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Tax Alert – Canada

CITT releases safeguard inquiry report

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.

On 10 October 2018, the *Order Referring to the Canadian International Trade Tribunal, for Inquiry into and Reporting on, the Matter of the Importation of Certain Steel Goods* directed the Canadian International Trade Tribunal (CITT) to conduct a safeguard inquiry concerning the future importation into Canada of seven classes of steel goods from countries (other than certain countries, including those party to a free trade agreement such as the US, Mexico and Israel) that have been subject to a 25% provisional safeguard surtax since 25 October 2018.¹

The purpose of this safeguard inquiry under World Trade Organization (WTO) rules is to determine whether goods subject to reduced tariffs under WTO binding tariff reductions are being imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of such goods. If so, surtaxes to offset such injury or threat can be imposed by the Governor in Council.

On 3 April 2019, the CITT submitted its Report to the Governor in Council on the safeguard inquiry.² The Report recommends that, based on the evidence elicited in the inquiry, only two of the seven categories of imported steel goods (heavy plate and stainless steel wire) should be subject to a remedy in the form of a Tariff Rate Quota (TRQ) and over-access surtaxes for a period of three years.

¹ Order in Council P.C. 2018-1275.

² Canadian International Trade Tribunal - *Safeguard Inquiry into the Importation of Certain Steel Goods, Inquiry No. GC-2018-001*.

Background

As discussed in a previous EY Tax Alert,³ the *Order Imposing a Surtax on the Importation of Certain Steel Goods* (Surtax Order) imposed a 25% provisional surtax and TRQ restrictions on imports of seven categories of steel goods imported from countries other than the US and certain free trade agreement and lesser-developed countries.⁴ The classes of goods affected by the provisional Surtax Order are:

- ▶ Steel plate (heavy plate)
- ▶ Concrete reinforcing bar
- ▶ Energy tubular products
- ▶ Hot-rolled sheet
- ▶ Pre-painted steel
- ▶ Stainless steel wire
- ▶ Wire rod

On 2 February 2019, an amendment to the Surtax Order went into effect, increasing the TRQ limit on Mexican origin energy tubular products and wire rod imported into Canada.⁵

In its safeguard inquiry, the CITT found that heavy plate and stainless steel wire originating from countries other than Korea, Panama, Peru, Colombia and Honduras are being imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic Canadian producers. The CITT recommended, for both classes of goods, a remedy in the form of a TRQ on imports originating from countries other than Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for *General Preferential Tariff* treatment, for a period of three years:

Recommended remedy for heavy plate ⁶		
	In-quota volume (tonnes)	Above-quota surtax
First year	100,000	20%
Second year	110,000	15%
Third year	121,000	10%

³ TA 2018-35 - Finance announces new global steel safeguard surtax/implements remission order for surtaxes on certain US origin goods.

[https://www.ey.com/Publication/vwLUAssets/Tax_Alert_2018_No_35/\\$FILE/TaxAlert2018No35.pdf](https://www.ey.com/Publication/vwLUAssets/Tax_Alert_2018_No_35/$FILE/TaxAlert2018No35.pdf)

⁴ SOR/2018-0206, PC 2018-1273.

⁵ SOR/2019-35, *Order Amending the Order Imposing a Surtax on the Importation of Certain Steel Goods*.

⁶ Canadian International Trade Tribunal - *Safeguard Inquiry into the Importation of Certain Steel Goods*, Inquiry No. GC-2018-001.

Recommended remedy for stainless steel wire ⁷		
	In-quota volume (tonnes)	Above-quota surtax
First year	2,800	25%
Second year	3,080	15%
Third year	3,388	5%

The CITT also found that safeguard surtaxes were not needed for the other five categories of steel goods.

Impact

The provisional Surtax Order was implemented on the recommendation of the Minister of Finance, pursuant to subsection 55(1) of the *Customs Tariff*.⁸ Per subsection 56(2) of the *Customs Tariff*, an Order made under subsection 55(1) of the *Customs Tariff* ceases to have effect at the end of the 200th day after the day on which the Order is made. The CITT's report was submitted to the Governor in Council before the 200-day limit (13 May 2019), and the provisional Surtax Order will remain in effect for all seven classes of steel goods until 13 May 2019.

The Minister of Finance must now review the Report and decide whether or not to impose the CITT's recommended safeguards on heavy steel plate and stainless steel wire, and cease applying safeguard measures on the other five classes of steel goods, before 13 May 2019. Section 58 of the *Customs Tariff* provides the legislative mechanism for refunds of provisional safeguard duties that were imposed under an order made under subsection 55(1) of the *Customs Tariff* on the basis of a report made by the Minister of Finance.⁹ An Order in Council issued from the Governor in Council is required to establish the refund process under section 58 of the *Customs Tariff*. It is unclear if the Government of Canada will seek public input before deciding on final safeguard measures, but importers should nonetheless prepare themselves to reach out to the government to communicate their concerns if and when public input is sought by the government.

Lastly, it is crucial for importers to consider that developments and events pertaining to US Section 232 tariffs on certain steel and aluminum goods will likely influence the Canadian government's decision on whether or not to accept the CITT's recommendations. There remains a risk that Canada could increase retaliatory tariffs on US origin imports,¹⁰ and the ratification of the United States-Mexico-Canada Agreement may be delayed until those tariffs are lifted, perhaps to 2020.¹¹

⁷ Canadian International Trade Tribunal - *Safeguard Inquiry into the Importation of Certain Steel Goods*, Inquiry No. GC-2018-001.

⁸ SOR/2018-206, *Order Imposing a Surtax on the Importation of Certain Steel Goods*.

⁹ *Customs Tariff*, s. 58.

¹⁰ CBC News, *Ottawa considering new retaliation to end US tariff fight, source says*, 29 March 2019. <https://www.cbc.ca/news/politics/canada-considering-new-tariff-retaliation-1.5076254>

¹¹ CBC News, *Freeland says lifting US tariffs must be part of ratification of new NAFTA*, 3 April 2019. <https://www.cbc.ca/news/politics/freeland-nafta-steel-tariffs-1.5083498>

Learn more

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