簡析台灣就加拿大對焊接碳鋼管課徵反傾銷稅提出控 訴案—以微量傾銷差額之認定為中心

施虹好

今(2015)年3月10日,台灣控訴加拿大對焊接碳鋼管(Carbon steel welded pipe,簡稱 CSWP) 課徵反傾銷稅案 (DS4821) 之爭端解決小組已正式成立2。 本案為台灣加入 WTO 以來第四起爭端解決案件3,認為加拿大課徵反傾銷稅的決 定與相關法令規範違反 WTO 協定下的相關規定。我國於 2014 年 6 月 25 日通知 WTO,要求與加拿大展開爭端解決之諮商程序,然諮商未果,進而於今(2015) 年1月25日正式提出控訴(DS482)。

經濟部表示,若該案勝訴,估計每年直接與間接的貿易利益將高達 3,000 萬 美元(約9.48 億元台幣)4,攸關我國重大利益。而本案最大的特點即台灣不僅 要求加拿大修改本案中所實施之反傾銷措施,更訴求加拿大修改其反傾銷法規有 關微量傾銷差額(de minimis margin of dumping)之「計算基準」5,即法規範本 身之控訴 (as such claims) 6。若台灣該項控訴得到支持,則因加拿大需撤銷此 等違法措施,其結果不僅影響本案中之我國產業,更將使往後與加拿大貿易的國 家受惠,影響層面極廣,重要性不言而喻,故以下將以微量之「計算基準」為討 論之主軸7。

¹ Request for the Establishment of a Panel by Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Canada — Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, WT/DS482/2 (Mar. 18, 2012).

WTO News, Panels established at the request of Chinese Taipei and Canada, Mar. 10, 2015, available at https://www.wto.org/english/news_e/news15_e/dsb_10mar15_e.htm (last visited Mar. 18, 2015).

我國以控訴國身分參與之爭端案件分別為:美國對部分鋼鐵產品實施確定防衛措施案(United States - Definitive Safeguard Measures on Imports of Certain Steel Products, WT/DS274 (Nov. 1, 2002)); 印度反傾銷措施案 (India -Anti-Dumping Measures on Certain Products from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, WT/DS318 (Oct. 28, 2004)); 歐盟對特定 資訊科技產品關稅待遇案(European Communities and its Member States —Tariff Treatment of Certain Information Technology Products, WT/DS377 (Aug. 16, 2010)) •

⁴ 加課碳鋼管反傾銷稅-經部提告,經濟部南部產業發展推動辦公室,2015 年 1 月 22 日,網址: http://www.srido.org.tw/news/669 (最後瀏覽日:2015年3月18日)。

⁵ Request for the Establishment of a Panel by Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, supra note 1, at 4.

⁶ 經濟部南部產業發展推動辦公室,前揭註4。

⁷ 台灣在適用上的控訴 (as applied claims) 的內容分為除了涉及微量之傾銷差額應如何認定外, 亦包含以下幾點:傾銷進口與國內產業損害之因果關係 (The treatment of non-dumped imports and of factors other than the dumped imports in the injury and causation analyses)、對其他未配合調查之 出口商課徵一致的高反傾銷稅率 (The dumping determination for "all other exporters")、將新產品

本文以下將分為五部分:首先,簡述本案的事實背景,並指出爭議點所在; 其次,介紹加拿大反傾銷條文如何認定傾銷差額屬於微量;第三,以台灣控訴書 為基礎,提出台灣對加拿大反傾銷制度法律本身與適用上之質疑;第四,回顧過 往類似案例,分析該案中之正反論點並帶出本文觀點;最後,作一小結。

本案事實

加拿大反傾銷及補貼制度⁸,主要係由加拿大邊境服務署(Canada Border Services Agency,簡稱 CBSA)與加拿大國際貿易法庭所掌管(Canadian International Trade Tribunal,簡稱 CITT),前者負責調查傾銷事實,其法源為特別進口措施法(Special Import Measures Act,SIMA),並下設特別進口措施施行細則(Special Import Measures Act Regulation);後者則係負責認定是否對國內造成損害,其法源為國際貿易法庭法(The International Trade Tribunal Act),其子法為國際貿易法庭規則(International Trade Tribunal Rule)⁹。

