

## 国际贸易 法律月刊

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## Article

### Higher US visa fees for companies hiring 50% foreign labour: Can the measure withstand WTO scrutiny?

对雇佣50%以上外国劳动力的公司收取较高的美国签证费 – 该措施能否经得起世贸组织的详细审查？

By Sagnik Sinha

#### Introduction

If press reports are any indication, the decision of the Government of India to challenge at the WTO, the decision of the United States to increase visa fees for specified type of companies hiring more than 50% of foreign labor is gaining traction<sup>1</sup>. The decision is expected to affect Indian technology companies like Infosys, Wipro, Tata Consultancy Services and Mahindra Satyam<sup>2</sup>. The article presents a short analysis on whether the US measure will be able to withstand scrutiny before a WTO panel.

#### US Rules and legal basis for WTO challenge

The US provision which triggers possible liability is contained in the *Emergency Border Security Supplemental Appropriations Act, 2010*. Title IV [Section 402(a)] increases the L1 and H1-b visa fee by 2250 USD and 2000 USD respectively for companies which employ 50 or more employees in the US if more than 50% of the company's employees are on L or H-1b visa<sup>3</sup>. While the law itself does not specifically target Indian companies, Indian technology companies which send Indian citizens to the United States to work short term on client sites will be the worst affected.

Under the WTO system, a member (India) is permitted to challenge the laws and regulations of a fellow member (United States) if the measure contravenes that country's obligations under the WTO Agreements. One such agreement is the General Agreement on Trade & Services (GATS).

#### A word on GATS and US obligations

GATS regulates four kinds of services. One such service is the service offered by Indian companies in the US through the presence of natural persons (employees of Indian companies) in the US<sup>4</sup>. The US has undertaken an obligation under its Schedule of Concessions to provide market access to up to 65,000 persons annually on a worldwide basis in occupations set out in 8 US Code 1101 (a) (15) (H) (i)(b)<sup>5</sup>. Such occupation covers persons engaged in a specialty occupation who meet some educational requirements when the work undertaken in the US is one which requires application of highly specialized knowledge<sup>6</sup>. Indian engineers sent to the US seem to meet this criterion. The relevant GATS provisions which trigger liability are Articles XVI and XX of GATS. In the present article, the analysis is restricted to these provisions though it is possible that other

<sup>1</sup> See India may move WTO against US visa fee hike by Oct end, Times of India, September 23, 2012 available at <http://timesofindia.indiatimes.com/business/india-business/india-may-move-wto-against-us-visa-fee-hike-by-oct-end/articleshow/16518025.cms>.

<sup>2</sup> id

<sup>3</sup> see Emergency Border Security Supplemental Appropriations Act, 2010, H.R. 6080, 111th Congress available at <http://www.gpo.gov/fdsys/pkg/plaw-111publ230/html/plaw-111publ230.htm>; also see Summary of the Bill available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:hr05875:@@&summ2=m&>

<sup>4</sup> see WTO General Agreement on Trade in Services (GATS), Article i:2(d)

<sup>5</sup> see WTO US Schedule of Concession (Services) available at <http://tsdb.wto.org/simplesearch.aspx> (last visited November 28, 2012)

<sup>6</sup> Id

provisions may also be breached. It is also unlikely that any of the Exceptions will save the US measure from a successful WTO challenge.

### **Likely issues that a Panel may confront**

Under Article XVI, the US cannot provide less favorable treatment than that set out in its Schedule. Furthermore, under Article XVI (2) (d), the US is prohibited from maintaining “*limitations*” on the total number of natural persons that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service<sup>7</sup>. The limitation should be in the “*form*” of numerical quotas or the requirement of an economics need test. Therefore, the success of a WTO challenge will depend on the following:

- (A) Whether the US measure is (a) a limitation and (b) the limitation is in the form of numerical quotas or requirement of an economic needs test?
- (B) Whether the measure accords less favorable treatment than that specified in the US Schedule.

