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内容

Articles文章

Assigning single rate of duty by US for all producers & exporters from NME countries – An analysis

分析美国对所有来自非市场经济国家的生产商和出口商适用单一税率的假设

By **Elaine TAN**

On December 3, 2013, China has requested for a consultation with the United States of America for certain methodologies in 13 anti-dumping measures imposed by USDOC against China (DS471). It is alleged by China that USDOC uses certain anti-dumping methodologies that are inconsistent with the US obligations under the Anti-dumping Agreement (ADA), including "targeted dumping methodology", "zeroing", "single rate presumption" and "NME-wide methodology".

This is already not the first time China has raised these issues, especially the "zeroing" method, which has been disputed and held to be inconsistent with the ADA by various DSB panels.

In DS471 case, the focus is more on the single rate presumption, involving in all 13 alleged anti-dumping measures. With regards to US practice, the US presumes that all producers and exporters comprise a single entity under common government control. Section 351.107 (d) set forth *"Rates in antidumping proceedings involving nonmarket economy countries. In an antidumping proceeding involving imports from a nonmarket economy country, "rates" may consist of a single dumping margin applicable to all exporters and producers."* When determining the anti-dumping duty rate, there actually exists three categories of rates, i.e. individual rate applicable to mandatory respondent, weighted average rate applicable to respondents who are not mandatory but pass "separate rate" test and nation-wide single rate for all other enterprises on the basis of facts available. In this situation, the burden is placed upon the producers and exporters to provide sufficient proof of absence of government control, in law and in fact, with respect to their export activities, based on a number of factors comprising the US' "separate rate" test. Companies who do not pass the "separate rate" test shall be subject to nation-wide single rate, whether or not they provide reliable export prices.

Thus, it is of importance to understand how US practice violates the WTO obligations in this regard.

Article 6.10 of the ADA which provides for the imposition of an individual margin of dumping for each known exporter or producer, reads as below:

> "The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated."

First of all, it is normally understood that the above article places an obligation on the authorities to apply individual dumping rate for each known exporter or producer. The Appellate Body in *EC-*

Fasteners (China)[1] stated that the rule in the first sentence of Article 6.10 is mandatory. This is equally applicable in the case of all WTO Member countries irrespective of the nature of the economies. Article 6.10 first sentence does not envisage a special treatment for non-market economy countries. There is no sanction for applying a single rate treating all the exporters and producers in NME countries as a single homogenous entity.

Secondly, Article 6.10 only provides one exception namely where it is "impracticable". What's the meaning of impracticable? Although there is no specific interpretation on this word by the Panel yet, we shall understand it under related WTO provisions. If we go through the ADA , "impracticable" appears in Article 9.2 also.

> "… If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved."

Both Articles in fact provide same explanation of "impracticable", i.e. when a large number of exporters or producers are involved in the investigation and it is not practicable to determine an individual rate to each, the authorities may limit the number of interested parties. Other than this condition, the rules do not provide any additional conditions such as where NME applies.

Thirdly, according to the principle of the US legislation, it's not possible to determine individual dumping margins for each exporter or producer in NMEs. The US view is that in case varying dumping margins are determined to every export entity, it may cause circumvention since in an NME all producers and exporters comprise a single entity under common government control. In *Korea – Certain Paper*[2], the Panel concluded that:

> "…Having said that, however, we do not consider that Article 6.10 provides the IA with unlimited discretion to do so… In our view, in order to properly treat multiple companies as a single exporter or producer in the context of its dumping determinations in an investigation, the IA has to determine that these companies are in a relationship close enough to support that treatment."

Therefore, the Panel holds that under the Article 6.10, if the authority decides not to grant individual dumping margin to companies who may be related, the burden shall be placed on the authority to closely evaluate if these companies are related enough to be deemed as a single entity but not on the presumption[3] or on the exporters or producers to prove their export activities are not intervened by the government.

