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From Duties to Import Bans: President Trump Escalates Section 338 Actions Against Canadian Goods

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KEY POINTS

- President Trump signed five proclamations on September 8, 2026, under Section 338 of the Tariff Act of 1930, imposing outright import bans on specified Canadian alcoholic beverages, dairy products, and motorcycles effective September 29, 2026.
- Section 338(b) authorizes the president to exclude articles from importation when a foreign country has "maintained or increased" discrimination against U.S. commerce following an initial Section 338(a) proclamation.
- The Canadian Tariff Modification Proclamations, effective September 15, 2026, reverse the original non-stacking policy, allowing Section 338 duties to apply "in addition to" Section 232 duties, resulting in combined additional duty rates of up to 75% on aluminum and steel structural products.
- USMCA qualification provides no relief from Section 338 duties or import bans because 19 U.S.C. § 4512(a)(1) provides that no USMCA provision inconsistent with U.S. law shall have effect.
- Importers with Canadian-origin inventory should prioritize entries for consumption before September 29, 2026, reassess landed cost models for duty-stacked products, and preserve documentation for potential drawback claims on re-exported goods.

On September 8, 2026, the Trump administration issued five proclamations (collectively, the September 8 Proclamations) under Section 338 of the Tariff Act of 1930 (Section 338), escalating the U.S. response to recent Canadian trade actions. These actions build on the original July 20, 2026 proclamations — Proclamations 11046, 11047, and 11048 — which imposed 50% additional *ad valorem* duties on specified Canadian imports in response to formal findings of trade discrimination. Those duties were originally set to take effect August 19, 2026.

Three proclamations impose import bans of certain Canadian-origin goods (Canadian Goods) effective September 29, 2026 (collectively, the Canadian Import Ban Proclamations):

1. The proclamation "Excluding Certain Canadian Alcoholic Beverages from Importation into the United States in Response to Continued Discrimination Against the Commerce of the United States with Respect to Alcoholic Beverages" (the Alcoholic Ban Proclamation).
2. The proclamation "Excluding Certain Canadian Products from Importation into the United States in Response to Continued Discrimination Against the Commerce of the United States with Respect to Dairy" (the Dairy Ban Proclamation).
3. The proclamation "Excluding Certain Canadian Products from Importation into the United States in Response to Continued Discrimination Against the Commerce of the United States with Respect to Motor Vehicles" (the

Motor Vehicle Ban Proclamation).

Two proclamations modify the product scope of existing 50% duties on Canadian Goods effective September 15, 2026, (together, the Canadian Tariff Modification Proclamations), and reverse the original non-stacking policy for tariffs imposed under Section 232 of the Trade Expansion Act of 1962 (Section 232):

1. The proclamation "Modifying the Scope of Products of Canada Subject to the Additional Duties Imposed to Offset Canadian Discrimination Against the Commerce of the United States with Respect to Alcoholic Beverages" (the Modified Alcohol Tariff Proclamation).
2. The proclamation "Modifying the Scope of Products of Canada Subject to the Additional Duties Imposed to Offset Canadian Discrimination Against the Commerce of the United States with Respect to Motor Vehicles" (the Modified Motor Vehicle Tariff Proclamation).

After Canada committed to modifying the practices in question, Proclamation 11056 temporarily suspended the duties for three days (August 19–22). When Canada ceased negotiations on August 21, the suspension lapsed, and the 50% duties became effective August 22, 2026. For background on the original Section 338 actions, see our prior client alert.

CANADIAN IMPORT BAN PROCLAMATIONS

Section 338(b) authorizes the president to exclude articles from importation when a foreign country has "maintained or increased" its discriminations against U.S. commerce after an initial Section 338(a) proclamation. All three Canadian Import Ban Proclamations take effect September 29, 2026.

Alcoholic Ban Proclamation

The Alcoholic Ban Proclamation targets Canadian alcoholic beverages. The administration cites Saskatchewan's August 27, 2026, announcement of an additional 50% levy on U.S. alcoholic beverages (effective September 8) as evidence of increased discrimination. The banned product list, drawn from Annex I, includes:

- Beer (Harmonized Tariff Schedule of the United States (HTSUS) 2203.00.00), limited to packaged product (bottles, cans, kegs, and similar direct-to-consumption containers);
- Wine (sparkling, still, and vermouth across multiple subheadings);
- Spirits (whiskey, bourbon, rye, brandy, rum, gin, vodka, tequila, mezcal, liqueurs, cordials, and bitters);
- Other fermented beverages (cider, sake, and fermented beverages not elsewhere specified); and
- Undenatured ethyl alcohol for beverage purposes.