### **A. GATS, Article XVI(2)**

It is relevant to bear in mind that the WTO Appellate Body in *US-Gambling* has stated, in the context of a similarly worded provision in Article XVI (a)<sup>8</sup> that the term “*limitation...in the form of*” would cover a

limitation *in form or in effect*<sup>9</sup>. Though the Appellate Body included a caveat that the words “*in the form of*” should not be ignored or replaced by the words “*that have the effect of*”, it maintained that the words “*in the form of*” must be read in conjunction with the words that precede them—“*limitations on the number of service suppliers*”—as well as the words that follow them, including the words “*numerical quotas*”<sup>10</sup>. The Appellate Body concluded that read in this way, it was clear that the thrust of subparagraph (a) was not on the *form of limitations, but on their numerical or quantitative, nature*<sup>11</sup>.

Therefore, if the US measure imposes a limitation, which is in form or in effect a numerical quota, on entry of Indian software engineers who enter the US to offer their services, the measure could violate Article XVI (2) (d).

Further guidance is available in the 1993 Scheduling Guidelines which has been used by the Appellate Body in *US-Gambling* where the US was the Respondent. In all likelihood, this document will be used in future WTO cases also, at least when the US is a Respondent. The document provides the following illustration of what “*limitation*” under Article XVI (d) could mean:

*“foreign labor should not exceed X percent and/or wages XY percent of total”*<sup>13</sup>

<sup>7</sup> See GATS, Article xvi(d) (*limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic test*)

<sup>8</sup> See GATS, Article xvi(2)(a) [*limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test*]

<sup>9</sup> WTO Appellate Body Report in *United States - Measures Affecting The Cross Border Supply Of Gambling And Betting Services* WT/DS285/AB/R (7 April 2005), [AB, US-Gambling], para 230

<sup>10</sup> AB, *US-Gambling*, para 232

<sup>11</sup> Id

<sup>12</sup> See AB, *US-Gambling*, para 207. The appellate body noted after examination that the US intended to follow the 1993 scheduling guideline while outlining its market access commitments.

<sup>13</sup> see *Scheduling of initial commitments in trade in services: Explanatory Notes*, para 6, MTN/ GNS/W/164 (3 Sep. 1993) available at [http://www.wto.org/gatt\\_docs/english/sulpdf/92140039.pdf](http://www.wto.org/gatt_docs/english/sulpdf/92140039.pdf); also see *Guidelines for the scheduling of specific commitments under the General Agreement on Trade in Services (GATS)*, para 12, S/II/92, [adopted on March 23, 2001]

A question which is likely to come up is whether the term “quota” is restricted to absolute prohibitions or can extend to limitations which increase the cost of procuring foreign labour if they “exceed X percent” of the total labour force. The 50% cap is quite clearly a numerical quota in form and in effect. It is a *limitation in effect*, as the higher visa fee will limit the total number of natural persons Indian companies send to the US. Even if the WTO Panel takes a narrow view of the term, the measure could still contravene the provisions of Article XVI (1).

### **B. GATS, Article XVI (1) read with Article XX(1)**

The provisions of Article XVI (1) may be read in conjunction with Article XX of GATS. Article XX(1) (a) provides that with respect to sectors where commitments are undertaken, each Schedule shall specify terms, limitations and conditions of market access. The application of a discriminatory fee qualifies as a condition and limitation on market access, for reason of which it should be specifically included in the Schedule of Concessions. No such concessions have been specified in the US Schedule. Therefore, a limitation in the form of high visa fees not otherwise specified in the schedule breaches US obligations under Article XVI(1).

### **C. Possible defences that the US could raise**

The US may raise defences under either Article XIV or under paragraph 4 of the Annexure on *Movement of natural persons supplying services under the Agreement (Annex)*. The applicable defences under Article XIV will be applicable if the measure is necessary to maintain public order,

protect human life or secure compliance with laws or regulations. WTO jurisprudence indicates that a measure is *necessary* if no other less trade restrictive alternative is available to meet the objectives of the member state. The stated objective itself seems to be protectionism and therefore not a legitimate end which may be pursued. Even otherwise, it may be difficult to establish that no other trade restrictive measure was available.

The Annex, para 4 permits a member to *regulate the entry or temporary stay of natural person, in its territory provided that such measures are not applied in a manner which nullifies or impairs the benefits accruing to any Member under the terms of a specific commitment*. The verb “regulate” is defined in the Oxford Dictionary to mean “control by means of rules and regulations”. Since the US is regulating the behavior of Indian companies rather than natural persons, this exception may not apply. In any event, nullification and impairment of specific commitments excludes the application of this exception.

