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UNITED STATES – ADDITIONAL IMPORT DUTIES ON GOODS FROM CANADA

REQUEST FOR CONSULTATIONS BY CANADA

The following communication, dated 4 March 2025, from the delegation of Canada to the delegation of the United States, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

The Government of Canada hereby requests consultations with the Government of the United States pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), in conjunction with Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and Article 24.8 of the *Trade Facilitation Agreement* (TFA), with respect to measures adopted by the United States that impose a 25 percent *ad valorem* rate of import duty on Canadian non-energy goods and a 10 percent *ad valorem* rate of import duty on Canadian energy goods entering the United States as of March 4, 2025. These import duties are in addition to any duties imposed by the United States pursuant to its tariff commitments as set out in its GATT 1994 Schedule of Concessions.

The legal instruments through which the United States imposes and administers these measures include the following, operating separately or in combination:

- the International Emergency Economic Powers Act of 1977, 50 U.S.C 1701 *et seq*;
- the National Emergencies Act, 50 U.S.C. 1601 *et seq*;
- Section 604 of the Trade Act of 1974, 19 U.S.C. 2483;
- Presidential Executive Order No. 14193, dated February 1, 2025;
- Presidential Executive Order No. 14197, dated February 3, 2025;
- The Presidential Executive Order entitled Amendment to Duties to Address the Flow of Illicit Drugs Across Our Northern Border, dated March 2, 2025 (March 2 Executive Order);
- The *Federal Register* Notice entitled Notice of Implementation of Additional Duties on Products of Canada Pursuant to the President's Executive Order 14193, Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border (FR Document 2025-03664), filed on March 3, 2025 and scheduled to be published on March 6, 2025 (March 3 Notice);

as well as any amendments, replacements, renewals, extensions, implementing measures, exemptions, or other related measures or instruments thereto, including any subsequent measures that increase the rate or scope of the tariffs.

The measures at issue include:

- Subsection 2(a) of Executive Order No. 14193, as amended by Executive Order No. 14197, provides, in relevant part, that "[a]ll articles that are products of Canada as defined by the [March 3 Notice]...and except for those products described in subsection (b) of this section, shall be, consistent with law, subject to an additional 25 percent *ad valorem* rate of duty. Such rate of duty shall apply...on or after... March 4, 2025... ."

- Subsection 2(b) of Executive Order No. 14193, as amended by Executive Order No. 14197, provides, in relevant part, that, "[w]ith respect to energy or energy resources, as defined in section 8 of Executive Order 14156 of January 20, 2025^[1]...and as otherwise included in the [March 3 Notice], such articles that are products of Canada as defined by the [March 3 Notice] shall be, consistent with law, subject to an additional 10 percent ad valorem rate of duty. Such rate of duty shall apply with respect to goods...on or after...March 4, 2025... ."
- Subsection 2(d) of Executive Order No. 14193 permits the President to "increase or expand in scope the duties imposed" under the Executive Order if Canada retaliates against the United States in response to the U.S. duties by imposing import duties in U.S. exports to Canada or similar measures.
- Subsection 2(h) of Executive Order No. 14193, as amended by the March 2 Executive Order, provides that, "[d]uty-free de minimis treatment under 19 U.S.C. 1321 is available for otherwise eligible covered articles described in subsection (a) and subsection (b) of this section. Such duty free de minimis treatment shall cease to be available for such otherwise eligible covered articles upon notification by the Secretary of Commerce to the President that adequate systems are in place to fully and expeditiously process and collect tariff revenue applicable pursuant to subsection (a) and subsection (b) of this section for covered articles otherwise eligible for de minimis treatment."

The Government of Canada considers that the above measures appear to be inconsistent with the United States' obligations under the following provisions:

1. Article I:1 of GATT 1994, as the measures at issue fail to extend immediately and unconditionally to products of Canada an "advantage, favour privilege or immunity" granted by the United States "with respect to customs duties and charges of any kind imposed on or in connection with" the importation of like products originating in the territory of other WTO Members.
2. Article II:1(a) of GATT 1994, as the measures at issue fail to accord to the commerce of Canada treatment no less favourable than that provided in the United States' Schedule of Concessions that is annexed to GATT 1994.
3. Article II:1(b) of GATT 1994, as the measures at issue impose ordinary customs duties in excess of the bound rates set forth and provided in The United States' Schedule of Concessions that is annexed to GATT 1994.
4. Article V:3 of GATT 1994, as the measures at issue apply a customs duty to goods in transit.
5. Article 7.8.2(d) of the TFA, as the measures at issue fail to provide, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected.

The United States' measures described above nullify or impair benefits accruing to Canada directly or indirectly under those Agreements.

The Government of Canada reserves the right to address additional measures, as well as any additional factual and legal claims, in the course of consultations and in any future request for panel establishment.

As some of the products subject to the above-referenced import duties are classified as agricultural products under chapters 1-24 of the Harmonized Tariff System of the United States 2025, the Government of Canada considers that this consultation request concerns a matter of urgency relating, *inter alia*, to perishable goods. Consequently, the Government of Canada requests that, in

¹ Section 8 of Executive Order No. 14156 of January 20, 2025 provides that, "(a) The term 'energy' or 'energy resources' means crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606(a)(3)." 30 U.S.C 1606(a)(3) defines "critical minerals" as follows: "(A) In general The term 'critical mineral' means any mineral, element, substance, or material designated as critical by the Secretary under subsection (c). (B) Exclusions The term 'critical mineral' does not include— (i) fuel minerals; (ii) water, ice, or snow; (iii) common varieties of sand, gravel, stone, pumice, cinders, and clay."

accordance with Article 4.8 of the DSU, the consultations be held within 10 days of the date of delivery of this request.

The Government of Canada looks forward to receiving the Government of the United States' reply to this request and to determining a mutually convenient date and place for the consultations.
