Discussions on trade policy have spilled over Canada-U.S.-Mexico borders to involve trade partners around the world. With sudden shifts by the new U.S. administration, the continuing threat of new tariffs and trade barriers creates growing uncertainty in the market. These tariffs also provide a strong motivation for businesses to reorient their trade and supply chains to mitigate risk and remain globally competitive.

What would tariffs mean for Canadian exports, sector by sector? What's the potential impact of retaliatory measures? How would reciprocal tariffs impact Canada-U.S. relations — and your business? How and where can you reposition inbound and outbound trade to other markets?

Keep an eye on this page as BLG's international trade lawyers bring you the latest on the tariff issue, and how your company can adapt.

The inside track on U.S. tariffs and Canadian trade

From Rambod Behboodi

August 25, 2025 – Canada's latest tariff announcement: A concession or a step forward?

The Prime Minister announced last Friday that Canada would remove its retaliatory tariffs on "US products covered under the CUSMA". This, according to the Prime Minister, "matches" the US exemptions under the "fentanyl" tariffs. The government will continue to negotiate the sectoral tariffs the United States has imposed on global imports of steel, aluminum, autos, and copper, and in that context, Canada will be maintaining its retaliatory tariffs on US steel, aluminum, and autos.

Last month I discussed in these pages the shape of the "deal" that we could expect in the short to medium term. The announcement is in line with those early observations.

The Prime Minister pitched the removal of certain of the retaliatory tariffs as "matching" the "USMCA-compliant" exemption in the IEEPA tariffs. This is, strictly speaking, true. Canada will continue to impose sectoral retaliatory tariffs, which further supports the Prime Minister's assertion on "matching".

The usual Monday morning quarterbacking – largely by those far removed from the ongoing negotiations, the tariffs, and their impact – though healthy in a vibrant democracy, has tended to misinform as to timeline, scope, impact, and procedures for the retaliatory tariffs, both those that were lifted and those that remain. It's good and proper that we remind ourselves of what has been happening in the world of Canada-US trade relations since November 25, 2024.

1. Canada announced the imposition of retaliatory tariffs shortly after the imposition, by the United States, of its "fentanyl" tariffs on February 1, 2025. Both sets of tariffs were suspended, to be reimposed in March.
2. US tariffs initially covered all Canadian exports into the United States. Canadian retaliatory tariffs were limited to a subset of *politically* strategic goods. They still had bite on Canadian companies and consumers, but to a far lesser extent than the expected impact of US tariffs on Canadian exports.
3. Canada and the United States eventually negotiated a "USMCA-compliant" exemption to the "fentanyl" tariffs. At that time, it was expected that the tariffs would apply to nearly half of Canadian exports, or about $200 billion. Canada maintained its tariffs on about $30 billion worth of US imports.
4. The United States then proceeded to impose separate tariffs on Canadian autos and auto parts, steel, and aluminum. Canada retaliated with tariffs of

its own.

5. In the course of ongoing negotiations, Canada removed certain measures – such as the digital services tax – that the United States objected to. This gesture of good faith did not result in a softening of the US stance in respect of ongoing tariffs.

Which brings us to the latest unilateral measures taken by Canada to address US concerns – presumably to enable the negotiations to move forward.

There is no question that the remaining Canadian retaliatory tariffs continue to have a negative impact on importers, manufacturers, and consumers. At the same time, the Canadian steel industry remains effectively barred from the US market. The steel retaliatory tariffs remain because the government of Canada could not allow steel exports by *protected* US industries to compete freely in the Canadian market with a battered Canadian steel sector.

And so here we are: certain retaliatory tariffs have been lifted – ostensibly to "match" US exemptions now that we know how valuable they truly are – and others remain.

The Prime Minister is correct – at least in immediate economic terms – that the "non-deal" scenario for Canada is better economically than the "deals" that have been announced so far: average tariffs on Canadian goods are at 5%, considerably lower than the global average of 16%. And although there is a lot of doom and gloom about the challenges of establishing "USMCA compliance", on the ground, the situation is different. It is true that under the old framework, the resources required to produce a certificate of USMCA origin could not be justified in most cases, as it would move the product from a 0% MFN rate to a 0% USMCA/CUSMA rate. Add a 25% or 35% incentive, and manufacturers and exporters are learning to adjust to the new "certificate of origin" reality efficiently.

Where does that leave us?

On the one hand, there is the broader concern that without a deal, or a "deal", Canadian manufacturers and investors will be facing increasing uncertainty.

On the other, Canada and the United States already have a deal. Two of them, in fact. Neither has constrained US tariffs so far. It is not immediately clear that a third, side, deal would fare better.

Be that as it may, the matching announcement is a strategic concession to the realities on the ground. The Prime Minister's concession will likely help move the negotiations forward, perhaps to a tentative global deal on the sectoral tariffs and eventual CUSMA revisions.

CUSMA is up for review in 2026.

Although the principal value of a "free trade" agreement is the removal of tariff barriers and the predictability and security that they will not return, free trade agreements – and in particular CUSMA – are more than just about tariff levels. For example, CUSMA has over two hundred pages of "rules of origin" that are essential these days for any Canadian manufacturing entity engaged in bilateral trade; this is something the EU and the US could spend the next half-decade negotiating. As well, CUSMA also has a sophisticated dispute settlement mechanism that, *other than on the sectoral or fentanyl tariffs*, continues to function. And so on. Neither party appears ready to ditch all of that. As I also observe in my note on the EU-US "deal" in these pages, the same is true of the WTO. Even though the United States is seeking to reorder the global trading system, these legacy institutions and superstructures still serve an important purpose. The concession of last Friday has to be seen against the broader context.

The government of Canada will be launching consultations on its position in the 2026 review and eventual renegotiations. Canadian manufacturers and exporters, and their respective sectoral associations, have a golden opportunity to have an impact on the government's agenda and, by extension, on the contents of a trade agreement that could shape Canada-US (and global) trade relations for the next decade.

