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Article 文章

Sampling in anti-dumping investigations – Understanding EC's practice
反倾销调查中的抽样 – 理解欧盟的实务操作

By **TD Satish**

Introduction

Anti-dumping investigations are company-specific and in a majority of such investigations, separate margin of dumping are determined for producers/exporters based on data provided by them. But often situation arises wherein large numbers of exporters participate and request for a separate duty margin. Since, anti-dumping investigations are time bound, this situation may as a necessary consequence result in significant administrative burden for the investigating authority. The concept of sampling is an effective way to overcome this problem, which has been in use even before it formed a part of the Anti-dumping Agreement (ADA) of the WTO. This article tries to compare the anti-dumping law in respect of sampling as existing in European Union and India and also examine the practice that has evolved in European Union with respect to sampling and whether such practice can be adopted under Indian system. Both EC's Basic Regulation No 1225/2009 dated 30-11-2009 (EC Law) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and For Determination of Injury) Rules, 1995 (Indian AD Rules) are based on general framework set under Article 6.10 of the ADA.

Major issues in Sampling

A. Basis for sampling:

Article 6.10 of the ADA provides that sampling can be resorted to where the number of exporters, producers, importers or type of products involved is so large so as to make determinations impracticable. Rule 17(3) of Indian AD Rules has adopted sampling provision provided under Article 6.10 of the ADA albeit with changes. Indian jurisprudence on sampling is next to nothing with India having resorted to sampling in only 2 anti-dumping investigations so far, wherein sampling was based on volume of exports into India.[1,2]

In contrast, the provision of sampling is broader in EU[3], which also covers complainants and transactions over and above exporters, producers and type of products. While often sampling is undertaken in view of large number of producers and exporters from exporting country taking part in the investigations, there have also been few instances in EC where sampling has been undertaken in view of large participation from importers[4], domestic industry producers[5] or different models of products imported into EC. In *Hairbrushes from China PR, Korea, Taiwan, Thailand, Hong Kong*[6], out of 8 companies participating from China PR, 5 companies were initially selected for sampling. However, since significant part of sampled companies did not cooperate, the sampling failed. To overcome this problem, EC adopted a sample which included export transactions of the four best-selling models sold by the two largest exporters from China PR. Apart from methods suggested, sampling may also be done based on largest representative volume of production, sales or exports, which can reasonably be investigated in time available. However, for doing such sampling, statistically valid information should be available at the time of selection of sample.

1 Poly Vinyl Chloride (PVC) Suspension Grade from Taiwan, China PR, Indonesia, Japan, Korea RP, Malaysia, Thailand and USA

2 Silk Fabrics 20-100 gms per meter from People's Republic of China

3 Article 17 of Council Regulation(EC) No 1225/2009

4 Integrated Electronic Compact Fluoroscent Lamps (CFL-i) from China [2002 OJ (C244)2]; Certain Handbags from China [1997 OJ (L33)11]

5 Unbleached (grey) cotton fabrics from China, Egypt, India, Pakistan and Turkey [1996 OJ (L295) 3]; Farmed Atlantic Salmon from Norway, Chile, Faroe Is. [2003 OJ (L133) 1]; Certain luggage and travel goods from China PR [1997 OJ (L174) 53]

6 2000 OJ (L111) 4

B. Issue of non-sampled respondents

In a sampling exercise, sampled exporters/producers get separate rate of duty based on information provided by them and non-sampled/producers are accorded weighted average dumping margin of sampled companies. Thus, a fundamental question arises whether such non-sampled exporters are entitled to separate rate of duties. Answer to the question lies in Article 6.10.2 of the ADA which provides that authorities shall determine an individual margin of dumping not initially selected for sampling, provided such an exporter/producer submits necessary information within the prescribed time limit. The last line of Article 6.10.2 further provides that voluntary responses shall not be discouraged, making it amply clear that where non-sampled companies wish to get a separate rate of duty, authorities shall accede to such requests. Indian AD Rules, on the other hand, specifically exclude the last line of Article 6.10.2 of the ADA.

The Indian provision on sampling is modeled on the EC anti-dumping law, which also contains similar provision [Article 17(3) of EC Law]. Article 17(3) of EC Law provides that requests for separate dumping margin for non-sampled exporters may be allowed where:-

a. the company has submitted all necessary information within the timeframe provided, and
b. individual examination would not be unduly burdensome.

There have been cases on both sides, with EC, in some cases, allowing few requests out of many applications received[7], while rejecting the demand for separate dumping margin for entire non-sampled companies altogether, in certain other cases.

It is to be noted that EC anti-dumping law is more comprehensive than its Indian counterpart. Article 17(4) of the EC law provides that the authority may select a new sample, where it reckons that there is a degree of non-cooperation from the parties selected in a sample. However, Indian Rules do not accommodate such a situation and as a result, leaving non-sampled exporters in Indian investigations in a more precarious situation. This is so because, by treating a sampled company as non-cooperating, the weighted average of remaining sampled companies may increase substantially, which may result in increase in dumping margin for non-sampled exporters.

C. The China factor

The problem gets further complicated when it comes to imports from China considering the fact that it is deemed to be a non-market economy country. In case of China, Chinese companies are entitled to claim market economy treatment (MET), acceptance of which would result in an individual normal value for the participating company. Even where such companies are not accorded market economy treatment, they can still claim individual treatment and claim a separate export price.

