

# Intelligence MEMOS



From: Jon Johnson  
To: Canadians Concerned About Canada/US Trade  
Date: May 23, 2019  
Re: **THE STEEL AND ALUMINUM TARIFFS HAVE ENDED, BUT IT'S NOT THAT SIMPLE**

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Last week's Canada and US joint statement announcing the end of US tariffs on steel and aluminum under Section 232 of the *Trade Enhancement Act of 1962* is a very positive development. The US is eliminating these tariffs and Canada is eliminating its measures taken in retaliation. There are no quotas or tariff rate quotas to restrict the trade in these products between Canada and the US. This removes an impediment to Canada enacting legislation ratifying the USMCA, and is a step in the same direction for the US Congress.

There are, of course, pitfalls.

Canada and the US agree to “prevent the importation of aluminum and steel that is unfairly subsidized and/or sold at dumped prices.” Canadian and US antidumping and countervailing duty laws authorize the imposition of countervailing duties on subsidized imports and antidumping duties on dumped imports if the imports are causing material injury. These laws do not “prevent” the importation of dumped or subsidized products. Complications will arise if more is intended than a simple commitment by each of Canada and the US to enforce its antidumping and countervailing duty laws.

Canada and the US agree to prevent the transshipment of aluminum and steel made outside of Canada or the United States to the other country. The steel and aluminum products to which this is intended to apply will have to be added to Canada's Export Control List. Presumably this obligation would not apply to aluminum and steel that had been further processed in Canada into a different product. This must be clarified.

The statement requires an agreed process for monitoring aluminum and steel trade between Canada and the US. Global Affairs Canada administers Canada's export and import control regime and should be able to develop a workable process with its US counterparts. However, the meaning of the requirement that in “monitoring for surges, either country may treat products made with steel that is melted and poured in North America separately from products that are not” also requires clarification.

The most serious pitfall is the provision that if imports of steel or aluminum products “surge meaningfully beyond historic volumes of trade,” the importing country may request consultations, and then may impose duties of 25 percent for steel and 10 percent for aluminum in respect to the individual product(s) where the surge took place.

If the importing country takes such action, the exporting country may retaliate only in the affected sector. Thus if the US decides to impose 25 percent duties on hot rolled steel from Canada, Canada can only retaliate by imposing duties on a product falling within the steel sector from the US and not on other products.

Any potential problem for Canada would likely arise with aluminum, of which Canada exports about three times as much to the United States as it imports from that country, and therefore has limited capacity to respond to any US tariff. The steel trade is much more balanced, with the United States typically running a surplus with Canada. But, more importantly, the joint statement outlines a process outside WTO rules, under which the imposition of a tariff as a safeguard requires evidence of serious injury to a domestic industry, as well as compensation to the exporting nation. That means Washington appears free to act unilaterally sector by sector should it be so inclined.

But these pitfalls should not obscure the overall good news in last week's developments. The Section 232 tariffs presented Global Affairs Canada with a truly intractable situation with a difficult trading partner. The Canadian negotiators deserve credit for negotiating a solution that allows Canada and the US to move forward with repairing their immensely valuable but damaged trading relationship.

As [pointed out](#) by the International Monetary Fund, the removal of steel and aluminum tariffs between Canada, the United States and Mexico would offset some of the higher costs of North American auto production resulting from the agreement. That alone, according to the IMF, would result in the agreement overall having a modest but significant positive economic impact. Sometimes a disaster averted can be as good as a triumph achieved.

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