Where an Annex subheading is marked "Packaged," the ban reaches only alcohol products in bottles, cans, boxes, kegs, or other similar direct-to-consumption containers; Canadian alcohol shipped in bulk (*e.g.*, tanker loads for U.S. bottling or blending) is outside the ban but remains subject to the 50% Section 338 duty under Proclamation 11046. Subheadings without a "Packaged" limitation apply to all imports classified under that subheading, regardless of packaging, although the HTSUS description for those lines generally already specifies a consumer-ready container size.

Dairy Ban Proclamation

The Dairy Ban Proclamation responds to Canada's maintenance of tariff-rate quota (TRQ) allocation measures that originally triggered Proclamation 11047. The banned Canadian Goods include:

- Whey protein concentrates, modified whey, fluid whey, and dried whey;
- Invert molasses, cane molasses, and other molasses; and
- Non-alcoholic beer (HTSUS 2202.91.00) — a notable inclusion under the dairy proclamation, likely based on its classification adjacency.

A proclamation modifying the scope of dairy products subject to the 50% duties under Proclamation 11047 was referenced in the Dairy Ban Proclamation but had not been separately published as of the date of this alert. The Dairy Ban Proclamation provides that it "does not otherwise affect" Canadian Goods that remain subject to the 50% duties under that concurrent dairy scope modification. We will provide an updated analysis when the full text of the dairy scope modification is available.

Motor Vehicle Ban Proclamation

The Motor Vehicle Ban Proclamation covers only motorcycles (including mopeds) with engine displacement exceeding 800 cc (HTSUS 8711.50.00). This responds to Canada's maintenance of its 25% tariff on non-originating U.S. vehicles under the United States-Mexico-Canada Agreement (USMCA) and its TRQ system for USMCA-qualifying vehicles. Dealers and distributors with Canadian-sourced inventory should prioritize entries for consumption before September 29, where applicable.

Transitional and Severability Rules

Each Canadian Import Ban Proclamation includes:

- Transitional Rule: Canadian Goods that have been imported but not yet *entered for consumption*, or withdrawn from warehouse for consumption, prior to September 29 will remain subject to the 50% duty — not the ban. This creates a brief window for importers to clear existing inventory through customs.
- Severability: If any court invalidates the import ban in whole or in part as to any particular import, that import snaps back to the 50% *ad valorem* duty under the underlying proclamation. This belt-and-suspenders structure provides that even a successful legal challenge does not result in duty-free entry.

CANADIAN TARIFF MODIFICATION PROCLAMATIONS

The Canadian Tariff Modification Proclamations, effective September 15, 2026, adjust which Canadian Goods are subject to the 50% Section 338 duties. Each of these proclamations adds new Canadian Goods to the duty list and removes others.

Modified Alcohol Tariff Proclamation

The Modified Alcohol Tariff Proclamation expands Proclamation 11046 beyond alcoholic beverages. Canadian Goods added to the 50% duty include:

- Cheese products — Cheddar, Swiss, Emmentaler, Gruyere, Romano, Reggiano, Parmesan, Provolone, blue-veined cheese, Roquefort, Edam, Gouda, sheep's milk cheese, and cheese substitutes;

- Oxidized and dehydrated fats and oils;
- Raw bovine and equine hides and leather goods;
- Raw and tanned furskins — beaver, chinchilla, ermine, lynx, raccoon, sable, fox, wolf, and others; and
- Motorboats and outboard motorboats of certain sizes.

Canadian Goods removed from the 50% duty include whiskies in containers over four liters (HTS 2208.30.6085) and liqueurs and cordials in containers over four liters (HTS 2208.70.0060).

Modified Motor Vehicle Tariff Proclamation

The Modified Motor Vehicle Tariff Proclamation adds products beyond motor vehicles. Canadian Goods added to the 50% duty include:

- **Metals and construction materials:** iron and steel structures, columns, beams; aluminum profiles, bars, rods, tubes, and pipes; flexible tubing; hooks, eyes, eyelets, rivets, beads, spangles, buckles, clasps, crown corks; sign and name plates; welding electrodes, wire, and rods.
- **Furniture and home goods:** seats convertible into beds; bamboo, rattan, wood, teak, bent-wood, plastic, and rubber seating; seat parts; office, kitchen, and other furniture; mattress supports and mattresses.
- **Lighting:** electric lamps (table, desk, bedside, floor-standing) in brass, base metal, non-metal, LED, and non-LED.
- **Vehicles and recreation:** golf carts; motor vehicles for transport of persons with engines of 1,000 cc or less; outboard motorboats of 7.5 meters or more.
- **Other:** cheese not made from cow’s milk; paper and paperboard for writing and printing; fishing rod parts.