August 21, 2025 – A deal is announced

August in Europe is usually very calm. Almost all European institutions south of the beer/wine line come to a standstill, and everyone else catches up on their email backlog.

Not this August.

A joint statement published on the EU Commission website announced a comprehensive deal on U.S. tariffs. According to the statement, "The United States and the European Union, in line with their relevant internal procedures, will promptly document the Agreement on Reciprocal, Fair, and Balanced Trade to implement this Framework Agreement." So we still don't have a *text* text, but the statement, if it holds, could be momentous; and a text, when (if?) it is published, will be the first concrete "deal" since the launch of the tariff wars earlier this year.

Background

A bit of context is useful.

The EU and the United States already have a "deal".

It's called the "WTO Agreement".

In *that* deal, which covers everything from tariffs to subsidies to health measures to intellectual property (and much more besides), each side has agreed to certain limitations on tariff and non-tariff measures they could impose on the other, and in the case of disagreement, each side agrees to resolve it through formal, binding, and impartial dispute resolution, rather than brute force.

Since November 25, 2024, or January 20, 2025, or February 1, 2025, or – pick any date really since the 2024 election – that global "deal" that had held since 1947 was cast aside, at least on tariffs. The United States sought unilaterally to reorder the global trading order.

The New Deal

Over the past few months, bilateral deals have been announced, only to be retracted, or contested, or quietly withdrawn. The EU-U.S. Joint Statement provides welcome certainty for manufacturers, investors, consumers, and politicians – not to mention a measure of respite for negotiators and trade policy officials – and could well serve as template for other deals. So what does it include? Key provisions are:

1. More access for U.S. processed lobster (and processed foods).

2. "The United States commits to apply the higher of either the U.S. Most Favored Nation (MFN) tariff rate or a tariff rate of 15%, comprised of the MFN tariff and a reciprocal tariff, on originating goods of the European Union." (bold added) Along with the "MFN" rate (presumably the rate already inscribed in the WTO Agreement) to certain other goods such as "unavailable natural resources", aircraft, and generic pharmaceuticals.

3. A 15 per cent cap on certain s. 232 tariffs. But also: "All modifications to U.S. Section 232 tariffs will be executed in a manner that reinforces and is consistent with U.S. national security interests."

4. Agree to negotiate rules of origin.

5. Energy purchases: "As part of this effort, the European Union intends to procure U.S. liquified natural gas, oil, and nuclear energy products with an expected offtake valued at $750 billion through 2028." (bold added)

6. Investments: "In this context, European companies are expected to invest an additional $600 billion across strategic sectors in the United States through 2028." (bold added)

7. More EU defence purchases from the United States.

8. This is likely momentous: "With respect to automobiles, the United States and the European Union intend to accept and provide mutual recognition to each other's standards."

9. Commitment to negotiate a mutual recognition agreement on cybersecurity.

10. Strengthen cooperation on export controls on critical minerals by third countries.

11. Commitment to "address unjustified digital trade barriers".

Analysis and Impact

The statement is important not just for what it says, but also for what it implies and what it does not say. The reference to MFN preserves at least a semblance of life for the WTO. And, indeed, although the WTO is not mentioned, the reference to cooperation in respect of third country export controls on critical minerals could well breathe new life in the negotiating and the dispute settlement frameworks of the WTO. Finally, the statement gives us a hint of issues and approaches that the United States would be seeking to include in other "deals". Certainly, what the deal does *not* say is that the superstructures of global trade – at a very practical and prosaic level, tariff classification and valuations rules – are being thrown out with the tariffwater. That's good news.

At the same time, the *text* is not yet out; rules of origin negotiations are notoriously laborious; it is not clear how private sector investment expectations will be fulfilled, nor how the "European Union" will purchase $250 billion in energy products from the United States in the next three years.

And of course the elephant in the room: how will the deal be kept – or enforced?

July 17, 2025 – New tariff announcements by Canada: What do they mean, and what do they *really* mean?

There is a theory in certain circles in Washington, D.C. that public pronouncements and positioning in the midst of ongoing trade (and security) negotiations are part of an overall *strategy*: concessions by the other side are made public and "pocketed"; back to the negotiating table, further concessions are demanded in private, only to be made public and pocketed ... Rinse and repeat, until at some point a deal is announced. Before, of course, the deal is renounced and denounced, to be renegotiated and agreed and annulled – always with the intention of maintaining a position of "strategic uncertainty" *voire* imbalance to end up with a win-lose solution at the end of the day.

There is no denying the fact of ongoing uncertainty. Whether it *is* part of a strategy and whether the strategy, such as it is, will deliver the desired win big-lose crushingly outcome is a different matter.

Time will tell.

In the case of Canada – we are now five days, or two weeks, from various deadlines. We will know where we are when we get there, but perhaps not even then. (See CUSMA.)

Be that as it may, although the United States has been negotiating in the public for some time, the government of Canada – not unreasonably – has been reluctant to get into the fray. There are good reasons for discretion in trade and diplomatic negotiations, not the least of which is that a deal must always be assessed *as a whole* and not – never, as in, not ever – in the light of specific concessions in ongoing negotiations that, pocketed or not, may well not find themselves in the final text. Which final text is in any event always open to further clarification through side letters and protocols and schedules and further agreements.

(In one set of negotiations, a small concession here gave rise to big issues there, which we eventually resolved through a side text over yonder. All good in the end, but you wouldn't know it in the middle.) Which is also why Canada has been reluctant to negotiate in the public. Or had been, until yesterday.

In the last two days, the Prime Minister has made two announcements, both significant, but perhaps not momentous.

To tariff or not to tariff, is that the deal?

In an interview yesterday, the Prime Minister noted that it was not clear that the United States would be willing to give up all of its tariffs in any agreement. Some outlets characterized this as a "concession" of sorts. Perhaps.

Or, perhaps not.