### **Conclusion**

It seems that the Government of India may actually have a strong case to present before a WTO panel. Like in all WTO cases, the Government needs to balance the law, economics and politics of trade. The law, at least, is unlikely to be a hindrance.

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## Trade Remedy News 贸易救济新闻

### Trade remedy actions 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 通知文号及日期
Aluminium radiators 铝散热器	EU 欧盟	Definitive ADD imposed 征收最终反倾销税	Council Implementing Regulation (EU) No 1039/2012, dated 29-10-2012 2012年10月29日, 欧盟委员会执行规定第1039/2012
Ceftriaxone Sodium Sterile 头孢曲松钠	India 印度	ADD extended up to 28-11-2013 as sunset review has been initiated 由于发起日落复审, 反倾销税被延期至2013年11月28日	50/2012-Cus. (ADD), dated 29-11-2012 2012年11月29日, 海关(反倾销) 50/2012
Ceramic tableware and kitchenware 陶瓷餐具和厨房用具	EU 欧盟	Provisional ADD imposed 征收临时反倾销税	Commission Regulation (EU) No 1072/2012, dated 14-11-2012 2012年11月14日, 欧盟委员会规定第1072/2012
Cold deformed seamless stainless steel pipes 冷轧不锈钢无缝钢管	Customs Union of Russia, Belorussia and Kazakhstan 俄罗斯、白俄罗斯和哈萨克斯坦关税同盟	ADD investigation extended 反倾销调查延期	Notice No. 11, dated 13-11-2012 2012年11月13日, 第11号通知
Crystalline silicon photovoltaic modules and key components 晶体硅光伏组件及关键零部件	EU 欧盟	Initiation of an anti-subsidy proceeding 发起反补贴调查	2012/C340/06, dated 8-11-2012 2012年11月8日, 2012/C340/06
Crystalline silicon photovoltaic cells and modules 晶体硅光伏电池	USA 美国	Affirmative determination of injury 肯定性损害裁定	News Release 12-113, dated 7-11-2012 2012年11月7日, 发布新闻12-113
Dicyandiamide 双氰胺	EU 欧盟	Initiation of ADD expiry review 发起反倾销期终复审	2012/C 349/06, dated 15-11-2012 2012年11月15日, 2012/C 349/06

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日期
Rimless Glasses 无框镜	South Africa 南非	ADD investigation initiated 发起反倾销调查	South Africa International Trade Management Committee 2012年11月16日, 南非国际贸易管理委员会
Digital Offset Printing Plates 数码印刷版	India 印度	Definitive ADD imposed 征收最终反倾销税	51/2012-Cus. (ADD), dated 3-12-2012 2012年12月3日, 海关(反倾销)第51/2012
Diocetyl phthalate 邻苯二甲酸酐	India 印度	Definitive Safeguard duty recommended 建议最终保障措施税	G S R D1-22011/13/2011/ Part A, dated 16-11-2012 2012年11月16日, G S R D1- 22011/13/2011/Part A
Formulated Glyphosate 草甘膦制剂	Australia 澳大利亚	Resumption of investigation into alleged dumping 重新开始反倾销调查	Australian Customs Dumping Notice No.2012/54, dated 16-11-2012 2012年11月16日, 澳大利亚海关倾销通知第2012/54
Seamless Casing 无缝钢制油气套管	Canada 加拿大	Affirmative determination of expiry review 期终复审肯定性裁定	Expiry Review No. RR-2012-002, dated 9-11-2012 2012年11月9日, 期终复审第RR-2012-002
Solar Cells 太阳能电池	India 印度	ADD investigation initiated 发起反倾销调查	14/5/2012-DGAD, dated 23-11-2012 2012年11月23日, 14/5/2012-DGAD
Synthetic silica gel 沉淀二氧化硅	Brazil 巴西	ADD investigation initiated 发起反倾销调查	News Report dated 26-10-2012 2012年10月26日 新闻
Stainless steel tube and pipe butt-welding fittings 不锈钢管对焊件	EU 欧盟	Initiation of ADD investigation 发起反倾销调查	2012/C 342/02, dated 10-11-2012 2012年11月10日, 2012/C 342/02

