

# United States Eliminates Section 232 Tariffs on Steel and Aluminum from Canada and Mexico; Canada and Mexico Eliminate Retaliatory Tariffs on US Goods

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On May 17, 2019, the United States announced that it had reached agreements with Canada and Mexico to remove the US tariffs imposed on steel and aluminum products from those countries pursuant to Section 232 of the Trade Expansion Act of 1962, as well as the retaliatory tariffs that Canada and Mexico have imposed on US goods in response.

The United States now has published the final text of the two bilateral agreements, and all three countries have taken the actions required thereunder to terminate the Section 232 tariffs and retaliatory measures as of May 20, 2019. We provide an overview of the latest developments below.

## Bilateral Agreements on the Removal of Section 232 Tariffs and Retaliation

On May 18, the Office of the US Trade Representative (USTR) published the full text of the bilateral agreements reached with Canada and Mexico to eliminate the Section 232 tariffs and retaliation. As shown below, the terms of the two agreements (which took the form of “joint statements” between the respective governments) are nearly identical:

1. The parties agreed that all Section 232 tariffs on Canadian and Mexican steel and aluminum products, as well as all tariffs Canada and Mexico imposed in retaliation for the Section 232 action, would be eliminated “no later than two days from the issuance” of the joint statements;
2. The parties will terminate all pending WTO litigation between them regarding the Section 232 action<sup>1</sup>;

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<sup>1</sup> Related WTO disputes include those brought by Canada against the United States (DS550: United States - Certain Measures on Steel and Aluminium Products); by Mexico against the United States (DS551: United States - Certain Measures on Steel and Aluminium Products); by the United States against Canada (DS557: Canada - Additional Duties on Certain Products from the United States); and by the United States against Mexico (DS560: Mexico - Additional Duties on Certain Products from the United States).

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3. The parties will “implement [as-yet-determined] effective measures” to (1) “[p]revent the importation of aluminum and steel that is unfairly subsidized and/or sold at dumped prices”; and (2) “[p]revent the transshipment of aluminum and steel made outside of [Canada/Mexico] or the United States to the other country[.]”
  4. The United States and Canada will establish an agreed-upon process for monitoring aluminum and steel trade between them, as will the United States and Mexico. In monitoring for surges, “either country may treat products made with steel that is melted and poured in North America separately from products that are not.”
  5. In the event that imports of aluminum or steel products “surge meaningfully beyond historic volumes of trade over a period of time, with consideration of market share,” the importing country may request consultations with the exporting country. After such consultations, the importing party “may impose duties of 25 percent for steel and 10 percent for aluminum in respect to the individual product(s) where the surge took place[.]” If the importing party takes such action, the exporting country agrees to retaliate only in the affected sector (*i.e.*, aluminum and aluminum-containing products or steel), thus ruling out “cross-retaliation” targeting other sectors. The agreement does not define the period of review or what would constitute a “meaningful” surge.

The agreement between the United States and Mexico contains additional language providing that, in assessing whether there has been a surge in steel imports, each country will take into account certain quantities of imports needed for new investments. Specifically, “the United States will consider that new investment in the United States may require an additional 225,000 metric tons of billet from Mexico,” and “Mexico will consider that new investment in Mexico may require an additional 200,000 metric tons of cold-rolled steel from the United States,” in assessing whether there has been a surge in steel imports.

The text of the US-Mexico agreement is available [here](#). The text of the US-Canada agreement is available [here](#).

## Presidential Proclamations Terminating Section 232 Tariffs for Canada and Mexico

In accordance with the bilateral agreements, President Trump on March 19 issued Proclamations providing that imports of steel and aluminum products from Canada and Mexico will no longer be subject to the Section 232 tariffs, effective with respect to goods entered for consumption or withdrawn from warehouse for consumption on or after 12:01 a.m. eastern daylight time on May 20, 2019. Any imports of steel or aluminum articles from Canada and Mexico that were admitted into a US foreign trade zone under “privileged foreign status” prior to 12:01 a.m. eastern daylight time on May 20, 2019, shall not be subject, upon entry for consumption made after 12:01 a.m. eastern daylight time on May 20, 2019, to the Section 232 tariffs.

The Proclamation states that the President has determined to terminate the Section 232 tariffs because the measures set forth in the new agreements with Canada and Mexico “will provide effective, long-term alternative means to address the contribution of these countries’ imports to the threatened impairment of the national security.” In light of this decision, the President also considered whether it is necessary to adjust (*i.e.*, increase) the Section 232 tariffs as they apply to other countries, and determined that the appropriate course of action is to maintain the current tariff levels of 25 and 10 percent for steel and aluminum, respectively.

The Proclamation concerning steel imports is available [here](#). The Proclamation concerning aluminum imports is available [here](#).

## Termination of Retaliatory Tariffs Imposed by Canada and Mexico

In accordance with the bilateral agreements, Canada and Mexico have taken the following actions terminating their respective retaliatory tariffs on US goods:

- **Canada.** On May 19, Canada’s Border Services Agency issued Customs Notice 19-09, which states that “[e]ffective May 19, 2019, the United States Surtax Order (Steel and Aluminum): SOR/2018-152 and the United States Surtax Order (Other Goods): SOR/2018-153 imposing surtax on certain products originating in the United States are repealed. Please note that importers will no longer be required to pay

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surtax pursuant to the above-referenced orders.” The two surtax orders were introduced by Canada in June 2018 in response to the United States’ Section 232 action, and applied to certain steel, aluminum, and other products of the United States with an annual import value of approximately US\$12.8 billion.

Canadian Customs Notice 19-09 is available [here](#).

- **Mexico.** On May 20, Mexico’s Ministry of Economy published a Decree repealing the provisions of its June 5, 2018, Decree that imposed retaliatory tariffs on approximately US\$3.6 billion in US exports, including steel products, pork, apples, potatoes, and cheese, among other items. The Decree repealing Mexico’s retaliatory tariffs took effect on the date of its publication in Mexico’s Official Gazette (*i.e.*, May 20, 2019).

The Decree repealing Mexico’s retaliatory tariffs is available [here](#).

## Outlook

US business groups and Members of Congress of both parties have welcomed the new agreements to eliminate the Section 232 tariffs and retaliatory measures between the United States, Canada, and Mexico. However, and as noted above, the specific actions that the parties will take under the new agreements, including to counteract transshipment and the importation of dumped and unfairly subsidized goods, have not yet been determined. Moreover, the agreements contemplate the potential re-imposition of duties and retaliatory measures in response to import “surges” based on unspecified criteria. The US presidential proclamations terminating the Section 232 duties similarly contemplate the potential re-imposition of duties, stating that “[t]he United States will monitor the implementation and effectiveness of these measures in addressing our national security needs, and [the President] may revisit this determination as appropriate.” Thus, despite the recent agreements, tensions related to steel and aluminum trade between the three countries could re-emerge in the future. Moreover, while some US business groups and Members of Congress have expressed hope that the agreements will provide new momentum towards US congressional approval of the US-Mexico-Canada Agreement (USMCA), influential congressional Democrats have reiterated in recent days that their primary concerns about the agreement (e.g., regarding labor, environment and enforcement provisions) remain unaddressed. Thus, despite the removal of the Section 232 tariffs and retaliation among the USMCA parties, it appears that the Agreement still faces an uphill battle in the US Congress.

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