Fourthly, even if under some situation, some exporters or producers are related companies in NMEs, the authorities still have the obligation to determine individual dumping margin for each. In *EC – Fasteners (China*[4]*)*, the Appellate Body concluded that:

> "[W]e do not find any provision in the covered agreements that would allow importing Members to depart from the obligation to determine individual dumping margins only in respect of imports from NMEs. We have explained above that Section 15 of China's Accession Protocol permits derogation in respect

1 Appellate Body Report, *EC – Fasteners (China)* Para. 320.
2 Panel Report, *Korea – Certain Paper,* Para.7.161
3 In EC – Fasteners (China), the Appellate Body upheld the Panel's finding that the presumption in Article 9(5) violated Article 6.10.
4 Appellate Body Report, *EC – Fasteners (China)* Para. 328.

of the domestic price or normal value aspect of price comparability, but does not address the export price aspect of price comparability. It, therefore, has no entailment in respect of the obligation in Article 6.10 of the Anti-Dumping Agreement to determine individual dumping margins. In our view, therefore, Section 15 of China's Accession Protocol does not provide a legal basis for flexibility in respect of export prices and for justifying an exception to the requirement to determine individual dumping margins in Article 6.10 of the Anti-Dumping Agreement."

Thus, there is no legal basis to deny a fully cooperative exporter's export price from NMEs. China's Accession Protocol only made compromise on the determination of domestic price and cost, which are two critical data for the determination of normal value, but these two data have never been used for the determination of export price. Therefore, if the company who passes the "separate rate" test, it shall be eligible to get individual rate based on its own export price and not be subject to the uniform rate impacted by other exporters.

Further, it has also been contended that the US measures, presuming state control, are inconsistent with the factual findings made by the US Department to justify CVD proceedings. The issue was last raised in a case before the US Court of International Trade [Slip opinion dated 11-10-2013 in Diamond saw blades][5]. Though US courts have been consistent in their opinion and have time and again justified presumption of state control[6], the issue it seems has been settled by the Appellate Body in the *EC – Fasteners (China)* and the non-individual treatment has been held inconsistent with WTO obligations. This precedent case assumes more importance in the issue raised above as USA had participated in the said dispute before the WTO as the interested third party, siding with the European Union on the issue raised above, and its arguments before the Appellate Body had been rejected. It hence seems most likely that the US has to change its practice in this regard.

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[5] The US Court of International Trade however declined to express its opinion on the issue.

[6] *Sigma Corp. v. United States,* 117 F.3d 1401, 1405–06 (Fed. Cir. 1997)

Publication and administration of trade regulations – Scope of GATT Article X after Bali
贸易规则的发布和管理-巴厘岛会议后对关税和贸易总协定第10条范围的解读

By **Ankur Sharma**

Transparency, uniformity and predictability in trade regulations enhance facilitation of international trade. Article X of the GATT 1994 deals with publication and administration of trade regulations. In particular, Article X:1 requires that rules, regulations, judicial decisions and administrative rulings be promptly published, Article X:2 requires that certain measures be officially published and Article X:3 establishes certain minimum standards for transparency and procedural fairness in the administration of such measures.[1] Article X:3(a) read with Article X:1 mandates requirements of uniformity, impartiality and reasonableness in the administration of laws, regulations, judicial decisions and administrative rulings of general application[2].

The recently concluded Trade Facilitation Agreement (hereinafter "TFA") at the Bali Ministerial Conference has further expanded the scope of Article X. This article analyses certain limitations

[1] Panel Report, *Thailand – Cigarettes (Philippines),* para. 7.868; Appellate Body Report, *US – Shrimp,* para. 183.

[2] A measure of general application is one that affects an unidentified number of economic operators; *see* Appellate Body Report, *US – Underwear,* p. 21.

of Article X and how those limitations have been addressed in the TFA.

