

# 200% Tariff Imposed on Russia Aluminum; CBP Releases Extensive New Reporting Requirements for Covered Aluminum and Derivative Aluminum Articles, Regardless of Origin

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## Key Points

- On February 24, the one-year anniversary of Russia’s invasion of Ukraine, President Joe Biden announced, via Presidential Proclamation 10522, an additional 200% *ad valorem* tariff on Russian origin aluminum (and derivative aluminum) articles and, regardless of origin, aluminum (and derivative aluminum) articles where any amount of primary aluminum used in the manufacture of such articles is smelted in Russia or such articles are cast in Russia.
- The new 200% *ad valorem* tariff (which applies in addition to the column 2 duties already imposed on products of Russia pursuant to the Suspending Normal Trade Relations with Russia and Belarus Act) takes effect in two stages: (1) on March 10, 2023, with respect to aluminum (and derivative aluminum) articles that are “the product of Russia”; and (2) on April 10, 2023, with respect to aluminum (and derivative aluminum) articles, regardless of origin, where any amount of primary aluminum, as defined in Proclamation 10522, used in the manufacture of such articles is smelted in Russia or such articles are cast in Russia. The aluminum and derivative aluminum articles subject to Proclamation 10522 (the “Covered Aluminum Products”) fall under the same headings or subheadings (i.e., 7601, 7604-7609, 7616.99.51, certain subheadings of 7614 and 8708) and include the same types of aluminum products (e.g., aluminum castings and forgings, aluminum bars, rods, and profiles and body stampings of aluminum for motor vehicles) subject to the already-established Section 232 aluminum duties.
- Proclamation 10522 noted that importers shall provide to CBP “information necessary” to identify the countries where the primary aluminum used in the manufacture of the covered aluminum (and derivative aluminum) articles was smelted or the aluminum (and derivative aluminum) articles cast. CBP released CSMS Nos. 55424218 and 55438432 to announce the new requirements for reporting the countries of smelt and cast for importers of aluminum articles and aluminum derivative articles from all countries of origin, which apply regardless of where the smelting or casting occurs. Effective April 10, importers of the aluminum (and

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derivative aluminum) articles from all countries of origin under the enumerated subheadings shall report on the entry summary the primary country of smelt, the secondary country of smelt and the country of cast—even if the smelting/casting occurs in a country other than Russia—which is a significant additional reporting requirement for importers to meet. Importers should note that false reporting could lead to CBP enforcement, including significant penalties.

- On the same day, the Biden Administration also issued Proclamation 10523 to increase column 2 duties on certain products of Russia, effective April 1, 2023. The products subject to the column 2 duty increase, to either 35% or 70%, are listed in the Annex to Proclamation 10523 and include items such as iron ores, chemicals, certain iron or steel wire, iron or steel containers for compressed or liquefied gas, certain waste and scrap. The products subject to the increased column 2 duty rate of 70% *ad valorem* also include certain Russian-origin aluminum products (i.e., unwrought aluminum under heading 7601 and aluminum plates, sheets and strip under heading 7606) that are already subject to 200% *ad valorem* tariff as a result of Proclamation 10522, which would mean that importers would pay a 270% tariff on these imports.

## Background

On January 19, 2018, the U.S. Department of Commerce (“Commerce”) issued a report to the President regarding the effect of imports of aluminum articles on U.S. national security, pursuant to section 232 of the Trade Expansion Act of 1962 (the “2018 Report”). The 2018 Report determined that aluminum articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair U.S. national security.

As a result, on March 8, 2018, President Donald Trump issued Proclamation 9704, which imposed a 10% *ad valorem* tariff on aluminum articles (the “Original Sec. 232 Aluminum Duty”) and instructed the Secretary of Commerce to continue to monitor aluminum imports to report to the President if circumstances occurred requiring additional action. The 2018 Report noted that the President could—and should—consider applying a higher tariff with respect to certain countries, including Russia, for various reasons, including that Russia is one of the major exporters of aluminum to the United States for domestic consumption.

## Presidential Proclamation 10522 on Adjusting Imports of Aluminum into the United States

As noted above, Proclamation 10522 (A Proclamation on Adjusting Imports of Aluminum into the United States) issues an additional 200% *ad valorem* tariff on Russian origin aluminum (or derivative aluminum) articles and, regardless of origin, aluminum (and derivative aluminum) articles where any amount of primary aluminum used in the manufacture of such articles is smelted in Russia or such articles are cast in Russia. On the first anniversary of Russia’s war against Ukraine, President Biden issued Proclamation 10522 along with a series of other actions to both support Ukraine and target Russia—actions which include, but are not limited to, an additional security package and grant financing for Ukraine, additional economic sanctions on Russia’s economy, and further export control restrictions. The White House fact sheet on the full package of taken actions can be found at the link [here](#).

