IN THE UNITED STATES COURT
OF INTERNATIONAL TRADE

GELLERT GLOBAL GROUP CORP., Plaintiff, v. DONALD J. TRUMP, *in his official capacity as President of the United States*; EXECUTIVE OFFICE OF THE PRESIDENT; the UNITED STATES OF AMERICA; UNITED STATES CUSTOMS AND BORDER PROTECTION; RODNEY S. SCOTT, *in his official capacity as Commissioner of United States Customs and Border Protection;* JAMIESON GREER, *in his official capacity as United States Trade Representative*; and OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE; Defendants.	Case No. 26-cv-04636

Plaintiff's Statement of Undisputed Material Facts Pursuant to USCIT Rule 56.3

Pursuant to USCIT Rule 56.3(a), Plaintiff Gellert Global Group Corp. submits the following statement of material facts as to which it contends there is no genuine issue to be tried, in support of its motion for summary judgment. The same facts support Plaintiff's motion for a preliminary injunction. Capitalized terms have the meanings given in Plaintiff's motion. The Court may take judicial notice of the proclamations, Federal Register notices, and official government publications cited below. *See* Fed. R. Evid. 201(b); 44 U.S.C. § 1507; *Borlem S.A.-Empreedimentos*

Industriais v. United States, 913 F.2d 933, 940 (Fed. Cir. 1990) (affirming judicial notice of an agency determination "published in the Federal Register").

A. In July 2026, the President imposed Section 338 duties, the first time any President had done so.

1. Section 338 was enacted as part of the Tariff Act of 1930. It superseded Section 317 of the Tariff Act of 1922, which contained similar provisions, and it has not been amended since its enactment. Tariff Act of 1930, ch. 497, tit. III, § 338, 46 Stat. 590, 704; 19 U.S.C. § 1338 (source credit and Prior Provisions note).

2. Before July 2026, the United States had never imposed a duty under Section 338 or its predecessor, Section 317. U.S. Tariff Comm'n, 25th Ann. Rep. 44 (1941) ("Since 1922, when this retaliatory power was conferred on the President by the tariff act of that year, no action by this Government against foreign discrimination under this law has been carried as far as the imposition of penalty duties."); Christopher T. Zirpoli, Cong. Rsch. Serv., R48435, *Congressional and Presidential Authority to Impose Import Tariffs* 24 (updated Mar. 19, 2026)[1] ("As of the time of this writing, the United States has never imposed tariffs under Section 338 . . . ."); Kyla H. Kitamura, Cong. Rsch. Serv., R49349, *U.S. Tariffs on Canadian Imports: Section 338 of the Tariff Act of 1930*, at 1 (Sept. 14, 2026)[2] (describing the July 2026 proclamations as "the first time a President has expressly cited this statute to impose tariffs").

[1] https://www.congress.gov/crs_external_products/R/PDF/R48435/R48435.5.pdf.
[2] https://www.congress.gov/crs_external_products/R/PDF/R49349/R49349.2.pdf.

3. On July 20, 2026, the President issued Proclamation Nos. 11046, 11047, and 11048, each invoking Section 338 of the Tariff Act of 1930, 19 U.S.C. § 1338. Proclamation No. 11046, 91 Fed. Reg. 46,639 (July 23, 2026); Proclamation No. 11047, 91 Fed. Reg. 46,653 (July 23, 2026); Proclamation No. 11048, 91 Fed. Reg. 46,663 (July 23, 2026).

4. Each of the three proclamations imposed an additional 50 percent ad valorem duty on certain products of Canada: Proclamation No. 11046 with respect to alcoholic beverages, Proclamation No. 11047 with respect to dairy, and Proclamation No. 11048 with respect to motor vehicles. *Id.*

5. Each of the three proclamations was scheduled to take effect on August 19, 2026. *Id.*

B. The proclamations target three Canadian measures.

6. Proclamation No. 11046 identifies the removal of American alcoholic beverages from the shelves of Canadian provincial liquor authorities as the measures it addresses and dates those measures to March 4, 2025. Proclamation No. 11046 ¶ 4.