Canadian Goods removed from the 50% duty include: salt and pure sodium chloride, Portland cement, certain chemically pure sugars, toilet and facial tissue stock, bed sheets and similar articles of paper pulp, refined lead, switchgear assemblies, switchboards, and certain fishing rod parts.

The dairy scope modification is referenced in the Dairy Ban Proclamation but was not separately published as of this alert. We will provide an updated analysis when the full text is available.

IMPLICATIONS

Duty Stacking

The Canadian Tariff Modification Proclamations contain a provision with consequences for duty calculation: Section 338 duties shall now apply “in addition to” duties imposed under Section 232. This reverses the original Proclamations 11046, 11047, and 11048, which stated that Section 338 duties “shall not apply to articles subject to duties pursuant to section 232.”

Canadian Goods now subject to both Section 232 and Section 338 face combined additional duty rates on top of the applicable normal most-favored-nation (MFN) tariff rate:

- Aluminum products (profiles, bars, rods, tubes, and pipes newly added by the Modified Motor Vehicle Tariff Proclamation): 25% (Section 232) + 50% (Section 338) = 75% combined additional duties.
- Iron and steel structural products (columns, beams, structures): similarly facing 25% + 50% = 75% combined additional duties.

Importers who had structured their supply chains around the original non-stacking rule should reassess their landed cost models and consider whether continued sourcing from Canada remains economically viable for affected products.

USMCA

These Section 338 tariffs apply to all covered goods regardless of whether a good originates under USMCA. Section 338 is a standalone statutory authority that predates USMCA by nearly a century, and the USMCA implementing legislation provides that no USMCA provision inconsistent with U.S. law shall have effect (19 U.S.C. § 4512(a)(1)), giving Section 338 a path to override USMCA benefits.

The September 8 Proclamations make no provision for USMCA preferential tariff treatment. This means that USMCA qualification — which historically has been the primary tool for duty mitigation on Canadian goods — provides no relief from Section 338 duties or import bans.

The administration’s use of Section 338 as an enforcement tool outside USMCA’s dispute resolution mechanisms raises questions. The Dairy Ban Proclamation arises from Canada’s allocation of its cheese TRQ under USMCA — a matter that could have been pursued through USMCA Chapter 31 panels. Similarly, the motor vehicles dispute concerns Canada’s tariff treatment of vehicles under the USMCA framework. By choosing Section 338 over Chapter 31, the U.S. is proceeding with unilateral measures rather than USMCA dispute resolution.

Canada may respond by bringing challenges under both USMCA Chapter 31 and the WTO Dispute Settlement Understanding. The viability of those challenges will turn on whether Section 338 actions constitute “emergency” measures exempt from trade-agreement disciplines and whether USMCA’s dispute resolution exclusivity provisions are self-executing.

Foreign Trade Zones

The September 8 Proclamations require goods subject to Section 338 duties to be admitted into Foreign Trade Zones (FTZ) as “privileged foreign status” merchandise under 19 CFR 146.41, rather than “domestic status” under 19 CFR 146.43, preventing tariff engineering based on the product’s condition at admission. FTZs are irrelevant for banned goods because they cannot lawfully enter, and newly added scope-modification products — including aluminum, steel, furniture, and lighting — are subject to the same privileged-foreign-status requirement.

Drawback

The September 8 Proclamations are silent on whether Section 338 duties qualify for drawback, leaving unresolved whether U.S. Customs and Border Protection will treat them as refundable duties under 19 U.S.C. § 1313. Banned goods cannot generate drawback because they cannot lawfully enter, while importers that pay Section 338 duties and later re-export covered goods should preserve all documentation and consult customs counsel pending clarification.

CONCLUSION

The September 8 Proclamations represent a significant expansion of Section 338, moving from duties to outright import bans. Importers of Canadian Goods should take immediate steps to assess their exposure: review product classifications against the updated duty and ban lists; prioritize entries for consumption before September 29 for goods subject to the Canadian Import Ban Proclamations; reassess landed cost models for products subject to duty stacking (Section 232 + Section 338); evaluate alternative sourcing for affected product categories; and preserve documentation for potential drawback claims on re-exported goods.

For more information on the September 8 Proclamations or Section 338 compliance strategies, please contact Ryan Last, Daniel Anziska, or any member of Troutman Pepper Locke's Tariff + Trade Task Force.

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