Before Bali

Although Article X:1 requires member countries (hereinafter "members") to promptly publish trade-related laws, regulations, judicial decisions and administrative rulings, it does not provide for a timeframe that is to be maintained between publication and entry into force of such rules. Only if such measures effect an advance in a rate of duty or other charges on imports or impose a new or more burdensome requirement, restriction or prohibition on imports, they are required to be *officially* published before coming into force.[3]

Further, Article X does not identify the means that members could adopt to publicise their laws and regulations. Indeed, a WTO Panel had noted the importance of medium of publication and observed that trade related measures are to be published in such a manner so as to enable governments and traders to become acquainted with them, therefore they must be available through an appropriate medium rather than simply making them publicly available.[4]

After Bali

The TFA has tried to improve upon the above-mentioned aspects of Article X. Paragraph 1.1 of Article 1 of the TFA mentions the nature of information that members are to promptly publish in an easily accessible manner to enable governments and traders to become acquainted with them, such as:

1. Importation, exportation and transit procedures and required forms and documents;
2. Applied rates of duties, taxes of any kind, fees and other charges imposed on or in connection with importation, exportation or transit;
3. Rules for the classification or valuation of products for customs purposes; procedures relating to administration of tariff quotas;
4. Laws, regulations and administrative rulings of general application relating to rules of origin;
5. Import, export or transit restrictions or prohibitions; penalty provisions against breaches of import, export or transit formalities;
6. Appeal procedures;
7. Agreements with any country or countries relating to importation, exportation or transit.

When read with paragraph 1.2 of Article 2, members are required to make best efforts to make publicly available new or amended laws and regulations of general application related to movement, release and clearance of goods, including goods in transit before their entry into force.

Paragraph 2 of Article 1 of the TFA further requires members to make available through the internet,

- a description of its importation, exportation and transit procedures including appeal procedures;
- forms and documents required for importation, exportation or transit;
- contact information on enquiry points.

[3] Article X:2 of the GATT.

[4] Panel Report, *EC – IT Products*, para. 7.1084.

Members are also required to establish or maintain within their available resources, enquiry points to answer enquiries on matters covered under paragraph 1.1 of Article 1. Enquiry points may address enquiries within a reasonable period of time depending on complexity of the request.

An interesting development under Article 2 of the TFA is the opportunity that members may provide to traders and other interested parties to comment on proposed introduction or amendment of laws and regulations of general application[5] before entry into force. The language of this provision seems over-prescriptive and may be perceived as intrusive vis-a-vis the legislative processes of a member. Though the text of this provision allows a member to comply with this provision only to the extent permissible in its legal system, but such a requirement of consultation with other interested parties outside or within a member is not present in Article X of the GATT. Therefore, it appears to be an additional obligation incurred by members beyond the mandate of Article X. It could lead to lobbying and undue pressures on a member's legislative processes.

Other notable features regarding publication and administration of trade related information in the TFA include application requirements for an advance ruling, its review and applicability to the concerned member that issues such ruling and the applicant;[6] appeal and review procedures in customs matters;[7] notification in case of controls or inspections at the border in respect of foods, beverages and feedstuffs;[8] and information to carrier or importer on detention of goods declared for importation.[9]

Conclusion

It is likely that the TFA would improve movement and clearance of goods as a result of increased transparency and ease in availability of rules and regulations related to importation, exportation and transit. Accessibility of trade-related information through Internet will keep traders abreast of the changes and enable them to adapt accordingly. At some places, however, the language of the TFA is open-ended; an example is use of the term "interested parties" in Articles 1 and 2.

Certain provisions also seem to be best effort clauses, where members are only required to comply within their available resources; establishment of enquiry points and opportunities to interested parties to comment on proposed laws and amendments are such instances. The implication of this would be in raising a claim of violation in future cases, where it would be difficult to prove that members have not made best effort with regard to these obligations. Article X of the GATT read with the TFA would redefine WTO dispute settlement, as a violation of transparency and administration procedures would become a major claim, rather than being a subsidiary claim, as it was until now.[10]

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5 Laws and regulations of general application in this context relate to movement, release and clearance of goods, including goods in transit.
6 Article 3 of the TFA.
7 Article 4 of the TFA.
8 Article 5, paragraph 1 of the TFA.
9 Article 5, paragraph 2 of the TFA.
10 The approach of Panels so far is that if a measure is found in violation of substantive provisions such as Article I or Article III of the GATT, the Panels refrain from examining that measure under Article X.