7. On March 4, 2025, additional duties on products of Canada imposed under the International Emergency Economic Powers Act took effect. Exec. Order No. 14193, 90 Fed. Reg. 9,113 (Feb. 7, 2025), *as amended by* Exec. Order No. 14197 § 3(a), 90 Fed. Reg. 9,183, 9,183 (Feb. 10, 2025).

8. The Government of Canada has stated that the provincial and territorial restrictions on U.S. alcoholic beverages, and Canada's counter-tariffs on U.S. light

vehicles, were "implemented in response to the unjustified U.S. tariffs implemented in 2025." Regulatory Impact Analysis Statement, United States Surtax Order (2026), SOR/2026-186, C. Gaz. pt. II, vol. 160, no. 19 (Sept. 23, 2026) (Can.)[3] (hereinafter "2026 Surtax Order RIAS").

9. Proclamation No. 11047 states that Canada maintains a tariff-rate quota ("TRQ") for cheeses of all types under the United States-Mexico-Canada Agreement ("USMCA") and a separate TRQ for cheeses under the Canada-European Union Comprehensive Economic and Trade Agreement ("CETA"), and that both TRQs "provide duty-free access for the covered dairy products up to specified annual quantities." Proclamation No. 11047 ¶ 3.

10. Proclamation No. 11047 states: "[w]hile Canada's eligibility criteria for the USMCA dairy TRQs . . . do not allow retailers to obtain and use TRQ quantities, the eligibility criteria for the CETA do grant retailers access to the TRQ quantity for cheese of all types." *Id.* ¶ 4.

11. On that basis, the President "f[ou]nd as a fact that Canada is discriminating in fact against the commerce of the United States," that the discrimination "places the commerce of the United States at a disadvantage compared to the commerce of the EU and its member States," and that Canada's imposition "is unreasonable, is not equally enforced upon the like articles of every foreign country, and places a burden on the commerce of the United States." *Id.* ¶ 6.

[3] https://gazette.gc.ca/rp-pr/p2/2026/2026-09-23/html/sor-dors186-eng.html.

12. Proclamation No. 11047 states: "Imposing additional duties on certain products of Canada will, among other things, expand opportunities for U.S. producers to compete within the U.S. market, enhancing American production and bringing attendant economic and societal benefits, and may spur Canada to remove the discrimination against U.S. cheeses of all types." *Id.* ¶ 7.

13. Proclamation No. 11047 imposed a duty of 50 percent ad valorem on the products listed in its Annex II and stated that the duties "will offset the burden or disadvantage on U.S. commerce." *Id.* ¶ 8.

14. The products subject to duty under Proclamation No. 11047 include whey, lactose, sugar syrups, molasses, and hops. Harmonized Tariff Schedule of the United States ("HTSUS") ch. 99, subch. III, U.S. note 51(b)(2); HTSUS heading 9903.03.13.

15. In 2021, a USMCA panel found that Canada's practice of reserving TRQ allocations for processors was inconsistent with the USMCA. *Canada—Dairy TRQ Allocation Measures*, No. CDA-USA-2021-31-01, Final Report (Dec. 20, 2021).

16. After Canada revised its measures, the United States challenged them again, arguing that retailers must be eligible. A second USMCA panel held that the agreement's eligibility provision "is merely the floor of eligibility" and that Canada's treatment of retailers and other types of applicants is not inconsistent with the agreement. *Canada—Dairy Tariff-Rate Quota Allocation Measures 2023*, No. CDA-USA-2023-31-01, Final Report ¶ 90 (Nov. 10, 2023).

17. The Office of the United States Trade Representative stated that "[u]nder the USMCA, the report of the panel is now final." Press Release, Off. of the U.S. Trade Representative, *USMCA Panel Releases Canada Dairy Report; Biden-Harris Administration Will Continue Seeking Full USMCA Benefits for U.S. Dairy* (Nov. 24, 2023).

18. Proclamation No. 11048 identifies Canada's "United States Surtax Order (Motor Vehicles 2025)" as the measure it addresses. That surtax has applied since April 9, 2025, to U.S.-origin vehicles that do not meet USMCA rules of origin, and to the non-Canadian, non-Mexican content of those that do. Proclamation No. 11048 ¶¶ 2–3, 5; Kitamura, *supra*, at 6; 2026 Surtax Order RIAS, *supra*.

