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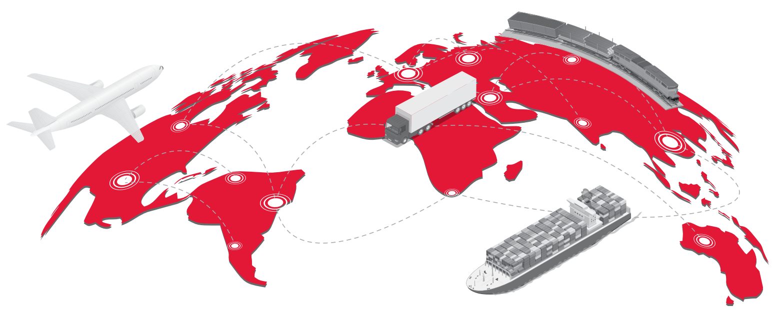
INTERNATIONAL TRADE



As part of our quarterly series on current trends across different industries, our final article examines the current state of international trade, highlighting some trends and developments in this area.

By Greg Kanargelidis

International trade issues have carved out a place on the front pages of most daily news sources since the inauguration in early 2017 of U.S. President Donald Trump.

Trade agreements such as the *North American Free Trade Agreement* (NAFTA), the *Trans-Pacific Partnership* (TPP), the *Canada-European Union Comprehensive Economic and Trade Agreement* (CETA) and others, as well as trade measures such as 25-per-cent tariffs by the U.S. and countermeasures by Canada followed by remission of those same surtaxes continue to take up the time of in-house counsel and tax and compliance professionals.

1 New Trilateral Trade Agreement Among Canada, U.S. and Mexico

On September 30, 2018, Canada and the United States announced that they, together with Mexico, agreed to a new trilateral trade agreement following the resolution of outstanding trade issues between Canada and the United States. All three countries signed the agreement on November 30, 2018.

The agreement will be referred to in Canada as the *Canada-United States-Mexico Agreement* (CUSMA), in the U.S. as the *United States-Mexico-Canada Agreement* (USMCA), and in Mexico as *Tratado entre México, Estados Unidos y Canadá* (TMEC).

The announcement served to bring some certainty to a NAFTA renegotiation process, which commenced in August 2017 and showed little signs of progress until the summer of 2018. The renegotiation process caused investors and businesses to pause, hold back investments and reconsider future plans for location of facilities and trade chains, given the uncertainty over whether there would remain any sort of free trade agreement among the three NAFTA countries. The announcement represented a secure step forward toward a trading relationship that would remain stable, at least for another 16 years — the stated duration of the agreement.

The CUSMA is ultimately intended to replace NAFTA when ratified by each of Canada, the U.S. and Mexico. It is anticipated that the U.S. Congress will consider the CUSMA in the first half of 2019 and will take effect on January 1, 2020. Until implementation, NAFTA will remain in place.

The CUSMA is a complex agreement. A fair amount of existing NAFTA provisions have been retained, though the CUSMA does contain some new chapters and substantial changes from NAFTA.

This new trade deal is bound to remain in the news until ratification and beyond, given the political changes brought on by the U.S. mid-term elections and the new president's administration in Mexico. Should ratification be delayed, the Canadian elections may be a factor in the latter part of 2019.

2

Steel Tariffs, Countermeasures and Remission

Under international trade rules, World Trade Organization (WTO) members are not permitted to increase import tariffs without justification. An exception to this rule exists where the "national security" of a nation is at risk. On this basis (which has been challenged within the WTO by several nations, including Canada), U.S. President Trump has issued executive orders imposing import tariffs on steel and aluminum imports from Canada of 25 per cent and 10 per cent, respectively, since May 31, 2018. The U.S. has also imposed similar tariffs against imports from other countries.

Canada was swift to announce and implement countermeasures intended to offset the U.S. measures. As of July 1, 2018, Canada imposed a surtax of 25 per cent and 10 per cent on imports of steel and aluminum of U.S. origin that are imported into Canada. In addition, in order to match the C$16.6-billion of its U.S.-bound trade that is affected by the U.S. measures, Canada has imposed a 10-per-cent tariff on imports of a wide assortment of consumer goods, including foods, hygiene products, household appliances and articles, recreational articles, and others.