Proclamation 10522 cites several reasons for imposing the 200% tariff. First, it notes that the current capacity utilization in the domestic aluminum industry is “well below the target capacity utilization level” that the 2018 Report recommended. It also provides that, while aluminum exports from Russia have decreased since the 2018 Report, Russia is still the fifth largest source of aluminum imports into the United States. Proclamation 10522 also provides that two of the five U.S. aluminum smelters may close due to the continued high volume of aluminum imports. Last, it cites Russia’s “unjustified, unprovoked, unyielding, and unconscionable war” against Ukraine and notes that the “Russian aluminum industry is a key part of Russia’s defense industrial base and has played a major role in supplying Russia with its weapons and ammunition used in the war.” It points out that Russia’s war has caused global energy prices to rise, resulting in direct harm to the U.S. aluminum industry.

In light of all of these reasons, Proclamation 10522 provides that the President has determined that it is both necessary and appropriate to impose:

- Beginning on March 10, 2023, “a 200 percent ad valorem tariff on aluminum articles that are the product of Russia and derivative aluminum articles that are the product of Russia.”
- Beginning on April 10, 2023, “a 200 percent ad valorem tariff on aluminum articles where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or the aluminum articles are cast in Russia, and derivative aluminum articles where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or the derivative aluminum articles are cast in Russia.”
- “Primary aluminum” is defined as a new aluminum metal that is produced from alumina (or aluminum oxide) by the electrolytic Hall-Heroult process.

Proclamation 10522 effects the tariff increases through modifications to previous Presidential Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles into the United States), and Presidential Proclamation 9704. It provides that the tariff modifications shall be effective “with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 eastern standard time” on the relevant date (either March 10, 2023, or April 10, 2023) until such actions are expressly reduced, modified or terminated. It also describes that, in order to establish the duty rate increases, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) will be modified as provided in the Annex to Proclamation 10522, available [here](#). The Annex creates new subheadings to report the Covered Aluminum Products, and it provides that the Covered Aluminum Products fall under the headings or subheadings enumerated in Note 19(b) or note 19(a)(iii) to subchapter III. These are the same headings and subheadings that provide for the imported products covered by the Original Sec. 232 Aluminum Duty.

Proclamation 10522 clarifies that U.S. Customs and Border Protection (CBP) will have a leading role in implementing the tariff hike. Section 4 provides that importers shall provide to CBP “information necessary to identify the countries where the primary aluminum used in the manufacture of aluminum articles imports, covered by clause 1 of Proclamation 9704, and derivative aluminum articles, specified in Annex I of Proclamation 9980, are smelted and information necessary to identify the countries where such aluminum articles imports and derivative aluminum articles are cast.”

## **CBP Guidance and Reporting Requirements Relevant to Proclamation 10522’s 200% *Ad Valorem* Tariff**

On March 8 and 9, CBP released guidance via CSMS No. 55402109 and CSMS No. 55424218 regarding the new tariffs. First, CBP issued CSMS No. 55402109, which identified the new Ch. 99 HTSUS subheadings that importers shall report for the Covered Aluminum Products.[1] They are as follows:

- 85.67 (Effective March 10, 2023): “Aluminum articles that are the product of Russia, the foregoing under the terms of note 19(a)(vii)(A) to this subchapter and provided for in the tariff headings or subheadings enumerated in note 19(b) to this subchapter, except any exclusions that may be determined and announced by the Department of Commerce.”
- 85.68 (Effective March 10, 2023): “Derivative aluminum articles that are products of Russia, when such derivative articles are provided for in the headings or subheadings enumerated in note 19(a)(iii) to this chapter, except any exclusions that may be determined and announced by the Department of Commerce.”
- 85.67 (Effective April 10, 2023): “Aluminum articles that are the product of Russia, or where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or where the aluminum articles are cast in Russia, the foregoing under the terms of note 19(a)(vii)(A) to this subchapter and

provided for in the tariff headings or subheadings enumerated in note 19(b) to this subchapter, except any exclusions that may be determined and announced by the Department of Commerce.”

- 85.68 (Effective April 10, 2023): “Derivative aluminum articles that are products of Russia, or where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or where the aluminum articles are cast in Russia, when such derivative articles are provided for in the headings or subheadings enumerated in note 19(a)(iii) to this chapter, except any exclusions that may be determined and announced by the Department of Commerce.”

Then, on March 9, CBP released CSMS No. 55424218, which specified the new requirements that importers will have to meet to report the countries of smelt and cast for imports of aluminum and aluminum derivative products from all countries of origin.[2] Effective April 10, 2023, importers of aluminum and aluminum derivative products enumerated in one of the covered headings or subheadings, which the CSMS also lists, will have to report on the entry summary a “primary country of smelt,” “secondary country of smelt” and “country of cast,” as defined in CSMS No. 55424218 (and updated CSMS No. 55438432). Notably, these reporting requirements apply even if the importer determines that Russia is not one of the countries of smelt or country of cast of the imported aluminum product.

Given that the requirements apply whether or not an importer’s supply chain touches Russia, these information declaration requirements are a significant burden to importers of aluminum products. It is likely that CBP will review importers’ country of smelt and cast declarations and, in certain cases, request documentary evidence to prove the authenticity of such declarations. In light of this, importers should use diligence and care when making their country of cast and smelt determinations, given that false declarations may lead to CBP enforcement and penalties.