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 通知号及日 期
4, 4 DiaminoStilbene 2, 2 Disulphonic Acid (DASDA) 4,4'-二氨基二苯乙烯-2,2'-二磺酸	India 印度	Definitive ADD imposed for 5 years 征收为期5年的最终反倾销税	9/2014-Cus. (ADD), dated 23-1-2014 2014年1月23日，9/2014-Cus. (ADD)
Aluminum extrusions 铝型材	USA 美国	ADD and CVD Orders on rectangular wire revoked 取消部分产品的反倾销和反补贴征税令	A-570-967, C-570-968, 79 FR 634, dated 6-1-2014 2014年1月6日，A-570-967, C-570-968, 79 FR 634
Bars and rods, hot-rolled, in irregularly wound coils 不规则盘卷的热轧条和杆	Indonesia 印度尼西亚	Safeguard Investigation initiated 发起保障措施调查	G/SG/N/6/IDN/24 (WTO Notification), dated 17-1-2014 2014年1月17日，G/SG/N/6/IDN/24（世贸组织公告）
Calcium hypochlorite 次氯酸钙	USA 美国	ADD and CVD – Preliminary affirmative determination of material injury 反倾销和反补贴-临时肯定性裁决存在实质损害	US ITC News Release 14-013, dated 31-1-2014 2014年1月31日，美国国际贸易委员会发布新闻14-013
Cast Aluminium Alloy Wheels 铝制车轮	India 印度	Provisional ADD recommended 发布临时反倾销裁决	14/7/2012-DGAD, dated 13-1-2014 2014年1月13日，14/7/2012-DGAD
Caustic Soda 氢氧化钠	India 印度	ADD extended until 25-12-2014 pending sunset review determination 反倾销税延期至2014年12月25日	3/2014-Cus. (ADD), dated 16-1-2014 2014年1月16日，3/2014-Cus. (ADD)
Ceramic tiles 瓷砖	EU 欧盟	ADD – Partial interim review initiated 反倾销-发起部分期中复审	EC Announcement C 28/11, dated 31-1-2014 2014年1月31日，欧盟公告C 28/11
Ceramic tableware 陶瓷餐具	Brazil 巴西	ADD affirmative final determination 发布肯定性反倾销终裁	Dated 17-1-2014 2014年1月17日
Compact Fluorescent Lamps 紧凑型节能灯	India 印度	ADD extended until 20-11-2014 pending sunset review determination 反倾销税延期至2014年11月20日	2/2014-Cus. (ADD), dated 3-1-2014 2014年1月3日，2/2014-Cus. (ADD)