Let's say the United States keeps the "fentanyl" tariff framework (despite U.S. court rulings on that) and removes the remaining sectoral tariffs. Let's even "concede" that the United States would continue to apply 35 per cent – not 25 per cent, but the higher, 35 per cent – tariffs on exports from Canada of goods that are not *USMCA-compliant*. That is, export of goods that do not conform with the rules of origin requirements of the trilateral Canada-United States-Mexico free trade Agreement (CUSMA or the USMCA). Is that bad?

It's complicated.

Only *Canadian-origin* goods – but not other goods originating from other countries and exported from Canada to the United States, or goods that a producer cannot establish are of Canadian origin - are entitled to tariff-free entry into the United States under the CUSMA. Because the United States used to have a largely free-trade framework, compliance with the rules of origin has not been that big of a deal: whether a good came from Canada or Syldavia did not matter, because there would be no tariff on it at all.

Impose differential tariffs, and the calculation changes.

Now, in the above scenario, if you keep *USMCA-compliant* as a limitation, it would mean that the United States could reasonably boast a big, huge, win of 35% tariffs on goods *entering from* Canada. But, equally, Canada could – much more quietly – consider itself lucky that the core of the CUSMA – no tariffs on Canadian-origin goods – has been maintained.

This is not without cost or disruption. But it does mean that a final outcome *that has some sort of tariffs involved* is not the end of the world for Canada. In fact, it might even be a really good deal. If the United States keeps to the bargain.

I won't speculate *why* the Prime Minister started talking publicly about the potential final outcome. But, like a plume of white smoke coming out of the Sistine Chapel, it might be a hint that *habemus pactum*.

Steel city blues

Optics and rhetoric aside, as noted above, we should assess the final agreement only when it comes out. A *successful* agreement will be one that removes the existing tariffs (and the threat of future tariffs) on Canadian-origin or USMCA-compliant steel (and aluminum, and copper, and autos).

Secretary Lutnick's latest comments might give you the impression that nothing of the sort will come to pass. Then again, Prime Minister Carney's statement at the beginning of his mandate – that he will be looking for a trade *and security* agreement with the United States – suggests that Canada has been playing the long game in the negotiations. ("Of course the U.S. can fight a war without American steel; it can fight multiple wars, all over the globe, with *Canadian* steel and aluminum and copper." Though you will not find this in any Canadian public statement.) This is speculation; we'll find out soon enough.

In the meantime, the steel industry needs help.

I started my trade career defending Canadian steel producers. I had the privilege last December to return to the sector in my appearance before the House Standing Committee on International Trade. The Canadian steel sector is heavily integrated into the U.S. economy, and it does not have an immediate alternative market to turn to. The reasons for this are global and complex, but the key point to bear in mind is that access to the U.S. market is essential for the Canadian steel sector, and no amount of internal trade will replace that in the short to medium term.

That access is threatened. Pending a negotiated resolution, the Prime Minister has announced a package of new steel measures to support the industry:

1. Canada will be "tightening" its "tariff rate quote" for steel imports. This is essentially a two-tiered tariff framework: goods enter at a certain tariff up to a certain quantity ("within quota"), and then tariffs will go up above that "quota". The higher tariffs are usually set at a "prohibitive" level and not meant to be collected – the idea is, only the *within quota* steel enters the Canadian market. In this respect, there are similarities to Canada's supply managed sectors.
2. Canada will put in place a series of support measures for the sector and its workers.
3. Canada will "change federal procurement processes to require companies contracting with the federal government to source steel from Canadian companies."

These measures, though without a doubt helpful to the sector, are not long-term fixes. For that, we need the white plume.

Tariff and trade related insights

PODCAST: The Tariff Home Companion

- Episode 3: Canada's historic search for the third option: Trade diversification away from the United States – Nov 21, 2025
- Episode 2: Whither the WTO in its Thirtieth Year – Oct 30, 2025
- Episode 1: CUSMA is in the air – Oct 16, 2025

International Trade & Investment

- EU customs reform: What Canadian exporters and trade associations need to know – July 18, 2025
- Buying Canadian: Recent developments in Canadian public procurement – May 30, 2025
- CUSMA compliance and its relevance to the Canada-U.S. tariff dispute – April 30, 2025
- Breaking down barriers: Ontario pushes for a freer Canadian market – April 24, 2025
- New federal support for Canadian businesses affected by U.S. tariffs – April 22, 2025
- Taxes and tariffs: Can you deduct the duty? – April 2, 2025
- The City of Toronto adopts a tariff response plan restricting some government procurement to Canadian companies – March 28, 2025
- The potential impact of tariffs on agribusinesses – March 6, 2025
- Canada-U.S. tariff war resumes – March 4, 2025
- The return of the steel tariffs – February 19, 2025
- Country of origin for customs purposes – February 19, 2025
- Product of Canada vs Made in Canada: What are the requirements? – February 19, 2025
- (Country of) origin story: Navigating country of origin claims in Canada and at the U.S. border – February 19, 2025
- EU-Mexico's new trade deal: What about a trilateral trade tango with Canada? – February 12, 2025
- Thriving amid tariff shifts – February 4, 2025
- The return of the President: What can we learn from the 2018 U.S. tariffs to prepare for February 1? – January 24, 2025
- A tariff-ying new world: Unpacking Canada's latest tariff policies – January 17, 2025
- The EU-Mercosur Free Trade Agreement: Is it time to revive talks on a Canada-Mercosur Agreement? – January 9, 2025
- Conciliation and mediation: The way forward for the WTO? – November 28, 2024

- China launches a new WTO case on U.S. ‘green’ industrial policy measures – October 29, 2024
- Canada tariffs on Chinese EVs, steel and aluminum: Feds introduce remissions request process to ease transition – October 24, 2024
- No taxation without presentations: Canada to launch public consultations on possible tariff hikes on Chinese EVs – June 26, 2024

Advertising & Marketing

- Country of origin for customs purposes – February 19, 2025
- Product of Canada vs Made in Canada: What are the requirements? – February 19, 2025
- (Country of) origin story: Navigating country of origin claims in Canada and at the U.S. border – February 19, 2025

