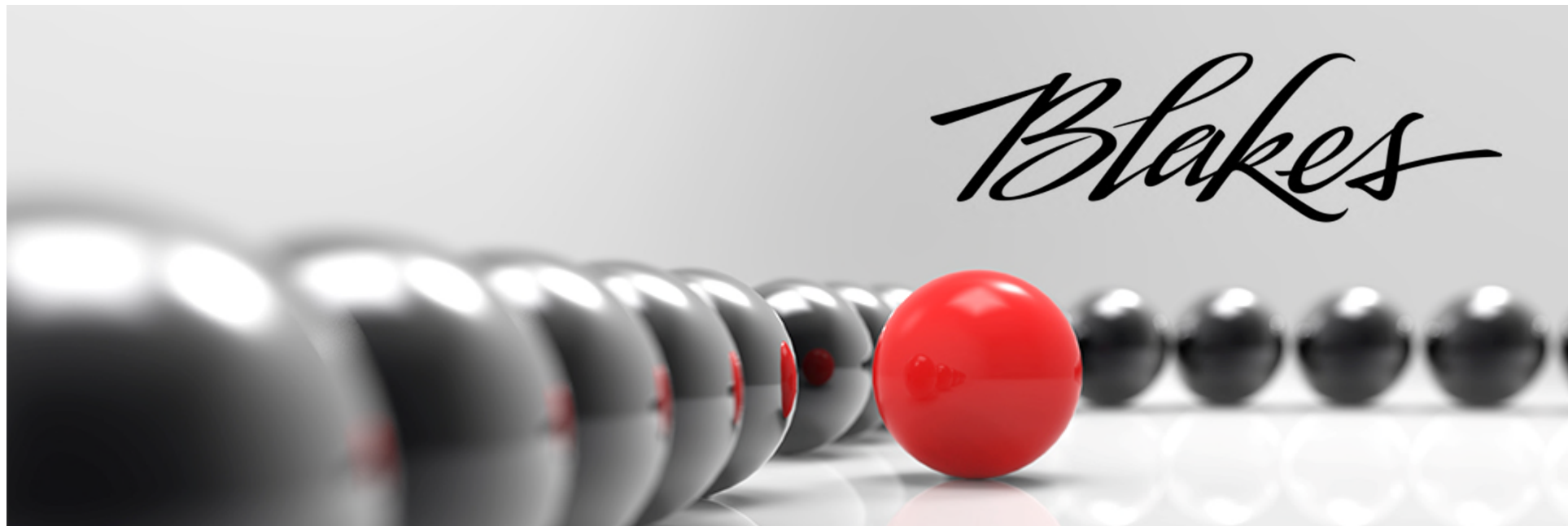




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Canadian Surtax Strategies

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Background

How Did We Get Here?

U.S. Measures

- President Trump requested reports on imports of steel and aluminum goods from the Secretary of Commerce based on section 232 of the Trade Expansion Act of 1962
- Section 232 authorizes the President to adjust the imports of goods that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the “national security”
- January 11 and 19, 2018 – the reports on steel and aluminum were provided to Trump
- March 8, 2018 – Trump imposes tariffs on imports of steel (25%) and aluminum (10%) commencing March 23, 2018 pursuant to Proclamations 9705 and 9704
- March 22, 2018 – Trump exempts several countries, including Canada, from the tariffs until May 1, 2018
- April 30, 2018 – Trump exempts from the tariffs imports from several countries, including Canada, until May 31, 2018
- May 31, 2018 – imposes the 10% aluminum tariffs and 25% steel tariffs on Canada

How Did We Get Here?