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日 期
Copper pipe fittings 铜管件	Canada 加拿大	Re-investigation of normal values, export price and amount of subsidy, initiated 重新调查正常价值、出口 价格和补贴金额	Canada Border Services Agency Press Note dated 15-1-2014 2014年1月15日， 加拿大边境服务署发布公告
Crystalline silicon photovoltaic products 晶体硅光伏产品	USA 美国	ADD and CVD investigations initiated 发起反倾销和反补贴调查	US International Trade Administration Press Release dated 23-1-2014 2014年1月23日，美国国际贸易委员会发布新闻
Float glass (specified) 浮法玻璃	India 印度	ADD extended until 5-1-2015 pending sunset review determination 反倾销延期至2015年1月5日	7/2014-Cus. (ADD), dated 23-1-2014 2014年1月23日， 7/2014-Cus. (ADD)
Hand pallet trucks and their essential parts 手动叉车及其主要配件	EU 欧盟	ADD – New exporter review initiated 反倾销-发起新出口 商复审	Commission Regulation (EU) No. 32/2014, dated 14-1-2014 2014年1月14日， 欧盟委员会公告第32/2014
Indigo Blue Reduced 还原靛蓝染料	Brazil 巴 西	ADD final duty imposed 征收最终反倾销税	Dated 27-12-2013 2013年12月27日
Iron or steel fasteners 钢铁紧固件	EU 欧盟	ADD – Sunset review initiated 发起反倾销日 落复审调查	EC Notice 2014/C 27/11, dated 30-1-2014 2014年1月30日， 欧盟通知2014/C 27/11
Lightweight thermal paper 低克重热敏纸	USA 美国	ADD and CVD - US ITC to conduct full five-year sunset reviews 进行双反全面日 落复审调查	US ITC News Release 14-010, dated 23-1-2014 2014年1月23日，美国国际贸易委员会发布新闻14-010
Liquid Epoxy Resins 液态环氧树脂	Brazil 巴 西	ADD investigation terminated 终止反倾销调查	Dated 30-12-2013 2013年12月30日
Non-malleable cast iron pipe fittings 不可锻铸铁管附件	USA 美国	ADD – Affirmative determination in sunset review 做出反倾销日 落复审肯定性终裁	US ITC News Release 14-004, dated 16-1-2014 2014年1月16日，美国国际贸易委员会发布新闻14-004
Nylon yarn 尼龙线	Brazil 巴 西	ADD affirmative determination 做出反倾销肯定性终裁	Dated 27-12-2013 2013年12月27日

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日 期
Off-the-road tires 新充气工程机械轮胎	USA 美国	ADD and CVD – Affirmative determination in sunset review 做出 双反日 落复审肯定性终裁	US ITC News Release 14-001, dated 6-1-2014 2014年1月6日， 美国国际贸易委员会发布新闻14-001
Phosphoric Acid - Technical Grade and Food Grade (Including Industrial Grade) 磷酸-技术级和食品级（包括工业级）	India 印度	ADD continued for 5 years pursuant to sunset review 日 落复审建议继续征收5年的反倾销税	33/2013-Cus. (ADD), dated 31-12-2013 2013年12月31日， 33/2013-Cus. (ADD)
Polyethylene terephthalate film, sheet, and strip 聚酯薄膜	USA 美国	ADD - US ITC to conduct full five-year sunset reviews 反倾销-美国国际贸易委员会进行全面日 落复审	US ITC News Release 14-009, dated 23-1-2014 2014年1月23日， 美国国际贸易委员会发布新闻14-009
Polyvinyl Chloride (PVC) Suspension Grade Resin 悬浮级聚氯乙烯树脂	India 印度	Time for completion of ADD Sunset review extended upto 4-3-2014 完成日 落复审的期限延长至2014年3月4日	21/29/2011-DGAD, dated 24-1-2014 2014年1月24日， 21/29/2011-DGAD
Raw Flexible Magnets 未加工橡胶磁	USA 美国	ADD and CVD – Affirmative determination in sunset review 作出 双反日 落复审肯定性终裁	US ITC News Release, dated 6-1-2014 2014年1月6日， 美国国际贸易委员会发布新闻
Small diameter graphite electrodes 小直径石墨电极	USA 美国	Sunset review initiated 发起日 落复审	79 FR 110, dated 2-1-2014 2014年1月2日， 79 FR 110
Sodium Bicarbonate 碳酸氢钠	Australia 澳大利亚	ADD - Accelerated new-exporter review initiated 发起反倾销快速新出口 商复审	Anti-dumping Notice No. 2013/107, dated 8-1-2014 2014年1月8日， 反倾销通知第2013/107
Sodium Nitrate 硝酸钠	India 印度	Provisional ADD recommended 发布临时反倾销裁决	15/1009/2012-DGAD, dated 6-1-2014 2014年1月6日， 15/1009/2012-DGAD