19. By Proclamation No. 10908, the President imposed 25 percent duties under Section 232 of the Trade Expansion Act of 1962, 19 U.S.C. § 1862, on imported automobiles, including automobiles from Canada. Proclamation No. 10908, 90 Fed. Reg. 14,705 (Mar. 31, 2025).

20. The Section 232 duties on automobiles took effect on April 3, 2025. *Id.* at 14,706. That day, the Prime Minister of Canada announced that Canada would impose countermeasures on imports of U.S. vehicles, "mirroring the approach of the United States." Regulatory Impact Analysis Statement, United States Surtax Order (Motor Vehicles 2025), SOR/2025-118, C. Gaz. pt. II, vol. 159, no. 9 (Apr. 23, 2025) (Can.)[4] (hereinafter "Motor Vehicles Surtax RIAS").

[4] https://gazette.gc.ca/rp-pr/p2/2025/2025-04-23/html/sor-dors118-eng.html.

21. Canada adopted the United States Surtax Order (Motor Vehicles 2025) in response to the Section 232 duties on automobiles. The Government of Canada stated that "[t]he objective of Canada's tariffs is to mirror U.S. trade actions on vehicles to ensure reciprocal market access conditions," and that "[s]hould the United States eliminate its tariffs against motor vehicles made in Canada, Canada's counter tariffs would be repealed as well." Motor Vehicles Surtax RIAS, *supra*; *see also* 2026 Surtax Order RIAS, *supra* ("On April 9, 2025, Canada responded to U.S. Section 232 tariffs on Canadian light vehicles with counter-tariffs under the United States Surtax Order (Motor Vehicles 2025) . . . ."); Kitamura, *supra*, at 6 ("The Canadian government responded with 25% tariffs on U.S. vehicles . . . .").

22. Proclamation Nos. 11046 and 11048 recite declines in U.S. exports to Canada of roughly $581 million and $5.6 billion, respectively. Proclamation No. 11046 ¶ 5; Proclamation No. 11048 ¶ 4. Each states that the additional duties "will, among other things, expand opportunities for U.S. producers to compete within the U.S. market" and "may spur Canada to remove" the measure it addresses, and that the duties "will offset the burden or disadvantage on U.S. commerce." Proclamation No. 11046 ¶¶ 8–9; Proclamation No. 11048 ¶¶ 7–8.

C. The duties took effect in August 2026 and were later extended to cheese.

23. On August 18, 2026, the day before the duties were to take effect, the President suspended them for three days after Canada "expressed a commitment to remove the discrimination or unreasonable and unequal imposition." Proclamation

No. 11056, 91 Fed. Reg. 54,789 (Aug. 24, 2026); *see* Proclamation No. 11062 ¶ 2, 91 Fed. Reg. 58,319, 58,320 (Sept. 14, 2026).

24. The suspension lapsed, and the 50 percent duties took effect at 12:01 a.m. eastern time on August 22, 2026. Proclamation No. 11062 ¶ 4.

25. Canada imposed counter-tariffs on approximately C$27.6 billion (US$20 billion) of U.S.-origin goods, effective September 8, 2026. Kitamura, *supra*, at 1; 2026 Surtax Order RIAS, *supra*.

26. On August 27, 2026, Saskatchewan imposed a 50 percent levy on American alcohol, which the President described as imposed "expressly in response to" Proclamation No. 11046. Proclamation No. 11061 ¶ 5, 91 Fed. Reg. 58,311 (Sept. 14, 2026).

27. On September 8, 2026, the President issued Proclamation Nos. 11064 and 11065, which modified the products subject to the duties imposed by Proclamation Nos. 11046 and 11048, respectively, effective September 15, 2026. Proclamation No. 11064, 91 Fed. Reg. 58,331 (Sept. 14, 2026); Proclamation No. 11065, 91 Fed. Reg. 58,339 (Sept. 14, 2026).

28. Proclamation No. 11064 extended the duties imposed by Proclamation No. 11046 to, among other products, fresh cheese; grated, powdered, and processed cheese; blue-veined cheese and Roquefort; cheddar; Edam and Gouda; Swiss, Emmentaler, and Gruyère-process cheese; Romano, Reggiano, Parmesan, and Provolone; sheep's milk cheese; and other cheese made from cow's milk.

