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First-Ever Section 338 Tariffs: U.S. Imposes 50% Duties on Nearly $20 Billion of Canadian Imports

Key Takeaways

- **President Trump imposed three new tariff actions against Canada.** Beginning Aug. 19, specified Canadian-origin goods will face an additional 50% duty in response to Canadian measures affecting U.S. motor vehicles, alcoholic beverages and dairy products.
- **The actions activate a powerful but untested authority with broad cross-sector reach.** This is the first use of Section 338 of the Tariff Act of 1930 to impose tariffs. The statute permits duties of up to 50%, allows the president to modify the action or escalate to import prohibitions, contains no automatic sunset, and does not require the targeted imports to correspond to the U.S. exports affected by the foreign measure. As a result, businesses with no direct connection to the automotive, alcohol or dairy sectors may face significant tariff exposure.
- **Coverage turns on classification and Canadian origin; USMCA qualification is not an exemption.** The lists extend well beyond autos, alcohol and dairy, and covered goods remain subject to the additional duty even when they qualify for USMCA treatment. Importers must separately analyze the eight-digit HTSUS classification, whether the merchandise is a product of Canada and the applicable Section 232, civil-aircraft and Chapter 98 provisions.
- **Aug. 19 presents an immediate customs and commercial deadline.** The duties apply based on entry for consumption or warehouse withdrawal, with no general in-transit exception. Importers should promptly review goods in transit and bonded inventory, cumulative duty exposure, customs-bond sufficiency, contracts, pricing and potential mitigation strategies.
- **As an untested authority, legal challenge is nearly guaranteed.** Importers and downstream purchasers of products subject to these duties should ensure that refund rights are clear and preserved in the event that the tariffs do not withstand judicial scrutiny.

On July 20, 2026, President Donald Trump issued three proclamations (motor vehicles, alcoholic beverages, and dairy products) imposing additional 50% *ad valorem* duties on specified products of Canada. The Administration stated that the actions are intended to offset burdens on U.S. commerce resulting from Canada's allegedly discriminatory

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treatment of U.S. motor vehicles, alcoholic beverages and dairy products. USTR estimates the three lists collectively cover nearly $20 billion in Canadian imports.

We discuss below this first use of Section 338, the Canadian measures identified by the Administration, the scope of the tariff lists and actions importers should take before the duties become effective.

What Section 338 Authorizes and Why Its First Use Matters

Section 338, codified at 19 U.S.C. § 1338, permits the president to impose new or additional duties when the president finds that doing so will serve the public interest and that a foreign country either:

1. Imposes an unreasonable charge, regulation or limitation on U.S. products that is not equally applied to like products of other countries; or
2. Discriminates against U.S. commerce through a duty, fee, classification, regulation, restriction, prohibition or similar measure in a manner that disadvantages U.S. commerce relative to another country.

The president may impose duties determined to offset the identified burden or disadvantage, up to 50% *ad valorem* or its equivalent. The tariffs take effect 30 days after the proclamation and may be imposed on any selected products of the foreign country. The responsive imports need not be the same products affected by the foreign measure.

Section 338 also permits the president to suspend, revoke, supplement or amend an action whenever the public interest requires. If the foreign country maintains or increases the discrimination after the initial proclamation, the president may issue a further proclamation excluding selected products of that country from importation. The statute does not establish a maximum duration, and the Canadian proclamations provide that the HTSUS modifications will remain in effect unless expressly reduced, modified or terminated.

These are the first tariffs imposed under Section 338. Before July 20, the provision had remained dormant for more than 95 years, although it reportedly was referenced as potential leverage in trade negotiations.

That lack of precedent is consequential. Unlike Section 301, Section 338 does not appear to require a completed agency investigation or determination before the president acts. The statute assigns the U.S. International Trade Commission a role in monitoring foreign discrimination, but the operative findings are made by the president.

The timing of the Section 338 actions also coincides with a substantial change in the Commission charged with monitoring the foreign discrimination addressed by the statute. On July 16, the Senate confirmed five nominees selected by President Trump for seats on the six-member Commission: Brett Doyle (sworn in July 17 and designated Chairman on July 20), David Foley Jr., Samuel Negatu, Peter-Anthony Pappas and Bartholomew Thanhauser. Commissioner Jason E. Kearns continues to serve. Section 338 directs the Commission to ascertain and remain informed regarding covered discrimination against U.S. commerce and, when discriminatory acts are disclosed, to bring them to the president's attention with recommendations. The statute does not, however, expressly require a prior Commission investigation, finding or recommendation before the president acts; the operative findings and tariff determination remain with the president. The confirmations may therefore be most significant for how the Commission performs its ongoing monitoring and advisory responsibilities.