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日 期
Sodium Nitrite 亚硝酸钠	USA 美国	ADD and CVD – Affirmative determination in sunset review 作出 双反日 落复审肯定性终裁	US ITC News Release 14-005, dated 16-1-2014 2014年1月16日， 美国国际贸易委员会发布新闻 14-005
Steel cable 钢绞线	Malaysia 马来西亚	ADD affirmative determination 做出 肯定性反倾销终裁	Dated 4-1-2014 2014年1月4日
Steel nails 钢钉	USA 美国	ADD to continue as result of affirmative determination in sunset review 日 落复审肯定性终裁继续征收反倾销	A-570-918, 79 FR 1830, dated 10-1-2014 2014年1月10日， A-570-918, 79 FR 1830
Steel wire garment hangers 钢丝衣架	USA 美国	ADD affirmative determination in sunset review 反倾销日 落复审肯定性终裁	A-570-918, 79 FR 1829, dated 10-1-2014 2014年1月10日， A-570-918, 79 FR 1829
Synthetic staple fibres, not carded, combed or otherwise, processed for spinning of polyester 聚酯短纤	Egypt 埃及	ADD investigation initiated 发起反倾销调查	Dated 29-1-2014 2014年1月29日
Tappets 十字万向节和球笼三叉	Argentina 阿根廷	ADD sunset review investigation initiated 发起反倾销日 落复审调查	Dated 8-1-2014 2014年1月8日
Test Liner 强韧箱纸板	Philippines 菲律宾	Safeguard duty continues for years 继续征收3年的 保障措施税	Dated 8-1-2014 2014年1月8日
Uncovered Innerspring Units 非封闭内置弹簧部件	USA 美国	Affirmative final determination of ADD circumvention by imports from Malaysia 对来自 马来西亚的进口 产品 做出 肯定性反规避终裁	A-570-928, 79 FR 3345, dated 21-1-2014 2014年1月21日， A-570-928, 79 FR 3345
Vulcanized Rubber Belt 硫化橡胶传送带	Argentina 阿根廷	ADD final duty imposed 征收最终反倾销税	Dated 27-12-2013 2013年12月27日
Yarn 纱线	Indonesia 印度尼西亚	Safeguard investigation initiated 发起保障措施调查	Dated 15-1-2014 2014年1月15日

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 通知号及日 期
Solar-grade polysilicon 太阳能级多晶硅	USA 美国	Affirmative CVD final determination 肯定性反补贴终裁	MOFCOM Announcement No. 4 of 2014, dated 20-1-2014 2014年1月20日， 商务部公告2014年第4号
Solar-grade polysilicon 太阳能级多晶硅	US and Korea RP 美国和韩国	Affirmative ADD final determination 肯定性反倾销终裁	MOFCOM Announcement No. 5 of 2014, dated 20-1-2014 2014年1月20日，商务部公告2014年第5号
Solar-grade polysilicon 太阳能级多晶硅	EU 欧盟	Preliminary ruling on anti-subsidy 反补贴初步裁定	MOFCOM Announcement No. 6 of 2014, dated 24-1-2014 2014年1月24日， 商务部公告2014年第6号
Solar-grade polysilicon 太阳能级多晶硅	EU 欧盟	Preliminary ruling on anti-dumping 反倾销初步裁定	MOFCOM Announcement No. 7 of 2014, dated 24-1-2014 2014年1月24日， 商务部公告2014年第7号
X-ray security inspection equipment X射线安全检查设备	EU 欧盟	Re-investigation for implementing WTO recommendations 为执行世贸组织报告进行再调查	MOFCOM Announcement No. 1 of 2014, dated 10-1-2014 2014年1月10日，商务部公告2014年第1号