Proclamation No. 11064, Annex I, Part A. It also extended those duties to hides, upholstery leather, furskins, and motorboats. *Id.*

29. Proclamation No. 11065 extended the duties imposed by Proclamation No. 11048 to, among other products, cheese classified in HTSUS subheading 0406.90.99, furniture, lamps, golf carts, and paper. Proclamation No. 11065, Annex I, Part A.

30. Proclamation Nos. 11064 and 11065 each state that modifying the products subject to the duties "would still offset the burden or disadvantage on U.S. commerce while better serving the public interest." Proclamation No. 11064 ¶ 5; Proclamation No. 11065 ¶ 5.

31. As issued on July 20, 2026, Proclamation Nos. 11046, 11047, and 11048 did not subject any cheese classified in HTSUS heading 0406 to additional duties. *See* Proclamation No. 11046, Annex; Proclamation No. 11047, Annex II; Proclamation No. 11048, Annex.

32. The Section 338 duties are implemented in chapter 99 of the HTSUS under heading 9903.03.12 (Proclamation No. 11046, as modified by Proclamation No. 11064), heading 9903.03.13 (Proclamation No. 11047), and heading 9903.03.14 (Proclamation No. 11048, as modified by Proclamation No. 11065). HTSUS ch. 99, subch. III, U.S. note 51(b)(1)–(3).

33. Also on September 8, 2026, the President issued Proclamation Nos. 11061, 11062, and 11063, invoking 19 U.S.C. § 1338(b) to prohibit the importation of certain products of Canada, effective September 29, 2026. Proclamation Nos. 11061, 11062, 11063, 91 Fed. Reg. 58,311, 58,319, 58,325 (Sept. 14, 2026).

34. Proclamation No. 11062 rests on the President's finding that Canada "maintained the discriminations" identified in Proclamation No. 11047. Proclamation No. 11062 ¶ 6, 91 Fed. Reg. at 58,320.

35. Proclamation No. 11062 provides that, if its prohibition is invalidated, the 50 percent duty will apply instead. *Id.* at 58,321.

D. The Trade Representative separately imposed a 10 percent Section 301 duty on Canadian products.

36. At the President's direction, on March 12, 2026, the United States Trade Representative initiated investigations under Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, of 60 economies, including Canada, concerning their failure to prohibit imports of goods made with forced labor. Press Release, Off. of the U.S. Trade Representative, *USTR Takes Action in Forced Labor Section 301 Investigations* (July 23, 2026); Notice of Actions in Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure of Each Economy to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor, 91 Fed. Reg. 47,318 (July 28, 2026).

37. In those investigations, the Trade Representative held public hearings, consulted with more than 45 of the investigated governments, determined on June 2, 2026, that the practices were actionable under Section 301(b), received more than 1,600 written comments on the proposed action, and heard testimony from more than 100 witnesses. *Id.*

38. On July 23, 2026, the Trade Representative imposed a 10 percent duty under Section 301 on products of Canada. 91 Fed. Reg. at 47,319–20, 47,322.

E. Gellert imports Canadian cheese and pays Section 338 duties on it.

39. Gellert is a New York corporation headquartered in Elizabeth, New Jersey. Thomas S. Gellert and Andrew Gellert are its Co-CEOs. Decl. of Thomas S. Gellert ("Gellert Decl.") ¶ 2, Exhibit A to Plaintiff's Motion.

40. Gellert consists of many of North America's leading food-importing companies, which have been importing food products for over 100 years. Gellert employs more than 700 people across the United States and generates over $1.7 billion in annual revenue. *Id.* ¶¶ 2–3.

41. Gellert sources many items from Canada and is the importer of record for all its products imported from Canada. *Id.* ¶ 4.

