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# Customs & Trade

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## ■ I. FOCUS

### **SAFEGUARDS MEASURES ON THE RISE: EUROPEAN AND CANADIAN PERSPECTIVES**

It has been just over one year since the first announcement of the [steel](#) and [aluminum](#) ad valorem tariffs imposed by the United States (US) on March 31, 2018.

#### **Canada's Steel Safeguards**

While initially exempted, when Canada lost its exemption to the US's [steel](#) and [aluminum](#) tariffs on May 31, 2018, the gloves were off.

Canada first imposed [countermeasures](#) only on the US. Those came in the form of a 25% surtax on certain steel products, 10% surtax on certain aluminum products and 10% surtax on other affected products including but not limited to many types of food, herbicides, insecticides, kitchenware, home appliances, and stationary.

Next Canada challenged the US tariffs at the [WTO Dispute Resolution Board](#), which several nations have now joined.

Finally, ostensibly fearing a diversion of steel imports to Canada, Canada has now begun its own [steel safeguards inquiry](#) and has added a [25% surtax on 7 types of steel goods](#) coming from certain countries: 1) energy tubular, 2) heavy plate, 3) hot-rolled sheet, 4) pre-painted steel, 5) concrete rebar, 6) wire rod, 7) and stainless steel wire.

#### **Canada's Safeguards Are Now Overreaching...**

While the countermeasures against the US appear to be tit-for-tat politics, there appears to be less wisdom in the [implementation of the steel safeguards](#). Certain nations are exempt, however, some nations with which Canada has a free trade agreement are not. The Canadian government's approach has made even less sense due to the non-exemption of specific goods within a class even if they are not manufactured in Canada.

#### **Is there a balance between protectionism and safeguarding domestic industry?**

There is a balance to be struck – at the very least goods that are NOT manufactured in Canada ought to be exempted from safeguards (i.e. surtaxes). Moreover, exemptions could be made for areas in which Canadian producers are unable to keep up with demand. However, it remains to be seen whether wisdom will prevail within the Canadian government as the CITT has provided for neither of these exemptions and has gone for an all-or-nothing approach.

At the time this article is being written the safeguards inquiry's public hearing are taking place, and we can expect the report to be published on April 3, 2019, but until then the 25% surtax remains in place.

#### **On the other side of the Atlantic, the EU confirmed the adoption of definitive safeguards measures on steel**

For reminder, [the Commission imposed provisional safeguard measures](#) on imports of steel in July 2018 which could remain in place for a maximum of 200 days. The safeguard measures were the result of the import duties applied by the US as of 23 March 2018 under Section 232 the US Trade Expansion Act of 1962. As exporting steel to the US has become less attractive, steel suppliers have diverted some of their exports from the US to the EU.

Following its investigation, the [Commission has notified the WTO](#) of its findings in the safeguard investigation on certain steel products. Based on these, the [Commission intends to impose definitive measures](#) to replace the provisional measures in place since July 2018. WTO members with an interest in this case will now have the opportunity to hold consultations with the Commission before a final decision is taken.

The proposed measures will be imposed erga omnes (against imports from all origins), and concern 26 steel product categories.

The measures consist of tariff-rate quota by which a duty of 25% will apply when the level of the traditional trade flows is reached. This system is similar to the provisional measures currently in place, with some exceptions. For example, the

main supplying countries will benefit from individual quotas based on their own historical imports.

The Commission's findings were submitted to EU Member States who will vote on the Commission's proposal. Following their adoption, the definitive measures could enter into force in the beginning of February 2019. The measures will remain in place for a period of three years, including the period of imposition of the provisional measures, expiring on 16 July 2021. The measures can be reviewed in case of changed circumstances.

Finally, the European Parliament, the Council and the Commission reached a political [agreement on an EU horizontal safeguard regulation](#).

