



CANADA — ADDITIONAL DUTIES ON CERTAIN PRODUCTS
FROM THE UNITED STATES

REPORT OF THE PANEL

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1 COMPLAINT BY THE UNITED STATES

1.1. On 16 July 2018, the United States requested consultations with 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 increased duties on certain products originating in the United States (additional duties measure).¹

1.2. The United States alleged that Canada's additional duties measure did not impose the increased duties on like products originating in the territory of any other WTO Member, and thus appeared to be inconsistent with the most-favoured nation obligation in Article I of the GATT 1994. Additionally, the United States alleged that the additional duties measure resulted in rates of duty greater than rates of duty set out in Canada's schedule of concessions, and thus appeared to be inconsistent with Article II of the GATT 1994.

1.3. According to the United States, the additional duties measure was imposed through the following legal instruments, operating separately or collectively:

- a. Customs Notice 18-08 Surtaxes Imposed on Certain Products Originating in the United States, Canada Border Services Agency, 29 June 2018;
- b. Countermeasures in Response to Unjustified Tariffs on Canadian Steel and Aluminum Products, Department of Finance Canada Press Release, 29 June 2018;
- c. 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 31 May 2018;
- d. as well as any amendments, replacements, related measures or implementing measures.

1.4. Consultations were held on 3 October 2018.

2 PANEL ESTABLISHMENT AND COMPOSITION

2.1. On 18 October 2018, the United States requested the establishment of a panel pursuant to Article 6 of the DSU with standard terms of reference.²

2.2. In its panel request, the United States alleged that Canada's additional duties measure applied only to products originating in the United States. According to the United States, the additional duties measure did not apply to like products originating in the territory of any other WTO Member, and thus appeared to be inconsistent with the most-favoured nation obligation in Article I of the GATT 1994. Additionally, the United States alleged that the additional duties measure resulted in rates of duty greater than the rates of duty set out in Canada's schedule of concessions, and thus appeared to be inconsistent with Article II of the GATT 1994.

2.3. In that same document, the United States alleged that the additional duties measure was imposed through the following legal instruments, operating separately or collectively:

- a. Customs Notice 18-08 Surtaxes Imposed on Certain Products Originating in the United States, Canada Border Services Agency, 29 June 2018, rev. 11 July 2018;
- b. Countermeasures in Response to Unjustified Tariffs on Canadian Steel and Aluminum Products, Department of Finance Canada Press Release, 29 June 2018;
- c. 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 31 May 2018;

¹ WT/DS557/1.

² WT/DS557/2.

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- d. United States Surtax Order (Steel and Aluminum), SOR/2018-152, Canada Gazette, Part II, Volume 152, Number 14, 11 July 2018;
 - e. United States Surtax Order (Other Goods), SOR/2018-153, Canada Gazette, Part II, Volume 152, Number 14, 11 July 2018;
 - f. as well as any amendments, replacements, related measures or implementing measures.

2.4. At its meeting on 21 November 2018, the Dispute Settlement Body (DSB) established a panel pursuant to the United States' request in document WT/DS557/2, in accordance with Article 6 of the DSU.³

2.5. The Panel's terms of reference are the following:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by the United States in document WT/DS557/2 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.⁴

2.6. On 7 January 2019, the United States requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU. On 25 January 2019, the Director-General accordingly composed the Panel as follows:

Chairperson: Mr William Ehlers
Members: Mr Darlington Mwape
Ms Claudia Uribe

2.7. Brazil, China, Egypt, the European Union, Guatemala, India, Indonesia, Japan, Kazakhstan, Mexico, New Zealand, Norway, the Russian Federation, Singapore, South Africa, Switzerland, Chinese Taipei, Thailand, Turkey, Ukraine, and the Bolivarian Republic of Venezuela notified their interest in participating in the Panel proceedings as third parties.

3 NOTIFICATION OF MUTUALLY AGREED SOLUTION

3.1. By a letter dated 23 May 2019, pursuant to Article 3.6 of the DSU, the parties notified the DSB that they had reached a mutually agreed solution, which was circulated as document WT/DS557/4 on 27 May 2019. Also on 27 May 2019, the parties jointly wrote to the Panel advising it of their mutually agreed solution and "recall[ing] that Article 12.7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes provides that "[w]here a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached."

3.2. The Panel takes note of the mutually agreed solution between the parties to the dispute and of Article 3.7 of the DSU, which provides that "[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred."

3.3. The Panel also takes note of Article 12.7 of the DSU, which provides that "[w]here a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached". Accordingly, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.

³ WT/DSB/M/421.

⁴ WT/DS557/3.