The return of the steel tariffs

February 19, 2025

In two separate “national security” proclamations issued last week, the President of the United States “restored” tariffs on steel and aluminum that it had imposed on these same articles in 2018 and had suspended following agreements with the affected parties.

One of those parties was Canada.

One of those agreements was the Canada-United States-Mexico Agreement, negotiated by President Trump.

This is what President Trump had to say about the CUSMA at the time:

> *I have to, certainly, give my highest regards to Prime Minister of Canada, Justin Trudeau. A lot of stories came out about Justin and I having difficulty together, and we did over the trade deal. But I'll tell you, it's turned out to be a very, very good deal for both; and a very, very good deal for all three. It puts us in a position that we've never been in before.*
>
> *It's very good when you look at the world and what the world is doing and what — when you look at the unfair trade practices that countries are using against the United States, this is a terrific deal for all of us.*
>
> *Once approved by Congress, this new deal will be the most modern, up-to-date, and balanced trade agreement in the history of our country, with the most advanced protections for workers ever developed.*

At the time, he was not wrong.

This “terrific deal”, agreed and trumpeted by President Trump in 2018, provides, in Article 2.4:

> *1. Unless otherwise provided in this Agreement, no Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.*

On February 1 of this year, the President, now in his second term, signed an Executive Order (the Tariff EO) under the *International Emergency Economic Powers Act* (IEEPA) that imposed a *blanket* 25% additional tariff on "all articles:"

- originating in Canada, and
- entering the U.S. for consumption in the U.S., except for
- "energy" as defined in the "Energy Emergency Executive Order" signed earlier, which were subjected to 10% tariffs.

The stated basis for these sweeping measures that would have brought large parts of the Canada-U.S. trade relationship to an abrupt halt was "illegal migration and fentanyl," described by a former Trump trade official as an "existential crisis" for the United States. The Tariff EO was suspended for Canada on the adoption of certain measures to monitor and "secure" – against exports and outbound migration – the 8,891 km border across 13 U.S. states and eight Canadian Provinces and Territories.

Shortly after the Steel and Aluminum Tariffs, the President announced the imposition of a system of "reciprocal tariffs" on all of the trading partners of the United States. It is not clear if these tariffs responded to other "existential" crises in the U.S., or if they were to have some other "essential security" justification.

What will all these different tariffs do?

There will, without a doubt, be price increases for domestic consumers *and* producers that use imported inputs, and consequential price increases for *their consumers*, including in export markets. It is possible to construct models that in respect of specific products or producers the price impact will be modest, but there is no denying that there will be a price increase *because that is the purpose of protective tariffs*. This is not theoretical economics. Just ask any trade remedy lawyer in the United States, or any Canadian exporter of softwood lumber into the United States, about antidumping and countervailing duties and they will tell you the how and why of the price impact of tariffs.

So, we know both the *intended* and the *immediate* effect of these tariffs to U.S. consumers and U.S. users of imported inputs.

Prices, in turn, shape demand. There will be a reduction in at least some Canadian sales into the United States, and certainly some profits.

So, that's the snapshot.

If you switch to video mode – that is, undertake a *dynamic* analysis – the consequential effects are likely to be far more troubling. Depressed demand for Canadian goods abroad results in job losses and depressed prices at home. These threats – and, of course, the imposition of tariffs – result in extreme uncertainty and disruption in economic relations across all sectors of the economy, affecting investments and long-term contracts.

Then there are retaliatory tariffs by trading partners of the U.S., the institutional and legal breakdown of trade agreements, and pressures to circumvent the tariffs.

Governments will do what they can to contain the damage at home and the harm to our trading relations. We are not yet in an all-out trade war. Although a strong Canadian retaliation list is out, the scope is limited to goods. It will be rolled out in two stages. There will be consultations. Entities that might suffer extreme harm could well get a break. (No exclusions for U.S. buyers of steel and aluminum; they have no option but to buy more dear steel and aluminum. On the campaign trail, candidate Trump expressed his fondness for the Golden Age of Tariffs. It was also, it should be noted, the age of monopolies and robber barons.)

At some point, however, Canada's capacity to retaliate on goods will be exhausted. At some point, policymakers will run out of options to respond. At some point, someone will notice that the United States has a $30 billion surplus in services trade, mostly in financial services. At some point, someone will remember the precedent, in the WTO, of proposed withdrawal of intellectual property protection in the face of extreme imbalance of economic power and trade patterns.

We're not there yet, of course. But the stark reality of the new steel and aluminum tariffs could well have two deep structural consequences for Canada.

First, about that "terrific deal."

The airwaves, the printed pages, the social media, and the coffee machines have witnessed plenty of debates about the *real* motivations of the U.S. administration:

- "Border security": 'If we just fixed the border, the tariffs would go away.'
- "Art of the Deal": *the President is "transactional"* (a word used by one of his former officials); *he just wants a deal*.

Well, steel and aluminum tariffs are not about border security. And the structure of the proclamations by the U.S. administration does not evidence an interest in a "deal."

Even if they were interested, we already have a "terrific deal," remember? The President no longer considers his deal convenient, and so it is no longer relevant. But, in the world of lawyers and our clients, a "deal" usually *ends* negotiations; it is not, in ordinary parlance – let alone commercial relations – the basis for the next round, and the round after that, and still another after that.

And thus, the CUSMA is no longer at the centre of Canada-U.S. trade relations. Neither is any other trade agreement between our countries. This means that many of the certainties that we had taken for granted about trade policy risks no longer apply. In the absence of background rules, commercial contracts that involve trade with the United States need to be restructured. This is the first structural consequence.

The second – and I wish to end on a positive note – is that economic shocks, though always painful, are not always fatal. The steel and aluminum shock, and the VAT shock, and the "fentanyl" shock, and the other shocks that the U.S. administration will no doubt deliver in its good time, will leave deep scars across the face of the country, not to mention on its psyche.

This is the time for Canadian producers and distributors and exporters and importers and service providers and policymakers to redouble efforts to:

- boldly go in search of new markets to win over or source from;
- put pressure on governments at all levels to enter into trade agreements that remove not just tariffs, but also address non-tariff barriers – one of the most challenging areas for Canadian exporters locked into the North America regulatory framework;
- think creatively about supply chains, about product marketing, about market development. Costco and Sam's Club are great clients, to be sure, but there are significant markets whose exposure to Canada is limited to Tim Horton's and maple syrup. For all of the maple leaf patches on the backpacks of Canadian travelers across Europe, *Canada* as a high-quality brand supplier of goods and services remains underexploited. And not just as a place to sell, but also as a place to source from.

In some ways, Canadians are like the passengers on the spaceship in the movie *Wall-E*. Thrown violently off our comfortable perch next to the richest market in the world, we have to learn things anew. There will be a period of adjustment, but we have the tools and the resources. Now we just have to apply them to the rest of the world.

By

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