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From NAFTA to the USMCA: A Primer for In-House Counsel

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On the
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Introduction

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- international trade issues have become front page news
- trade developments are important to in-house counsel and to external advisors
- changes in trade laws can happen quickly with significant effects on business, whether by Canada (sanctions), or other countries (POTUS Executive Orders)
- examples: NAFTA renegotiation, changes to sanctions and export controls legislation, new trade agreements with Europe and Asia, US steel tariffs and Canada's retaliatory surtaxes
- modern trade agreements are complicated, sectoral annexes and bilateral arrangements in plurilateral agreements

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NAFTA Renegotiation

USMCA – the “New” NAFTA

- The “renegotiation” of NAFTA took place from August 2017 to September 2018
- Significant uncertainty for business during negotiations
- Text finalized in November 2018 as USMCA, CUSMA or TMEC
- uncertainty over implementation remains

USMCA - Overview

- Complex agreement, 34 chapters, numerous annexes, side letters
- All components form part of the legal text of the final agreement
- Key highlights:
 - Dispute Resolution in Trade Remedy Cases (Antidumping/Countervail)
 - Investor-State Dispute Settlement Abolished (for Canada)
 - No Government Procurement
 - De Minimis Exceptions for Duty-Free Shopping
 - Cultural Exemption
 - Currency Assurances
 - Non-Market Economies

USMCA – Current Status and Next Steps

- Final agreement not yet in force
- NAFTA applies in the meantime, unless Trump acts to terminate it for USA
- Intended to come into force by January 1, 2020
- Date no longer certain due to US mid-term elections, border wall dispute, US government shutdown
- Delay could mean USMCA becomes a Canadian federal election issue

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Steel Tariffs and Canadian Countermeasures

Steel Tariffs and Canadian Countermeasures

- As of May 31, 2018 President Trump instituted 25% tariffs on steel and 10% tariffs on aluminum imports from Canada
- Canada's response was reciprocal tariffs as of July 1, 2018 on US origin steel and aluminum, plus 10% on a long list of consumer goods
- Resulted in significant impacts on Canadian businesses, both exporters to and importers from the US

Canadian Remission of Surtax

- relief potentially available from the Canadian surtaxes
- importers must apply to Finance, relief available in only 1 of 3 circumstances
 - short supply
 - contractual obligations
 - exceptional circumstances
- so far, Surtax Remission Orders issued in October 2018 and December 2018
- relief is retroactive to July 1, 2018 but intended to be temporary/time limited
- no deadline to apply, applications continue to be accepted and considered for relief

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Canada's New Trade Agreements

Other Trade Developments in Canada

- Canada trying to lessen its significant reliance on trade with the USA
- CETA in place since September 2017
- CPTPP in place since December 2018
- Pacific Alliance, ASEAN
- Potential bilateral deals with China, India
- Trade agreements are only helpful to those companies who act on them
- In-house counsel can assist their client in taking advantage of opportunities raised by trade agreements

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Concluding Comments

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- Canada is a large country geographically but small by population
- Canada depends on trade for a robust economy
- Canada supports a rules based trading system
- Recent events demonstrate that monitoring of trade developments is not only prudent, it is necessary to avoid significant negative impacts
- Advance planning and alternative supply chain scenarios should form part of risk assessment and containment policies

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Thank You

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