

国际贸易 法律月刊

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Article 文章

Monitoring of steel imports in USA – Consistency under WTO Laws

美国对钢铁进口的监管-是否与世贸相关法律规定一致？

By **Aman**

The United States maintains a licensing mechanism known as the Steel Import Monitoring and Analysis (hereinafter referred to as the 'SIMA') System. As per the system, any business importing steel mill products covered under the licensing program is required to procure a license. This includes importers, importing agents or brokers. The aggregate data in relation to volume and prices collected from the licenses are made available to the public following review by the relevant authorities. The purpose of the SIMA system is to provide steel producers, steel consumers, importers and the general public with future trends in the volume and prices of steel imports expected to enter the American steel market.

It must also be noted that the monitoring of steel imports is not unique. A similar system for monitoring steel exists in Canada and Mexico as well. The SIMA system was introduced by the United States Department of Commerce (hereinafter referred to as 'US DOC') and has been in force since December 9, 2003. The SIMA System was specifically introduced at the persistence of the domestic steel industry in the United States which was going through a rough patch then. The measure was introduced in

conjunction with the Section 201 case initiated in early 2002¹. The domestic steel industry's stated purpose was to have the government develop a system that would allow them to have an early warning system for imports so that they could file trade cases faster. As discussed later, the Bush Administration made it clear that while they wanted to develop a system, it had to be automatic, with no cost and not an impediment to trade.

This Article discusses the SIMA System and discusses the consistency of the measure under WTO law.

Key Features of SIMA

The list of steel mill products that require steel import licenses are maintained by the Enforcement and Compliance division of the International Trade Administration². The details required for the license include:

1. Name of importer, exporter and manufacturer
2. Country of origin and exportation
3. Expected port of entry
4. Expected date of export
5. Date of import
6. HTS number of product

¹ On March 5, 2002 the President of the United States had signed a proclamation imposing, effective March 20, 2002, increased tariffs on imports of certain steel products. The President's action was taken pursuant to Section 201 of the Trade Act of 1974. The duties are referred to as 'safeguard measures'. In particular, duties were increased on certain flat steel, hot-rolled bar, cold-finished bar, rebar, certain welded tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products and stainless steel wire. A tariff rate quota was also applied to steel slabs.

² See <http://enforcement.trade.gov/steel/license/SMP_byHTS.pdf> as of January 1, 2016

7. Product description
8. Volume of imports of particular product
9. Value of imports

The license is permitted to be obtained up to 60 days prior to the date of importation and is valid for 75 days. In particular, the license would have to be procured prior to completing the necessary import documentation as the license number would need to be provided in the relevant import documentation. Upto 10 products can be imported on one license if the importer, exporter, manufacturer and country of origin and exportation of the product is the same. More than 10 products would require an additional license. In addition, if any of the aforesaid categories differ, then a different license would be required. As mentioned above, there is no application fee charged for the license and the license is provided immediately on submitting the information, if complete.

As discussed above, the purpose of the SIMA System is to provide the public statistical data on steel imports entering the United States. Such publication takes place seven weeks earlier than it would otherwise be available to the public. On the basis of the information compiled from the licenses, a series of aggregate tables and graphs on imports of steel mill products by country and type of steel product is prepared. The information, prior to being published, is also analyzed against the census data. The statistics on the basis of the information in the licenses is updated on

a weekly basis. Import statistics published are provided up to the 6 digit level. However, it does not provide aggregate port of entry data because of the possibility of inadvertent release of proprietary information.

WTO Consistency of SIMA

It must be noted that the SIMA System has been designed to overcome the problems highlighted by the Panel and the Appellate Body in *Argentina — Measures Affecting the Importation of Goods* (DS 445) with respect to the Argentinian monitoring mechanism called the Advance Sworn Import Declaration (hereinafter referred to as 'DJAI'). The DJAI was held to be WTO-inconsistent (in particular Article XI:1 of the Safeguards Agreement which is discussed in detail below) as the license was not automatic and the period between application and providing license was delayed. As mentioned above, the US administration made it clear that while they wanted to introduce SIMA it had to be automatic, with no cost and not an impediment to trade.

The SIMA System, however, is still open to challenge under the WTO Agreement on Safeguards (hereinafter referred to as the 'Safeguards Agreement'). Certain provisions under the Safeguards Agreement prohibit Members from taking or maintaining, *inter alia*, import-price monitoring schemes or import surveillance *which afford protection*. In particular, Article 11:1(b) of the Safeguards Agreement provides that:

'Further, a Member shall not seek, take or maintain any voluntary

*export restraints, orderly marketing arrangements or **any other similar measures on the export or the import side.***³⁴ These include actions by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members. Any such measure in effect on the date of entry into force of the WTO Agreement shall be brought into conformity with this Agreement or phase out in accordance with paragraph 2.

