

## US imposes 10% punitive tariff on Canadian-origin aluminum; Canada announces countermeasures in response

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### Executive summary

On 6 August 2020, United States (US) President Donald Trump announced in a [Presidential Proclamation](#) that the US would again be imposing a 10% punitive tariff on non-alloyed unwrought aluminum articles of Canadian origin. The tariffs, levied under Section 232 of the *Trade Expansion Act of 1962* (Section 232), will go into effect on 16 August 2020.

Canada immediately responded to the tariff action by announcing dollar-for-dollar countermeasures.

### Detailed discussion

On 8 March 2018, the US imposed additional tariffs on US imports of steel and aluminum originating from certain countries.<sup>1</sup> Initially, Canadian aluminum was included within the scope of the Section 232 tariffs. On 17 May 2019, in conjunction with reaching consensus on the US Mexico Canada Agreement (USMCA), the US and Canada issued a joint statement indicating that Section 232 tariffs implemented by the US on Canadian steel and aluminum would be removed.<sup>2</sup> In exchange, Canada agreed to remove any retaliatory tariffs imposed on the US in response to the Section 232 tariffs. The US and Canada further agreed to other procedures, one of which related to the potential surge of steel and aluminum, inclusive of the ability of the US to reimpose the Section 232 tariffs after consultations between the parties.<sup>3</sup>

In a Presidential Proclamation dated 6 August 2020, the US announced non-alloyed unwrought aluminum articles of Canadian origin would be subject to a 10% punitive tariff under Section 232. The action is the direct result of an increase of non-alloyed unwrought aluminum from Canada that occurred in the 12 months following the May 2019 exclusions, according to the US Secretary of Commerce.

The goods subject to the additional 10% are only goods provided for under Harmonized Tariff Schedule of the US (HTSUS) subheading 7601.10. The below table illustrates the product and 10-digit HTSUS codes impacted by the action.

HTSUS	Article description
7601.10.3000	Unwrought aluminum: Aluminum, not alloyed: Of uniform cross section throughout its length, the least cross-sectional dimension of which is not greater than 9.5 mm, in coils
7601.10.6030	Unwrought aluminum: Aluminum, not alloyed: Other: Of greater than 99.8 percent aluminum.
7601.10.6090	Unwrought aluminum: Aluminum, not alloyed: Other: Other

The punitive tariffs are scheduled to go into effect on 16 August 2020.

The proclamation further notes that the US will continue to monitor imports for surges of other aluminum articles from Canada, specifically with the intent to confirm that unwrought aluminum exports from Canada do not become reoriented into increased exports of alloyed, further processed, or wrought aluminum articles.

## Canada

On 7 August 2020, Canada announced that it intends to impose retaliatory tariffs on a range of US-origin imports containing aluminum. The Canadian Federal Government estimates the retaliatory tariffs will affect CA\$3.6 billion worth of US imports into Canada. A 30-day consultation period with business leaders and other Canadian stakeholders has been launched to draw up a final target list for the retaliatory tariffs.<sup>4</sup>

During the USMCA negotiations, a key Canadian objective was to obtain an exemption from future use of measures under Section 232. Per a Canada-US side letter agreed to on 30 November 2018 during USMCA negotiations, the US agreed to not adopt nor maintain a measure imposing tariffs or import restrictions on goods or services from Canada under Section 232 for at least 60 days after imposition of a measure. During the 60-day period, the US and Canada would seek to negotiate an appropriate outcome based on industry dynamics and historical trade patterns.<sup>5</sup>

To date, it is unclear whether the consultation process, as provided for in the side letter, was triggered prior to the US Administration's announcement of the punitive tariffs. Therefore, it remains to be seen whether the US and Canada will formally trigger the 60-day negotiation period before or after 16 August 2020, if at all. According to the terms of the side letter, Canada reserves the ability to impose measures of equivalent commercial effect in response to US Section 232 measures.

## Actions for businesses

Companies that import Canadian aluminum into the US should review the HTSUS codes included in the scope of the action and assess impact to business. Immediate steps companies can consider to mitigate the impact are:

- ▶ Identify strategies to defer, eliminate, or recover the excess duties paid such as bonded warehouses, foreign trade zones, and Chapter 98.

- ▶ With respect to foreign trade zones, duty is due when the item is *removed* from the zone.
  - Any impacted item admitted to a zone after 16 August must be admitted in privileged foreign status, and any item in privileged foreign status is subject to duties imposed by the proclamation, as it may be amended, at the time of entry.
  - As duties are imposed at entry, companies can benefit from utilizing a foreign trade zone if they will be exporting the unwrought aluminum, or goods made from the unwrought aluminum. Similarly, companies can utilize a foreign trade zone to defer the punitive duties. FTZ manufacturers should be particularly aware of the how the FTZ scrap rules will apply to manufacturing operations.
- ▶ Explore strategies to minimize the customs value of imported products potentially subject to the additional duties such as first sale for export, unbundling non-product related costs from product pricing, and reevaluating current transfer pricing of imported products, being careful to align the income tax transfer price with the customs value to avoid inventory basis limitations under Internal Revenue Code Section 1059A.

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## Endnotes

1. <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/>.
2. [https://ustr.gov/sites/default/files/Joint\\_Statement\\_by\\_the\\_United\\_States\\_and\\_Canada.pdf](https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Canada.pdf).
3. Id.
4. Canadian Broadcasting Corporation News, *Canada to impose \$3.6B in tariffs in response to Trump's move against Canadian aluminum*, 7 August 2020. <https://www.cbc.ca/news/politics/freeland-aluminum-imports-tariffs-trump-1.5677757>.
5. Letter from the US/Letter from Canada (Section 232 Tariffs - Future Measures. <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/letters-lettres.aspx?lang=eng>.

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