Bilateral safeguards mechanisms linked to trade agreements negotiated by the EU will allow for the temporary withdrawal of tariff preferences and to reintroduce custom tariffs when imports under the agreement reach an unexpected high level which lead to serious economic damage to an EU industry. To make these mechanisms operational, the EU will put in place internal rules and procedures defining the investigation and the decision-making process, as well as the form and duration of the measures. For example, industry associations and trade unions can request a Commission investigation, which may lead to temporary safeguards if the Commission decides they are necessary.

The first agreements to be covered by this horizontal regulation will be the EU trade agreement with Japan, followed by the trade agreements with Singapore and Vietnam, as well as all future agreements.

Despite the progress made with this new regulation, the use of safeguard measures should stay as limited as possible and to be used only if there is a risk of serious injury to industry sectors.

**■ II. BRIEF OVERVIEW****WORLD TRADE ORGANIZATION (WTO)**[EU proposes solutions for the functioning of the WTO](#)[Appellate Body](#)

The EU and other WTO members - Australia, Canada, China, Iceland, India, Korea, Mexico, New Zealand, Norway, Singapore and Switzerland - unveiled a proposal for concrete changes for the modernization of Appellate Body of the WTO. The proposed amendments follow the EU's ideas for modernizing the WTO, published on 18 September, as part of a wider effort including the recently tabled proposal on the rules of notification and transparency within the WTO.

[EU launches WTO action against forced technology transfers in China](#)

The EU has challenged China's practices before the WTO for forcing European companies to give up sensitive technology and know-how as a precondition for doing business in China. This legal action follows a procedure initiated by the EU in June 2018. With this decision, the EU broadens and deepens considerably the scope of its WTO action. This measure is taken in the light of additional findings regarding the incompatibility of China's investment approval measures and the protection of intellectual property rights of foreign companies with the agreed multilateral rules.

**ASIA****Indonésia**[Introduction of an Advanced valuation advice system](#)

The Ministry of Finance has issued regulation number 134/PMK.04/2018, which came into force on 3 November 2018, and aims to ease the determination of a good's customs value and speed up the customs clearance process. This new regulation sets up an advance valuation advice system. Such advice will be delivered to operators regarding the value of a particular good, and will be valid for 3 years from the date of its issuance. Where favorable, this advice will be a great legal safety tool for an operator.

Application for an advance valuation advice requires the applicant to meet certain conditions and provide several

commercial documents. When made well, the application allows the issuance of the advice within 30 (for AEO operators) to 40 days.

**Vietnam**[New Regulations on the Inspection and Verification of Origin of Exports](#)

Vietnam's Ministry of Industry and Trade has adopted Circular No.39/2018/TT-BCT in December 2018, which provides guidance on inspection and verification of origin of exported goods before and after the issuance of certificates of origin. This circular aims at setting up processes which will lead to reduced origin frauds. The Circular contains provisions for significant increase of the administrative cooperation, the frequency of inspections and controls and the conditions to fulfill in order to obtain certificates of origin.

**EUROPEAN UNION****Britain's Parliament rejected the EU-UK withdrawal agreement**

The special meeting of the European Council (Article 50) [has agreed on 25 November 2018](#), the withdrawal agreement and the political declaration on future relations between the EU and the UK, as presented by the negotiators from the EU and the UK.

However, on 15 January 2019, the UK Parliament rejected this agreement with a vast majority paving the way to a non deal, or in another referendum is held to the remain of the UK in the EU.

[Update of the Annexes of the dual-use items listed in the basic Regulation 428/2009](#)

On 10 October 2018, the Commission announced its draft annual Delegated Regulation, which updates the EU dual-use export checklist set out in Annex I to Regulation (EC) 428/2009 and aligns it with decisions taken in 2017 under international agreements (mostly Wassenaar Arrangement) or non-proliferation regimes and export controls. Since neither the Council nor the European Parliament raised any objections within the two-month time-limit, the regulation was published in the Official Journal on 14 December 2018 and entered into force on the following day, 15 December 2018.