Generally, the primary and secondary country of smelt is considered the country where the largest (and second-largest) volume of the new aluminum is produced, whereas the country of cast is the country where the aluminum was last liquified via heat and cast into a solid. More technical descriptions of these processes are included in the CSMS. The CSMS also clarifies that if Russia is not the country reported for the primary country of smelt, and any primary aluminum used in the manufacture of the product was smelted in Russia, the importer must report the ISO code for Russia as the secondary country of smelt. In addition, the CSMS provides that products of the U.S. are not covered by the countries of smelt and cast reporting requirements and that, for products of the U.S., filers may report “N/A” for the countries of smelt, and U.S. for country of cast until further notice.

For more guidance from CBP relating to Proclamation 10522, please see the aforementioned CSMS guidance at the links provided above. CBP has also released additional CSMS relating to the new reporting requirements - for more information, please see CSMS No. 55483045 and CSMS No. 55468907.

## **Presidential Proclamation 10523 on Increasing Duties of Certain Articles from the Russian Federation**

On February 24, the White House also issued Proclamation 10523 to increase the HTSUS column 2 rates of duty on certain articles imported into the United States from the Russian Federation (including, but not limited to, certain aluminum articles). By way of background, Proclamation 10523 follows Proclamation 10420 of June 27, 2022, which increased the column 2 rates of duty duties to 35% *ad valorem* on certain products of Russia (e.g., chemicals, inputs and aluminum articles). President Biden issued Proclamation 10420 pursuant to his authority under the Suspending Normal Trade Relations with Russia and Belarus Act (19 U.S.C. 2434 note) (“Suspending NTR Act”), which President Biden signed into law on April 8, 2022. Section 3(a) of the Suspending NTR Act suspended nondiscriminatory tariff treatment for products of the Russian Federation and of the Republic of Belarus and imposed the rates of duty set forth in column 2 of the HTSUS on all products of Russia and Belarus. Section

3(b)(1) of the Suspending NTR Act provided that the President may proclaim increases in the column 2 rates of duty applicable to products of Russia and Belarus.

With Presidential Proclamation 10523, President Biden increased the column 2 duty rate on various Russian origin products from 35 to 70% *ad valorem*, to include many Russian metal and metal products (including aluminum). Such products include, but are not limited to: wire of iron or nonalloy steel under heading 7217; containers for compressed or liquefied gas, of iron or steel under heading 7311; aluminum wires under heading 7605; aluminum containers for compressed or liquefied gas under subheading 7613.00.00; and waste and scrap of titanium articles under heading 8108. Additionally, Presidential Proclamation 10523 increased tariffs on additional Russian products, including, but not limited to, certain iron ores and chemicals under chapter 26 and 28 and bumpers for motor vehicles under subheading 8708.10.30, to 35% *ad valorem*. The HTSUS subheadings covering the products subject to the tariff increase are listed in the Annex to Proclamation 10523, which is available at the Federal Register Notice for the Proclamation (88 Fed. Reg. 13277). The increased duty rate takes effect on April 1, 2023, and will remain in effect unless stated otherwise.

### What Interested Parties Should Consider

As described above, Proclamations 10522 and 10523 have significant impact, in terms of tariff implications and reporting requirements, that importers should take care to fully understand. Importers should review the annexes of both Proclamations and the relevant changes to the HTSUS to determine if they are importing merchandise subject to the covered subheadings. For certain Russia origin aluminum products, it appears that total duty rates could rise as high as 270%.

Importers of aluminum articles or derivative aluminum articles will also likely need to conduct traceability assessments to determine if the new tariffs apply to their products. It is not enough to say that an aluminum (or derivative aluminum) article is not a product of Russia; now, importers need to carefully review their supply chain to see if their articles are smelt or cast in Russia. Furthermore, even if importers determine that the 200% *ad valorem* tariff does not apply, the importer still has an obligation to meet the new entry summary reporting requirements for each import of aluminum (and derivative aluminum) articles subject to the enumerated headings or subheadings. Importers should also begin to ensure that they have a robust recordkeeping system in place, given that it is plausible that CBP may seek supporting information to authenticate the reported smelt and cast countries and, with such requests, may require the submission of various documents from the supply chain to demonstrate origin/location of production, smelting and/or casting. This new reporting requirement will likely lead to new transshipment investigations and provide CBP with more authority to review mis-declarations with respect to the reported countries of cast or smelt. Importers must use diligence in making the relevant determinations; otherwise, they may find themselves subject to penalty proceedings and criminal investigations, in accordance with CBP's authority.

[1] On March 8, CBP released CSMS No. 55407022, (“(UPDATED) GUIDANCE: Section 232 Additional Duties on Russian Aluminum”).

[2] On March 10, CBP released CSMS No. 55438432 (“(UPDATED) GUIDANCE: Section 232 Aluminum Smelt and Cast Requirements”).

