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**CANADA – ANTI-DUMPING MEASURES ON IMPORTS OF CERTAIN CARBON STEEL  
WELDED PIPE FROM THE SEPARATE CUSTOMS TERRITORY OF  
TAIWAN, PENGHU, KINMEN AND MATSU**

**REQUEST FOR THE ESTABLISHMENT OF A PANEL BY SEPARATE CUSTOMS TERRITORY OF  
TAIWAN, PENGHU, KINMEN AND MATSU**

The following communication, dated 22 January 2015, from the delegation of Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 25 June 2014, the Government of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu requested consultations with Canada pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article 17 of the *Agreement on Implementation of Article VI of the GATT 1994* ("Anti-Dumping Agreement") with respect to the provisional and definitive anti-dumping measures imposed by Canada on imports of Certain Carbon Steel Welded Pipe ("CSWP") originating in, among others, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.<sup>1</sup>

On 7 November 2014, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, in an *addendum* to its request for consultations, requested further consultations on other aspects of the abovementioned anti-dumping measures and on certain provisions of the Special Import Measures Act ("SIMA") and the Special Import Measures Regulations ("SIMR").<sup>2</sup>

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and Canada held consultations on 24 July 2014 and 4 December 2014. Unfortunately, those consultations have not led to a satisfactory resolution of the dispute.

**1 CLAIMS CONCERNING THE PROVISIONAL AND DEFINITIVE ANTI-DUMPING  
MEASURES IMPOSED BY CANADA ON IMPORTS OF CSWP ORIGINATING IN, AMONG  
OTHERS, THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND  
MATSU**

**1.1 Background and Measures at Issue**

On 14 May 2012, the Canada Border Services Agency ("CBSA") initiated an anti-dumping investigation with respect to imports of CSWP originating in, among others, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.<sup>3</sup> A Statement of Reasons of the initiation of the investigation was made available on 29 May 2012.<sup>4</sup> On 15 May 2012, the Canada International Trade Tribunal ("CITT") issued a notice of commencement of a preliminary injury inquiry.<sup>5</sup>

<sup>1</sup> WT/DS482/1, G/ADP/D105/1, G/L/1073.

<sup>2</sup> WT/DS482/1/Add.1, G/ADP/D105/1/Add.1, G/L/1073/Add.1.

<sup>3</sup> <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1396/ad1396-i12-ni-eng.html>.

<sup>4</sup> <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1396/ad1396-i12-de-eng.pdf>.

<sup>5</sup> Canada Gazette 2012.I.146.21 p. 1382.

On 13 July 2012, the CITT determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury.<sup>6</sup> A Statement of Reasons was issued on 30 July 2012.<sup>7</sup> The CBSA made a preliminary determination of dumping on 13 August 2012.<sup>8</sup> The Statement of Reasons concerning the preliminary determination of dumping was made available on 28 August 2012.<sup>9</sup>

On 14 August 2012, the CITT published a notice of commencement of inquiry.<sup>10</sup>

Definitive measures were imposed following the final dumping determination made by the CBSA on 9 November 2012<sup>11</sup> and following the finding by the CITT made on 11 December 2012 that the dumping of certain CSWP originating in, among others, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu were threatening to cause injury to the Canadian domestic industry.<sup>12</sup> A Statement of Reasons concerning the findings of the CBSA was made available on 26 November 2013<sup>13</sup> and a Statement of Reasons concerning the findings of the CITT was made available on 27 December 2012.<sup>14</sup>

On 7 January 2013, the CBSA initiated a re-investigation to update the normal values and export prices of certain CSWP originating in, among others, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.<sup>15</sup> The CBSA issued a Notice on the conclusion of the re-investigation on 7 May 2013.<sup>16</sup>

The measures at issue in this dispute include all determinations, notices and statements of reasons issued by Canada as mentioned above as well as any related measures, amendments or replacement measures taken by Canada in relation to the above-mentioned investigations and the imposition of the provisional and definitive anti-dumping measures.