Agribusiness

- Canada’s economic shield: Fortifying national security in a fractured trade landscape – March 6, 2025
- The potential impact of tariffs on agribusinesses – March 6, 2025

Automotive & Transportation

- U.S. releases new process for expanding auto parts tariffs: What Canadian stakeholders need to know – September 18, 2025
- U.S. releases new tariff changes for the automotive industry – May 1, 2025
- The automotive tariff battle between the United States and Canada: A new phase – April 3, 2025
- Reprieve or escalation? “Reciprocal” and automobile-specific tariffs – April 3, 2025
- The evolving tariff threat: The impact on the automotive industry – February 12, 2025
- No taxation without presentations: Canada to launch public consultations on possible tariff hikes on Chinese EVs – June 26, 2024

Banking & Financial Services

- Banks in Canada: A primer – February 4, 2025

Construction

- Construction Tariff Resource – April 2, 2025
- Navigating impacts of tariffs on the Canadian construction industry – March 6, 2025

- May you live in interesting times: Canadian procurement and potential bans on American companies – February 27, 2025
- Top considerations for construction contracts in light of potential Canadian and U.S. tariffs – February 3, 2025

Corporate Commercial

- Country of origin for customs purposes – February 19, 2025
- (Country of) origin story: Navigating country of origin claims in Canada and at the U.S. border – February 19, 2025
- Canada tariffs on Chinese EVs, steel and aluminum: Feds introduce remissions request process to ease transition – October 24, 2024

Infrastructure

- China launches a new WTO case on U.S. 'green' industrial policy measures – October 29, 2024

Health Care & Life Sciences

- The evolving tariff threat: Impact on med-tech and life science industries – February 27, 2025

Health Law

- The evolving tariff threat: Impact on hospitals in Canada – March 5, 2025

Labour & Employment

- The U.S. tariff effect: Temporarily expanded work share and employment insurance measures introduced in Canada – April 30, 2025
- The U.S. tariff effect: Labour relations – The need for cooperation, not confrontation – April 22, 2025
- The U.S. tariff effect: Renegotiating terms of employment – Avoiding constructive dismissal risks – April 10, 2025
- The U.S. tariff effect: Mass terminations in Ontario – Rights, risks and responsibilities – April 8, 2025
- The U.S. tariff effect: Ensuring the psychological health and safety of a reduced workforce part II – March 26, 2025
- The U.S. tariff effect: Ensuring the health and safety of a reduced workforce part I – February 28, 2025
- The U.S. tariff effect: A multi-part analysis of the impact on Canadian employers – February 7,

2025

Procurement

- May you live in interesting times: Canadian procurement and potential bans on American companies – February 27, 2025

Tax

- Taxes and tariffs: Can you deduct the duty? – April 2, 2025
- Navigating the tax implications of new trade measures: U.S. tariffs and goods and services tax – March 11, 2025
- The price is right? The role of transfer pricing across supply chains of multinational companies – March 6, 2025

Transportation

- Final U.S. Trade Representative Chinese ship fees provide relief for Canadian shipowners – May 29, 2025
- Canada initiates WTO dispute over U.S. tariffs on automobiles and parts – April 28, 2025

Canadian exports

With regulatory changes threatening just about every sector of the Canadian economy, BLG's guidance as a full-service firm will prove a real advantage to Canadian companies looking for strategic solutions on tariff and non-tariff trade barriers. Our International Trade & Investment Group is the most senior and experienced in Canada, and can provide assistance to clients in all industries, including on:

- Tariff mitigation
- Supply-chain restructuring
- Change in business relationships between related Canada-U.S. parties
- Transfer pricing concerns
- Certification of origin issues
- Force majeure and related contractual clauses

You can't afford to be passive in protecting your interests.

Key Contacts

Graeme A. Hamilton
PARTNER

Toronto
GHamilton@blg.com
416.367.6746

Rambod Behboodi
SENIOR COUNSEL

Ottawa
RBehboodi@blg.com
613.369.4770

Jeffrey S. Thomas
PARTNER

Vancouver
JSThomas@blg.com
604.640.4203

Previous inside track posts

July 11, 2025 – The 35 per cent solution

In a standard form letter with which we have become quite familiar, the President of the United States advised Prime Minister Carney of his intention to impose 35 per cent tariffs on Canada as of August 1.

There was mention of fentanyl, but given that that particular pretext has already been adjudicated and found wanting, we can set it aside. And because last week the government rescinded the Digital Services Tax to allow negotiations to go forward to meet an expected deadline of July 21, we know that the DST is not the issue either. President Trump's Secretary of Commerce has already indicated that a “zero-for-zero" deal is not on the table – because of undefined nontariff barriers or other equally undefined unfairness, some say, or because large section of the US electorate remains convinced, still, that foreigners and not US consumers pay the tariffs. So “grand strategy to reduce tariff barriers" is not the issue either.

What does this mean? For now, nothing.

Products that are compliant with the trilateral trade agreement's rules of origin will continue to enter the US tariff free. That is, those products that are not subject to special sectoral tariffs. And those products remain subject to the special sectoral tariffs, and not the additional proposed tariffs. So no change there.

Does the date matter? Probably not.

Canada and the United States had already agreed to try to come up with a deal before July 21. If that happens, August 1 won't matter. If it does not, August 1 is an extension. Either way, the letter is less threat than performance, and that, likely for a domestic audience.

As the dormouse said, 'Keep your head.'

June 5, 2025 – No unbound authority: Congress, the U.S. administration, the courts, and the power to tax

Last week, the United States Court of International Trade (CIT) released its highly anticipated ruling on the legality of two sets of tariffs imposed by the President of the United States under the *International Emergency Powers Act* (IEEPA). The court found that:

> The IEEPA does not authorise any of the Worldwide, Retaliatory, or Trafficking Tariff Orders. The Worldwide and Retaliatory Tariff Orders exceed any authority granted to the President by IEEPA to regulate importation by means of tariffs. The Trafficking Tariffs fail because they do not deal with the threats set forth in those orders.