自 2012 年 5 月起,CBSA 分別對自印度、阿曼、韓國、泰國、土耳其、阿拉伯聯合大公國與我國等 7 國進口之焊接碳鋼鋼管(Carbon steel welded pipe,簡稱 CSWP)進行調查。就台灣廠商之部分,有兩家配合調查之廠商,其傾銷差額分別為 0.005%與 0.4%,台灣主張依照反傾銷協定(Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994,簡稱 Anti-dumping Agreement)微量排除原則,即傾銷差額小於 2%者應立即中止調查,但該兩家廠商卻一同被納入課徵與其傾銷差額相同之反傾銷稅率,即 0.005%及 0.4%,台灣因此提出質疑¹⁰。然就加拿大的調查報告,其認為「台灣」整體的傾銷差額為 8.9%,非屬微量,因此得對個別廠商課徵反傾銷稅¹¹。由此可知,本案關鍵爭議在於反傾銷調查過程有關「微量」的認定標準,究竟是以「個別廠商」,抑或以「國家」為標準,即為兩造主要爭執所在。

種類一同納入計算(New product types to be exported by cooperating producers),認為上述爭議恐違反反傾銷協定及關稅暨貿易總協定之相關規定。惟本文之重點僅著重在微量之認定基準,故其他適用上之爭議將不在此討論;see Request for the Establishment of a Panel by Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, supra note 1, at 2-3.

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⁸ 由於本案僅涉及傾銷之爭議,以下僅針對加拿大反傾銷制度之部分作介紹,補貼之方面省略不論。

⁹ Legislation, regulations and D-memoranda, CANADA BORDER SERVICES AGENCY, available at http://www.cbsa-asfc.gc.ca/sima-lmsi/ar-lr-eng.html (last visited Mar. 18, 2015).

 $^{^{10}}$ 經部 WTO 狀告加拿大,鋼鐵業:揪感心,中央通訊社,2015 年 3 月 10 日,網址: http://www.cna.com.tw/news/afe/201503100450-1.aspx (最後瀏覽日:2015 年 3 月 18 日)。

Concerning the making of Final Determinations of Dumping and Subsidizing and the Termination of Dumping and Subsidizing Investigations respecting Certain Carbon Steel Welded Pipe Originating in or Exported from Chinese Taipei, the Republic of India, the Sultanate of Oman, the Republic of Korea, Thailand, the Republic of Turkey and the United Arab Emirates Decision, CANADA BORDER SERVICES AGENCY, ¶¶ 56, 113, AD/1396, available at

http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1396/ad1396-i12-fd-eng.html (last visited Mar. 18, 2015).

加拿大之反傾銷相關法條—SIMA 與 SIMR

根據加拿大的 SIMA 之規範內容,第 2 (1)條主要是關於該傾銷制度相關名詞的定義,其中有關微小 (insignificant)之定義為傾銷差額小於貨品之出口價格的 2% 12;而所謂的傾銷差額則依照本法相關規定,係指貨品之正常價格大於貨品之出口價格的量 (amount) 13。雖然並未明確指出以國家為認定標準,但將該定義性的條文與 SIMA 其他具體規範反傾銷制度運作之法條及 SIMR 的細部條文交互參照,即可發現加拿大確實是以「國家」認定傾銷差額,該論點亦得到加拿大官員證實 14,因此以下將詳述台灣指稱加拿大以「國家」為認定基準之違法條文。

SIMA 規定,加拿大主管機關須依本法第 38 (1) 條 15 與第 41 (1) 條 16 做出初步裁定(preliminary determination)與最終裁定(final determination),並以第 35 (1) 及 (2) 條為發動傾銷調查之依據。該第 35 (1) 及 (2) 條提到,CBSA的署長(President)以及國際貿易法庭(Tribunal)依第 38(1)條對「國家(a country or countries)」的貨品作成之初步調查所應遵守之事項,其中包含「國家(country or countries)」的傾銷差額必須大於微小(insignificant)之要件 17 。而同法第 41 (1) 條除了再次指出本法第 38 (1) 條之初步裁決係以「國家」為基準外,亦提及以「國家」作為最終判決之基礎 18 。此外,該法第 30.1 條也提及「特定國家(particular country)」有關貨品之傾銷差額如何計算 19 。

有關損害認定的部分,SIMA 第 42 (1) 條規定 CITT 在收到 CBSA 以「國

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Special Import Measures Act, art. 2(1): "... 'insignificant' means, (a) in relation to a margin of dumping, a margin of dumping that is less than two percent of the export price of the goods...."

