



**THE IMPACTS OF CANADA’S RETALIATORY TARIFFS
ON THOSE WHO MUST ADMINISTER COMPLIANCE WITH THEM
Submission to the Standing Committee on International Trade
July 30, 2018**

Customs brokers manage most commercial importations into Canada. Importers rely on their expertise and their systems to ensure compliance with the relevant requirements.

Customs brokers and importers are accustomed to dealing with frequent changes to the rules of international trade. It is an expected part of the business. The July 1, 2018 implementation by Canada of retaliatory tariffs on certain United States goods however, was introduced in a way that imposes a significant compliance burden on Canadian business. We understand that Canadian decision-makers are primarily concerned with the “what” of these measures, and that the political impact of these changes is a focus of attention, but the “how” of implementation is equally important, although poorly understood.

Canadian importers and their customs brokers want to be compliant and make every effort to be compliant, but the implementation of Canada’s retaliatory tariffs on July 1st presented serious obstacles to compliance. It is fair to say that implementation of this surtax could not have been done without the efforts of Canada’s customs brokers. There were only 36 hours between implementation and the issuance of the final list of products and the publication of the Customs Notice indicating how this surtax was to be applied. There were still outstanding policy questions at that time. Implementation was over a weekend – and Canada Day long weekend, at that – with some staff on holidays. Here are some of the specific things that were critical for this implementation.

- IT departments had to shift priorities to manage programming and testing to accommodate this change, within a very tight timeframe. Based on previous experience with the application of surtaxes, businesses made assumptions about the use of an Order in Council (OIC) for programming purposes, and then had to change programming at the last minute when this was not the case.
- Client service departments have pored over database reports of clients to determine which clients were affected. This then had to be validated immediately prior to implementation, on a long weekend, since the final list was available only hours in advance. Clients were contacted to discuss the financial implications of the surtax, including surety bond arrangements and deposit requirements. Many clients had no

idea they imported products affected by the surtax. Importers who had never paid duty because their goods were duty free under NAFTA now face a very different financial reality. This client service function represents a net transfer of cost from the public sector to the private sector – can you imagine the burden on the Canada Border Services Agency (CBSA) if affected importers were trying to get definitive answers from CBSA’s BIS Line rather than from customs brokers, and the increased likelihood of incorrect assessments and the related post-entry adjustments?

- Credit departments of our members had a major challenge to assess and manage the financial impacts of the surtax, including discussions with surety partners, internal client reviews analyzing terms of payment and liaison with clients to put into place financial deposits or surety bonds. There have been repeated follow-ups with clients, and system updates with new credit thresholds. This is ongoing work as importers assess their next steps, perhaps finding alternate suppliers to reduce their financial exposure.
- Senior management of our member firms has also been affected by this change. CEOs and company presidents have been making personal calls to clients explaining financial impacts and options not only with respect to the Government of Canada but with respect to the broker-client relationship. Management has also been reviewing bond requirements and credit policy and reaching out to banking contacts because of potential impacts on the company’s cash flow.
- We will be closely watching the impact on the operations departments of our members. Will new credit policies negatively impact the time that it takes to process the Customs release of a commercial shipment? Will currently prevalent internal “one step” processes, where customs brokers are able to “touch” a transaction a single time, still be useful? We will be gathering feedback and providing it to CBSA as we better understand these operational implications.

Given our experience with these measures, the following are concrete suggestions for improvement:

1. We must improve the quality and timing of information made available to the private sector. Since the Department of Finance issues the final list of retaliatory tariff items and CBSA issued its operational guidance in a Customs Notice, we have been compiling a list of Frequently Asked Questions. Appendix A contains a subset of that list. Many of these questions fill gaps in the Customs Notice, and some key policy questions are still outstanding. In future, there should be an opportunity for the CSCB to consult on the Customs Notice before publication - “not enough time” is never a reason not to do this. Even without knowing the specifics regarding the affected items, we could still sort out in advance most of the issues that we have raised post-implementation this time around.

2. We encourage CBSA to sign off its long-standing review of release prior to payment security, with a recommendation for implementation of mandatory direct importer security as a means of clarifying liability and simplifying program administration.
3. We recommend that CBSA take immediate action to implement efficiencies in the administration of its financial security programs, a suggestion we first made in 2014. Even if it is decided to do this within the CARM framework, we believe we can start working on elements of this immediately.
4. The Government of Canada must rescind the application of these retaliatory measures to goods under \$20 (PIRO and CIRO). It is impossible to comply with this requirement given existing systems and processes developed to support previous regulatory requirements and volumes. We understand the United States has exempted goods under its de minimis amount from retaliatory tariffs.
5. Visits to the office of a customs broker should be mandatory for CBSA staff at the Director and DG level who have responsibilities for commercial processes. We know that knowledge transfer within CBSA is always a challenge, and this becomes even more difficult when staff at these levels come from other government agencies. Decision-makers often have little knowledge of CBSA's commercial processes, and no knowledge of business processes. They cannot be expected to fully understand the complexities and consequences for business of their decisions, or know how to improve implementation strategies. We have previously coordinated these visits and, without exception, have received excellent feedback from CBSA staff about their value. In our view, it is a small investment to make to support compliance and foster relationship-building and communication, especially in today's environment when there is increasing uncertainty in the world of global trade.