WTO News 世贸组织新闻

遵守争端解决机构报告-美国关注中国的执行情况而墨西哥与美国就执行的一致性产生争议

是否遵守争端解决机构的报告成为世贸组织本月的工作重点。根据墨西哥诉美国在吞拿鱼争端案件中的执行情况的要求，世贸组织成立了执行专家组。而美国本身与中国就中国的电子支付服务和取向电工钢案的执行情况产生分歧。

2014年1月22日，争端解决机构对墨西哥诉美国对吞拿鱼和吞拿鱼产品的进口、营销和销售措施案成立了执行专家组。墨西哥认为美国修改了海豚安全标志要求，但是并没有遵守争端解决机构在DS381案件中所提出的建议。而美国于2013年7月修改了相关的法律，因此美国认为其已经完

全执行了专家组的建议。加拿大、中国、欧盟、危地马拉、日本、韩国、挪威和泰国在这些程序中保留作为第三方的权力。

同一天，美国对中国在电子支付服务的措施案（DS413）的遵守情况提出质疑。据报导，美国在争端解决委员会会议上要求中国迅速承担相应的义务，并且允许电子支付服务的国外服务商以公平公开的形式开展业务。另外，在另一案件中，即中国对来自美国的取向电工钢采取贸易救济措施案（DS414），美国已经于2014年1月13日就中国未能对出口自美国的取向电工钢的反倾销和反补贴税按照相关报告执行其相应义务的情况与中国进行磋商。

加拿大和挪威就海豹案专家组报告提出上诉

2014年1月24日，加拿大和挪威就欧盟禁止进口和销售海豹产品的相关措施案（DS400、DS401）专家组报告的部分认定提出上诉。加拿大对报告中《技术性贸易壁垒协定》第2.1条合法区别监管测试的认定提出复审。加拿大也认为专家组未能根据《技术性贸易壁垒》第2.1条和2.2条以及1994年关税和贸易总协定第20(a)条对事实作出客观的评估，违反了贸易争端解决机制第11条。

贸易救济措施正在上升

贸易政策审议机构总干事发布的年度报告中指出2013年是新的贸易限制措施和贸易救济措施迅猛增长的一年，与2012年的所采取的措施数量相比，2013年大约增长了33%。据报导，在355项的贸易救济行动中，绝大部分是反倾销措施和保障措施。

根据报道，能够响要求积极报告其新的贸易措施信息以达到监管贸易目的的国家非常少，并且这个数量从2012年的38个减少到2013年的35个。2014年1月31日报告指出需要制定合理的范围以改善与贸易有关措施的报告制度。目前，并没有要求成员国报告一些的境内措施如补贴、国家补贴和国内法规等。

12月被第9次部长级会议采纳的巴厘岛一揽子协议被认为是促进贸易、增长和发展的重大成就。据报导，成员国所报告的新的贸易便利措施数量从一年前的162下降到2013年的107项。报告最后也指出区域性贸易谈判和协议以及这些协议将如何成为多边贸易体系的演化重要的分支。

News Nuggets 新闻精华

绿色产品由红转黄

无论在自由贸易文件或者与技术转让有关的知识产权或者碳排放交易，环境已经成为贸易谈判是否给予国家政策空间的焦点。欧盟近期在世贸组织请求开展有关“绿色产品”贸易自由化的谈判。新闻稿指出世贸组织成员应当基于最惠国原理寻求形成有约束力的协定。但是目前尚无明确的绿色产品的界定表-以理解与其他类似产品相比哪些产品较少污染环境，并且哪些将帮助与污染进行斗争。

亚太经合组织已经总结了一份包括54种应当在2015年之前减少关税至5%或更低的产品列表。14个国家包括中国、欧盟、美国、日本和澳大利亚将寻求依靠亚太经合组织的列表以被世贸组织接纳。亚太经合组织列表包括蒸汽锅