¹³ Id. "... 'margin of dumping', in relation to any goods, means, subject to sections 30.1, 30.2 and 30.3, the amount by which the normal value of the goods exceeds the export price of the goods...".

 ¹⁴ 陳威宇,「加拿大反傾銷調查及課稅之實務」研討會紀要,工業總會貿易發展組,2013年7月8日,網址: http://wto.cnfi.org.tw/all-module9.php?id=176&t_type=s(最後瀏覽日:2015年3月18日)。

¹⁵ Special Import Measures Act, art. 38. (1): "Subject to section 39, after the sixtieth and on or before the ninetieth day after the initiation of an investigation under section 31, the President shall make a preliminary determination of dumping or subsidizing with respect to the goods in respect of which the investigation has not been terminated under section 35 after estimating and specifying, in relation to each exporter of goods in respect of which the investigation is made, as follows...."

¹⁶ Special Import Measures Act, art. 41. (1): "Within ninety days after making a preliminary

Special Import Measures Act, art. 41. (1): "Within ninety days after making a preliminary determination under subsection 38(1) in respect of goods of a **country** or **countries**, the President shall...."

¹⁷ Special Import Measures Act, art. 35. (1): "The President shall act under subsection (2) and the Tribunal shall act under subsection (3) if, at any time before the President makes a preliminary determination under subsection 38(1) in respect of goods of a **country** or **countries**,"

¹⁸ Special Import Measures Act, art. 41. (1): "... (ii) the margin of dumping of, or the amount of subsidy on, the goods of that **country** or of any of those **countries** is not insignificant...."

¹⁹ Special Import Measures Act, art. 30.1: "For the purposes of subparagraphs 35(1)(a)(ii), 38(1)(a)(i) and 41(1)(a)(ii) and paragraphs 41.1(1)(a) and (2)(a), the **margin of dumping** in relation to goods of a particular country is the weighted average of the margins of dumping determined in accordance with section 30.2."

家」為基準所為之「初步裁決」後,須展開損害認定²⁰,由此可間接推知,這樣的作法可能將原應排除在傾銷計算外的廠商,技術性地納入後續的損害認定;第42(6)條則表示其規範目的即是針對「國家」的傾銷²¹。其後,CITT 在收到最終調查時須依同法第43(1)條決定課稅對象,並延續第42條以「國家」為判斷基準²²。至於 SIMR 第37.1(1)²³條則是涉及損害認定需考量之因素²⁴,雖然未指明以國家的認定標準,惟若原應在調查階段即排除之微量傾銷差額,卻因為採取上述以國家為基準的計算方法,將可能使之意外地變成損害認定的因素。

台灣控訴內容-以微量之傾銷差額為中心

根據台灣提交之控訴書,涉及微量的主張可分為「法規範本身的主張」與「適用上的主張 (as applied claims)」,分述如下:

(一) 法規範本身的主張25:

依照反傾銷協定第 5.8 條規定,傾銷差額以出口價格百分比表示,如低於 2%時,應認定為微量,主管機關應立即終止處理該案件;而所謂的微量之傾銷差額係以「個別廠商」加以認定²⁶。然從上述 SIMA 的法條可知,其係以「國家」為判斷標準,似違反反傾銷協定第 1 條、第 5.8 條及第 7.1.2 條有關微量排除原則及基此所為之臨時措施。

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²⁰ Special Import Measures Act, art. 42. (1): "The Tribunal, forthwith after receipt pursuant to subsection 38(3) of a notice of a preliminary determination, shall make inquiry with respect to such of the following matters as is appropriate in the circumstances...."