We must learn from the errors made this time around and not repeat them. Statements such as “there is no change in administrative or compliance costs to business” which appear in the Regulatory Impact Analysis Statement in the Canada Gazette, are simply not true. We understand why the “what” must be kept secret until implementation but we believe that efforts to understand the “hows” must be fully parsed before any similar, future action is announced.

Canadian Society of Customs Brokers (CSCB) – *As one of the most authoritative and respected organizations in Canada's international trade community, the CSCB actively seeks and achieves improvements in government policies and procedures on behalf of our members and their clients, and consistently delivers relevant, high quality products and services, including education and professional development. The CSCB creates member value and benefits through education, advocacy, information and innovation and provides services to over 160 customs broker members, over 4,200 CCS (Certified Customs Specialist) designates, over 240 CTCS (Certified Trade Compliance Specialist) designates, and more than 700 students on an annual basis.*

APPENDIX A

1. Will we be advised of an Order-in-Council?

The Order in Council will be included in the July 11 issue of the Canada Gazette. However, it will not be mandatory to include the O.I.C. on release or accounting documents. CBSA will use the code shown in field 26 of the B3, together with the HS and description of goods, to identify when the surtax applies. Members who wish to include an O.I.C. or other numbers/characters in field 26 for programming purposes may do so. This is considered a free-text field and will not result in CADEX rejects regardless of the information in this field.

2. Paragraph 7 of Customs Notice 08-18 regarding goods removed from a warehouse and paragraph 19 contradict each other.

CBSA has confirmed that the surtax will apply to ALL goods removed from a Customs Bonded Warehouse or Sufferance Warehouse after midnight June 30, 2018.

3. Does the surtax apply on goods imported temporarily and documented on a B3, E29B, or Carnet?

Yes. The surtax applies to goods of Chapter 99, including goods imported temporarily. When accounting for a temporary importation which is subject to the surtax, in addition to the E29B the goods must be accounted for on a Form B3-3. On the form B3-3, importers must report the surtax order code in field 32 "SIMA Code" of the B3 Form by inserting code "51" for the surtax and importers must enter the amount of surtax owing in field 39 "SIMA Assessment" of the B3 Form.

4. How are non-U.S. goods sent from Canada to the U.S. for processing treated?

If non-U.S. goods are sent from Canada to the U.S. for processing, surtax is payable on the cost of the processing when the goods return to Canada if the origin of the goods has changed to U.S. and if the goods are included in one of the tariff items subject to the surtax.

5. Are goods that are repaired in the U.S. and eligible for re-entry into Canada under heading 9992 subject to surtax?

Paragraph 8 of Custom Notice 18-08 provides guidance on the application of Chapter 99 as it relates to the surtax orders by stating that goods listed in the surtax orders which are also eligible under a provision of Chapter 99 are subject to the surtaxes even though they are entitled to a preferential tariff rate of customs duty under this Chapter. The surtax only applies to goods listed in the surtax orders. If a good is not subject to a surtax, repairs for these goods in the U.S. would not be subject to a surtax.

- 6. Paragraph 10 of Customs Notice 18-08 indicates that the Duties Relief and Duty Drawback Programs continue to be available for duties and surtaxes paid or owed by Canadian businesses. Does the fact that the term “Canadian businesses” was used in the Customs Notice indicate that only a Canadian business can make a drawback claim, and not the eligible parties listed in D7-4-2?**

There are no restrictions specific to the surtax with respect to who may utilize the Duties Relief and Duty Drawback Programs. The criteria in paragraph 5 of D7-4-2 continues to apply.

- 7. Please clarify when goods imported under heading 9814 are subject to the surtax?**

Goods eligible and entered under heading 9814 are subject to the application of the surtax if originating from the US and listed among those subject to a surtax. If a good classifiable under a chapter 98 heading would not be subject to surtax when classified in Chapter 1-97, they are not subject to surtax if classified in Chapter 98.

- 8. What is the authority to file for a refund of overpayment of surtax?**

The authority under which a refund claim would be filed is the same as for any other similar overpayment of duties, i.e. section 74 of the Customs Act.

- 9. Is it possible that the temporary bond amount can be increased to cover the amount of the surtax or must the goods be entered under an importer or broker release prior to payment bond?**

No, the temporary importation surety bond cannot be used to cover the amount of surtax. Unlike the security deposit for duties and taxes that are relieved under various provisions for temporarily imported goods and which may be covered by a temporary importation bond (standing security), the surtax is a non-refundable payment. As the surtax it is not eligible for relief for goods temporarily imported under tariff item No. 9993.00.00 it must be paid at the time of importation and is not eligible as a deposit against a temporary importation bond or other form of security. The amount would be paid under usual import/payment procedures.