

# Intelligence MEMOS



From: Jon Johnson  
To: Canadians Concerned About Section 232 Tariffs  
Date: September 22, 2020  
Re: **ALUMINUM TARIFFS – DID THE US REALLY BLINK?**

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Last week, hours before Canadian retaliatory tariffs were to go into effect, the Office of the United States Trade Representative (USTR) issued a [statement](#) advising that the US was resuming duty free treatment of non-alloyed, unwrought aluminum retroactive to September 1 (ending the August 16 re-imposition of Section 232 tariffs).

However, the resumption of the duty free treatment is conditional on shipments from Canada to the US not exceeding 83,000 tons for the months of September and November 2020, and not exceeding 70,000 tons for the months of October and December 2020. If shipments exceed 105 percent of these volumes for any month (i.e., 87,150 tons in September and November and 73,500 tons in October and December), the US will retroactively impose duties for all shipments made during that month.

These volumes are not agreed to by Canada. Section 232 tariffs (purportedly to protect US national security) have nothing to do with any trade infraction by Canada (such as dumping or subsidization).

These monthly volumes are below the monthly average volumes for periods during which non-alloyed, unwrought aluminum entered the US duty free. For example, average monthly volume of shipments was 130,852 tons from July 2016 to June 2018. The 10 percent Section 232 tariffs were imposed and in effect from July 2018 to May 2019, during which period the average volume of shipments to the US was 76,583 tons, which is roughly within the range set out in the USTR statement.

Duty free treatment of non-alloyed, unwrought aluminum resumed with the May 2019 Canada/US Joint Statement, under which the US agreed to eliminate its Section 232 tariffs on Canadian aluminum products (subject to conditions) and Canada agreed to eliminate its retaliatory tariffs. This duty free treatment remained in effect for the months of June 2019 through to July 2020. The average volume of shipments for each of these months was 156,236 tons, well above the US thresholds.

So where does this leave us?

If shipments for any of September through December 2020 exceeds the 105 percent thresholds, the USTR will have to decide whether to follow through with its threat to impose retroactive 10 percent tariffs. Contingent tariffs are arguably worse for a US importer than tariffs at the time of the shipment. Even if retroactive tariffs are not imposed (a possible result of effective lobbying), the threat of these tariffs undermines CUSMA by creating market uncertainty.

If retroactive tariffs are imposed, Canada will impose tariffs on the wide range of US aluminum products originally scheduled to be subject to tariffs if the US had not resumed duty free treatment.

So US consumers and Canadian producers of Canadian non-alloyed, unwrought aluminum, together with US producers and Canadian consumers of the US aluminum products covered by the Canadian retaliatory tariffs, will all be worse off.

In the CUSMA negotiations, the US insisted that passenger vehicles and light and heavy trucks be considered originating only if 70 percent of the aluminum used in the vehicle is originating under CUSMA rules. However, US holds out the threat of a 10 percent tariff on Canadian non-alloyed, unwrought aluminum, which means that US producers of these vehicles could be subject to a substantial retroactive penalty if they use Canadian product to satisfy this CUSMA rule of origin requirement. Rather than protecting US national security, the real purpose of the 10 percent tariff appears to be to turn a trilateral rule of origin requirement into domestic US content scheme.

One hopes that whoever occupies the White House come January 20, 2021 will understand that the US is seeking to obtain a US content origin requirement by the back door that it could not obtain in good faith negotiations. This will only foist more uncertainty and costs on American industries seeking to remain globally competitive. And, although Canada has called off its retaliatory tariffs, it should realize the fight is not over, and consider its strategic options vis-à-vis partners that increasingly seek to impose managed trade in the name of security.

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