Special Import Measures Act, art.42. (6): "For the purposes of this section, the volume of dumped or subsidized goods from a **country** is deemed to include the volume of goods of the country that are of the same description and are the subject of a sale for export to Canada."

Special Import Measures Act, art. 43. (1): "In any inquiry referred to in section 42 in respect of any goods, the Tribunal shall, forthwith after the date of receipt of notice of a final determination of dumping or subsidizing with respect to any of those goods, but, in any event, not later than one hundred and twenty days after the date of receipt of notice of a preliminary determination with respect to the goods, make such order or finding with respect to the goods to which the final determination applies as the nature of the matter may require, and shall declare to what goods, including, where applicable, from what supplier and from what **country** of export, the order or finding applies. (1.01) Where an inquiry referred to in section 42 involves goods of (a) more than one NAFTA **country**, or (b) one or more NAFTA **countries** and goods of one or more other **countries**, the Tribunal shall make a separate order or finding under subsection (1) with respect to the goods of each NAFTA **country**..."

²³ 此處似有誤。就台灣的控訴書內容,係對「第 37(1)條」提出控訴,惟查閱就 SIMA 條文,其條文編號僅有第 37條與第 37.1(1)條,前者規範控訴的適當紀錄(Properly Documented Complaints),後者則為損害、減緩或損害之虞(Injury, Retardation or Threat of Injury),因此本文認為後者較接近台灣控訴之內容,因此文中指出之法條為第 37.1 (1)條。

²⁴ Special Import Measures Act, art. 37.1 (1): "For the purposes of determining whether the dumping or subsidizing of any goods has caused injury or retardation, the following factors are prescribed...."

²⁵ Paguest for the Establishment of a Part of a

²⁵ Request for the Establishment of a Panel by Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, *supra* note 5.

²⁶ Anti-dumping Agreement, art. 5.8: "... There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price...."

此外,反傾銷協定之第 7.5 條 27 及第 9.2 條 28 之規定,臨時性措施係對一切有傾銷並「引起損害」之所有來源貨物課徵反傾銷稅,因此個別廠商之傾銷差額若屬微量者理應被排除;惟 SIMA 以「國家」為基準將使傾銷差額超過微量之可能性大為提高,且將不會引起損害的微量傾銷廠商作為採行臨時性措施的考量因素,似違反反傾銷協定之意旨。

而依照關稅暨貿易總協定(General Agreement on Tariffs and Trade 1994,簡稱 GATT 1994)第 6.2 條²⁹及反傾銷協定第 1 條³⁰規定,反傾銷稅之課徵係以抵消或防止傾銷為目的;且依上述第 5.8 條規定,遇到微量之傾銷差額應立即中止調查,自不會進入後續的課稅階段。因此加拿大之做法,使得原應被排除課徵反傾銷稅之個別廠商存在被一同被課稅之可能,故違反上述 WTO 之相關規定。

損害認定程序係於反傾銷調查事實確定之後開啟,若於調查期間發現微量時即應立刻停止調查,該微量傾銷之廠商將不會落入損害認定之範疇;惟加拿大反傾銷制度卻在調查過程中,增加將所有廠商加權平均的流程,使得傾銷差額原屬微量之廠商意外地須進行損害認定,因而導致被課徵反傾銷稅。是以台灣認為SIMA 第 42 (1) 及 (6) 條、第 43 (1) 條,與 SIMR 第 37.1 (1) 條以此種前提下所為的損害認定與因果關係之判斷,似違反反傾銷協定第 3.1 條、第 3.2 條、第 3.4 條、第 3.5 條及第 3.7 條,無法客觀評估對國內所造成之影響。

(二) 適用上的主張主要控訴如下31:

如前所論,加拿大之主管機關在執行反傾銷之相關制度時,係依循 SIMA 及 SIMR 為之,因此 CBSA 在計算傾銷差額時,將台灣全部廠商之傾銷差額予以加權平均,最後得出以「國家」為認定標準之傾銷差額為 8.9% 32,非屬微量傾銷差

²⁷ Anti-dumping Agreement, art. 7.5: "The relevant provisions of Article 9 shall be followed in the application of provisional measures."