The structure provides a comparatively direct mechanism for imposing tariffs, but it also leaves unresolved questions concerning the necessary factual record, the relationship between the identified disadvantage and the selected products, applicable procedures and the scope of judicial review. The first use of Section 338 likely will prompt litigation testing the statute's substantive and procedural limits.

The Three Canadian Measures

Motor Vehicles

The motor-vehicle proclamation addresses Canada's tariff and tariff-rate quota system for U.S. vehicles.

According to the proclamation, Canada imposes a 25% tariff on U.S. motor vehicles that do not qualify for USMCA treatment. For qualifying U.S. vehicles, Canada applies a 25% tariff to specified content that does not originate in Canada or Mexico. The proclamation states that Canada reduced quota access for certain companies that shifted production from Canada to the United States.

The Administration states that U.S. motor vehicles exports to Canada declined approximately 22% — from approximately $25.9 billion to $20.3 billion — between April 2025 and March 2026 compared with the corresponding prior-year period.

Alcoholic Beverages

The alcoholic-beverage proclamation responds to restrictions adopted by Canadian provinces and territories beginning in March 2025 on the purchase, distribution or retail sale of U.S. alcoholic beverages.

The proclamation states that all Canadian provinces and territories initially imposed restrictions and that only Alberta and Saskatchewan later lifted them. The remaining jurisdictions allegedly continued to restrict U.S. products without imposing comparable measures on alcoholic beverages from other countries.

The Administration states that U.S. exports of alcoholic beverages to Canada declined approximately 81% — from approximately $718 million to $137 million — between March 2025 and February 2026 compared with the corresponding prior-year period.

Dairy Products

The dairy proclamation concerns Canada's administration of tariff-rate quotas for cheese under the USMCA and the Canada-European Union Comprehensive Economic and Trade Agreement.

According to the proclamation, Canadian retailers may obtain allocations under the tariff-rate quota for EU cheese but are not eligible for comparable allocations under the USMCA cheese quota. The Administration concluded that the differing eligibility criteria disadvantage U.S. cheese relative to materially similar EU products and impede market access for U.S. producers and exporters.

Unlike the vehicle and alcohol proclamations, the dairy proclamation does not quantify the alleged decline in U.S. sales.

New Chapter 99 Duties Take Effect Aug. 19

The actions establish three new Chapter 99 headings:

- HTSUS 9903.03.12 for products covered by the alcoholic-beverage action;
- HTSUS 9903.03.13 for products covered by the dairy action; and
- HTSUS 9903.03.14 for products covered by the motor-vehicle action.

Each heading imposes the duty otherwise applicable under the product's ordinary HTSUS classification plus an additional 50%. The additional duty appears in both the General (column 1) and Special duty-rate (column 2) columns.

The duties apply to goods entered for consumption, or withdrawn from warehouse for consumption, on or after **12:01 a.m. Eastern time on Aug. 19**. The controlling event is entry or withdrawal — not when the goods were ordered, purchased, exported, shipped or physically arrived in the United States.

The proclamations do not provide a general in-transit exception. Goods already in transit, at a U.S. port or held in a bonded warehouse may therefore become subject to the tariff if entered or withdrawn on or after Aug. 19.

Tariff Coverage Extends Beyond Autos, Alcohol and Dairy

Businesses with no direct connection to the auto, alcohol or dairy industries may face significant exposure under these Section 338 proclamations.

The tariff actions operate through positive lists of eight-digit HTSUS classifications. The annexes expressly state that their product descriptions are informational only and do not limit the scope of the measures. The classification — not the product's common name, intended use or the importer's industry — controls.

The alcoholic-beverage list (Annex I and Annex II) includes beer, wine, cider, fermented beverages and distilled spirits. It also includes selected products outside the beverage sector, such as certain wood and paper products, bamboo articles and hockey equipment.

The dairy list (Annex I and Annex II) includes 52 tariff classifications covering specified milk and cream products, whey, lactose, casein, caseinates, albumin and other products.

The motor-vehicle list (Annex I and Annex II) is substantially broader. Its 18-page annex covers hundreds of classifications, including:

- Honey, flowers, seeds and plant products;
- Salt, Portland cement and other construction products;
- Chemicals, cosmetics, plastics and packaging;
- Wood, plywood, paper and paperboard;
- Apparel, footwear, luggage and household goods;
- Hand tools, refrigeration equipment and machinery;
- Smartphones, telecommunications equipment, cameras and monitors;
- Motorcycles, furniture and lighting fixtures;
- Toys, video game consoles and sporting goods; and
- Artwork, collectibles and antiques.

USMCA Treatment Does Not Eliminate the Tariff

The Section 338 tariffs apply to covered goods regardless of whether the merchandise qualifies as originating under the USMCA.