[Entry into force of the EU-Japan agreement on 1st February 2019](#)

By a [decision \(EU\) 2018/1907](#) of 20 December 2018, the Council of the EU approved the economic partnership concluded between the EU and Japan and signed on 17 July 2018.

Following the ratification of the agreement by the European and Japanese Parliaments, this decision paved the way for the entry into force of the agreement on 1 February 2019. The agreement will remove most tariffs for EU products exported to Japan, namely for wines, spirits, dairy products, leather and textile.

**France**[The finance law for 2019: tax and customs impact](#)

The law of 28 December 2018 on finance for 2019 contains measures amending tax and customs regulations, particularly in the area of environmental taxation and energy taxation (several taxes falling within the competence of the customs are abolished, while others will be integrated in the declaratory formalities of the VAT of common right). The law also provided for the simplification of fiscal and administrative systems and the abolition of certain taxes, as well as new conditions for the self-liquidation of VAT on imports which will come into effect on 1 January 2020.

**LATIN AMERICA**[New maximum levels for certain contaminants](#)

Foodstuffs from third countries are subject to demanding border controls by the European Union in application of harmonized health regulations.

EU Regulation N° 488/2014 of 12 May 2014 sets new maximum levels for certain contaminants in foodstuffs as of 1 January 2019, in particular for cadmium in chocolate and cocoa derivatives. Some third countries see this as an unjustified restriction and an infringement of international trade principles.

**NORTH AMERICA****United States**[US reimposes fully restrictive measures on Iran](#)

After a first renewal of certain sanctions on August 6, 2018, the US sanctions against Iran are now fully restored.

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November 4, 2018 marked the end of the transitional period of 180 days given to operators to end their activities in Iran and as of November 5, all US sanctions lifted or canceled in connection with the JCPOA are reimposed and have full effect, and namely in the following sectors: oil, energy, maritime (freight, shipbuilding) and many Iranian financial institutions including the Central Bank of Iran.

[OFAC envisages to remove from the SDN lists the companies En+, Rusal and EuroSibEnerg](#)

On 19 December 2018, OFAC decided to put an end to the sanctions imposed on En + Group plc, UC Rusal plc and JSC EuroSibEnerg, owned or controlled directly or indirectly by Oleg Deripaska, within 30 days.

However, OFAC will continue to apply its sanctions against Deripaska, and foreign persons will continue to be subject to secondary sanctions should they knowingly facilitate a significant transaction for or on behalf of Deripaska.

**Canada**

On December 30, 2018 Canada ratified the [Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\)](#). The CPTPP is a free trade agreement between Canada, Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. To date the CPTPP has been ratified by six countries: Canada, Australia, Japan, Mexico, New Zealand, and Singapore. On January 14, 2019, the CPTPP entered into force for Vietnam.

Once the agreement is fully implemented, Canada will have duty-free access to CPTPP countries for:

- 94% of Canadian agriculture and agri-food products exports;
- 99% of Canadian industrial products exports;
- 100% of Canadian fish and seafood products exports; and
- 100% of Canadian forest product exports.

The tariff elimination will happen over the next 7 to 12 years in accordance with the schedule.

■ III. PRESS REVIEW

« [Teneurs Maximales en cadmium: protection sanitaire ou entrave commerciale ?](#) », Revue Lamy Droit Alimentaire, N° 387, 1 December 2018, Patricia CUBA-SICHLER, Partner, DS Pérou

■ III. UPCOMING EVENTS

DS Avocats Paris organises a seminar on the new EU-Japon economic agreement on 28 February 2019: check DS website for upcoming details.

DS Avocats Paris organises a lunch on fiscal and customs impact of the new Finance Law for 2018 on 12 March 2019: check DS website for upcoming details.

For any further information, please contact: [dscustomsdouane@dsavocats.com](mailto:dscustomsdouane@dsavocats.com)