



JUL 23 2018

Ambassador C.J. Mahoney
Deputy United States Trade Representative for Investment,
Services, Labor, Environment, Africa, China and
the Western Hemisphere
600 17th Street Northwest
Washington, D.C. 20006
UNITED STATES OF AMERICA

Dear Ambassador Mahoney:

The Government of Canada hereby requests consultations with the Government of the United States pursuant to Article 2006 of the North American Free Trade Agreement (NAFTA) with respect to the imposition of a global emergency action (or safeguard measure) by the United States on certain solar goods, including from Canada.

On January 23, 2018, the United States imposed a 30 percent additional import duty on certain solar goods, including solar cells and modules, under the “Presidential Proclamation to Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells.”

The additional safeguard duty applies to imports from Canada. This is despite the fact that Chapter 8 of NAFTA requires that imports from Canada be excluded from a safeguard duty unless they account for both a substantial share of total imports and contribute importantly to serious injury caused by imports. The U.S. International Trade Commission found that neither of the two conditions for inclusion was met.

In addition, Chapter 8 of NAFTA prohibits a Party from imposing restrictions on a good that would have the effect of reducing imports below the trend over a recent period with allowance for reasonable growth. The United States has also failed to observe this prohibition in instituting its emergency action.

The Government of Canada considers that the above measure appears to be inconsistent with the obligations of the United States under:

1. Article 302 of NAFTA, as the United States has increased an existing customs duty or adopted an additional customs duty on originating solar goods of Canada.

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2. Article 802 of NAFTA, as the United States failed to exclude imports of Canada from its global action imposing a safeguard duty on imports of certain solar goods. Further, the imposition of the duty and the failure to exclude Canadian imports have had the effect of reducing imports from Canada below the trend of imports of solar goods from Canada over a recent representative base period with allowance for reasonable growth.
3. Article 803 of NAFTA, as the United States failed to:
 - a) ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings;
 - b) entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals; and
 - c) adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in Annex 803.3.

The measure of the United States described above nullifies or impairs benefits accruing to Canada directly or indirectly under NAFTA.

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

The Government of Canada looks forward to receiving the reply of the United States to this request and to determining a mutually convenient date for consultations, particularly as it would be fitting to ensure that the NAFTA Parties continue to live up to their existing obligations as we seek to renegotiate new rights and obligations of mutual benefit to the North American economy.

Sincerely,



Tim Sargent

c.c. Mr. Juan Carlos Baker Pineda
Undersecretary for Foreign Trade
United Mexican States

Mr. Paul E. Morris
Secretary
NAFTA Secretariat U.S. Section
United States of America

Mr. Sergio Soto Núñez
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Mr. André François Giroux, Secretary
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