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日期
Steel piling pipe 钢管桩	Canada 加拿大	Final determinations of dumping and subsidizing 最终确定倾销和补贴	Dumping case number: AD/1393 and Subsidy case number: CV/130, report dated 15-11-2012 2012年11月15日, 倾销案件AD/1393和补贴案件CV/130
		Finding of threat of injury 裁定损害威胁	Canadian International Trade Tribunal, Press Release dated 30-11-2012 2012年11月30日, 加拿大国际贸易法院通告
Threaded tube or pipe cast fittings, of malleable cast iron 可锻铸铁螺纹管和接头	EU 欧盟	Provisional ADD imposed 征收临时反倾销税	Commission Regulation (EU) No.1071/2012, dated 14-11-2012 2012年11月14日, 欧盟委员会第1071/2012
Gift boxes 礼品盒	USA 美国	Affirmative determination in sunset review 日落复审肯定性裁定	News Release 12-119, dated 27-11-2012 2012年11月27日, 发布新闻12-119
Honey 蜂蜜	USA 美国	Affirmative determination in sunset review 日落复审做出肯定性裁定	News Release 12-118, dated 19-11-2012 2012年11月19日, 发布新闻12-118
Hardwood plywood 硬木胶合板	USA 美国	Reasonable indication that a U.S. industry is materially injured 有合理迹象显示美国产业受到实质损害	News Release 12-114, dated 9-11-2012 2012年11月9日, 发布新闻12-114
Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel 镀锌板和镀铝板	Australia 澳大利亚	Initiation of investigations into alleged subsidisation 发起反补贴调查	Australian Customs Dumping Notice No. 2012/56, dated 26-11-2012 2012年11月26日, 澳大利亚海关倾销通知第2012/56
Fresh Garlic 新鲜大蒜	USA 美国	Provisional determination of ADD new shipper review 反倾销新出口商复审初裁	DOC announced, dated 25-10-2012 2012年10月25日, 美国商务部公告

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日期
Tapered roller bearing 圆锥滚子轴承	USA 美国	Final determination of ADD new shipper review 反倾销新出口商复审终裁	DOC announcement, dated 30-10-2012 2012年10月30日, 美国商务部公告
Steel wire hanger 钢丝衣架	USA 美国	ADD administrative review final finding 反倾销行政复审终裁	DOC announcement, dated 8-11-2012 2012年11月8日, 美国商务部公告
Steel Threaded Rod 钢制螺杆	USA 美国	ADD administrative review final finding 反倾销行政复审终裁	DOC announcement, dated 9-11-2012 2012年11月9日, 美国商务部公告
Front Seating Service Valve 空调用截止阀	USA 美国	ADD administrative review final finding 反倾销行政复审终裁	DOC announcement, dated 9-11-2012 2012年11月9日, 美国商务部公告
Active carbon 活性炭	USA 美国	ADD administrative review final finding 反倾销行政复审终裁	DOC announcement, dated 9-11-2012 2012年11月9日, 美国商务部公告
Seamless tube 无缝钢管	Mexico 墨西哥	Initiation of ADD investigation 发起反倾销调查	Mexico Ministry of Economy, dated 21-11-2012 2012年11月21日, 墨西哥经济部国际贸易惯例司
SDS drill SDS钻头	Brazil 巴西	Initiation of ADD sunset review investigation 发起反倾销日落复审调查	Brazil MDIC announcement, dated 21-11-2012 2012年11月21日, 巴西发展工业外贸部公告
Indigo Blue Reduzido 还原靛蓝产品	Brazil 巴西	Initiation of ADD investigation 发起反倾销调查	Brazil MDIC announcement, dated 30-10-2012 2012年10月30日, 巴西发展工业外贸部公告
MDI 聚合	Brazil 巴西	Final ADD imposed 征收最终反倾销税	Brazil Foreign Trade Council, dated 31-10-2012 2012年10月31日, 巴西外贸委员会公告



