



AUGUST-IN-REVIEW

International Trade

1. [Canada Publishes Its Interpretation of The CUSMA \(USMCA\)](#) (21 August 2020)
2. [Wheat Gluten Imports from Australia, Belgium, France, Germany, and Lithuania Targeted by Canadian Anti-Dumping Investigation](#) (14 August 2020)
3. [What Goes Around Comes Around...Canada Issues List of Proposed Countermeasures Against U.S. Aluminum Duties](#) (13 August 2020)
4. [The U.S. Reimposes 10% Tariffs on Imports of Non-Alloyed Unwrought Aluminum from Canada](#) (10 August 2020)
5. [Pool of Ten Appeal Arbitrators Established for the WTO Multi-Party Interim Appeal Arbitration Arrangement](#) (3 August 2020)

International Trade

1. CANADA PUBLISHES ITS INTERPRETATION OF THE CUSMA (USMCA)

On 22 August 2020, the Canadian Statement on Implementation of the Canada-United States-Mexico Agreement was published in the Canada Gazette, Part 1.

The Statement sets out Canada's interpretation of the CUSMA (which is called the USMCA by the United States and the T-MEC by Mexico). Its objective is to explain the basic rights and obligations in the CUSMA from Canada's perspective, including how Canada intends to exercise its rights while observing its commitments.

On a chapter-by-chapter basis, the Statement provides a summary of Canada's interpretation of each provision and outlines how Canada has implemented the Agreement into domestic law. The Statement also sets out additional actions that the Government will undertake to maximize the benefits of the negotiated outcomes of the new Agreement.

Tereposky & DeRose regularly provides advice on the interpretation, application, and implementation of international trade agreements. Should you have any questions regarding the CUSMA or any other trade matter, we are at your disposal.

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2. WHEAT GLUTEN IMPORTS FROM AUSTRALIA, AUSTRIA, BELGIUM, FRANCE, GERMANY, AND LITHUANIA TARGETED BY CANADIAN ANTI-DUMPING INVESTIGATION

On 14 August 2020 the Canada Border Services Agency (CBSA) **initiated an anti-dumping investigation** respecting the alleged injurious dumping of certain wheat gluten from Australia, Austria, Belgium, France, Germany and Lithuania. The investigation was prompted by a complaint filed by ADM Agri-Industries. Wheat gluten consists of natural protein found in wheat. It is used as an ingredient in a broad range of food products.

Together with the **Notice of the Initiation of Investigation**, the CBSA has published the **Investigation Schedule**. Responses to the CBSA's request for information (RFI) questionnaires are due September 7th for importers and September 21st for exporters. Publication of the CBSA's preliminary determination is expected on or about November 12th. On that date, provisional anti-dumping duties could be imposed on imports of wheat gluten from the above-referenced countries.

Product definition

The subject goods are defined as follows:

Wheat gluten, whether or not blended with wheat flour, salt or any other substance, with a minimum wheat protein content of 40% by weight on a dry basis calculated using a Jones Factor of 5.7, originating in or exported from Australia, Austria, Belgium, France, Germany and Lithuania, but excluding (i) devitalized wheat gluten; (ii) hydrolyzed wheat gluten; (iii) wheat protein isolates; and (iv) organic wheat gluten that is certified organic in accordance with and otherwise meets the requirements of the Food and Drugs Act, R.S.C., 1985, c. F-27, and regulations made thereunder, and the Safe Food for Canadians Act, S.C. 2012, c. 24, and regulations made thereunder including the Safe Food for Canadians Regulations, S.O.R./2018-108, all of which as may be amended or replaced from time to time.

For greater certainty, the subject goods include but are not limited to vital wheat gluten as defined by the World Health Organization's Codex Standard 163-1987, Rev. 1-2001 ("Standard for Wheat Protein Products Including Wheat Gluten").

Tereposky & DeRose has extensive experience in anti-dumping investigations. Should you have any questions regarding this investigation, we are at your disposal.