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Anti-dumping Agreement, art. 9.2: "When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and **causing injury**, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted..."

²⁹ General Agreement on Tariffs and Trade 1994, art. 6.2: "In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1."

³⁰ Anti-dumping Agreement, art. 1: "An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated1 and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations."

Request for the Establishment of a Panel by Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, *supra* note 1, at 2 & 3.

³² 基於加拿大保密原則,加拿大並未公布我國廠商進口數量比例,因此無法確切得知台灣之傾銷差額在加權平均的過程中如何計算;惟從台灣配合調查之廠商—中鴻、鑫陽與燁輝,個別傾銷差額為0.005%、0.4%及4.7%,台灣傾銷之加權平均卻是8.9%,合理推測似平將未配合調查廠

額,因此對台灣個別廠商依其傾銷差額課徵同等之反傾銷稅。我國則主張加拿大 在初始調查反傾銷認定時之措施,似違反反傾銷協定第5.8條(微量傾銷應立即 中止調查)、第6.10條(應就個別廠商認定傾銷差額)與第7.1第2項(臨時措 施採行之要件);有關損害認定之部分,有違反反傾銷協定第3.1條、第3.2條、 第 3.4 條、第 3.5 條與第 3.7 條 (損害之客觀認定與因果關係)之虞;就課徵反 傾銷稅的部分,可能悖於第 7.5 條及第 9.2 條(反傾銷稅之課徵)、GATT 1994 第6.2條及反傾銷協定第1條之宗旨33。

微量之計算基準—以「個別廠商」抑或「國家」為據?

依反傾銷協定第 5.8 條第二句及第三句規定:「主管機關如認定傾銷差額微 量,或實際或潛在之傾銷進口數量或損害程度微不足道時,應立即終止處理申請 案件。傾銷差額以出口價格百分比表示如低於 2% 時,應認定係微量 134。可知, 從文義解釋觀之,反傾銷協定並未明確指出以何者為判斷基準。故產生究竟係以 「國家」抑或「個別廠商或生產者」為計算基礎的爭議。

關於上述議題,過往 WTO 爭端解決機構曾在墨西哥牛肉稻米案 (Mexico-Antidumping Measures on Beef and Rice) 中作出相關認定。該案中, 墨西哥主張應以「國家」為準。反傾銷協定第 3.3(a)條規定:「每一『國家』 之進口量皆不容忽視,且傾銷差率大於第5.8條所定義之『微量』, 35。墨西哥以 此為據,主張反傾銷協定第3.3(a)條中特別指出第5.8條,因此第3.3(a)條 可作為認定微量傾銷之相關法條;且第3.3(a)條中係以「國家」為基準,故墨 西哥認為以個別廠商或生產者為基準是錯誤的³⁶。而所謂的立即中止,係指「整 體(as a whole) 調查程序而言,故著重對該「產品」並非單一出口商(one exporter) 之調查37。因此,若發現其中某一廠商之傾銷差額屬於微量,並不會就此對該廠 商終止調查,尚須等待其他被列入調查之同類產品之傾銷差額整體認定屬於微量 者始可。

惟該案中,美國則認為應依反傾銷協定第5.8條整體觀之,係以國家為計算 基礎。反傾銷協定第5.8條第4句在傾銷數量特別指出得以國家作為計算傾銷數

商之傾銷差額 54.2% 一同列入計算。

³³ Request for the Establishment of a Panel by Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, supra note1, at 2, 3, 5.

Anti-dumping Agreement, supra note 26.

³⁵ Anti-dumping Agreement, art. 3.3: "Where imports of a product from more than one **country** are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and"

³⁶ Appellate Body Report, Mexico – Definitive Anti-Dumping Measures on Beef And Rice, ¶ 213, WT/DS295/AB/R (adopted Dec. 10, 2005).

³⁷ *Id*. ¶ 211.

