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Canada Concludes Consultation on New Clean Energy Surtaxes

Brenda C. Swick, Matt Hammer, Rachel Donnelly

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On October 10, 2024, the Government of Canada closed consultations on potential surtaxes in response to alleged unfair Chinese trade practices in critical manufacturing sectors relevant to the energy transition sector, such as batteries and battery parts, semiconductors, solar panels, critical minerals, and clean technology. This latest round of consultation follows the imposition of previous surtaxes on Chinese electric vehicles (EVs) and Chinese aluminum and steel products. Canada's surtaxes are part of a general movement among aligned states, including the US and the EU, to incentivize alternatives to Chinese supply chains, particularly in the clean technology sectors.

The new surtaxes also join previous trade restrictions on China; these restrictions include Canada, the United States and Europe's joint sanctions on individuals and entities who participated in human rights violations in the Xinjiang Uyghur Autonomous Region, discussed in previous Cassels' Comment here.

Canada's recent surtax impositions were made under Section 53 of the *Customs Tariff*, which allows Canada to unilaterally impose trade restrictions as determined by the Governor in Council on the advice of the Minister of Finance and the Minister of Foreign Affairs. Both Ministries are involved in the development and implementation of these new surtaxes. In the past the imposition of such unilateral measures have given rise to challenges by China at the World Trade Organization (WTO) regarding their consistency with Canada's international trade obligations under the WTO trade agreements.

Previous Surtaxes on Electric Vehicles, Steel and Aluminum

As discussed in our previous Client Comment, Canada launched consultation on electric vehicle surtaxes in July of 2024. As of October 1, 2024, there is a 100% surtax that applies to all EVs imported to Canada from China.

At the same time, as discussed in our previous Client Comment, Canada consulted on and enacted a 25% surtax on Chinese aluminum and steel products which was intended to take effect on October 15, 2024. The effective date for that surtax has now been pushed to October 22, 2024, and the final list of products subject to the surtax, which closely matches the initial list under consideration, is available here.

These surtaxes will not apply to goods in transit the day the provisions come into force and Canada intends

to review them one year after they individually come into force.

Canada has also indicated that a framework will be provided on the process and criteria for importers to seek relief from these surtaxes through the duty relief process. As we previously noted, Canadian businesses that rely on Chinese imports to maintain production may obtain some measure of relief from surtaxes through the duty relief and duty drawback programs and under the duty remission process. The coming remission framework will hopefully provide clarity on acceptable reasons for remissions. It is anticipated that the reasons will focus on short term need and may include situations of short supply, requiring additional time to switch to alternate sources of supply, certification requirements, and other exceptional circumstances. The details of this framework will become available prior to October 22, 2024. Requests for remission or inquiries on the remission process can be directed to remissions-remises@fin.gc.ca.

Coming Surtaxes on Critical Manufacturing Sector Items

China has a strong hold on critical mineral supplies and manufactured products such as batteries, semiconductors and photovoltaic products that are necessary to facilitate the energy transition. There is a growing consensus among Canada's trading partners that China has achieved its position as the dominant producer and midstream processor of critical minerals and manufacturing inputs through unfair and anti-market practices and policies.

In this context, Canada's new consultations on critical manufacturing sector surtaxes aim to "level the playing field and ensure our domestic critical manufacturing sectors prosper in domestic and global markets and safeguard Canada's economic security interests" as described in the background to the consultation.

The rates of Canada's EV and steel and aluminum surtaxes directly mirrored those recently imposed by the United States and it is possible that coming surtaxes on critical manufacturing sector items will also mirror US rates, which are:

- 25% on certain battery parts and EV and non-EV lithium ion batteries;
- 25% on critical minerals and permanent magnets;
- 50% on semiconductors; and
- 50% on solar cells, whether or not assembled into modules.

As the government highlighted when announcing these critical manufacturing sector consultations and confirming the EV and steel and aluminum product surtaxes, these trade measures are one piece of Canada and other nations' strategies to disrupt China's dominant position over critical manufacturing supply chains in order to bolster efforts toward the energy transition.

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Conclusion

Given China's dominant position in critical mineral supply chains that must be engaged to manufacture clean energy technologies, the imposition of trade restrictions on these materials could have significant global and Canadian effects. In particular, ongoing projects, pre-existing purchase contracts and contractual arrangements dependent on supply of long-lead time materials such as power purchase agreements and renewable energy bids in Provincial procurement programs could be subject to significant impacts. We encourage you to seek legal advice on the language of your contracts to better understand the complex risks you may be exposed to in the face of government's increasing interest in imposing trade restrictions.

In addition, Canada's trade restrictions on China have and will likely continue to lead to retaliatory efforts by China across a range of sectors. China has already begun a trade investigation into Canadian canola in response to the new EV surtax, as well as challenging the surtax before the WTO. These and potential future retaliations are a risk to any entity with significant exposure to trade with China.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.