## 1.2 Legal Claims

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that the provisional and definitive anti-dumping measures imposed by Canada on imports of CSWP originating in, among others, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, as well as the underlying investigations are inconsistent with the following provisions of the Anti-Dumping Agreement and of the GATT 1994:

### *The treatment of exporters with a de minimis margin of dumping*

1. Article 5.8 of the Anti-Dumping Agreement because Canada failed to immediately terminate the investigation with respect to those exporters whose margins of dumping are de minimis within the meaning of that provision.
2. Article 1 of the Anti-Dumping Agreement because, in imposing anti-dumping measures including on imports of exporters with a de minimis dumping margin, Canada did not apply such measures pursuant to an investigation conducted in accordance with the provisions of the Anti-Dumping Agreement.
3. Article 6.10 of the Anti-Dumping Agreement because Canada failed to determine only one individual margin of dumping for each exporter in its determination of whether to continue the investigation and the subsequent determination of duty rates.

<sup>6</sup> Canada Gazette 2012.I.146.29 p. 2095.

<sup>7</sup> [http://www.citt.gc.ca/en/dumping/preinq/determin/pi2m003\\_e](http://www.citt.gc.ca/en/dumping/preinq/determin/pi2m003_e).

<sup>8</sup> Canada Gazette 2012.I.146.34 p. 2518.

<sup>9</sup> <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1396/ad1396-i12-pd-eng.pdf>.

<sup>10</sup> Canada Gazette 2012.I.146.34 p. 2523.

<sup>11</sup> Canada Gazette 2012 I 146.47 p. 3172.

<sup>12</sup> Canada Gazette 2012 I 146.51 p. 3555.

<sup>13</sup> <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1396/ad1396-i12-fd-eng.pdf>.

<sup>14</sup> [http://www.citt.gc.ca/en/dumping/inquiere/findings/nq2m003\\_e](http://www.citt.gc.ca/en/dumping/inquiere/findings/nq2m003_e).

<sup>15</sup> <http://www.cbsa-asfc.gc.ca/sima-lmsi/ri-re/ad1396/ad1396-ri13-ni-eng.html>.

<sup>16</sup> <http://www.cbsa-asfc.gc.ca/sima-lmsi/ri-re/ad1396/ad1396-ri13-nc-eng.html>.

4. Article 7.1(ii) of the Anti-Dumping Agreement because Canada applied provisional anti-dumping measures in the absence of a preliminary affirmative determination of dumping when it applied such measures to imports of CSWP of exporters with a de minimis dumping margin.
5. Articles 7.5 and Article 9.2 of the Anti-Dumping Agreement because, in imposing provisional and definitive anti-dumping duties on imports from exporters with a de minimis margin of dumping, Canada caused anti-dumping duties to be collected from sources found not to be dumped and causing injury.
6. Article VI:2 of the GATT 1994 and Article 1 of the Anti-Dumping Agreement because the possibility to levy an anti-dumping duty only applies "in order to offset or prevent dumping" and therefore not with respect to imports from exporters with a de minimis dumping margin.

**The treatment of non-dumped imports and of factors other than the dumped imports in the injury and causation analyses**

7. Articles 3.1, 3.2, 3.4, 3.5 and 3.7 of the Anti-Dumping Agreement because, for the purpose of the injury analysis, Canada failed to exclude from the dumped imports, the imports of the exporters with a de minimis dumping margin. By failing to exclude these imports, Canada failed to properly consider the volume of dumped imports, the effects of the dumped imports on prices in the domestic market, the impact of the dumped imports on the domestic industry and whether the dumped imports are causing injury and/or threat of injury to the domestic industry.
8. Articles 3.1 and 3.5 of the Anti-Dumping Agreement because Canada failed to examine all known factors other than the alleged dumped imports which at the same time were injuring the domestic industry, such as the existing overcapacity of the domestic industry and subsidized imports, and failed to ensure that the injuries caused by such other factors were not attributed to the alleged dumped imports.

**The dumping determination for "all other exporters"**

9. Article 6.8 and Annex II, paragraph 7, of the Anti-Dumping Agreement because Canada improperly applied facts available in determining the dumping margin and duty rate applicable to "all other exporters" without complying with the conditions laid down in those provisions. In particular, in using the highest intermediate margin of dumping calculated for one single transaction in the determination of the "all other exporters" dumping margin and duty rate applicable, Canada applied facts inconsistent with the "best information available" principles of those provisions.