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3. WHAT GOES AROUND COMES AROUND...CANADA ISSUES LIST OF PROPOSED COUNTERMEASURES AGAINST U.S. ALUMINUM DUTIES

As anticipated, Canada issued on August 13th a **Notice of intent to impose countermeasures** against the United States in response to the Section 232 tariffs that the U.S. administration imposed on Canadian articles of non-alloyed, unwrought aluminum on August 6th. Canada intends to impose 10 percent surtaxes on imports of aluminum and aluminum-containing products from the U.S., representing a proportionate amount of Canadian aluminum products affected by the U.S. tariffs.

The countermeasures will only apply to goods originating from the U.S., which are those eligible to be marked as a good of the U.S. in accordance with the Canadian **Determination of Country of Origin for the Purposes of Marking Goods (CUSMA Countries) Regulations**. They will take effect by September 16, 2020 and will remain in place until the U.S. eliminates its Section 232 tariffs against Canada. Goods that are in transit to Canada on the day on which these countermeasures come into force are excluded.

The products covered by the countermeasures will be drawn from the proposed list published in the Notice, which is reproduced below. This list encompasses a broad range of aluminum products, from primary products to finished goods (including e.g., doors, windows, climbing and mountaineering articles, refrigerators, washing machines, bicycles and parts, livestock trailers and golf clubs).

Comments on the Proposed List

The Department of Finance has invited written comments from interested stakeholders. Comments must be submitted by email to fin.tariff-tarif.fin@canada.ca no later than September 6, 2020. Submissions, at a minimum, should include the following information:

- Canadian company/industry association name and contact person.
- Relevant eight-digit tariff item(s) and description of the goods of particular interest.
- Reasons for the expressed support for, or concern with, the proposed countermeasures, including detailed information substantiating any expected beneficial or adverse impact.

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PROPOSED LIST

2606.00.00	Aluminum ores and concentrates
2620.40.00	Slag, ash and residues, containing mainly aluminum
2818.20.00	Aluminum oxide

2818.30.00	Aluminum hydroxide
2826.12.00	Fluorides of aluminum
2827.32.00	Other chlorides of aluminum
2833.22.00	Other sulphates of aluminum
3212.90.00	Pigments used in manufactures of paints and dyes
3815.19.00	Reaction initiators, reaction accelerators and catalytic preparations, other
7601.10.00	Unwrought aluminum, not alloyed
7601.20.00	Unwrought aluminum, aluminum alloys
7602.00.00	Aluminum waste and scrap
7603.10.00	Aluminum powders of non-lamellar structure
7603.20.00	Aluminum powders of lamellar structure; aluminum flakes
7604.10.00	Aluminum bars, rods and profiles, not alloyed
7604.21.00	Hollow profiles, of aluminum alloys
7604.29.00	Aluminum bars, rods and profiles, of aluminum alloys, other
7605.11.00	Aluminum wire, not alloyed, of which the maximum cross-sectional dimension exceeds 7 mm
7605.19.00	Aluminum wire, not alloyed, other
7605.21.00	Aluminum wire, of aluminum alloys, of which the maximum cross-sectional dimension exceeds 7 mm
7605.29.00	Aluminum wire, of aluminum alloys, other
7606.11.00	Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm, rectangular (square), not alloyed
7606.12.00	Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm, rectangular (square), of aluminum alloys
7606.91.00	Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm, other, not alloyed
7606.92.00	Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm, other, of aluminum alloys
7607.11.00	Aluminum foil, not backed, rolled but not further worked
7607.19.00	Aluminum foil, not backed, other
7607.20.00	Aluminum foil, backed
7608.10.00	Aluminum tubes and pipes, not alloyed
7608.20.00	Aluminum tubes and pipes, of aluminum alloys

7609.00.00 Aluminum tube or pipe fittings

7610.10.00 Aluminum doors, windows and their frames and thresholds for doors

7610.90.10 Aluminum structures and parts of structures; aluminum plates, rods, profiles, tubes and the like, prepared for use in structures, other than doors, windows and their frames and thresholds for doors, for use in Canadian manufactures

7610.90.90 Aluminum structures and parts of structures; aluminum plates, rods, profiles, tubes and the like, prepared for use in structures, other than doors, windows and their frames and thresholds for doors, other

7611.00.00 Aluminum reservoirs, tanks, vats and similar containers, for any material (other than compressed or liquefied gas), of a capacity exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment

