



OCTOBER-IN-REVIEW

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International Trade

1. IT'S OFFICIAL – NO U.S. TARIFFS ON IMPORTS OF CANADIAN ALUMINUM

On October 27, 2020, President Trump signed a Proclamation that formally exempted Canadian non-alloyed unwrought aluminum exports from the punitive tariffs under Section 232 of the *Trade Expansion Act*. This exemption formalizes USTR's September 15th announcement of the return of tariff-free treatment of Canadian aluminum retroactively in response to Canada's threatened countermeasures (see U.S. Blinks First – No Tariffs on Imports of Canadian Aluminum).

The Proclamation reserves the authority to reimpose the tariff on imports of non-alloyed unwrought aluminum from Canada in the event that the volume of imports from Canada in the remaining months of 2020 exceeds the quantities that the United States expects will be exported from Canada to the United States during this period. USTR has stated that it is expected that Canada would export just 70,000 to 83,000 tonnes of raw aluminum a month through December – about half the monthly rate from January to July. The United States and Canada expect to hold further consultations in December 2020 to discuss the state of aluminum trade between the two countries in light of trade patterns in the last 4 months of 2020 and expected market conditions in 2021.

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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2. CANADA'S BAN OF SINGLE USE PLASTIC ITEMS WILL HAVE TO COMPLY WITH THE WTO TBT AGREEMENT AND OTHER TRADE OBLIGATIONS

On 7 October 2020, Canada released its preliminary list of banned single-use plastic items. The list is included in Table 3a of Environment Canada's Discussion paper: A proposed integrated management approach to plastic products to prevent waste and pollution. The listed products are:

- plastic checkout bags
- stir sticks
- 6-pack rings
- food service ware made from problematic plastics
- straws
- cutlery

While Canada's trade obligations permit measures necessary to protect the lives and health of people, animals and plants, where such measures are trade restrictive or discriminatory, detailed requirements must be met. Among other things, the measures must be the least trade restrictive means of achieving the public health and/or environmental objectives and must not be designed or applied in an arbitrary manner (i.e., a manner that is not rationally connected to the objective or does not contribute to the fulfilment of the objective). Canada's measure, including its preliminary list of banned products, will have to be carefully scrutinized against these requirements.

Tereposky & DeRose is Canada's most experienced law firm in advising on compliance with Canada's international trade obligations and one of the top firms in the world on compliance with the *WTO Agreement on Technical Barriers to Trade* (TBT Agreement). Our lawyers were counsel before the WTO Appellate Body in the trilogy of WTO disputes that defined the interpretation and application of the provisions in the TBT Agreement and the *General Agreement on Tariffs and Trade, 1994* (GATT 1994) that prohibit discriminatory treatment and trade-restrictive measures (*United States – Measures Affecting the Production and Sale of Clove Cigarettes* (DS406); *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (DS381); and *United States – Certain Country of Origin Labelling* (DS384, DS386)). These provisions will be directly applicable to Canada's new ban on certain single-use plastics.

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Economic Sanctions

3. CANADA EXPANDS ECONOMIC SANCTIONS AGAINST BELARUS

On September 29, 2020, Canada, in coordination with the UK, imposed sanctions against 11 Belarusian officials under the Special Economic Measures (Belarus) Regulations (the “Regulations”). This action was followed by controversial presidential elections on August 9, 2020, which were strongly condemned by Canada.

Further sanctions against an additional 31 Belarusian officials were introduced by Canada on October 14, 2020. These actions were taken by amending the Regulations and in coordination with the EU. Previously, Canada had imposed sanctions on Belarus under the Export and Import Permits Act, which were far less restrictive. It required any Canadian exporter to apply for a permit before the export or transfer of any goods or technology to Belarus.

The current measures under the Regulations impose a dealings prohibition, an effective asset freeze, on listed persons. Consequently, the individuals listed in the Schedule to the Regulations are also inadmissible to Canada under the Immigration and Refugee Protection Act. The Regulations prohibit any person in Canada and any Canadian outside Canada from:

- dealing in property, wherever situated, that is owned, held, or controlled by listed persons or a person acting on behalf of a listed person;
- entering into or facilitating any transaction related to a dealing prohibited by these Regulations;
- providing any financial or related services in respect of a dealing prohibited by these Regulations;
- making available any goods, wherever situated, to a listed person or a person acting on behalf of a listed person; and
- providing any financial or other related services to or for the benefit of a listed person.

The Regulations also require several Canadian entities to determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of a listed person. The Regulations also prohibit any person in Canada or any Canadian outside Canada causing, facilitating, or assisting in prohibited activities.

The imposition of economic sanctions does not mean that Canadians must cease business with Belarus. The asset freeze and dealings prohibitions do not apply to certain activities or transactions under the Regulations. Pursuant to the Regulations exceptions can also be

made through an Authorization Order made by the Canadian Minister of Foreign Affairs to carry out a specified activity or transaction that is otherwise restricted or prohibited.

The lawyers at Tereposky & DeRose have significant experience in the design and implementation of sanctions-related compliance programs, including policies, procedures, employee training, and internal control mechanisms. They also regularly assist both Canadian and international businesses, financial institutions, and individuals with internal investigations when “red flags” appear and provide advice on compliance in these areas. Where breaches have occurred, they have worked closely with their clients in making voluntary disclosures and in engaging with the ensuing investigations conducted by the RCMP and Global Affairs Canada.

If you would like to discuss any aspect of the Canadian sanctions regime, contact Vince DeRose, Jennifer Radford or Umair Azam at:

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