Canada's Response

- May 31, 2018 – Canada issues Notice of Intent to Impose Countermeasures
- Proposed surtaxes of up to C\$16.6B, representing the value of 2017 Canadian exports affected by the U.S. measures
- U.S. steel (25%), U.S. aluminum (10%), other U.S. goods (10%)
- Surtaxes to take effect on July 1, 2018
- Preliminary list of items by tariff classification at the heading, subheading and tariff item level (but all breakouts covered)
- Comment period allowed until June 15, 2018
- Over 1,100 formal submissions were received by Finance

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Imposition of the Canadian Surtax

Imposition of the Canadian Surtax

Canada issues two Surtax Orders effective July 1, 2018

- *United States Surtax Order (Steel and Aluminum)*, SOR/2018-152
 - 25% surtax applies to 131 tariff items (steel) of Chapters 72&73
 - 10% surtax applies to 19 tariff items (aluminum) of Chapter 76
- *United States Surtax Order (Other Goods)*, SOR/2018-153
 - applies to 79 tariff items, in 23 Chapters ranging from 04 – 96
- *Order Amending the Surtax Order* issued April 30, 2019
 - deletes tariff item Nos. 8903.10.00, 8903.91.00, 8903.92.00 and 8903.99.90
 - removes boats from the list of goods subject to Surtax

How Does the Surtax Apply?

Surtax applies as follows:

- Goods that are classified in one of the listed tariff item numbers
- Goods that originate in the United States
 - means goods that are “eligible to be marked as goods of the United States under the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*
 - burden of proof on importer to show goods do **not** originate in the US
 - the Orders do not apply to goods that originate in the United States and that are in transit to Canada on the day on which the Order comes into force
- Regulatory Impact Analysis Statement:
 - “countermeasures will be repealed immediately” if the U.S. eliminates its tariffs
 - Covered products “have been selected to support political advocacy in the U.S.”

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Accounting for the Surtax

Reporting and Paying the Surtax

- Surtax applies as follows:
 - both commercial and personal importations of goods (including shipped from third countries)
 - goods released from a Customs Bonded Warehouse or Sufferance Warehouse after July 1, 2018
 - Includes Chapter 98 and Chapter 99 goods
- How to Complete the B3:
 - Surtax is calculated as a percentage of the value for duty of imported goods
 - Complete SIMA Code (field 32) with “51” when surtax applies (“50” when remitted)
 - Amount of the surtax is entered in the “SIMA Assessment” field 39
 - GST applies on the VFD + customs duty + surtax
- CBSA is currently doing post-release verifications to confirm surtax compliance

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Strategies to Avoid the Surtax

Planning to Avoid the Surtax

- Are your goods classified in a tariff item(s) listed in one of the Surtax Orders?
 - Importers should review their tariff classifications to confirm whether the surtax applies
 - Consider tariff engineering if possible/feasible
 - Consider applying for an Advance Tariff Classification Ruling
- Do your goods “originate” in the United States?
 - Work through the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*
 - Consider applying for an Advance Ruling on Marking
- Consider non-U.S. or local sourcing of covered goods
- Negotiate contracts and/or set trade terms to avoid liability for the surtax

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Dept. of Finance's Remission Program

Application Process

- July 11, 2018 - Finance announced it was accepting remission requests for the surtax
- remission allows for relief from the payment of the surtax, or the refund of surtaxes already paid
- only companies registered in Canada are eligible to make requests for remission
- Finance has a “template for submissions” covering 12 items of information that should be included in any application (where applicable)
- applications are accepted at any time (even currently!), there is no deadline.
- relief (if provided) is retroactive to July 1, 2018 but the duration of the remission may be limited depending on the reasons for remission
- all requests are considered by a federal inter-departmental committee before a final recommendation is made by the Minister of Finance
- remission requests are approved by Cabinet and implemented by the Governor-in-Council by Order made under section 115 of the *Customs Tariff*

Conditions for Relief

- Finance will consider remission requests only in the following instances:
 1. To address situations of short supply in the domestic market
 2. Where there are contractual requirements existing before May 31, 2018 which require Canadian businesses to use U.S. steel or aluminum
 3. Other exceptional circumstances considered on a case-by-case basis