7612.10.00 Aluminum collapsible tubular containers

7612.90.10 Aluminum aerosol containers, excluding three-piece cans without inserts having a base diameter of 50 mm or more but not exceeding 80 mm

7612.90.91 Embossed aluminum cans for use in the packaging of beverages

7612.90.99 Aluminum casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of a capacity not exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment, other

7613.00.00 Aluminum containers for compressed or liquefied gas

7614.10.00 Stranded wire, cables, plaited bands and the like, of aluminum, not electrically insulated, with steel core

7614.90.00 Stranded wire, cables, plaited bands and the like, of aluminum, not electrically insulated, other

7615.10.00 Aluminum table, kitchen or other household articles and parts thereof; aluminum pot scourers and scouring or polishing pads, gloves and the like

7615.20.00 Aluminum sanitary ware and parts thereof

7616.10.00 Aluminum nails, tacks, staples (other than those of heading 83.05), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles

7616.91.00 Cloth, grill, netting and fencing, of aluminum wire

7616.99.10 Articles of aluminum: Cups for use in the manufacture of candles; Ferrules for use in the manufacture of pencils; Fish egg incubators and parts thereof; For climbing or mountaineering; Identification bands for migratory birds; Pigeon countermark leg bands; To be employed in the manufacture of sera, antisera, toxoids, viruses, toxins or antitoxins, virus or bacterial vaccines, bacteriophage or bacterial lysates, allergenics, liver extracts, pituitary extracts, epinephrine or its solutions, insulin (with or without zinc, globin or protamine), and blood plasma or serum of human origin, or fractions thereof, or extenders or substitutes thereof

7616.99.90	Other articles of aluminum, other
8418.21.00	Refrigerators, household type, compression type
8418.29.00	Refrigerators, household type, other
8450.11.10	Household washing machines, not including machines which both wash and dry, of a dry linen capacity not exceeding 10 kg, fully-automatic
8450.11.90	Household or laundry-type washing machines, including machines which both wash and dry, of a dry linen capacity not exceeding 10 kg, fully-automatic, other
8450.12.00	Household or laundry-type washing machines, including machines which both wash and dry, of a dry linen capacity not exceeding 10 kg, with built-in centrifugal dryer
8450.19.00	Household or laundry-type washing machines, including machines which both wash and dry, of a dry linen capacity not exceeding 10 kg, other
8450.20.00	Household or laundry-type washing machines, including machines which both wash and dry, of a dry linen capacity exceeding 10 kg
8532.22.00	Other fixed capacitors, aluminum electrolytic
8712.00.00	Bicycles and other cycles
8714.91.10	Frame lugs, bottom bracket shells, forks, fork tubing sets, fork bearing assemblies, hydraulic shock absorbing cylinders, spring shock absorbers, rear pivots, cable stops, cable guides and back, chain and seat stays
8714.91.90	Other frames and forks, and parts thereof
8714.92.00	Wheel rims and spokes of vehicles of headings 87.11 to 87.13, other than bicycle wheels
8714.99.10	Bicycle wheels
8716.39.10	Aluminum construction drop-centre livestock trailers having a g.v.w. of 11.778 tonnes or more and a length exceeding 12 m
9403.10.00	Metal furniture of a kind used in offices
9403.20.00	Other metal furniture
9406.90.90	Prefabricated buildings, other than of wood
9506.31.00	Golf clubs, complete
9506.99.00	Articles for sports and general physical exercise (e.g., bats, hockey sticks, playground equipment)
9620.00.93	Monopods, bipods, tripods of aluminum

4. THE U.S. REIMPOSES 10% TARIFFS ON IMPORTS OF NON-ALLOYED UNWROUGHT ALUMINUM FROM CANADA

On August 6th, President Trump signed a [Proclamation](#) imposing aluminum tariffs on imports of non-alloyed unwrought aluminum from Canada. The Proclamation bases the imposition of the tariff on the substantial increase in imports of non-alloyed unwrought aluminum from Canada between June 2019 and May 2020, after President Trump's decision in May 19, 2019 to exclude Canada from the tariff on aluminum imports imposed by Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States). The new tariff will take effect as of August 16, 2020.

