

# Indirect Tax Alert

News from Americas Tax Center

## Finance Canada announces new global steel safeguard surtax/ implements remission order for surtaxes on certain US origin goods

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### Executive summary

On 11 October 2018,<sup>1</sup> the Department of Finance (Finance Canada) announced a new 25% global safeguard surtax on steel products, subject to a Canadian International Trade Tribunal injury inquiry, with exceptions for certain free-trade partners, lesser-developed countries entitled to the general preferential tariff and United States (US) origin goods already subject to the surtax, intended to prevent diversion of foreign steel products into Canada. Finance Canada also announced a Remission Order made 10 October providing full relief in specific circumstances from the surtax on steel and aluminum products (and certain vessels) subject to the retaliatory surtax measures on products originating in the US. In addition, Finance Canada provided an update on the House Committee on International Trade Study (CIT Study) on the impact of the surtax on US origin goods.

### Detailed discussion

#### Background

Previous Tax Alerts<sup>2</sup> described the imposition of Canadian surtaxes on US origin steel and aluminium and certain US origin consumer goods in force since 1 July 2018. While the Duties Relief Program and the Duty Drawback Program provide for the deferral or drawback of surtax, respectively, a discretionary case-by-case remission of these surtaxes was also made available for qualifying importers and exporters.

Finance Canada has now provided that these surtaxes will be refunded or no longer paid in specific circumstances under the *United States Surtax Remission Order*. However, significantly, Finance Canada has also implemented a global steel safeguard to support the Canadian industry to prevent diversions of such products to Canada, because of the US “national security” tariffs (and, perhaps, to assist in negotiations with the US to remove these tariffs by ensuring Canada is not a conduit for offshore steel into the US market).

This global safeguard on steel products is in addition to financial support previously announced for Canadian steel and aluminum producers that are adversely affected by recent US tariffs and other manufacturers affected by the retaliatory Canadian surtaxes. Most importantly to Canadian manufacturers more broadly, the Remission Order provides the first set of categories for remission relief of the surtaxes imposed by Canada on US goods in exceptional cases where supply is not available in Canada currently or is never expected to be, because of the integrated nature of the North American industry.

### **The United States Surtax Remission Order**

#### **Order in Council and Customs Notice published**

The *United States Surtax Remission Order*<sup>3</sup> issued 10 October 2018 was accompanied by the Canada Border Services Agency (CBSA)’s release of Customs Notice 18-16 on 11 October 2018. Finance Canada intends to publish formal regulations, in keeping with past implementations of Orders made under section 115 of the *Customs Tariff*, in the 31 October 2018 edition of the *Canada Gazette*.

The Remission Order was made following numerous applications by Canadian importers to the federal Interdepartmental Remission Committee for remission of the surtaxes imposed in response to the US steel and aluminum tariffs. It was concluded that certain goods covered by the *United States Surtax Order (Steel and Aluminum)*<sup>4</sup> are in short supply or there is no supply available in the Canadian market for manufacturing inputs.

In addition to this short-supply remission policy available to all importers of eligible goods listed in the Schedules to the Remission Order, the Interdepartmental Remission Committee is continuing its analysis of specific requests from Canadian companies, including those related to imports of surtax subject goods under contractual obligations existing prior to 31 May 2018.<sup>5</sup> Remission applications are also expected to continue to be processed under the exceptional circumstances criterion.

### **Covered goods and other remission conditions**

The Remission Order provides for the relief from or refund of surtaxes paid on: (i) imports of US origin steel and aluminum where there is no supply or temporary short supply to minimize negative effects on the Canadian economy; (ii) certain pleasure vessels in situations of pre-existing contractual obligations prior to 1 July; and (iii) goods imported temporarily for repair, alteration or storage.

#### **1. Certain steel and aluminum goods**

Remission is granted for those specific steel and aluminum goods listed in [Schedule 1 and Schedule 2](#) of the Remission Order.<sup>6</sup> Schedule 1 goods are granted relief for an indefinite period. Schedule 2 goods are only granted relief if imported prior to 31 December 2018.

#### **2. Other goods (sports and pleasure watercraft)**

Remission is also granted for “other goods,” specifically sports and pleasure watercraft of tariff items 8903.10.00, 8903.91.00, 8903.92.00 or 8903.99.90, excluding those that have been exported from Canada and then subsequently re-imported into Canada.

#### **3. Temporary imports for re-export**

Goods temporarily imported into Canada for the purposes of repair, alteration, or storage are also granted remission of surtaxes paid or payable pursuant to the United States Surtax Order (Other Goods).<sup>7</sup>

Each category is subject to specific conditions in the Remission Order, the administration of which by the CBSA is set out in Customs Notice 18-16. In all cases, remission is available retroactively to 1 July 2018 and can apply upon importation on a go-forward basis with proper import documentation coding.

### **Emergency global safeguard surtax imposed on importation of certain steel goods for 200 days pending CITT injury inquiry**

A surtax of 25% applies on seven categories of steel goods (multiple tariff items) to imports from all countries, other than the US and certain free trade agreement and lesser-developed countries, under the *Order Imposing a Surtax on the Importation of Certain Steel Goods*.<sup>8</sup> Unlike the retaliatory surtax, the safeguard surtax is being applied to **all** countries except certain free trade partners, lesser-developed countries, and the US, whose steel goods are already subject to the countermeasures surtax.

This new provisional global safeguard surtax is implemented effective 25 October 2018 and will apply for 200 days thereafter, or be implemented for up to four years, depending on the conclusion of an Inquiry into serious injury to Canadian producers by the Canadian International Trade Tribunal (CITT) due 3 April 2018, to which the matter has been referred<sup>9</sup> pursuant to section 55 (1) of the *Customs Tariff*.