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Surtax Remission Order

Status of Remission Orders

- October 11, 2018: entry into force of initial United States Surtax Remission Order (P.C. 2018-1272)
- December 17, 2018: entry into force of Order Amending the Surtax Remission Order (SOR/2018-205)
- April 15, 2019: Order Amending the Surtax Remission Order, No. 2019-1 (SOR/2019-104)

Steel and Aluminum Goods

- United States Surtax Remission Order in effect from October 11, 2018 by P.C. 2018-1272
- Schedule 1 - items relieved indefinitely so long as imported on or after July 1, 2018
 - relieves surtax on 168 items (originally was 110) (steel and aluminum goods) by description vs. tariff classification (originally limited to certain tariff items in Chapters 72, 73, and 76)
- Schedule 2 - items relieved only where imported between July 1 and April 30, 2019 (initially was December 31, 2018)
 - relieves surtax on 46 items (originally was 56 items) by description vs. tariff class (originally limited to certain tariff items in Chapters 72 and 73)
- Schedule 3 – importer specific remissions based on importer number, particular goods, and specific B3 import entries
 - relieves surtax for 219 importers during specific periods per importer, usually to June 30, 2019 (extended from original deadline of April 30, 2019)

Steel and Aluminum Goods

Conditions

- No other claim for relief of the surtax has been granted under the *Customs Tariff*
- Importer makes a claim for remission within 2 years of date of importation

Other Goods

Other Goods

- Subsection 2(1) of the *Surtax Remission Order* and Schedule 4
- Schedule 4 – relieves the surtax indefinitely on 6 tariff items: 4412.39.00, 4811.59.00, 8903.10.00, 8903.91.00, 8903.92.00 and 8903.99.90

Conditions

- Good was imported into Canada on or after July 1, 2018
- No other claim for relief of the surtax has been granted under the *Customs Tariff*
- Importer makes a claim for remission within 2 years of date of importation
- In the case of goods classified in Chapter 89:
 - Good was purchased and sold under contract before May 31, 2018
 - Good has not been exported from Canada and subsequently re-imported

Temporarily Imported Goods

Temporarily Imported into Canada

- Remission granted on goods covered by either Surtax Order on goods imported temporarily for the purpose of repair, alteration or storage

Conditions

- Good is exported immediately after having been repaired, altered or removed from storage
- Maximum period of 12 months after release
- No other claim for relief of the surtax has been granted under the *Customs Tariff*
- Importer makes a claim for remission within 2 years after date of importation

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Other Options for Dealing With The Surtax

Other Options to Obtain Surtax Relief

Duty Drawback Program

- Available on application after surtaxes have been paid
- Available where imported goods are
 1. exported in the same condition as imported
 2. processed in Canada and subsequently exported
 3. directly consumed or expended in the manufacture of goods for export
- Time limit to apply is 4 years from the date of importation

Duties Relief Program

- Pre-approval by CBSA required
- Allows relief from payment of surtaxes at time of importation
- Conditions for relief same as for Duty Drawback
- Using these relieving mechanisms can be complicated where more than a single entity handles the imported goods
- Requirements can be onerous
- Record-keeping requirements can be extensive
- Waivers from other eligible applicants must be secured

Other Options to Obtain Surtax Relief

Canadian Goods Abroad Program

- provided under ss. 101(1) of the *Customs Tariff*
- applicable to surtax pursuant to definition of “duties” in section 80 of the *Customs Tariff*
- partial relief available for goods that are returned to Canada after being exported for repairs, equipment additions or work done abroad
- for “work done abroad” claims:
 - pre-authorization from the CBSA is required
 - applications must be filed at least three months prior to the exportation of the goods
 - exported goods must be a “product of Canada”
 - the “work” cannot practically have been done in Canada
- if the goods qualify for relief, duties are payable on the value of the work/processing done outside Canada

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Thank You

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