In its summary judgment, the court also found that under the U.S. Constitution, no "narrowly tailored relief" was possible: "if the challenged Tariff Orders are unlawful as to Plaintiffs they are unlawful as to all". The injunction affected only a subset of tariffs currently in force: for example, those imposed on autos or steel under s. 232 of the *Trade Expansion Act* 1962 continue in force. The U.S. government appealed the decision, and the U.S. Court of Appeals for the Federal Circuit promptly issued a "temporary" administrative stay of the injunction pending consideration of substantive motions.

How solid is the ruling? From an outsider's perspective, quite solid on first read. To make sure that I had got the gist of it right, I looked at the critiques of the judgment; they did not disappoint. In fact, the ink was not yet dry on the ruling before John Yoo, of the *Torture Memo* fame, denounced the ruling as "a flawed decision that improperly intrudes into national security affairs and fails to grapple with the profound constitutional issues at stake." According to Mr. Yoo, the CIT's grounds for the decision were "remarkable, indeed unprecedented … [and] range far from the judiciary's role in foreign affairs." Indeed, the court, Mr. Yoo asserts, "intrudes into foreign policy in a manner no federal court has ever done before." Here is the thing: you know the CIT ruling is solid because the critic does not even engage with the case the CIT based its entire decision on: the post-Nixon *Yoshida* case.

And also because of this – frankly astonishing – sentence: "the Court gestured to broader canons of construction, including the nondelegation and major questions doctrines." [emphasis added] In a constitutional democracy, the "nondelegation doctrine" – or the Westminster presumption against the validity of "Henry VIII clauses" – is at the very heart of the relationship of the citizenry, the legislature, the Executive, and the power to tax. Courts do not "gesture" to bedrock principles.

So what next?

It is difficult to assess where the Appeals Court – or, indeed, the Supreme Court – ends up. More to the point, the trade policy quiver of the President, as we are all finding out, is full of discretionary and plenary authorities to impose taxes by Executive fiat. As Groucho Marx might have said, "Those are my provisions. If you don't like them, I got others." As mentioned, the s. 232 tariffs continue unabated. And not just: in a proclamation issued on June 3, the U.S. President raised the "national security" steel and aluminum tariffs from 25 to 50 per cent (except for exports from the United Kingdom). The Trade Act of 1974, and the Trade Act of 1930, provide additional avenues for the U.S. administration to impose punitive tariffs on trading partners.

In the light of the foregoing, the CIT ruling – and what comes of the various appeals – is only a minor bump in the road. This observed economic and legal chaos is, according to the U.S. Secretary of the Treasury, merely "strategic uncertainty" deployed as a negotiating tactic. Fair enough – though, of course, it remains to be seen what it is that the administration hopes to gain out of the negotiations.

I will leave you with this priceless statement by Senator John Kennedy of Louisiana, a strong supporter of the administration, in response to representations made by the U.S. Secretary of Commerce: "Why are you negotiating trade deals then? … You just said if a country came to you

and offered the ultimate reciprocity, no tariff, no trade barriers, in return for doing us the same, you would reject that."

May 5, 2025 – A new threat to U.S. national security: the imminent demise of Hollywood
The president of the United States announced, in a Sunday afternoon social media post, his intent to declare incentives by its trading partners to their film industries a "national security threat" to the United States.

In his social media posts, the president authorized the Department of the Commerce and the United States Trade Representative to institute a 100% tariff on "any and all Movies coming into our Country that are produced in Foreign Lands." The White House has since indicated that no definitive decision has been made on the topic, but that "the Administration is exploring all options to deliver on President Trump's directive to safeguard our country's national and economic security while Making Hollywood Great Again."

In response to this move, former Alberta premier Jason Kenney noted the support provided to the Canadian film industry and exhorted the Prime Minister to protect the industry against this new threat. *Critics* of film subsidies underlined, however, the vast resources that governments at all levels pour into the sector and argued that policy makers should take this opportunity to remove what they – the critics – considered wasteful and distorting support for the Canadian film industry.

Read the whole article here.

April 2, 2025 – U.S. trade war escalates: "Liberation Day" promises new barriers to free trade
On April 2, President Trump announced a series of tariffs on imports into the United States:

- 25 per cent tariffs on foreign-made automobiles and parts;
- variegated tariffs on a wide range of trading partners;
- baseline 10 per cent tariff on all other countries; and
- as reported by news agencies, CUSMA-compliant products will not be subject to the baseline.

News reports also indicate that the exemption for CUSMA-compliant products in "fentanyl" tariffs will continue for the time being.

We underline that the Executive Order has not yet been published. We will provide additional information as and when the EO is signed.

March 26, 2025 – The end of an integrated North American auto manufacturing sector?
An automated social media account apparently linked to the US Department of Government Efficiency (DOGE) had the following to say about the latest US tariff announcement:

> *The $100B revenue isn't a "tax hike"—it's a reclamation of funds from foreign competitors who've rigged trade for decades.*

There are at least four issues with this sentence; more on that later. The $100B figure refers to the announcement by President Trump, on 26 March 2025, that he will revive his own 2019 finding, based on a Commerce Department report, that:

> *automobiles and certain automobile parts are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States*

and, as a result subjected automobiles (as of 3 April) and auto parts (as of 3 May) to a 25% tariff.
The United States imports about $200B worth of automobiles. The top five exporters of autos to the United States are:

Mexico: $78B

Japan: $40B

S. Korea: $37B

Canada: $31B

Germany: $25B

The maximum revenue that can be raised out from a 25% tariff on $200B of imports is, of course, $50B. The "Autonomous AI uncovering waste & inefficiencies in government spending & policy" – and presumably the US government – has a basic math issue.

Tariffs, by raising the cost of imported goods, will generally result in lower imports. That, at any rate, is why they are imposed in most instances – to reduce competition for domestic goods. And so, that $50B revenue is likely to be lower than expected. Tariffs are reflected in higher domestic prices for the goods – and, in that sense, the only "fund reclamation" that's taking place is from the pockets of US consumers, rather than foreign competitors.

