

US replaces 10% punitive tariff on Canadian-origin aluminum with quota limits; Canada suspends contemplated countermeasures

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Executive summary

On 15 September 2020, the United States (US) Trade Representative (USTR) announced that the US would remove previously imposed punitive tariffs on non-alloyed, unwrought aluminum articles of Canadian origin.¹ The 10% ad valorem tariff, levied under Section 232 of the *Trade Expansion Act of 1962* (Section 232), went into effect on 16 August 2020.

The duty-free treatment of the goods is retroactive to 1 September 2020.

Detailed discussion

In March of 2018, the US imposed additional tariffs on imports of steel and aluminum originating from certain countries.² Initially, Canadian aluminum was included within the scope of the Section 232 tariffs. After reaching a consensus on the US Mexico Canada Agreement (USMCA), the US and Canada issued a joint statement indicating the US would remove Section 232 tariffs on Canadian-origin steel and aluminum, while Canada would remove retaliatory tariffs on US-origin goods.³ The two nations further agreed that the US would retain the ability to reimpose the Section 232 tariffs if future consultations between the parties are ineffective.⁴

On 16 August 2020, following a 6 August 2020 announcement, the US re-imposed a 10% punitive tariff on non-alloyed, unwrought aluminum articles of Canadian origin covered under Harmonized Tariff Schedule (HTS) 7601.10, citing an increase of non-alloyed, unwrought aluminum from Canada that occurred in the 12 months following the May 2019 exclusions.⁵ See EY Global Trade Alert, [US imposes 10% punitive tariff on Canadian-origin aluminum; Canada announces countermeasures in response](#), dated 7 August 2020.

On 7 August 2020, Canada announced its intention to impose countermeasures shortly after the US notice, with a formalized list scheduled to be presented on 15 September 2020, after a 30-day consultation period with Canadian stakeholders. The Canadian countermeasures were to take the form of a 10% ad-valorem surtax on US-origin aluminum products, specifically across 68 tariff items in the Schedule to the Customs Tariff. Products covered by the proposed countermeasures ranged from primary aluminum inputs to higher value goods such as washing machines and golf clubs.

On 15 September 2020, the USTR announced that the US punitive tariffs would be removed. The announcement, which came after consultations with the Canadian Government, noted the decision to remove the tariffs was due to the expectation of a normalization in the trade volumes of non-alloyed, unwrought aluminum for the balance of the calendar year. The USTR further advised that should imports of the subject goods exceed more than 105% of anticipated volume in any month for the remainder of the year, the US may reelect to impose the 10% tariff. The US and Canada will hold additional consultations at the end of the year to discuss market trends for 2021.

The resumption of duty-free treatment for Canadian-origin non-alloyed, unwrought aluminum will be retroactive to 1 September 2020.

The most recent action effectively resulted in only 15 days of the targeted imports being assessed the punitive 10% tariff.

While the Canadian Government welcomed the US decision to remove tariffs on Canadian-origin non-alloyed, unwrought aluminum, and has suspended retaliatory action in response,

the Government has signaled that it will retaliate if the US reimposes tariffs.⁶ Furthermore, it is important to highlight that Canada did not agree to the US decision to apply export quotas on the subject goods, per the USTR announcement. As a result, future trade tensions may result as a consequence of this decision.

Actions for businesses

Companies that import Canadian aluminum into the US should closely monitor the import trend for the in-scope aluminum given the potential for the tariffs to be reinstated. Steps companies can take to plan for mitigation include:

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

Canadian importers of US-origin aluminum goods are encouraged to stay abreast of US and Canadian trade developments affecting the metals sector, specifically:

- ▶ Assess whether imports were covered by the proposed Canadian countermeasures list or could be candidates for inclusion in future trade countermeasures.
- ▶ Identify and explore strategies to defer or recover punitive duties through the use of Canadian duty deferral programs such as the Duty Relief Program, Duty Drawback program, among others.
- ▶ Assess and consider strategies to unbundle dutiable costs from the customs value of imports.
- ▶ Explore the use of transfer pricing strategies to help mitigate the impact of punitive duties, while remaining aligned with Canadian and US income tax considerations and obligations.

Endnotes

1. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/september/ustr-statement-canadian-aluminum>.
2. <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/>.
3. https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Canada.pdf.
4. Id.
5. <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/>.
6. Canadian Broadcasting Corporation News, US Calls off tariffs on Canadian aluminum - for now. <https://www.cbc.ca/news/politics/aluminum-tariffs-trade-trump-trudeau-1.5724391>.

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