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Tax Alert – Canada

Update: final import surtaxes imposed on certain products originating in the US. CBSA Customs Notice issued

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 July 2018, Canada imposed a 25% or 10% surtax on steel and aluminum products and many consumer goods originating in the United States under two retaliatory surtax orders. Certain exclusions from the originally proposed retaliatory tariffs were made, and the CBSA issued Customs Notice 18-08 clarifying the application of the surtax, adding certain exceptions thereto, and confirming that the Duties Relief and Duty Drawback programs relieving measures will apply to covered goods.

Background

Following a month-long public consultation, in response to the United States' announcement to remove the Canadian exemption from the global "national security interests" tariffs imposed on US imports of steel and aluminum products at the rates of 25% and 10%, respectively, Canada implemented dollar-for-dollar retaliatory surtaxes on US originating goods similar to what was originally proposed last May. The surtaxes are imposed under the *United States Surtax Order (Steel and Aluminum)* (SOR/2018-152) and the *United States Surtax Order (Other Goods)* (SOR/2018-153).

For further information on Canada's proposed countermeasure action, please refer to Tax Alert - Canada 2018 Issue No. 23, *Canada to impose retaliatory tariffs on certain US origin products starting 1 July 2018*.

The implemented tariff countermeasures

The imported goods originating in the US that are subject to Canada's countermeasures are listed under three tables released by the Department of Finance (at link below). Table 1 goods are subject to a 25% surtax and cover primary iron and steel products (including bars, rods, tubes, pipes and wires). Table 2 goods are subject to 10% surtax and cover primary aluminum products and many finished aluminum goods, and Table 3 goods are also subject to a 10% surtax applicable to many consumer goods including food products, household products, recreational goods and, not surprisingly, wood and paper products.

Link to final Tables: <https://www.fin.gc.ca/access/tt-it/cacsap-cmpcaa-1-eng.asp>

Significant changes from the 31 May 2018 original proposed listing to the final list of goods subject to the retaliatory surtaxes were the removal of manufacturing inputs in Chapters 72, 73, 76, 85 and 90, in particular:

- ▶ **72.19 and 72.20** (Flat-rolled products of stainless steel)
- ▶ **7225.11, 7225.19, 7226.11, and 7226.19** (Flat-rolled products of other alloy steel (silicon-electrical steel))
- ▶ **7301.10** (Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements)
- ▶ **7302.40 and 7302.90** (Railway or tramway track construction material of iron or steel: fish-plates, sole plates, as well as other construction material)
- ▶ **76.05** (Aluminum wire)
- ▶ **7606.11** (Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm, rectangular and not alloyed)
- ▶ **76.08** (Aluminum tubes and pipes)
- ▶ **76.09** (Aluminum tube or pipe fittings (for example, couplings, elbows, sleeves))
- ▶ **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) and
- ▶ **90.32** (Automatic regulating or controlling instruments and apparatus)

Clarifying points of interest

It is important to note that goods listed in Tables 1, 2 and 3 referred to above (which correspond to Schedules 1 and 2 of the *United States Surtax Order (Steel and Aluminum)* and the Schedule to the *United States Surtax Order (Other Goods)*) that are also listed under provisions in Chapters 98 and 99 of the Schedule to Canada's *Customs Tariff* are subject to the surtaxes, even though they are entitled to a preferential tariff rate of customs duty under

these concessionary Chapters (usually duty free), subject to a few exceptions in Chapter 98. The exceptions include conveyances and containers engaged in international commercial transportation, temporary imports of conveyances and baggage for non-commercial purposes, travellers' exemptions (e.g., the 48-hour or 7-day exemptions) and certain settler's effects.

In addition, the surtaxes do not apply to goods originating in the US that were in transit to Canada prior to 1 July 2018.

Duties relief or drawback is available

Importantly, Canada's Duties Relief and Duty Drawback Programs continue to be available to importers for surtaxes paid or otherwise owing by Canadian businesses that meet the requirements of the programs. This means that duty deferral can apply to the surtax subject goods that are destined for re-export or as inputs therefor, and duty drawback can apply where the goods are exported or destroyed without use in Canada or are used as inputs in exported goods.

Learn more

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