The picture is even more complex than that.

Well over $100B of these imports are from Mexico and Canada, parties to the Canada-United States-Mexico Agreement, negotiated and signed by President Trump in his first Administration. The Proclamation notes, in this respect, that,

the revisions to the [...] United States-Mexico-Canada Agreement (USMCA), have not yielded sufficient positive outcomes. The threat to national security posed by imports of automobiles and certain automobile parts remains and has increased. Investments resulting from other efforts, such as legislation, have also not yielded sufficient positive outcomes to eliminate the threat to national security from such imports.

CUSMA, or the USMCA, was built on the NAFTA, an agreement promoted and advanced by the United States in the early 1990s, which was in turn based on the Canada-US Free Trade Agreement, which entered into force in 1989. The automotive rules of origin of the CUSFTA were founded on the Canada-United States Automotive Products Agreement – the Auto Pact – which entered into force in 1965.

In recognition of this 60-year economic and industrial integration history in the automotive sector, the understanding is that for CUSMA products, the tariffs will apply only to the non-US component of a vehicle, rather than its full value. This would mean a reduction in the impact of the tariffs on US consumers, such an approach has two ancillary – and possibly intended – effects: it will substantially increase the compliance costs of the automotive sector; it also upends the complex and heavily negotiated CUSMA rules of origin. But if all works out, it would mean that tariffs on Mexican and Canadian exports to the United States are going to be less than the full rate: at least for Canadian automobiles, roughly half of the input is US-made. So not even $50B.

The lesson in all of this? AI has a long way to go before gaining sentience and taking over the world: basic math appears to defeat it, and words it uses – “rigged” – have less than a robust connection with history, or facts.

One final note: the auto tariffs are distinct from the “reciprocal” tariffs expected on 2 April, and likely the “fentanyl” tariffs suspended and due on the same date.

March 12, 2025 - Trade War goes global

On March 12, 2025, promised (or threatened) U.S. tariffs of 25per cent on imports of steel and aluminium, and certain products containing steel and aluminium, “from most countries” under section 232 of the *Trade Expansion Act* of 1962 came into effect. This was after a new finding that the “articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States”.

These new measures are not, of course, *new*. For the most part, they reinstate the June 2018 tariffs on steel and aluminum products that covered items such as steel pipes. The 2025 measures go further by increasing the tariffs on aluminum to 25 per cent, up from 10 per cent in 2018, and by extending the tariffs to other steel and aluminum products, such as household products.

In response, so far, the EU has announced retaliatory tariffs targeting €26 billion worth of U.S. goods, in two tranches. First, the EU will unsuspend the measures on €8 billion worth of goods originally imposed in 2018 and 2020. Second, the EU will impose a package of new measures on €18 billion of U.S. trade, as of mid-April, after consultations with Member States and stakeholders. The consultations are expected to take two weeks. On March 26, 2025, and in the following days, the consultation period will conclude and the Commission will finalize its draft of the countermeasures which is to take effect by mid-April.

March 11, 2025 – The week the world of trade changed

What a week it’s been!

I’ve been practicing trade law for 32 years now and in that time, only once – when the gavel came down on the WTO negotiations in December 1993 – could I recall a week as momentous as this. That gavel launched a new era in the world of trade: the establishment of a rules-based framework for global trade, one aiming for predictability and security – and therefore prosperity – for all; a new era not just for governments that accepted the negotiated outcome, but for businesses (and their workers), who could rely on background rules governing their international transactions in goods, services, and intellectual property.

On March 4 of this year, a different world was born. After a 30-day reprieve, the United States formally imposed 25 per cent tariffs on all goods other than energy, and 10 per cent tariffs on energy, of Canadian origin imported into the United States. Canada swiftly retaliated, as it had said it would. Three days later, a new Executive Order reversed the tariffs for “USMCA compliant” goods until April 2. But not without some additional drama: the reprieve initially applied to Mexico following a “respectful dialogue” between presidents; it was extended to Canada some hours later.

The new Executive Order did something else. Following intensive lobbying by the U.S. agriculture sector, the U.S. lowered the tariffs – now suspended – on potash to 10 per cent. The lower tariffs on energy and potash somewhat undermine early Administration assertions that the tariffs would have minimal or no impact on prices. Be that as it may, April 2 is now the new deadline for the imposition of tariffs initially formally announced on February 1, ostensibly to stem the flow of fentanyl and illegal migrants from Canada.

But that is not all.

On March 12, a new set of tariffs – really, an old one from 2018 exhumed for new effect – on steel and aluminum is slated to enter into force. And on April 2, “reciprocal tariffs” to match tariffs that the trading partners of the United States had already negotiated with the U.S. in multilateral or bilateral fora (in exchange for tariffs the United States routinely applies in its own sensitive sectors), to counter domestic and non-discriminatory value-added taxes of its trading partners, and to correct for unspecific “non-tariff barriers”. I’ve written about all this below.

In the meantime, Canada’s first announced retaliation list – on $30 billion in U.S. imports - remains in force. Ontario has announced its own measures, including a 25 per cent surcharge on electricity exports to the United States (we will write on that shortly). The second list has been postponed; it may yet be revived on March 12. President Trump, having already stated on multiple occasions that the United States does not need anything from Canada, reacted to the Ontario electricity price hike by announcing that he would increase the tariffs on steel and aluminum from Ontario to 50 per cent. The United States wishes, it would seem, to continue to have unlimited access to cheap Canadian energy exports, even as it restricts access to Canadian goods.

As if that weren’t enough movement for one week, China announced a series of new measures on canola oil and meal, peas, and pork, to counter Canada’s imposition of measures on Chinese imports of electric vehicles. More on that later.

Feb. 27, 2025 – A new tempest this way comes
Earlier we wrote about a communication by President Trump about the unfairness of the Value Added Tax. Now the U.S. Commerce Secretary has added his official perspective on the matter. Mr. Lutnick “has warned that Canada's national sales tax will be subject to retaliation.”