## Trade remedy actions by China

### 中国采取的贸易救济行动

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日期
Ethylene glycol monobutyl ether and diethylene glycol monobutyl ether 单丁醚	USA, EU 美国, 欧盟	ADD investigation extended 反倾销调查延期	MOFCOM Announcement No. 75 of 2012, dated 14-11-2012 2012年11月14日, 商务部公告2012年第75号
Coated Bleached Folding 涂布白卡纸	USA 美国	ADD investigation extended 反倾销调查延期	MOFCOM Announcement No. 78 of 2012, dated 18-11-2012 2012年11月18日, 商务部公告2012年第78号
High-performance Stainless Steel Seamless Tubes 高性能不锈钢无缝钢管	EU and Japan 欧盟和日本	ADD imposed 征收反倾销税	MOFCOM Announcement No.72, dated 8-11-2012 2012年11月8日, 商务部公告2012年第72号
Methyl Ethyl Ketone 甲乙酮	Japan and Taiwan 日本和台湾	Sunset review initiated 发起日落复审	MOFCOM Announcement No. 69, 2012, dated 21-11-2012 2012年11月21日, 商务部公告第69号
Resorcinol 间苯二酚	Japan, USA 日本、美国	Provisional ADD imposed 征收临时反倾销税	MOFCOM Announcement No.83 of 2012, dated 23-11-2012 2012年11月23日, 商务部公告2012年第83号
Solar grade polysilicon 太阳能级多晶硅	USA, EU 美国、欧盟	Initiation of investigation to impose retrospective ADD and anti-subsidy duty 发起追溯征税调查	MOFCOM Announcement No.84 of 2012, dated 26-11-2012 2012年11月26日, 商务部公告2012年第84号
Toluene Diisocyanate 甲苯二异氰酸酯	EU 欧盟	Provisional ADD imposed 征收临时反倾销税	MOFCOM Announcement No.79, 2012, dated 13-11-2012 2012年11月13日, 商务部公告2012年第79号

## WTO News 世贸组织新闻

### 世贸组织采纳取向电工钢案的裁决

2012年11月16日，世贸组织争端解决机构采纳了就中国对来自美国的取向电工钢征收反倾销税和反补贴税案（DS414）的上诉机构报告以及上诉机构报告所支持的专家组报告。上述争议中的专家组认为中国的做法违反了补贴和反补贴措施协议第11.3条，要求调查机关应审查申请中所提出的证据是否准确与充分，以判定证据是否足以证明发起调查的正当性。专家组还裁决中国违反了补贴和反补贴措施协议第12.4.1条和反倾销协议第6.5.1条，因为其未能要求申请人提交充分的非机密性摘要。上诉机构就中国在适用反倾销协议和补贴和反补贴措施协议的实践中违反相关条款方面支持了专家组的裁定。

### 中国就国内成分限制请求与欧盟、希腊和意大利磋商

2012年11月5日中国请求与欧盟、希腊和意大利就某些措施请求磋商，这些措施包括影响可再生能源行业的国内成分限制措施，涉及到欧盟成员、意大利和希腊的光伏补贴。中国认为这些措施违反了1994年关税与贸易总协定第一条、第三条第一款、第三条第四款和第三条第五款，补贴与反补贴措施协议第3.1(b)和3.2条以及与贸易有关的投资措施协议第2.1和2.2条。日本、澳大利亚和阿根廷已经要求加入磋商。

### 欧盟与拉丁美洲国家解决香蕉争端

欧盟与拉丁美洲10个国家解决了就欧盟从特定国家进口香蕉征收进口关税长达20年的争端。2012年11月8日，达成一致的解决方案被告知了争端解决机构，该方案包括了2009年上述国家签署的《关于香蕉贸易的日内瓦协定》。自2017年1月1日起，进口关税将从148欧元/吨降低到114欧元/吨。之前，争端解决机构的专家组和上诉机构认为欧盟的香蕉进口体制以及进口香蕉的许可程序违反了1994年关税与贸易总协定。

### 巴西建议设置汇率波动规则

11月5日巴西建议世贸组织规则应当包括弥补汇率失调的体系。根据其提议，世贸规则虽然包含了对由于汇率不稳定、操作和限制造成的贸易扭曲进行保护，但是没有适当的工具提供相关解决的方案以弥补或救济这种削弱其承诺的汇率波动。提议认为在补贴和反补贴措施协议中没有对如何以及是否世贸成员可以使用该协议处理由于汇率失调产生的影响提供明确的指示。反倾销协议规定了单独生产商自身无权建立、操纵或纠正宏观经济政策时所适用的对策，但是该协议没有针对广泛影响并且不存在源自于汇率失调所造成的可能的多边贸易影响。然而，根据最新的报告，中国已经驳回了该提议。