³ An import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and this Agreement may, by mutual agreement, be administered by the exporting Member.

⁴ Examples of similar measures include export moderation, export-price or **import-price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford protection.**'

(Emphasis added)

A measure on the import side such as an import-price monitoring system or import surveillance that affords protection will be considered inconsistent with the requirements of Article 11:1(b) of the Agreement on Safeguards. In particular, as the proposed

mechanism does monitor the price of imports of certain steel products, and may even be regarded as a form of import surveillance, it would be considered inconsistent if it is found to afford protection. Therefore, the WTO consistency of the proposed mechanism would hinge upon on whether it is found to 'afford protection'. It may be argued that the proposed mechanism affords protection to the domestic industry by alerting them to the prices and volumes of imported steel products in advance of such imports entering the US market and allowing them to adjust their own prices, production and sales strategies accordingly.

It may be counter-argued however that the import statistics are available to all interested parties, namely domestic producers, importers and exporters. As all other interested parties have equal access to the information, the monitoring mechanism cannot be considered as providing protection to any one particular party. Even importers or exporters may devise their sales strategies based on statistics provided. Therefore, in providing data access to all parties, the proposed mechanism places all parties at a level playing field. Furthermore, the above import data is published only for tariff lines on a 6-digit level. More disaggregated data beyond the 6 digit level is not made public for reasons of confidentiality and to protect proprietary information.

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Trade Remedy News 贸易救济新闻

Trade remedy measures against China

对中国采取的贸易救济行动

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
1,1,1,2 tetrafluoroethane 1,1,1,2-四氟乙烷	USA 美国	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 25-3-2016 2016年3月25日, 商务部新闻
Alloy and non-alloy iron steel product 合金和非合金钢铁 产品	Viet Nam 越南	Imposed preliminary safeguard duty 征收临时保障措施税	MOFCOM news, dated 14-3-2016 2016年3月14日, 商务部新闻
Alloy hot-rolled flat steel 合金热轧扁钢	Thailand 泰国	Safeguard measure continued 延长保障措施	MOFCOM news, dated 5-4-2016 2016年4月5日, 商务部新闻
Alloy steel, strip, hot- rolled flat steel, coated steel 合金钢、带、热轧 扁钢、涂层钢	South Africa 南非	Safeguard investigation initiated 发起保障措施调查	MOFCOM news, dated 5-4-2016 2016年4月5日, 商务部新闻
Aluminum Extrusions 铝型材	Australia 澳大利亚	ADD - Initiation of accelerated review 反倾销-发起快速复审	Anti-dumping Notice No. 2016/31, dated 31-3-2016 2016年3月31日, 反倾销公告第2016/31号
Aluminum Extrusions 铝型材	USA 美国	ADD and CVD - Initiation of Anti- Circumvention Inquiry 反倾销和反补贴-发起反规避调查	81 FR 15039 [A-570-967 and C-570-968], dated 21-3-2016 2016年3月21日, 81 FR 15039 [A-570-967 和 C-570-968]
Amorphous Silica Fabric 非晶硅织物	USA 美国	CVD - Postponement of Preliminary Determination 反补贴-延期发布临时裁决	81 FR 13771 [C-570-039], dated 15-3-2016 2016年3月15日, 81 FR 13771 [C-570-039]
Benzoyl peroxide 过氧化苯甲酰	Taiwan 台湾	ADD Order continued 继续征收反倾销税	MOFCOM news, dated 22-3-2016 2016年3月22日, 商务部新闻