On August 6, 2020 Canada responded issuing a [Statement](#) that the measure was “unwarranted and unacceptable” and that Canada will respond by imposing “dollar-for-dollar countermeasures”. Details on Canada’s countermeasures are to be announced shortly.

The U.S. originally imposed tariffs on Canadian aluminum and steel in 2018 through Proclamation 9704 of March 8, 2018. Negotiations with Canada resulted in Proclamation 9893 of May 19, 2019 excluding Canada from the tariffs imposed by Proclamation 9704 but subject to conditions of monitoring and effectiveness.

The imposition of tariffs on imports of non-alloyed unwrought aluminum from Canada is based on U.S. findings that imports of non-alloyed unwrought aluminum from Canada:

- accounted for 59 percent of total aluminum imports from Canada during June 2019 through May 2020;
- non-alloyed unwrought aluminum increased 87 percent compared to the prior twelve-month period and exceeded the volume of any full calendar year in the previous decade;
- non-alloyed unwrought aluminum reached historic levels in June 2020;
- Canadian imports non-alloyed unwrought aluminum account for the 27 percent increase in total aluminum imports from Canada during June 2019 through May 2020.

For the history of this issue, please see: [Agreement to Eliminate The U.S. Section 232 Tariffs on Canadian Steel and Aluminum and Canada’s Retaliatory Countermeasures on U.S. Steel, Aluminum And Other Goods](#); [Canada Announces Final Countermeasures Against The United States](#); [The Morning After: U.S. Allies Taking Retaliatory Measures Against Trump’s Tariffs](#); [Nothing Good Happens After Midnight: Canada, Mexico and the EU Hit With Tariffs on Steel and Aluminum](#).

Tereposky & DeRose regularly provides advice on Canadian trade matters. Should you have any questions regarding this matter, we are at your disposal.

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5. POOL OF TEN APPEAL ARBITRATORS ESTABLISHED FOR THE WTO MULTI-PARTY INTERIM APPEAL ARBITRATION ARRANGEMENT (MPIA)

31 July 2020, the (now 24) signatories to the World Trade Organization (WTO) Multi-Party Interim Appeal Arbitration Arrangement ([MPIA](#)) (Australia; Benin; Brazil; Canada; China; Chile; Colombia; Costa Rica; Ecuador; the European Union; Guatemala; Hong Kong, China; Iceland; Mexico; Montenegro; New Zealand; Nicaragua; Norway; Pakistan; Singapore; Switzerland; Ukraine; and Uruguay) [announced the pool of 10 standing arbitrators](#) that will hear appeals under the mechanism:

1. Mr. Mateo Diego-Fernández Andrade (Mexico)
2. Mr. Thomas Cottier (Switzerland)
3. Ms. Locknie Hsu (Singapore)
4. Ms. Valerie Hughes (Canada)
5. Mr. Alejandro Jara (Chile)
6. Mr. José Alfredo Graça Lima (Brazil)
7. Ms. Claudia Orozco (Colombia)
8. Mr. Joost Pauwelyn (EU)
9. Ms. Penelope Ridings (New Zealand)
10. Mr. Guohua Yang (China)

Members will be selected to hear an appeal using the same principles and methods that apply to form a division of the Appellate Body under Article 17.1 of the [Dispute Settlement Understanding \(DSU\)](#) and Rule 6(2) of the [Working Procedures for Appellate Review](#), including the principle of rotation.

As per the [MPIA](#), the pool of arbitrators comprises persons, unaffiliated with any government, who are of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. In order to promote consistency and coherence in decision-making, to the extent practicable the members of the pool will discuss amongst themselves matters of interpretation, practice and procedure.

For more information on the history of the MPIA see: [19 WTO Members Formalize Multi-Party Interim Appeal Arbitration Arrangement \(MPIA\)](#); [16 WTO Members Establish Multi-Party Interim Appeal Arbitration Arrangement \(MPIA\)](#); [Norway Joins Canada and the European Union In Establishing An Interim WTO Appeal Arbitration System](#); and [Canada and the European Union Announce An Interim Bilateral Arbitration Solution for the WTO Appellate Body Deadlock](#).

Tereposky & DeRose LLP regularly provides advice and acts as counsel in international trade disputes, including WTO dispute settlement proceedings. If you have any questions about the foregoing subject, please do not hesitate to contact us.

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