### 最不发达国家请求更多的时间以遵守与贸易有关的知识产权协议

海地在上个月的与贸易有关的知识产权委员会会议上提议要求延长最不发达国家实施知识产权保护的最后期限，成为会议的一大亮点。对于最不发达国家遵守除与贸易有关的知识产权协议第3、4、5条以外的其他条款的最后期限为2013年7月1日或者是该国已脱离最不发达国家行列之日起，两者取其先。此次提出延长到“该世贸成员始终处于最不发达国家”。第3、4、5条是关于国民待遇、最惠国待遇和在世界知识产权组织的保护下达成的多边协议中所规定的程序。

该提议文件反映了现存的相关的第66条的措辞。自2005年上一次延期决定至今，最不发达国家的情况没有显著变化，条文中的经济、财政和管理的局限性以及为创立可行的技术基础所需的灵活性仍是相关因素。在第二部分第5段和第7段即专利和关于药用物品的未披露信息的保护（数据保护）也有执行协定条款的最后期限。根据2002年6月27日委员会的决定，最不发达国家无需在2016年1月1日前执行该协定条款。

## News Nuggets 新闻精华

### 欧盟暂停对外国航班征收碳排放税

欧盟已经临时暂停了根据外国航班的碳排放量征收碳排放税。得到欧盟议会以及欧洲理事会的支持，该暂停将维持一年的时间，意味着外国航班无需受制于2012年航班运营所产生的碳排放额度。根据计划，进出欧盟的航班需要按照其飞往欧盟的全部行程交换碳排放额度。

有报告该行动是由于在本月初国际民用航空组织会议上采取了一些积极措施，在会议上一致同意在其下一次会员大会也就是2013年9月前建立一个高端组织以开发能够追踪航班碳排放量的全球系统。为了减少多环境的污染，该计划在另一个国家被认为是有助于航班承担其义务的某些地区，欧盟可行使特别管辖权。

早前，印度与美国、中国、巴西、俄罗斯和其他25个国家反对欧盟单方面的决定，并引起了全球贸易战的恐慌。这些国家已经对欧盟采取了许多反制措施，包括限制国家的航班参

加欧盟的计划，审查双边服务以及与欧盟国家开放领空协议，并且也对欧盟航班征收类似的税。目前，虽然印度和中国已经要求他们的航班不参加，美国总统在上个月签署法案保护美国航班免交欧盟碳排放税。

### 加拿大和中国的外国投资促进和保护协议

加拿大和中国完成了外国投资促进和保护协议。该协议被搁置了21天，直至11月初加拿大仍未批准该协议。虽然不存在国会辩论，该协议在加拿大引起了大片反对之声。在任何投资保护协议中有关最惠国待遇、国民待遇和政府受制于国际仲裁的条款以及在加拿大-中国外国投资促进和保护协议中的一些特殊条款成为关注的焦点。例如，协议规定公众获得在投资者境内发生争议的判决、听证会和文件的详细内容的决定权在争议当事方。协议也开创了基于现行或将来双边或多边协议和缔约国提供的采购、补贴和奖励政策设立或扩大的自由贸易区或关税联盟对最惠国待遇和国民待遇的免除。最惠国待遇条款将不适用于在其他国际投资条约和协定中的争议解决机制。

## Ratio Decidendi 判决理由

### 反倾销税 – 撤销价格承诺所采取的比例原则

欧洲法院在其近期的判决中支持了常设法院的决定，常设法院认为上诉人(Usha Martin)未能遵守其反倾销的承诺。首先，其未能提供没有被包含在价格承诺中的涉案产品的季度销售报告。其次，对没有被包含在价格承诺中的产品开具价格承诺发票。早前，上诉人由于反倾销调查对欧盟调查机关提出价格承诺，他们将按照减少对欧盟国内产业造成损失的价格销售钢丝绳索。上诉人对常设法院认为没有遵守价格承诺的裁决提出上诉，而欧洲法院拒绝了该上诉，因为该争议要

求重审裁决的事实部分不在欧洲法院的管辖范围之内。

然而，欧洲法院推翻了常设法院的部分裁决，即不需要量化违反价格承诺的大侠以及任何违反价格承诺的行为将自动引起对接受价格承诺的撤销。根据比例原则，法院认为欧盟在决定时候有必要撤销接受价格承诺拥有自由裁量权。然而，在考虑了案件的事实部分，法院认为欧盟撤销接受上诉价格承诺时不存在违反了比例原则。[2012年11月22日，Usha Martin Ltd. v. 欧洲联盟理事会 – 案件 C 552/10 P判决]

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