In July 2018, shortly after the imposition of the steel, aluminum and other goods surtax orders came into effect, the Department of Finance issued a notice respecting the *Process for requesting remission of surtaxes that apply on certain goods from the U.S.* In that notice, the Department of Finance advised that an inter-departmental committee will receive and consider requests for remission of the surtaxes only in the following three instances:

1. To address situations of short supply in the domestic market, either on a national or regional basis.
2. Where there are contractual requirements, existing prior to May 31, 2018, for Canadian businesses to use U.S. steel or aluminum in their products or projects.
3. To address, on a case-by-case basis, other exceptional circumstances that could have severe adverse impacts on the Canadian economy.

As a result, importers affected by the imposition of the surtaxes since July 1, 2018 have been filing requests for remission order with the Department of Finance on the basis of one or more of the listed conditions. This is an ongoing process and there is no deadline for the filing of remission requests. Furthermore, the remission — when granted — is retroactive to July 1, 2018.

On October 11, 2018, the Department of Finance issued the United States Surtax Remission Order, which is intended to grant a remission of the surtax on steel or aluminum that is in "short supply" — in other words is unavailable or available in insufficient quantities from Canadian sources. The surtax remission order provides for two lists of steel and aluminum goods, and grants remission indefinitely to those in one list and remission up to December 31, 2018 to those in the second list.

The surtaxes imposed on importers since July 1, 2018 have been very costly to Canadian importers, especially in industries that operate on very thin margins. Therefore, the ability to request a remission of the surtax, albeit in specific circumstances, is welcome relief to affected companies that qualify for remission.

It is anticipated that the remission request, review and approval process will be ongoing as long as the U.S. surtaxes on Canadian shipments of steel and aluminum remain in place.

3

CPTPP, CETA, ASEAN and Other Acronyms

The NAFTA renegotiation process exposed a significance weakness in Canada's future prosperity; namely, its historic and long-standing significant reliance on access to the U.S. market for its exports.

While secure access to the U.S. under NAFTA has worked well for Canada since 1994, as a result of the NAFTA renegotiation process, such security has been weakened and there is now a recognition that Canada must diversify its trade beyond North America and seek new markets in other regions of the world.

Canada took a giant leap in this regard in implementing CETA on September 21, 2017. While CETA was "provisionally implemented" (because the investor-state dispute settlement rules among others could not be implemented without the ratification of all 28 member states of the European Union), practically speaking CETA is otherwise in full force and offering opportunities to both Canadian and EU importers and exporters to expand trade with each other.

One issue that is evident is the lack of participation by Canadian exporters in the advantages offered by CETA. It seems that EU exports to Canada have grown much faster than Canadian exports to the EU. In time, it is expected that Canadian traders will seek to broaden their markets to the EU under CETA.

Another ambitious regional trade agreement in which Canada is a party is the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP). Canada was one of 11 nations that signed the CPTPP on March 8, 2018. Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam are the other signatories to the CPTPP. The U.S. was an original member of the previous Trans-Pacific Partnership, however, upon his inauguration, U.S. President Trump officially withdrew the U.S. from the then-TPP.

Like the CUSMA and CETA, the CPTPP extends beyond the traditional areas covered by free trade agreements and contains chapters covering: telecommunications, electronic commerce, government procurement, capacity building, development, small and medium-sized enterprises, transparency and anti-corruption.

The CPTPP is slated to come into force on December 30, 2018, 60 days after the sixth signatory state ratified it. Canada was the fifth signatory to ratify the CPTPP on October 25, 2018.

Among other things, the CPTPP will immediately eliminate customs tariffs on the vast majority of tariff lines, with tariffs on certain items being reduced gradually in stages.

Canada is also engaged in negotiations or pre-negotiation discussions with other nations and trade blocs around the world, including the Pacific Alliance (Chile, Colombia, Mexico and Peru), Mercosur (Argentina, Brazil, Paraguay, Uruguay and Venezuela), ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam), as well as China and India.

Companies trading or sourcing internationally should follow these developments carefully and explore opportunities to take advantage of benefits to be gained by these various trade agreements once they are concluded and entered into force.

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