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Page: 1/2

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## CANADA – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

### REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES

The following communication, dated 18 October 2018, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On July 16, 2018, the United States requested consultations with the Government of Canada ("Canada") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), with respect to Canada's imposition of additional duties on certain products originating in the United States ("additional duties measure").<sup>1</sup> The United States held consultations with Canada on October 3, 2018. Unfortunately, these consultations did not resolve the dispute.

The additional duties measure applies only to products originating in the United States. The additional duties measure does not apply to like products originating in the territory of any other WTO Member, and thus appears inconsistent with the most-favored nation obligation in Article I of the GATT 1994. Moreover, the additional duties measure results in rates of duty greater than the rates of duty set out in Canada's schedule of concessions, and thus appears inconsistent with Article II of the GATT 1994.

The legal instruments through which Canada imposes the additional duties measure include the following, operating separately or collectively:

1. *Customs Notice 18-08 Surtaxes Imposed on Certain Products Originating in the United States*, Canada Border Services Agency, June 29, 2018, rev. July 11, 2018;
2. *Countermeasures in Response to Unjustified Tariffs on Canadian Steel and Aluminum Products*, Department of Finance Canada Press Release, June 29, 2018;
3. *Notice of Intent to Impose Countermeasures Action against the United States in Response to Tariffs on Canadian Steel and Aluminum Products*, Department of Finance Canada Press Release, issued May 31, 2018;
4. *United States Surtax Order (Steel and Aluminum)*, SOR/2018-152, Canada Gazette, Part II, Volume 152, Number 14, July 11, 2018;
5. *United States Surtax Order (Other Goods)*, SOR/2018-153, Canada Gazette, Part II, Volume 152, Number 14, July 11, 2018;

as well as any amendments, replacements, related measures or implementing measures.

The additional duties measure appears to be inconsistent with Canada's obligations under:

- Article I:1 of the GATT 1994 because it fails to extend to products of the United States an advantage, favor, privilege or immunity granted by Canada with respect to customs duties

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<sup>1</sup> WT/DS557/1.

and charges of any kind imposed on or in connection with the importation of products originating in the territory of other Members;

- Article II:1(a) of the GATT 1994 because it accords less favorable treatment to products originating in the United States than that provided for in Canada's schedule; and
- Article II:1(b) of the GATT 1994 because it imposes duties or charges in excess of those set forth in Canada's schedule.

The additional duties measure appears to nullify or impair the benefits accruing to the United States directly or indirectly under the GATT 1994.

Accordingly, the United States respectfully requests pursuant to Article 6 of the DSU that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

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