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Carbon and Alloy Steel Line Pipe 碳钢和合金钢管线管	Canada 加拿大	ADD and CVD – Affirmative finding of injury 反倾销和反补贴-肯定性裁决存 在损害	Govt. of Canada News Release dated 29-3-2016 2016年3月29日， 加拿大政府发布新闻
Cellphone 移动电话	Turkey 土耳其	Safeguard investigation terminated 终止保障措施调查	MOFCOM news, dated 16-3-2016 2016年3月16日， 商务部新闻
Cold-rolled steel 冷轧钢	Indonesia 印度尼西亚	ADD Order continued 继续征收反倾销税	MOFCOM news, dated 25-3-2016 2016年3月25日， 商务部新闻
Continuous filament glass fibre products 短切玻璃纤维	EU 欧盟	ADD – Initiation of expiry review 反倾销-发起期终复审	EU 2016/C 99/06, dated 15-3-2016 2016年3月15日， EU 2016/C 99/06
Copper Pipe Fittings 铜管件	Canada 加拿大	ADD and CVD – Initiation of expiry review 反倾销和反补贴-发起期终复审	Govt. of Canada News Release dated 22-3-2016 2016年3月22日， 加拿大政府发布新闻
Disposable plastic injector 一次性塑料注射器	Argentina 阿根廷	Initiated ADD sunset review 发起反倾销日落复审	MOFCOM news, dated 22-3-2016 2016年3月22日， 商务部新闻
Glassware 玻璃器皿	Brazil 巴西	Initiated ADD sunset review 发起反倾销日落复审	MOFCOM news, dated 18-3-2016 2016年3月18日， 商务部新闻
Glazed/Unglazed Porcelain/Vitrified tiles 上釉/未上釉瓷砖	India 印度	Provisional anti-dumping duty imposed 征收临时反倾销税	12/2016-Cus. (ADD), dated 29-3-2016 2016年3月29日， 12/2016-Cus. (ADD)
Hollow Structural Sections 空心型材	Australia 澳大利亚	ADD - Time extended to make a declaration as application for judicial review filed 反倾销-由于提交了司法审查申 请延期发布最终裁决	Anti-Dumping Notice No. 2016/29, dated 24-3-2016 2016年3月24日， 反倾销公告第2016/29号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Hollow Structural Sections 空心型材	Australia 澳大利亚	ADD - Product description amended consequent to anti-circumvention investigation 反倾销-根据反规避调查结果修改涉案产品定义	Anti-Dumping Notice No. 2016/24, dated 17-3-2016 2016年3月17日 , 反倾销公告第2016/24号
Hot Rolled Flat products of non-alloy and other alloy steel in coils of a width of 600 mm or more 宽度在600毫米及以上的热轧平板产品	India 印度	Safeguard duty imposed 征收保障措施税	1/2016- Cus. (SG), dated 29-3-2016 2016年3月29日 , 1/2016- Cus. (SG)
Large line pipe 大型管线管	Canada 加拿大	ADD and CVD - Initiation of preliminary injury inquiry 反倾销和反补贴-发起初步损害调查	Govt. of Canada News Release dated 29-3-2016 2016年3月29日 , 加拿大政府发布新闻
Monosodium glutamate 味精	Viet Nam 越南	Safeguard duty imposed 征收保障措施税	MOFCOM news, dated 31-3-2016 2016年3月31日 , 商务部新闻
Petroleum Wax Candles 石油蜡烛	USA 美国	ADD – Affirmative sunset review 反倾销-肯定性日落复审	81 FR 17665 [A-570-504], dated 30-3-2016 2016年3月30日 , 81 FR 17665 [A-570-504]
Polyethylene Terephthalate Resin 聚对苯二甲酸乙二酯树脂	USA 美国	CVD – Final affirmative determination of subsidy 反补贴-最终肯定性裁决存在补贴	81 FR 13337 [C-570-025], dated 14-3-2016 2016年3月14日 , 81 FR 13337 [C-570-025]
Polyethylene Terephthalate Resin 聚对苯二甲酸乙二酯树脂	USA 美国	ADD - Final Determination of Sales at Less Than Fair Value 反倾销-最终裁决低于正常价值销售	81 FR 13331 [A-570-024], dated 14-3-2016 2016年3月14日 , 81 FR 13331 [A-570-024]
Potassium Hydroxide 氢氧化钾	Japan 日本	Imposed preliminary ADD duty 征收临时反倾销税	MOFCOM news, dated 29-3-2016 2016年3月29日 , 商务部新闻