42. Gellert changed its name from Atalanta Corp. to Gellert Global Group Corp. in 2025. Gellert's import records still identify the importer of record as Atalanta Corp. *Id.*

43. Gellert imports more than 15 product lines of Canadian cheese, including sheep's milk cheese, mascarpone, borgonzola, chèvre-style goat's milk cheese, brie, and camembert. *Id.*

44. In 2025, Gellert imported roughly $71 million worth of Canadian cheese. *Id.* ¶ 5.

45. Under the USMCA, there has historically been no duty on Gellert's imports of Canadian cheese. *Id.* ¶ 9.

46. Gellert's sheep's milk cheese, mascarpone, and borgonzola (a hybrid cheese classified in HTSUS subheading 0406.40.54) are assessed Section 338 duties under heading 9903.03.12. *Id.* ¶ 4.

47. Gellert's goat's milk cheese, brie, and camembert, classified in HTSUS subheading 0406.90.99, are assessed Section 338 duties under heading 9903.03.14. *Id.*

48. Gellert pays Section 338 duties at a rate of 50 percent of the entered value of its Canadian cheese, an estimated $40 million per year. *Id.* ¶ 9.

49. Gellert paid no Section 338 duties on its Canadian cheese on any entry made before September 15, 2026. Id. ¶ 10.

50. On September 28, 2026, Gellert entered a shipment of goat's milk cheese with an entered value of $120,288 and paid a Section 338 duty of $60,144.50 under heading 9903.03.14. *Id.*

51. On October 5, 2026, Gellert paid a Section 338 duty of $33,411.50 on a shipment with an entered value of $66,822, which contained borgonzola under heading 9903.03.12 and brie and camembert under heading 9903.03.14. *Id.*

52. On 22 entries of Canadian cheese made between September 16 and October 11, 2026, Gellert paid at least $520,538 in Section 338 duties under headings 9903.03.12 and 9903.03.14. *Id.* ¶ 4, 10.

53. On entries of Canadian cheese made before October 8, 2026, Gellert paid at least $381,038.50 in Section 338 duties. *Id.*

54. Gellert's Canadian cheeses enter the United States regularly through Alexandria Bay, New York; Champlain, New York; and Detroit, Michigan, and Gellert will continue to pay Section 338 duties as each shipment arrives. *Id.* ¶ 11.

F. The Section 338 duties are harming Gellert's business.

55. Gellert sources its Canadian cheeses from leading producers in Ontario that have partnered with Gellert for over 25 years. Those relationships have been instrumental in developing and growing these product lines in the U.S. market and in establishing customer loyalty and confidence in the consistency and quality of the products. *Id.* ¶ 6.

56. Gellert sources its goat's milk cheese and brie from Canada because Canadian producers offer the quality standards, expertise, and production capacity required to meet market demand. *Id.* ¶ 7.

57. Given Gellert's longstanding supplier partnerships, customer trust, and established market position, these products cannot simply be replicated or replaced with U.S.-produced alternatives without significant disruption to customers and the supply chain. *Id.*

58. U.S. consumer demand for goat's milk cheese far exceeds domestic goat's milk production. Gellert's imports of Canadian goat's milk cheese complement, rather than displace, domestic production. *Id.* ¶ 8.

59. Domestically produced options are not readily available to replace the Canadian cheeses Gellert imports in the quantities U.S. consumers demand. *Id.* ¶ 15.

60. Gellert's Ontario-based brie supplier uses cow's milk from dairies in upstate New York. The brie is processed in Canada and the finished product is exported to the United States. *Id.* ¶ 14.

61. Gellert is absorbing the Section 338 duties through the end of 2026. Absorbing them has caused Gellert to delay hiring and investment, has put pressure on its working capital, and has dramatically reduced its margins. *Id.* ¶ 12.

62. If the Section 338 duties continue, Gellert will be forced to raise the prices of its products, resulting in lost or reduced sales, decreased customer loyalty, risk of losing product placements, and supply-chain interruptions as producers scale down or go out of business. *Id.* ¶ 13.

63. If there were no Section 338 duties, Gellert would continue to invest in its distribution across the United States to maintain and grow its customer base and ensure its supply chain from Canada. *Id.* ¶ 16.

64. Gellert's business has already been affected by lost profits, higher landed costs, and cash-flow issues. *Id.* ¶ 17. If the Section 338 duties continue, Gellert will also face supply-chain uncertainty, lost customers, and the loss of decades-long partnerships. *Id.*

Dated: October 23, 2026

Respectfully submitted,

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