Intelligence MEMOS

From: Jon Johnson

To: Trade Watchers

Date: June 10, 2025

Re: **The Trump Tariffs and the US Tariff Schedule – Where Does CUSMA Stand?**

The Canada-United States-Mexico Agreement (CUSMA, or USMCA in the United States) was negotiated and came into effect during first Trump administration with strong support from the president.

While it did not radically depart from its NAFTA predecessor, CUSMA achieved badly needed updating, such as including a chapter on the e-commerce that didn't exist when NAFTA was negotiated in the early 1990s.

CUSMA is subject to joint review on an annual basis, with the first joint review occurring on July 1, 2026. If the parties confirm that they wish the pact to continue, it will remain in effect for another 16 years. If they do not, its original expiry date of June 30, 2036, applies. Reviews continue on an annual basis until CUSMA either expires or is extended.

The tariff law of the United States is set out in the Harmonized Tariff **Schedule** of the United States (HSTUS), which divides all goods into 97 chapters, which in turn are divided into 4-digit headings, 6-digit subheading and into 8-digit or 10-digit tariff items. The tariff treatment of each tariff item is set out in Column 1 and Column 2 to the right of each tariff item.

Consider tariff **heading** 8703 that sets out the tariff treatment of various types of cars.

Column 1 is broken into two separate columns, one of which is entitled "General" and the other of which is entitled "Special." The "General" column sets out the applicable most-favoured-nation (MFN) rate of duty that applies to cars imported from WTO member countries that are not party to a free trade agreement with the United States. The "Special" column sets out circumstances in which the rate of duty is free reason of the existence of a free trade agreement such as CUSMA (indicated by "S" in the "Special" column).

Column 2 sets out the rate of duty that applies to cars imported from countries not included in Column 1; 10 percent, four times the MFN rate.

Up to this point in the schedule, CUSMA is being properly carried through in US tariff law.

However, HSTUS Chapter 99 sets out various instances of temporary legislation, some of which give major cause for concern as to the treatment by the US of imports of goods eligible for CUSMA rates of duty.

For example, tariff item 9903.94.03 (which can be found by scrolling down to page 370 of the pdf version of Chapter 99 of HTS 2025 revision 13, the most recent one at the time of writing) applies to passenger vehicles and light trucks eligible, as per heading 8703, for special tariff treatment under CUSMA. However, the duty applicable to these vehicles is now 25 percent of the value of the non-US content of the vehicle, with more detailed description set out in notes.

In other words, while CUSMA rules serve as a benchmark for determining a vehicle's eligibility for the treatment described in tariff item 9903.94.03, the tariff treatment provided in this tariff item bears no relation to the tariff treatment originally agreed by the CUSMA parties.

Section 3(d) of Mr. Trump's April 2 **Executive Order** declares a "national emergency" based on alleged flows of illicit drugs into the United States across its northern border. However, the tariff treatment passenger vehicles and light trucks eligible set out in tariff item 9903.94.03 is not tied to any of the allegations in that executive order.

There are numerous lawsuits challenging the validity of the Trump tariffs. One or more of these may be successful but all will take time to reach a conclusion and exercise of time-consuming of appeal rights is an inevitability.

Prime Minister Carney is being realistic in recognizing that Canada is faced with a whole new situation when it comes to trade between Canada and the United States.

Other countries with existing trade arrangements or considering trade arrangements with the current US administration should consider Canada's experience with CUSMA as an instructive tale.

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