

## Report on Supply Chain Compliance Volume 3, Number 17. September 03, 2020 US-Canada trade war threatens WTO

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By Sascha Matuszak

The World Trade Organization (WTO) ruled<sup>[1]</sup> Aug. 24 in favor of Canada in a dispute with the United States over lumber exports. The U.S. claimed that Canada was subsidizing lumber exports, justifying tariffs, but that claim was rejected by a WTO panel. The United States Trade Representative rejected the ruling,<sup>[2]</sup> called into question the WTO and its practices, and stated it was “evaluating options in response to the panel report.”

The ruling comes at a sensitive time for both countries, following aluminum tariffs<sup>[3]</sup> imposed by President Donald Trump and implementation<sup>[4]</sup> of the United States-Mexico-Canada Agreement (USMCA), which went into effect July 1, 2020.

The aluminum tariffs imposed Aug. 16, 2020, on Canadian suppliers is a reimposition of tariffs imposed in the spring of 2018 under Section 232 of the Trade Expansion Act of 1962.<sup>[5]</sup> Section 232 allows the president to impose sanctions following an investigation that finds that a certain product “is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.” The initial round of tariffs was removed in 2019 during negotiations of the USMCA and reimposed just a month after the agreement went into effect.<sup>[6]</sup>

Taken together, the ruling and tariffs represent an escalation of both the low-level trade war between the U.S. and Canada and a conflict between the WTO and the U.S. The U.S. has already refused to appoint judges<sup>[7]</sup> to the WTO as part of an ongoing effort by the U.S.—and particularly U.S. Trade Representative Richard Lighthizer—to delegitimize and exert pressure on the trade body. The use of the national security exception enshrined in Section 232 to impose tariffs is also a threat to WTO authority, as RSCC noted<sup>[8]</sup> in December 2019:

According to discussions held in 1947, drafters of the original Draft Charter stated that, ‘We cannot make [the security exception] too tight, because we cannot prohibit measures which are needed purely for security reasons. On the other hand, we cannot make it so broad that, under the guise of security, countries will put on measures which really have a commercial purpose.’...The result was a ‘gentlemen’s agreement’ not to abuse the national security exception. That agreement has been upended by the Trump administration’s broad definition of what constitutes national security and willingness to wield Section 232 of the Trade Expansion Act as a club in international trade negotiations.

### The lumber ruling

The lumber dispute between the U.S. and Canada goes back decades. The WTO issued a ruling in 2006,<sup>[9]</sup> for example, that acknowledged a mutually agreed-upon solution to the problem. The lumber problem raised its head most recently after the U.S. applied a pricing benchmark in 2017<sup>[10]</sup> that failed to consider regional

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variations and resulted in the U.S. determining that Canada was dumping lumber on the U.S. market. In retaliation for the alleged dumping, the U.S. imposed a tariff of 20% on softwood lumber exports from Canada.

The benchmark was ruled invalid by the WTO, which concluded that the U.S. was obligated to consider regional benchmarks under Article 14(d) of the Agreement on Subsidies and Countervailing Measures.<sup>[11]</sup> The U.S. is expected to recalculate its benchmark pricing and remove the 20% tariff.

The U.S. trade representative responded by claiming that the WTO failed to defer to the “reasoned judgment” of the U.S. Department of Commerce and that the interpretation of Article 14(d) is erroneous.<sup>[12]</sup> Furthermore, the U.S. trade representative stated that:

‘This flawed report confirms what the United States has been saying for years: the WTO dispute settlement system is being used to shield non-market practices and harm U.S. interests.... The panel’s findings would prevent the United States from taking legitimate action in response to Canada’s pervasive subsidies for its softwood lumber industry.’

## Supply chain considerations

There are a few issues for supply chain managers and compliance professionals to be aware of. First and foremost, the USMCA does not seem to shield companies on either side of the U.S.–Canada border from tariffs and other protectionist trade policies.

Also, the willingness of the Trump administration to invoke national security provisions under Section 232 of the Trade Expansion Act, even against allies such as Canada, adds risk to trade across the U.S.–Canada border and also calls into question the ability of the WTO to resolve trade disputes.

The lumber ruling may result in the removal of the 20% tariff, but it may just as well speed along a possible U.S. withdrawal from the WTO. The conflict with the WTO is perhaps the most risky of all the possibilities swirling around the trade conflict with Canada. If the U.S. does continue delegitimizing the WTO, then the multilateral framework built up in the postwar era to regulate global trade could give way to unilateral and bilateral action. The shift could severely affect supply chains through disruptions and possible re-shoring, as well as additional regulatory burdens as multilateral treaties encompassing entire regions give way to a web of bilateral trade conflicts and treaties each operating in silos.

## Takeaways

- The World Trade Organization ruling in regard to lumber subsidies may exacerbate the trade conflict between Canada and the U.S. as the U.S. rejects the ruling and seeks ways to retaliate.
- Aside from the burgeoning trade conflict with Canada, the U.S. is also actively delegitimizing the World Trade Organization. A U.S. withdrawal from this multilateral organization could spell the end of the global trade framework and would entail a massive disruption to supply chains worldwide.

<sup>1</sup> WTO, *United States – Countervailing Measures On Softwood Lumber From Canada*, report of the panel, August 24, 2020, <https://bit.ly/3llUGFX>.

<sup>2</sup> Office of the United States Trade Representative, “United States Rejects WTO Dispute Report Shielding Canada’s Harmful Lumber Subsidies,” news release, August 24, 2020, <https://bit.ly/2QulS7i>.

<sup>3</sup> Sascha Matuszak, “US and Canada rekindle trade war,” *Report on Supply Chain Compliance* 3, no. 16 (August 20,

2020), <https://bit.ly/3b23Xyn>.

**4** Karen Kroll, “The USMCA’s impact on supply chain compliance,” *Report on Supply Chain Compliance* 3, no. 16 (August 20, 2020), <https://bit.ly/2Qytl6g>.

**5** 19 U.S.C. § 1862.

**6** Canadian Press, “A timeline of Trump’s tariffs on Canadian steel, aluminum,” *OttawaMatters.com*, August 7, 2020, <https://bit.ly/2QELsqn>.

**7** Jacob M. Schlesinger, “Will the U.S. Bring Down the WTO?” *The Wall Street Journal*, November 28, 2019, <https://on.wsj.com/3hwIksw>.

**8** Sascha Matuszak, “US reliance on Section 232 tariffs threatens international trade system,” *Report on Supply Chain Compliance* 2, no. 23 (December 12, 2019), <https://bit.ly/3jfUpmc>.

**9** World Trade Organization, “United States — Final Dumping Determination on Softwood Lumber from Canada,” Dispute Settlement DS264, October 12, 2006, <https://bit.ly/3jkjvAA>.

**10** Paul Vieira, “World Trade Organization Sides With Canada in Lumber Dispute With U.S.,” *The Wall Street Journal*, August 24, 2020, <https://on.wsj.com/3lnUqGE>.

**11** WTO, “Agreement on Subsidies and Countervailing Measures (‘SCM Agreement’),” Overview, Subsidies and Countervailing Measures, <https://bit.ly/2EzTCxs>.

**12** Office of the United States Trade Representative, “United States Rejects WTO Dispute Report.”

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