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Potassium Permanganate 高锰酸钾	USA 美国	ADD Order continued 继续征收反倾销税	81 FR 14835 [A-570-001], dated 18-3-2016 2016年3月18日, 81 FR 14835 [A-570-001]
Refrigerator 冰箱	Morocco 摩洛哥	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 5-4-2016 2016年4月5日, 商务部新闻
Ring shaped magnet 环状磁铁	Brazil 巴西	Imposed final ADD duty 征收最终反倾销税	MOFCOM news, dated 16-3-2016 2016年3月16日, 商务部新闻
Seamless Carbon Alloy Steel Standard Line and Pressure Pipes 无缝碳合金钢标准管线和压力管	USA 美国	ADD and CVD Orders continued 继续反倾销和反补贴令	81 FR 14089 [A-570-956 and C-570-957], dated 16-3-2016 2016年3月16日, 81 FR 14089 [A-570-956 和 C-570-957]
Seamless tubes, pipes and hollow profiles of iron, alloy or non-alloy steel (other than cast iron and stainless steel) 无缝钢管 (除了铸铁和不锈钢)	India 印度	Imposition of provisional ADD recommended 建议征收临时反倾销税	F.No. 14/2/2015-DGAD, dated 31-3-2016 2016年3月31日, 第14/2/2015-DGAD号公告
Stainless Steel Sheet and Strip 不锈钢板和钢带	USA 美国	Initiation of Countervailing Duty Investigation 发起反补贴调查	81 FR 13322 [C-570-043], dated 14-3-2016 2016年3月14日, 81 FR 13322 [C-570-043]
Steel spring washer 钢制弹簧垫圈	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 6-4-2016 2016年4月6日, 商务部新闻
Tape 卷尺	Argentina 阿根廷	Initiated ADD sunset review 发起反倾销日落复审	MOFCOM news, dated 22-3-2016 2016年3月22日, 商务部新闻
Truck and Bus Tyres 卡车和客车轮胎	USA 美国	Postponement of Preliminary Determination in CVD Investigation 反补贴调查延期发布临时裁决	81 FR 18573 [C-570-041], dated 31-3-2016 2016年3月31日, 81 FR 18573 [C-570-041]
Tungsten carbide 碳化钨	EU 欧盟	ADD – Initiation of expiry review 反倾销-发起期终复审调查	EU 2016/C 108/05, dated 23-3-2016 2016年3月23日, EU 2016/C 108/05

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Tyre Curing Presses 轮胎硫化机	India 印度	Definitive anti-dumping duty continued after sunset review 日落复审继续最终反倾销税	11/2016-Cus. (ADD), dated 29-3-2016 2016年3月29日, 11/2016-Cus. (ADD)
Vitrified or porcelain tiles 瓷砖	India 印度	ADD New shipper review – Applicants found not entitled to individual dumping margin 反倾销新出口商复审-申请人没有获得单独倾销幅度	F.No.15/25/2011-DGAD, dated 28-3-2016 2016年3月28日, 第15/25/2011-DGAD号
Wheelbarrows 独轮手推车	South Africa 南非	Provisional ADD imposed 征收临时反倾销税	Government Gazette No. 38538, dated 6-3-2016 2016年3月6日, 政府公告第38538号
Xanthan Gum 黄原胶	USA 美国	ADD – Preliminary Rescission of New Shipper Review 反倾销-初步取消新出口商复审	81 FR 15240 [A-570-985], dated 22-3-2016 2016年3月22日, 81 FR 15240 [A-570-985]
Zinc coated steel 镀锌板	Australia 澳大利亚	ADD - Product description amended consequent to anti-circumvention investigation 反倾销-反规避调查后修改涉案产品范围	Anti-Dumping Notice No. 2016/23, dated 17-3-2016 2016年3月17日, 反倾销公告第2016/23号

Trade remedy measures by China

中国采取的贸易救济措施

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Grain oriented flat-rolled electrical steel 取向电工钢	Japan, Korea RP and EU 日本、韩国和欧盟	Preliminary determination of levying deposit 初步裁定征收保证金	MOFCOM Announcement No. 10 of 2016, dated 1-4-2016 2016年4月1日, 商务部公告2016年第10号
Polyacrylonitrile fiber 腈纶	Japan, Korea RP and EU 日本、韩国和欧盟	Preliminary determination of levying deposit 初步裁定征收保证金	MOFCOM Announcement No. 9 of 2016, dated 1-4-2016 2016年4月1日, 商务部公告2016年第9号

WTO News 世贸组织新闻

印度就美国相关的非移民临时工作签证措施提起争端解决

2016年3月3日，印度通知WTO秘书处，印度决定对美国就美国实施的将增加特定L-1和H-1B类的非移民签证申请人申请费用的措施，以及就某些签证实施数量限制的措施发起世贸组织争端解决程序。印度认为这些措施与美国在其服务贸易总协定具体承诺时间表中的条款不一致，并且印度法人在美国设立商业实体与从事提供如计算机和相关服务行业等类似服务的美国法人相比，获得了较少的优惠。印度还称这些规定还影响了愿意提供服务的自然人流动。印度表示这些措施在服务贸易总协定下似乎对印度直接或间接造成损害。美国的措施违反了服务贸易总协定第3.3条、4.1条、6.1条、16条、17条、20条和自然人提供服务的流动附件第3段和第4段。同样，就数量限制的措施，也被认为违反了服务贸易总协定第2条、5.4条、16条和20条以及自然人提供服务的流动附件第3段和第4段。