量的基礎³⁸,但該用語並未出現在同條前三句關於傾銷差額的條文內。由此即可證明是以個別廠商為加以計算³⁹。該案小組並援引美國熱鋼管案(United States—Hot-Rolled Steel)解釋反傾銷協定第 2.4.2 條中「差額」的定義,認為差額必須比對所有地主國市場(home market)與出口國市場(export market)相關的交易始能得出結果⁴⁰,故在調查過程中須對個別出口商或生產者所為個別的傾銷差額認定⁴¹。又反傾銷協定第 6.10 條有關傾銷調查證據方面,主管機關應就「每一」已知的「出口商或生產者」決定受調查產品個別之傾銷差額⁴²;第 8.1 條價格具結也以特定廠商為對象⁴³,而上訴機構贊同小組上述見解⁴⁴。此外,小組認為所謂「終止」,乃調查時發現傾銷差額屬微量或是無傾銷時,即應終止調查,不能將之列為課徵反銷稅之客體,即便課以零稅率亦違反立即終止調查原則⁴⁵,該點同樣得到該案上訴機構認同⁴⁶。

觀察墨西哥牛肉稻米案中雙方不同論述,本文認為後者論理較為可採。當條約解釋出現爭議時,依照維也納條約法公約(The Vienna Convention on the Law of Treaties)第31條:「條約應依其用語按其上下文並參照條約之目的及宗旨所具有之通常意義,善意解釋之」,因此以反傾銷協定第5.8條上下文而言,在判斷該條第4句之傾銷數量時,明確規定得以累積計算的方式為之(即以國家為基準);惟相同的文字並未出現在第3句有關傾銷差額的條文中,若再將兩者認定為皆得以國家為基準計算,似有違立法者之用心。再者,反傾銷協定第3.3(a)條之適用條件係建立在產品從數個國家進口,且同時接受反傾銷調查之情況,實與計算傾銷差額無關,故反傾銷協定第3.3(a)條並非用於解釋反傾銷協定第5.8條之參考條文。此外,即便墨西哥認為反傾銷協定第3.3(a)條「個別國家」的文字也應用於解釋反傾銷協定第5.8條的微量。惟此說法應無立足之地,因反傾銷協定第5.8條並未使用「個別國家」或類似字眼,故無法以第3.3條的解釋結果,套用於第5.8條的解釋中47。

結論

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³⁸ Anti-dumping Agreement, *supra* note 26: "...The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member."

³⁹ Panel Report, *Mexico — Definitive Anti-Dumping Measures on Beef And Rice*, ¶ 4.146 (d), WT/DS295/R (*adopted* Dec. 10, 2005).

⁴⁰ Appellate Body Report, *United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, ¶ 118, WT/DS184/AB/R (*adopted* Aug. 23, 2001).

⁴¹ Appellate Body Report, *Mexico* — *Antidumping Measures on Beef and Rice*, ¶ 216.

⁴² Panel Report, *Mexico— Antidumping Measures on Beef and Rice*, ¶ 7.137.

⁴³ *Id* ¶ 7 138

⁴⁴ Appellate Body Report, *Mexico—Antidumping Measures on Beef and Rice*, ¶ 217.

Panel Report, Mexico — Antidumping Measures on Beef and Rice, ¶7.144.

⁴⁶ *Id*. ¶ 7.137.

⁴⁷ Appellate Body Report, *Mexico*—Antidumping Measures on Beef and Rice, ¶ 220.

儘管 WTO 爭端解決機構所為之裁決並無先例拘束原則之適用,僅約束爭端當事國,惟各判決所提出相關概念之闡釋與應用以及個案中雙方之主張,對於其後之爭端極具參考價值。因此本文認為在此次台灣控告加拿大的案件中,台灣所提出的質疑乃有所依據。有關反傾銷協定第5.8條微量傾銷差額,應以個別廠商加以認定,而非以國家為判斷基準。所以台灣控訴加拿大違反反傾銷協定下微量計算的爭議應皆可成立,加拿大應修改其 SIMA 及 SIMR 之內容,以符合其在WTO 體制下之規定及義務。雖然本案之專家小組雖已成立,但小組報告仍未出爐。本文僅係簡析未來可能發展的動向,本案最終結果為何、小組是否支持台灣所提出之論點,仍有待未來持續觀察。