Retaliation is, of course, a curious term. It is not clear how Canada’s non-discriminatory national sales tax is harming the United States, U.S. exports to Canada, or – to pick up on a favourite theme – border security. What is the issue? These are the reported words of the Commerce Secretary of the United States:

> "We're supposed to have a free trade agreement with Canada, but they have a 5 per cent national tax," Lutnick told Fox News, in an interview following the first cabinet meeting of the Trump administration. "They tax so many different things. It's outrageous. They basically cheat around the sides, and then when we don't act, they stop cheating around the sides. They cheat right down the middle. And the President is sick and tired of it."

Read the whole article here.

Feb. 26, 2025 – A gift that keeps on giving
There is an old Persian proverb:

> *Every moment the orchard delivers a fruit*
> *Each more novel than the more novel before*

And so it is that copper imports have been declared a matter of national security in the United States. This is on top of steel and aluminum. And, of course, in addition to all imports from Canada and Mexico.

President Trump has ordered the initiation of a “Section 232 investigation” to determine whether “the United States’ increasing dependence on imported copper, in all its forms,” gives rise to a national security risk. The Executive Order also, and confusingly, refers to “trade remedies” to “safeguard domestic industry.” (“Trade remedies” and “national security” generally have

different procedures and bases.) The Fact Sheet issued by the White House notes that copper imports now constitute 45% of consumption in 2024, and "potential export restrictions from other nations" could threaten copper availability for US "defence and industry needs."

U.S. copper imports have been particularly strong since the post-pandemic economic recovery. This is in part attributable to an increase in demand in electrical vehicles and renewable energy. 90 per cent of copper imports into the United States originate in three countries: Chile, Canada, and Peru. The United States has free trade agreements with all three. None has ever imposed "export restrictions" on exports of copper, or other critical minerals, to the United States. Any "strategic" concerns about domestic supply arise not as a result of imports, or concerns about export restrictions from longstanding allies of the United States, but because of domestic regulatory issues.

To understand why this is happening – first, steel and aluminum, and now copper – we need to go no further than the editorial board of the Wall Street Journal, and the official position of the U.S.-based National Mining Association. Reacting to "Trump's Steel Tariffs," the WSJ observed that, "This is political rent-seeking at its most brazen." So it is; and here is the NMA at its most brazen:

> *The United States, despite sitting on trillions of dollars' worth of copper reserves, has become increasingly dependent on imports from countries like Chile, Canada and Mexico. This dependency leaves us vulnerable to geopolitical risks and supply chain disruptions. It's time for a change.*

It's important for Canadian mining interests to engage in new investigation through robust data-based submissions. We need to be there to underline that the solution to strategic concerns in the U.S. is not to raise the price of copper domestically, depress it internationally, and harm the closest trading partners of the U.S. in the process. If there are regulatory issues at home, that's where the solution lies, not in economically and strategically harmful, and blatantly illegal, tariffs on legitimate trade.

Feb. 19, 2025 – The return of the steel tariffs

Since November 25, 2024, importers, exporters, manufacturers, and consumers on both sides of the Canada-U.S. border and across all sectors have had to deal with two concurrent challenges: the potential imposition of layers of costs as a result of new tariffs announced in regular intervals by the new Administration, and the extreme uncertainty as to what comes next. The stability in framework rules that governed Canada-U.S. trade can no longer be taken for granted.

What is the likely impact of steel and aluminum tariffs on Canadian exports? How will retaliatory measures affect Canadian producers and consumer? What will yet another layer of "reciprocal" tariffs do to Canada-U.S. relations — and your business? Each sector and each company will be affected in a different way, and will need a bespoke strategy to address and manage the developments ahead.

Destabilizing though they may be – and we should not underestimate the harm of either the tariffs or the uncertainty to Canadian interests – these unprecedented disruptions to global trading order that had been going strong for nearly 80 years also present a real opportunity for Canadian business to reorient trade patters and take better advantage of existing relationships outside of the U.S. – and build new ones – and to expand hitherto less-explored interprovincial trade. This is the time for all Canadian businesses to start thinking about repositioning inbound and outbound trade from and to other, friendlier, more open, and more secure, markets.

Read the article.

Feb. 17, 2025

In a statement published on Elon Musk's social media platform, X, President Trump announced a sweeping set of new trade measures based on a faulty premise of how taxation and trade frameworks of other countries (and his own) operate. The measures are sure to throw tax and customs administrations of other countries (and his own) into chaos. Every sentence of the announcement gives rise to a concern.

> *"I will charge a RECIPROCAL Tariff meaning, whatever Countries charge the United States of America, we will charge them - No more, no less!"*

Of course, no country charges the *United States of America* tariffs of any kind. Tariffs are paid, by the importer, upon the importation of goods originating abroad. The importer then passes the tariff on to the local consumer. The tariffs are based on *negotiated* and *agreed* rates set out in multilateral (the WTO Agreement), regional (the CUSMA), and bilateral (the Canada-EU CETA, for example) trade agreements. Those rates reflect a balance of negotiations and interests, and basic institutional principles that have governed international trade since 1947. Returning to reciprocity – that is, upending nearly 80 years of stability in trading relations – will have enormous costs, in administration as well as commercial uncertainty. That's just the tip of the iceberg.

> *"For purposes of this United States Policy, we will consider Countries that use the VAT System, which is far more punitive than a Tariff, to be similar to that of a Tariff."*

On the positive side, this is the first time that the US president has acknowledged a tariff is a tax. Be that as it may, it's difficult to discern in which way a value-added tax is "far more punitive," or even mildly more so, than a tariff.

Remember: a "tariff" is an indirect tax, hidden from the consumer, which is paid and absorbed into the price of an imported good. A *value-added tax* – like the GST – applies equally to both domestic and imported goods, and generally operates through a sophisticated system of input tax credits.