Importers should separately determine:

- The merchandise's complete eight-digit HTSUS classification;
- Whether it is a product of Canada for purposes of the applicable Chapter 99 provision; and
- Whether it qualifies as originating under the USMCA.

USMCA qualification may still reduce or eliminate the ordinary customs duty. It does not reduce the additional Section 338 duty. A covered Canadian product entitled to a zero ordinary duty rate under the USMCA may therefore still incur the full 50% tariff.

Section 232 and Other Exceptions

The Section 338 tariffs do not apply to articles subject to specified Section 232 import restrictions. The implementing provisions identify covered steel, aluminum and copper products and derivatives; passenger vehicles, light trucks and parts; medium- and heavy-duty vehicles, buses and parts; specified wood products; semiconductor articles; and patented pharmaceutical articles.

Whether a good is subject to Section 338 or exempt because that good is subject to Section 232 must be tested at the entry level. A product's general connection to an industry subject to Section 232 is not sufficient; importers must review the applicable ordinary HTSUS provision and Chapter 99 reporting requirements together.

Qualifying civil aircraft, engines, parts, components and certain flight simulators meeting the applicable General Note 6 and HTSUS requirements are also excluded. The exclusion does not cover unmanned aircraft and should not be treated as a blanket exemption for all aerospace products.

The White House further states that the positive tariff lists do not cover energy, potash, fish and certain critical minerals. Importers should nevertheless confirm treatment using the controlling HTSUS lists rather than relying solely on broad sector descriptions.

The implementing provisions also preserve relief under many Chapter 98 provisions, subject to specified exceptions and valuation rules. Covered goods admitted to a U.S. foreign-trade zone on or after Aug. 19 generally must be admitted in privileged foreign status unless eligible for domestic status.

Total Duty Exposure May Exceed 50%

Except where an exclusion or non-stacking rule applies, the Section 338 tariff is imposed in addition to the ordinary customs duty and other applicable Chapter 99 duties. Covered merchandise also remains subject to antidumping and countervailing duties, taxes, fees, exactions and charges.

The additional 50% is therefore not necessarily the importer's total duty burden. Depending on the product and applicable trade remedies, aggregate exposure may substantially exceed 50% of entered value.

The effects also extend beyond landed cost. Increased duty liability may affect customs-bond sufficiency, working-capital requirements, inventory valuation, margins, transfer pricing, tariff pass-through rights and customer-pricing commitments.

What Importers Should Do Now

1. **Map exposure and validate classification and origin.** Screen all Canadian-origin

SKUs against the eight-digit HTSUS provisions associated with headings 9903.03.12, 9903.03.13 and 9903.03.14. Prioritize high-value goods, “parts,” “other” and “nesoi” provisions, mixed-origin products and goods processed in Canada from third-country materials. Analyze USMCA eligibility separately; it may reduce the ordinary duty but does not eliminate the Section 338 tariff.

2. **Manage the Aug. 19 transition.** Identify merchandise in transit, awaiting entry or held in bonded inventory. Because the proclamations provide no general in-transit exception, determine whether lawful acceleration of entry, FTZ admission, or warehouse withdrawal is commercially appropriate before the effective date.
3. **Confirm mitigation opportunities.** Confirm special tariff treatment at the specific tariff-line and Chapter 99 level. Discuss with external counsel, customs brokers, or other knowledgeable consultants options to mitigate impact, including foreign-trade zone, bonded warehouse and drawback options.
4. **Model aggregate financial exposure.** Calculate the Section 338 duty together with ordinary customs duties, antidumping and countervailing duties, other Chapter 99 measures, fees and taxes. Assess customs-bond sufficiency, near-term duty-payment liquidity, inventory valuation, margins and transfer-pricing effects.
5. **Review contracts, pricing and supply-chain alternatives.** Examine Incoterms, tariff-adjustment clauses, change-in-law provisions, purchase commitments and customer-pricing arrangements to determine which party bears the increased cost. Evaluate lawful sourcing, production or transaction changes while accounting for country-of-origin rules, substantial transformation, anti-evasion enforcement and documentation requirements.
6. **Monitor implementation and preserve potential claims.** Track Customs and Border Protection guidance, Cargo Systems Messaging Service notices, Federal Register corrections, negotiations and litigation. Maintain entry records and supporting classification, origin and exclusion analyses, and consider steps necessary to preserve potential refund rights if the actions are modified or successfully challenged.

If your business needs strategic legal guidance or anticipates potential impacts resulting from these announcements, contact Deanna Okun, Lydia Pardini, Dominic Bianchi, Polsinelli’s Executive Action Working Group your Polsinelli contact.