Three New Proclamations Tap into Section 338 Authority for Tariffs on Canadian Imports

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On July 20, 2026, President Trump issued three new executive orders utilizing Section 338 of the Tariff Act of 1930 (the "Section 338 Proclamations") to impose 50% tariffs on certain imports from Canada. The tariffs, which are scheduled to take effect 30 days from the proclamations' signing, or August 19, 2026, are "designed to offset the burden and disadvantage" from "Canada's discriminatory treatment of U.S. commerce," according to the White House Fact Sheet. The 30-day waiting period required by the statute means that there is time for the United States and Canada to talk before the tariffs are implemented. They may be adjusted in some way – or may not go into effect at all – by the time we get to mid-August.

What is Section 338?

Section 338 of the Tariff Act of 1930 (19 U.S.C. § 1338) authorizes the President to impose additional duties on imports upon finding that "the public interested will be served" by doing so in response to a foreign trading partner's direct or indirect discrimination "against the commerce of the United States." Direct or indirect discrimination includes laws, regulations, or practices related to trade or customs that "place the commerce of the United States at a disadvantage compared with the commerce of" that foreign trading partner.

Section 338 further allows the President to block the importation of goods from the foreign country if it has "maintained or increased" its discriminatory practices against U.S. commerce.

There are very few statutory limitations on the tariff authority provided by Section 338. The law requires that the additional duties not exceed 50% *ad valorem* and that they apply only after 30 days from the date of the proclamation.

The tariffs may remain in place, however, for an indefinite period of time and may be imposed on a country-wide or more limited basis (e.g., state or region). The President may also "suspend, revoke, supplement, or amend" the tariff measure if he determines that modification is required by the public interest. Additional tariffs (in the form of a new proclamation) may be imposed on imports from a third country benefitting from the primary country's discriminatory activity. While the U.S. International Trade Commission ("ITC") is charged with ascertaining and "at all times" being informed of a foreign country's discriminatory actions, the law does not require the ITC to make a finding prior to the President imposing additional tariffs.

What tariffs are set to be imposed on Canadian imports?

The Section 338 Proclamations of July 20, 2026, impose offsetting measures for three U.S. industries disadvantaged by Canada's discriminatory treatment: motor vehicles, alcoholic beverages, and dairy. Each proclamation identifies the relevant Canadian practices, including tariffs and quotas for autos exported from the United States to Canada (that do not apply to auto exports from other countries); provincial restrictions on the purchase, distribution, and retail sale of alcohol from the United States; and dairy tariff-rate quotas more restrictive than those applied to other economies (e.g., the European Union).

The public interest, as cited in the Section 338 Proclamations, is economic: Canada's discriminatory behavior suppresses U.S. industrial, manufacturing, and agricultural output, "as well as investment, and thereby undermines employment and economic vitality in American communities."

The 50% tariffs will apply only to those goods listed in Annex I of each proclamation (by U.S. Harmonized Tariff Schedule ("HTSUS") code). Notably, the products covered by each proclamation are somewhat related to the affected industry – alcoholic beverage imports from Canada are covered by the alcohol proclamation, dairy imports from Canada are covered by the dairy proclamation – but also include a wide variety of other products ranging from suitcases to plywood boards to clothing accessories and textiles to essential oils to furniture to sports equipment.

The tariffs will apply *even to goods qualifying for preferential treatment under the U.S.-Mexico-Canada Agreement ("USMCA")*. In other words, the USMCA-qualification exemption that has been a part of other recent tariff actions – including the Section 122 tariff action and the proposed Section 301 tariff action on failure to implement or effectively enforce a ban on forced labor in supply chains – is *not* available here.

The Section 338 Proclamations, however, do provide for the following exemptions: (1) products subject to tariffs under Section 232 of the Trade Expansion Act of 1962 (e.g., covered steel, aluminum, copper, auto, trucks, wood, semiconductors, and pharmaceutical products); (2) certain civil aircraft or aircraft parts consistent with the WTO Agreement on Trade in Civil Aircraft; and (3) energy products and potash from Canada (as well as all other products of Canada not specifically listed in Annex I).

Does this have anything to do with the recent USMCA review?

That is a fair assumption, but this is not just about USMCA. On July 1, 2026, the United States announced that, as part of the required joint review of USMCA, the United States did not agree to renew the agreement "in its current form." Yet, news outlets and experts have long been reporting on the tense relationship between the United States and Canada in particular since the start of the second Trump term.

The announcement of the Section 338 Proclamations appears to hang on the White House's broader frustrations with Canada, noting that "President Trump's tariffs have resulted in 18 deals opening new markets for U.S. exports and bringing reciprocity back to America's trade relations. Yet Canada has elected to discriminate against the United States rather than address Canadian trade barriers."

The President also points to Canada's prior retaliatory measures, akin to only those of our greatest economic rival, China: "Over the past year and a half, only two countries have chosen to retaliate against President Trump's tariffs rather than negotiate a deal with the United States: the People's Republic of China and Canada." Other statements to the press from President Trump following the Section 338 Proclamations signaled his view that the United States has significant leverage in broader talks with Canada over longtime trade irritants.

All that has seemed to strike a chord with Canada. On July 21, 2026, just a day after the Section 338 tariff actions were announced, Canadian Prime Minister Mark Carney reported that he and President Trump have agreed to “intensify” negotiations immediately – as the United States began round of bilateral USMCA talks with Mexico on the same day (not yet scheduled with Canada). A lot can change as a result of more “intense” negotiations in the next 30 days, which the United States is likely counting on.