

Minister of Small Business,  
Export Promotion and  
International Trade



Ministre de la Petite Entreprise,  
de la Promotion des exportations et  
du Commerce international

Ottawa, Canada K1A 0G2

The Honourable Robert Lighthizer  
United States Trade Representative  
Executive Office of the President  
600 17th Street Northwest  
Washington, D.C. 20508  
UNITED STATES OF AMERICA

Dear Ambassador:

The Government of Canada hereby requests consultations with the Government of the United States pursuant to Article 31.4 of the Canada-United States-Mexico Agreement (CUSMA) with respect to the imposition and ongoing application of an emergency action (or safeguard measure) by the United States on crystalline silicon photovoltaic cells (whether or not partially or fully assembled into other products) (CSPV products), including from Canada.

Following an investigation conducted by the U.S. International Trade Commission (ITC), on January 23, 2018, the United States imposed a 30 percent additional import duty on CSPV products, under the “Presidential Proclamation to Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells.” Pursuant to that Proclamation, the duty declined to 25% in 2019 and to 20% in 2020.

From the time the safeguard measure was first taken, it was inconsistent with Articles 302, 802, and 803 of NAFTA, as Canada set out in its July 23, 2018, letter to the United States requesting consultations under Article 2006 of NAFTA. Your government failed to respond to that request.

Following the ITC’s mid-point review of the safeguard measure, on October 13, 2020, the President continued the safeguard measure under the Presidential Proclamation “To Further Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled into Other Products)”.

The duties imposed under the safeguard measure continue to apply to imports from Canada as of the date of this letter. This is despite the fact that Chapter 10 of CUSMA requires that imports from Canada be excluded from an emergency action unless those imports account for both a substantial share of total imports and contribute importantly to serious injury caused by imports. The ITC found that neither of the two conditions for inclusion was met.

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Canada

In addition, Chapter 10 of CUSMA 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 failed to observe this prohibition in taking its emergency action and continues to fail to observe this prohibition with respect to imports from Canada.

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

1. Article 2.4 of CUSMA, as the United States has increased an existing customs duty or adopted an additional customs duty on originating CSPV products from Canada.
2. Article 10.2 of CUSMA, as the United States has failed to exclude imports of Canada from its emergency action imposing a safeguard duty on imports of CSPV products. 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 CSPV products from Canada over a recent representative base period with allowance for reasonable growth.
3. Article 10.3 of CUSMA, as the United States failed to entrust determinations of serious injury in emergency action proceedings to a competent investigating authority and to ensure that negative injury determinations shall not be subject to modification, except by judicial review as provided by domestic law.

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

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.

Sincerely,



The Honourable Mary Ng, P.C., M.P.

c.c. Vidya Desai, Acting United States Secretary  
USMCA Secretariat, United States Section

Rubisel Velázquez Lugo, Mexican Secretary  
TMEC Secretariat, Mexican Section

Sean Clark, Canadian secretary, CUSMA Secretariat