This provisional surtax applies to steel goods imported without a shipment-specific import permit, which can be applied for and issued under the guidance provided by Global Affairs Canada (GAC)'s Notice to Importers No. 911. GAC will administer a tariff rate quota (TRQ) regime similar to the agriculture TRQs.<sup>10</sup> It is important to note that nonresident importers will not be able to qualify for import permits under the quota regime for the new provisional safeguard surtax.

Goods covered by this surtax will be subject to the TRQ import permit process administered jointly by GAC and the CBSA. The GAC Notice to Importers No. 911 outlines the available quota levels for the seven categories of subject goods, but makes no reference to a quota allocation scheme. Subject to further policy modifications or clarifications from GAC, it appears that import permits will be issued within 50-day quota cycles to any applicant (without requiring an ongoing quota "allocation"), on a first-come-first-serve basis at import levels that are not expected to cause injury to Canadian producers.

### **Impact of tariffs study by the House of Commons**

The House Committee on International Trade (CIT) extended the deadline for submitting briefs regarding its study of the "Impact of Tariffs on Canadian Businesses, Companies and Workers" to 30 October 2018. Until then, affected businesses continue to have an opportunity to submit a brief to the CIT. Twenty-six witnesses have appeared before the Committee thus far, including five federal government departments.

Companies impacted by the retaliatory measures against US originating goods, as well as those impacted by the new safeguard measures, may submit briefs and can be invited to appear before the CIT to advocate their position. Finance Canada's 11 October 2018 notice announcing the new remission and new provisional surtaxes also announced Finance Minister Bill Morneau's appearance before the CIT will occur on 16 October 2018.

### **Actions for businesses**

Management responsible for importation tax and trade compliance functions should review their customs and production data to determine if the new global safeguard surtax on steel goods could be applicable. Importers are ultimately responsible for correctly identifying and declaring goods as subject to the surtax, or subject to remission, whether or not they use the services of a customs broker or other services provider to assist with trade operations and trade compliance. The remission granted for qualifying goods in the Remission Order can be claimed by any Canadian importer both retroactively (to 1 July 2018) and proactively, provided they made no other claim for relief (for example, a drawback).

Senior management and government affairs officers of companies affected by the new safeguard or by US-countermeasure surtaxes implemented earlier this year should consider policy representations for future surtaxes that may be imposed or for surtax relief that may be granted. They should consider potential strategic benefits of arguing their policy positions in the CIT Study. They should also consider all funding opportunities offered by the Business Development Bank of Canada and Export Development Canada to mitigate the impact of tariffs on the market, to the extent these apply to their companies.

Those companies affected by the safeguard surtax should consider participating in and presenting their economic impact positions with respect to the steel safeguards in the upcoming CITT inquiry (by submitting a brief and appearing as a witness). Appearance notices are due by 29 October and questionnaires are due 31 October, so a decision must be made on this immediately to properly prepare under guidance of counsel. EY Law has experience in these matters and is available to discuss them with affected parties.

As only Canadian resident companies may apply for import permits required for relief of the new 25% global safeguard surtax, supply chain restructuring may be required in cases where the only commercially viable course of action is to obtain shipment-specific import permits to avoid the new safeguard surtax.

## Endnotes

1. ["Government of Canada Stands Up for Steel and Aluminum Businesses and Workers."](#)
2. See EY Global Tax Alerts, [Canada updates final import surtaxes imposed on certain products originating in the US; CBSA Customs Notice issued](#), dated 12 July 2018 and [Canada: Duty relief, duty drawback, and remission available for Canadian surtaxes on certain US originating goods](#), dated 20 July 2018.
3. SOR/2018-0205 PC 2018-1272.
4. SOR/2018-152.
5. ["Backgrounder - Relief for Canadian Businesses from Countermeasures on Certain U.S. Imports."](#)
6. ["List of Goods Subject to Remission of Countermeasures on Certain Steel and Aluminum Goods from the U.S."](#)
7. SOR/2018-153. This third category includes vessels temporarily imported for repair alteration or storage under conditions, including those previously exported.
8. SOR/2018-0206, PC 2018-1273.
9. PC 2018-1275.
10. [Notice to Importers: Item 82 - Steel Goods \(Serial No. 911\)](#).

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## Appendix

### Global Safeguard Goods: 7 categories of steel products subject to exclusions

Customs Notice 18-17 and GAC Notice to Importers No. 911 provide the following specifications respecting subject goods, 50-day global quota levels (all countries, mitigated by a maximum country share consideration) and origin.

Subject goods	Quota for each 50-day period (tonnes)	Maximum share of total quota for any single country	Origin of the products
Steel plate ("heavy plate")	12,918	23%	All countries except the US, Mexico, Chile and Israel (or CIFTA country); General Preferential Tariff beneficiary countries are also exempt
Concrete reinforcing bar	35,332	23%	All countries except the US, Mexico, Chile and Israel (or CIFTA country); General Preferential Tariff beneficiary countries are also exempt, except Vietnam.
Energy tubular products	64,348	23%	All countries except the US, Chile and Israel (or CIFTA country); General Preferential Tariff beneficiary countries are also exempt.
Hot-rolled sheet	15,299	37%	All countries except the US, Mexico, Chile and Israel (or CIFTA country); General Preferential Tariff beneficiary countries are also exempt.
Pre-painted steel	11,635	35%	All countries except the US, Mexico, Chile and Israel (or CIFTA country); General Preferential Tariff beneficiary countries are also exempt.
Stainless steel wire	467	25%	All countries except the US, Mexico, Chile and Israel (or CIFTA country); General Preferential Tariff beneficiary countries are also exempt.
Wire rod	11,513	47%	All countries except the US, Chile and Israel (or CIFTA country); General Preferential Tariff beneficiary countries are also exempt.

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