与此同时，在世贸组织争端解决的第505件案件中，加拿大对美国就对进口自加拿大的超压光处理纸（光面打印纸）的征收补贴税提出争端解决。

日本就韩国对气动阀门实施反倾销税提出争端解决

2016年3月15日，日本要求同韩国进行

磋商，就后者对从日本进口的气动传输装置用阀门实施反倾销税提出争端解决。此前韩国对阀门实施了11.66%到22.77%的反倾销税。然而，日本认为韩国征收反倾销税不符合世贸组织反倾销协议，因为韩国错误地认定了损害和因果关系，同时调查程序存在缺陷。日本称韩国在调查中对进口的数量和价格的影响分析并非基于积极证据的客观审查。因此日本认为韩国违反了反倾销协议第3.1、3.2、3.4、3.5、4.1、6.5、6.9和12.2条。

欧盟对来自阿根廷的生物柴油实施反倾销税被认为违反世贸组织规则

2016年3月29日，世贸组织争端解决机构发布了关于欧盟对来自阿根廷的生物柴油实施反倾销措施案(DS473)的专家组报告。阿根廷声称欧盟当局在构造阿根廷生产商正常价值时，欧盟当局取代了阿根廷大豆生产商/出口商的成本报告而采用阿根廷农业部公布的参考价格的做法违反了相关规则。

专家组支持阿根廷的主张，认为欧盟的做法违反了反倾销协议第2.2.1.1条，因为欧盟未能根据被调查的生产商/出口商所保留的记录计算生物柴油的生产成本。此外，欧盟在构造正常价值过程中使用的“成本”，并不是原产国阿根廷普遍适用的成本，因此也不符合反倾销协议第2.2条和关贸总协定第6:1(b)(ii)条。

Ratio Decidendi 判决理由

被调查产品-产品之间不要求任何同种或类似受到质疑

欧盟法院认为欧盟的基本法规，与WTO反倾销协议相比，本身不需要考虑涉案产品的概念必须是一个由类似产品组成的整体上属于同类的产品。在这方面，法院认为基本法规的文本中并没有支持产品之间要求存在同种或类似的特殊要求。此案中的进口商声称相关的裁决规定（第412/2013号规定）对多种产品实施反倾销税，但这些产品并不类似或同种，因此并不构成一个产品，因此通过一个调查实施反倾销措施是不合理的。然而法院拒绝了该主张，虽然法院认为尽管产品存在不同的风格、形状和属性，但就陶瓷而言，他们有相同的基本物理和技术特征，并且都是直接与食物接触。因此法院认为欧盟当局在确定涉案产品的定义时把陶瓷餐具和厨房用具包括在一个调查中不存在明显的错误，因为没有证据证明如果不同的涉案产品定义，可能造成不同的裁决。

【*Portmeirion Group UK Ltd.*诉英国税务海关总署—判断日期为2016年3月17日，案件号C-232/14】

临时反倾销税-

欧盟法院支持常设法院的观点，不像最终裁决，临时裁决可能被认为没有独立地造成任何损失。此案中的上诉人是国内生产商之一，质疑征收临时反倾销税的裁决，认为所征收的税既没有消除倾销也没有减少因倾销造成的损失。然而法院依赖以往判例法认为，在最终裁决生效后，临时裁决并不存在独立的法律效力。欧盟法院也拒绝了上诉人提出的认为依靠判例法与现在的案件无关，因为争议中的裁决的效力并不是对涉案产品的生产商的进口或出口而言，而是对那些继续在程序中存在利益关系的欧盟生产商而言的论点。

【*Solar World AG*诉欧盟委员会—判断日期为2016年3月10日，欧盟法院案件号C-312/15 P】

News Nuggets 新闻精华

法国对食品用棕榈油和椰子油征收额外关税

棕榈油是马来西亚和印度尼西亚出口的一个重要产品，在许多食品以及非食品中是一个重要的成分，例如洗发水。然而某些研究警告在食品中使用棕榈油，认为它可以导致患心血管疾病和阿尔茨海默氏症的几率。同时由于棕榈树

中改变了森林用地，也引起了环境问题。棕榈油也是一种生物燃料。

关于生物多样性的法国法律第367修正案拟对用于食品的棕榈油和椰子油征收额外关税。法国认为，除了对产品颁布禁令，使其失去竞争优势将导致产品替换和减少消费，同时帮助维护公众健康。该修正案也关注了环境问题。然

而，正如预期一样，法国的贸易伙伴评论认为修正案违反世贸组织相关规则，并且该修正案并不是基于合理的科学推

理。对修正案的某些其他意见认为对用作生物燃料的棕榈油不征税，将意味着环境问题还没有完全解决。

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