Let's say a distributer buys 100 widgets. It pays GST on the wholesale price of those widgets. The distributor then sells those widgets to ten different stores. Each store buys those widgets at a certain price (higher than that paid by the distributor) and pays GST on that transaction.

Wait - what? So, you mean GST is charged twice? Yes and no: the distributor gets to deduct the GST it has paid on its initial purchase, and so it pays the CRA only the difference between the two. The same happens when a store sells a widget to the ultimate consumer. This means that there is really only one GST paid on a widget: the one at the point of consumption on the final sales price.

It gets even better. Unlike with a tariff, an input tax credit may be available in respect of other expenses related to commercial activity. (The CRA site sets out the list.)

There is, in this sense, nothing "punitive" about a VAT, and certainly not in any way shape or form "far more" so than a tariff.

> *"In addition, we will make provision for subsidies provided by Countries in order to take Economic advantage of the United States."*

There already is one. It's the oldest and most sophisticated countervailing duty framework in the world, one with which Canadians – especially exporters of softwood – are very familiar already.

> *"Likewise, provisions will be made for Nonmonetary Tariffs and Trade Barriers that some Countries charge in order to keep our product out of their domain or, if they do not even let U.S. businesses operate."*

I have no idea what a “nonmonetary tariff” is, and how it can be “charged” if it is nonmonetary. Be that as it may, non-tariff barriers are already subject to significant disciplines internationally: Articles III and XI of the GATT prohibit discriminatory domestic measures and import prohibitions; the TBT Agreement governs technical regulations and standards; and the SPS Agreement deals with health and food safety measures.

> *“We are able to determine accurately the cost of these nonmonetary trade barriers.”*

And, no, they’re not.

> *“There are no Tariffs if you manufacture or build your product in the United States.” [emphasis added]*

Finally, we come to the principal point of the announcement. There is a certain beauty in the simplicity of this sentence. It should end the debate, “Why the tariffs?” and “Let’s negotiate.” The end point of this fast and furious flurry of trade-related announcements is mercantilist autarky. Cooler heads will eventually prevail, but not before enormous damage has been done to the fabric of international business transactions more generally, and the word of the US in its trade agreements more specifically.

Feb. 7, 2025 – Do the CUSMA rules of origin still matter?
Much of commentary on the most recent tariff dispute between the United States and Canada has concentrated on the economics: who pays and what are the effects. These are important considerations, to be sure, and must be front and centre in any conversation about the topic.

At the same time, Canada-U.S. trade relations in goods (setting aside services trade) are far more complex and intertwined than tariffs and counter tariffs. At least two trade agreements set rules for our annual bilateral $800 billion goods trade. The U.S. tariffs might be illegal (they are), but the treaties are still there, and they still matter: the U.S. has not yet repudiated them, and is not even threatening to do so. The tariff issue raises specific concerns under other provisions of those agreements. We will, in the course of the coming weeks, explore those concerns in more detail. At the moment, one point sticks out: if the U.S. imposes tariffs on Canadian goods, and Canada imposes tariffs on U.S. goods, how do you determine where the goods are coming from?

That is to say, if the tariffs are illegal, do the CUSMA rules of origin still matter?

In a word, yes. How do we know? Well, despite the threat of tariffs, both the WTO Agreement and the CUSMA still govern trade relations on goods between Canada and the United States.

For example, the United States has not changed its customs valuation or classification rules. Nor does it propose to fundamentally alter its tariff administration to make it less objective or transparent, or more discriminatory, than required under the WTO. At least, not yet.

The same is true, in our view, with the CUSMA rules of origin. The tariff disciplines of the CUSMA and the WTO Agreement might well, for the time being, be out the window, but the bilateral — indeed, global — framework within which those tariffs would apply continue to operate.

Of course, that does not mean you’re out of the woods: the rules of origin chapter of the CUSMA runs to a dense, mind-numbingly technical 270 pages. But the rules are still relevant. So if you have any questions, give us a call at BLG and we’ll sort it out.

Feb. 6, 2025 – Welcome to our one-stop shop on trade tariffs
Starting Aug. 2024, BLG's Trade Team (that is, lawyers from our International Trade & Investment Group) has been making presentations at all our offices and at various meetings across the country to identify the challenges Canada faced regardless of the outcome of U.S. elections. It has been a hectic few months, between trade-related Insights, trade-related advice, public advocacy, and client communication and education efforts.

Since Nov. 25, 2024, Canada, as well as Canadian and U.S. entities engaged in international trade, have lived in a state of uncertainty, which is also true of BLG counsel across most of the firm's business lines. That uncertainty was resolved, in a manner, on Feb. 1, 2025: an Executive Order signed by President Trump targeted "All articles that are products of Canada" with punishing tariffs, ranging from 10 per cent for certain energy products to 25 per cent for the rest. Despite past practice, the EO did not set out a list of products, and did not provide for an exclusion framework.

In response, and on the same day, the government of Canada announced a series of retaliatory measures in two waves:

- First, a specific set of products was targeted for immediate retaliatory measures.
- Second, a more comprehensive list was made subject to a 21-day consultation period.

As is customary in these situations, the government of Canada also provided for a "remissions" framework.

All of these measures were suspended on Feb. 4, after Canada recommitted to a number of initiatives agreed with the previous administration, and announced new positions and spending in respect of "border security."

Over the past months, the Trade Team has produced a number of templates and guides for counsel to be shared with clients. In particular, though not exclusively, we focused on:

- Tariff mitigation
- Supply-chain restructuring
- Change in business relationships between related Canada-US parties
- Transfer pricing concerns
- Rules of origin issues
- Force majeure and related contractual clauses

The Trade Team remains at your disposal for generic or bespoke speaking points, client meetings, association information sessions, and other outreach activities. Contact any of our key contacts on this page.

Related Expertise

International Trade & Investment

Trade Policy & Negotiations

Competition/Antitrust and Foreign Investment

Additional Services

Mergers & Acquisitions

Government & Public Sector

Capital Markets

Banking & Financial Services