

Process for Exclusion From Canadian Retaliatory Tariffs on US Imports of Steel, Aluminum and Other Products

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On July 1, 2018, the Government of Canada (GOC) imposed retaliatory tariffs (surtaxes) ranging from 10 to 25% on imports of certain steel and aluminum products and a wide variety of other goods from the US. The surtaxes are implemented into law under the United States Surtax Order (Steel and Aluminum): SOR/2018-152 and the United States Surtax Order (Other Goods): SOR/2018-153. Canada's tariffs will remain in place until the US eliminates its tariffs on Canadian steel and aluminum products.

The Canadian Border Services Agency (CBSA) will administer and collect the surtaxes in accordance with Customs Notice 18-08. The goods listed in Tables 1, 2 and 3 are subject to 10% or 25% surtaxes on the value for duty in accordance with the United States Surtax Order (steel and aluminum) and the United States Surtax Order (Other Goods). Surtaxes will apply to both commercial and personal importations of goods.

Canada's surtaxes will only apply to US goods that are eligible to be marked as US goods under the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*.

The GOC has now announced an exclusion request process that permits Canadian businesses to request exclusions from these surtaxes.

Applications should set out a detailed business case for granting the exclusion. The information required includes the volume and value of imports, efforts to find alternative sources, costing, pricing, the impact of an exclusion on Canadian industry and the applicant's competitors, and many other factors. Exclusion requests should consider matters including:

- Short supply in the domestic market, either on a national or regional basis;
- Contractual requirements for Canadian businesses to use U.S. steel or aluminum in their products or projects that were in place prior to May 31, 2018; or
- On a case-by-case basis, other exceptional circumstances that could have severe adverse impacts on Canada's economy.

Approved exclusion requests will be issued through an Order-in-Council granting remission under the *Customs Tariff*. Remission orders will remit the surtax on future imports and may also refund any surtax already paid since July 1, 2018.

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Other interested parties, including domestic producers may be consulted by the government before a remission is issued.

Cassels strongly recommends that companies promote and protect their interests under the current retaliatory sanctions, not just in Canada but also abroad. Several strategies are available - at a minimum Canadian companies should carefully review the listed tariff classifications and examine the anticipated impact on their supply chain and the grounds for an exclusion request. Alternative sources of the goods (i.e., countries other than the US) should also be considered as companies may be able to rely on other Canadian trade agreements, such as the Canada-European Union Comprehensive Economic Trade Agreement (CETA), to source alternative goods duty free. On the other hand, some Canadian manufacturers may seek to have their competitors' U.S. imports placed on the list of goods subject to Canadian retaliatory tariffs.

For more information please contact Brenda C. Swick or any member of our Competition, International Trade & Foreign Investment team.

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