炉、过滤或净化水设备、竹子组合地板、燃气轮机、废物焚烧炉等等。虽然印度被邀请作为观察员，但印度还不是亚太经合组织的成员。然而，印度鼓励绿色产品的出口。

形成约束性协定仍需要花费较长时间，因为自多哈谈判开始并且国家在便宜的进口与有竞争力的出口之间如何保持平衡一直是一个棘手的问题。目前，焦点仍旧在太阳能电池组件的贸易战、对液化天然气的出口限制以及水力压裂法有关的环境问题上。

磋商和总结相互交替

2014年两党国会贸易优先法寻求强化美国国会在条约制定或发布中的角色。被称为快车道促成机构的国会将在完成条约方面授予总统更大的自由。值得注意的是1974年早前的法律版本赋予美国总统进行有关关税和贸易总协定的谈判。(国会)立法权对于已经达成一致的文件所做的修改方面存在限制范围。目前的法律版本是为了增强公众磋商和获得信息以及加紧国会监督。法律把包括促进数字贸易、保护知识产权、争端解决、汇率操纵和明确国有企业的影响力等作为在21世纪中更为合适的目标。法律将保证总统有权在2018年6月1日之前签订协定并且该权力可以被延长3年。

Ratio Decidendi 判决理由

欧洲法院分为缺乏损害威胁，征收反倾销的公告被取消

欧洲普通法院判决国内产业市场份额在调查期间下降了几个百分点并不能充分说明国内产业处在易受损害的状态。上诉人对欧盟所做的认为欧盟产业没有受到损害但是受到损害威胁，因为欧盟国内产业处在易受损害的状态的判决提出质疑。法院经过认真分析认为许多证据表明国内产业正处于上升阶段，因此认为欧盟产业并不处于易受损害的状态。

一方面原产自中国的进口产品限制了国内产业扩张其产能的意图，另一方面，强调欧盟市场的扩张是“例外”情况，并且合理的需求紧缩存在紧迫的风险（基于调查期后的数据），法院也认为两者存在明显的矛盾。另外，法院认为需求紧缩一定不是归因于倾销进口产品。法院还指出欧盟没有根据欧盟基本法第3（9）条的内容考虑其他出口市场承受任何额外出口的可能性。在分析了调查期后的数据，法院认为这种做法违反了欧盟的宗旨，甚至欧盟国内市场存在需求紧缩的情况下，原产自中国的进口产品价格却明显增长。

最后法院废除了欧盟委员会2009年9月24日作出对原产自中国的以及由某一中国企业生产的某些无缝钢管征收最终反倾销税案的第926/2009号公告。法院进一步判决欧盟委员会应当承担其自身费用以及在本案中提起上诉的企业的费用。[2014年1月29日，湖北新冶钢有限公司诉欧盟委员会-案件号T-528/09]

采购商的身份-支持美国商务部在界定反倾销和反补贴措施的产品排除时的省略

美国国际贸易法院支持商务部的行为，即在美国国际贸易委员会对于“散热器成品”界定方面省略了“销售给电子制造商”，而这些是被排除在对铝型材实施反倾销和反补贴措施的范围之外的。起

初，美国国际贸易委员会为了明确地排除产品，界定了散热器成品为“焊接的散热器，销售给电子制造商，对产品的设计和生产进行组织以完全满足某些热力性能要求，并不需要单独地进行测试以确定是否满足这些要求”。在此法院认为没有证据支持商务部所实施的措施扩大了国际贸易委员会对产品的界定，并且如果不明确采购商，这些产品将被不适当地适用反倾销和反补贴税。

值得注意的是美国国际贸易委员会认为其并没有支持在产品定义中省略某些文字是至关重要的观点，并且国际贸易委员会的目的是使用这些文字从而区别实际最终用户而不是为了明确产品排除的。法院拒绝了国内产业不合法的扩大了产品排除的范围的主张。另外，应当明确测试以界定产品的主张被法院驳回，理由是该主张只是一种假设。[2014年1月23日，铝型材公平贸易委员会诉美国-美国国际贸易法院-判决简报14-6]