. NAFTA Country of Origin Marking rules will be relied upon to determine this. These rule are used to clearly indicate to the ultimate purchaser of a product where it has been made. Under NAFTA, Canada, Mexico and the U.S. were permitted to institute their own country of origin marking rules applicable to goods imported from the other two trade agreement partners. The American NAFTA marking rules are set forth under 19 CFR Part 102 – Rules of Origin (19 U.S.C. 66, 1202).

#### Impact on Exporters and Importers

According to the U.S. Department of Commerce's International Trade Administration, last year, U.S. steel imports from Canada made up 17% of total steel imports. Canada imports roughly half of U.S. steel and aluminum exports.

#### How Long Will It Last

Canadian retaliatory tariffs will begin on July 1, 2018. The countermeasures will remain in place until the U.S. terminates the Trump Steel Tariffs and Trump Aluminum Tariffs.

At present, President Trump has not stated a termination date for the Trump Tariffs.

#### How to Protect and Promote Interests

Canadian importers must closely consider the impact that both United States and Canadian tariffs will have on their products and should take several actions including:

- Identifying which goods will be affected by the new tariffs;

- Reviewing H.S. codes of imported items and certificates of origin for NAFTA goods (See: <https://www.cbp.gov/trade/nafta/country-origin-marking>);
- Reviewing existing purchase orders and supply contracts that are scheduled to come into effect after July 1, 2018;
- Considering supply alternatives from other countries;
- Reviewing increases in prices of goods sold in Canada and reflecting changes in pricing and contractual obligations.

United States exporters should take action by:

- Reaching out to Canadian purchasers in order to encourage them to lobby the government to remove their products from the list of goods impacted by the countermeasures.

#### **Recap: Previous Proclamations: new tariffs on steel and aluminum**

Below are the links to two DW client alerts that have addressed the global Steel and Aluminum tariffs

- <http://www.dickinson-wright.com/news-alerts/section-232-steel-and-aluminum-tariffs>
- <http://www.dickinson-wright.com/news-alerts/president-trump-imposes-steel-and-aluminum-tariffs>

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