**New product types to be exported by cooperating producers**

10. Article 6.8 and Annex II of the Anti-Dumping Agreement because Canada resorted to facts available for the calculation of the normal values with respect to imports of new product types to be exported by cooperating producers, thus resorting to facts available even though the conditions laid down in these provisions had not been met.
11. Article 2.2 of the Anti-Dumping Agreement because Canada calculated normal values for new product types of cooperating exporters on the basis of a methodology which is not foreseen in Article 2.2 of the Anti-Dumping Agreement.
12. Article 6.10 of the Anti-Dumping Agreement because Canada determined more than one individual margin of dumping for cooperating exporters.
13. Article 9.3 of the Anti-Dumping Agreement because Canada imposed anti-dumping duties on new product types of the cooperating exporters that exceed their margin of dumping as established under Article 2 of the Anti-Dumping Agreement.

## 2 CLAIMS CONCERNING CERTAIN PROVISIONS OF THE SPECIAL IMPORT MEASURES ACT ("SIMA") AND OF THE SPECIAL IMPORT MEASURES REGULATIONS ("SIMR")

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that the following provisions of SIMA and SIMR are, as such, inconsistent with several provisions of the Anti-Dumping Agreement and of the GATT 1994.

1. Sections 2(1), 30.1, 35(1) and 35(2), 38(1) and 41(1) of SIMA, and any amendments, implementing measures, or related measures, are inconsistent, as such, with:
  - a. Article 1, Article 5.8 and Article 7.1(ii) of the Anti-Dumping Agreement, because Section 38(1) of SIMA, read together with Sections 30.1 and 35(1) and (2) of SIMA and the definitions of "insignificant" and "margin of dumping" in Section 2(1) of SIMA, mandates that an affirmative preliminary dumping determination be made for exporters with a *de minimis* margin of dumping when the country-wide weighted average of the margins of dumping is two per cent or more.
  - b. Article 1 and Article 5.8 of the Anti-Dumping Agreement because Section 41(1) of SIMA, read together with Sections 30.1 and 35(1) and (2) of SIMA and the definitions of "insignificant" and "margin of dumping" in Section 2(1) of SIMA, mandates that a final affirmative dumping determination be made for exporters with a *de minimis* margin of dumping when the country-wide weighted average of the margins of dumping is two per cent or more.
  - c. Articles 7.5 and 9.2 of the Anti-Dumping Agreement because in mandating that affirmative dumping determinations be made for exporters with a *de minimis* margin of dumping when the country-wide weighted average of the margins of dumping is two per cent or more, these provisions cause anti-dumping duties to be collected even from sources found not to be dumped and causing injury.
  - d. Article 1 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 which provide for the possibility to levy an anti-dumping duty only "in order to offset or prevent dumping" and therefore not with respect to imports from exporters with a *de minimis* dumping margin.
2. Sections 42(1), 42(6) and 43(1) of SIMA and Section 37(1) of SIMR and any implementing measures, or related measures, are inconsistent, as such, with Articles 3.1, 3.2, 3.4, 3.5 and 3.7 of the Anti-Dumping Agreement because they automatically include, for the purpose of the injury analysis, in the dumped imports, imports of exporters with a *de minimis* dumping margin when the country-wide weighted average of the margins of dumping is two per cent or more. Therefore, these provisions are inconsistent with the obligation that the injury determination be based on positive evidence and involve an objective examination of the volume of dumped imports and the effect of such imports on prices in the domestic market for like products and the impact of the dumped imports on domestic producers of the like product and with the obligation to demonstrate that the dumped imports are causing injury and/or threat of injury to the domestic industry.
3. The provisions of SIMA and SIMR listed above are inconsistent with Article XVI:4 of the Marrakesh Agreement and Article 18.4 of the Anti-Dumping Agreement insofar as Canada has not taken all steps to ensure the conformity of its laws, regulations and administrative procedures with the provisions of the GATT 1994 and of the Anti-Dumping Agreement.

In view of the claims set forth in sections 1 and 2, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that Canada has also acted inconsistently with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

The measures at issue also appear to nullify or impair benefits accruing to the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu directly or indirectly under the cited Agreements.

Therefore, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu respectfully requests that a panel be established, pursuant to Article 4.7 and Article 6 of the DSU, Article XXIII of the GATT and Article 17.4 of the Anti-Dumping Agreement by the Dispute Settlement Body, with standard terms of reference as set forth in Article 7.1 of the DSU.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu asks that this request be placed on the agenda for the next meeting of the Dispute Settlement Body.

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