However, lack of cases dealing with MET status in case of sampling in India compels us to refer EC law and look for a solution. There have been cases involving China, wherein EC has considered responses of all the companies, whether part of sample or not, and has determined MET status for each of the companies individually. In *Certain Finished Polyester Filament Apparel Fabrics from China PR*[8], the EC analyzed each of the 49 MET applications for MET treatment, of which 25 exporting producers from China were granted MET. Similarly in *Certain Castings from China PR*[9], out of 21 exporting producers, on-the-spot examination was carried for 7 companies, of which only one satisfied the MET criteria. Of the remaining 14 un-verified exporters, desk analysis was conducted and 4 exporting producers

[7] Hollow Sections from Turkey [2003 OJ (L175) 3]
[8] 2005 OJ (L) 69/6 dated 16.03.2005
[9] 2005 OJ (L) 199/1 dated 29.07.2005

from China were accorded MET status. However, in *Footwear from China PR*, the EC ruffled quite a few feathers, when it diverged from its previous position of considering individual MET claims. In this case, the Commission as well as the lower court rejected the appellant's contention that basic regulation obligated the Commission to examine individual MET/IT claims from an entity from NME country. The lower court held that Commission was not required to examine the MET/IT claims of non-sampled entities, where it has been concluded that the calculation of individual dumping margins would be unduly burdensome and would prevent it from completing the investigation in good time. However, Court of Justice of the European Union (ECJ)[10] overruled the lower court on the point that Commission was not required to examine MET claims under Article 2(7)(b) and (c) of the basic regulation. The ECJ held that Article 2(7) and Article 17 differed in content and purpose and according to Article 2(7)(b), the Commission has to determine normal value in accordance with Article 2(1) to (6), if it was shown that market economy conditions prevail for that company and the same was not affected by the manner in which the dumping margin was to be calculated.

However, WTO Panel in *European Union – Anti-Dumping Measures on Certain Footwear from China PR*[11], has rejected the contention of China that the criteria used for the selection of the sample used in the determination of dumping do not guarantee that the sample selected will be representative for purposes of determining whether market economy conditions prevail in the industry producing the like product. The Panel held that anti-dumping duties may be imposed on non-sampled exporters, consistently with Articles 6.10 and 9.4 of the AD Agreement, as a consequence of a finding of dumping based on information provided by a limited number of examined producers. The Panel found no reason for non-imposition of anti-dumping duties, in a case involving an NME, on non-sampled exporters based on a finding of dumping involving an MET analysis based on information provided by a limited number of examined producers. The Panel further opined that China did not indicate as to why the inclusion of such companies would make the sample more representative with respect to whether market economy conditions prevail for the industry in question and that there was no question that the sample used by the Commission for the MET determination concerned the "industry producing the like product" in this case.

Conclusion

The EC has been consistently using sampling provisions where large numbers of community producers, exporters, producers or products were involved. On the other hand, in spite of being the largest user of anti-dumping remedies, India has so far conducted 2 investigations using sampling methodology despite the fact that there are investigations wherein large numbers of interested parties take part. It is evident that India has failed to apply sampling provisions as effectively as is done by the EC. The EC law makes it clear that responses of non-sampled companies are examined and not rejected outright, which is not the case in India. Furthermore, the EC law provides an option to the authority to select another sample, if previous sample is not considered representative enough for want of cooperation or some other reason. Indian law, however, does not give such an option to authority, which places exporters/producers at a more precarious situation. Amendment in the existing Indian AD rules is one of the solutions that may be contemplated upon. However, despite the differences, there exist many similarities in EC law and practice, which can be adopted by India, while conducting sampling exercise.

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[10] Brosmann Footwear (HK) Ltd vs. Council of the European Union (ECJ)(Order in case C-249/10 P dated 2-Feb-12

[11] WT/DS405/R

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
Canned mushrooms 罐装伞菇	Mexico 墨西哥	Affirmative final finding in sunset review 日 落复审做出肯定性终裁	Mexico Ministry of Economy, dated 2-11-2012 2012年11月2日，墨西哥经济部国际贸易惯例总局
Glass vacuum flask 玻璃保温瓶	Argentina 阿根廷	Initiated ADD review 发起反倾销复审调查	Argentina Ministry of Economy and Public Finance, dated 26-10-2012 2012年10月26日，阿根廷经济和公共财政部国务秘书处
Aluminium foil 铝箔	EU 欧盟	Initiation of ADD circumvention investigation 发起反规避调查	Commission Regulation (EU) No. 973/2012, dated 22-10-2012 2012年10月22日，欧盟委员会规定第973/2012
Cable Ties 尼龙扎带	India 印度	ADD recommended in mid-term review at enhanced rate and in a different form 中期复审建议以不同形式征收反倾销税并提高税率	15/10/2011-DGAD, dated 3-10-2012 2012年10月3日，第15/10/2011-DGAD
Glasses 眼镜	Argentina 阿根廷	Final ADD imposed 最终征收反倾销税	Argentina Ministry of Economy and Public Finance, dated 10-10-2012 2012年10月10日，阿根廷经济和公共财政部国务秘书处
Carbon and alloy steel pipe piles 碳及合金钢管桩	Canada 加拿大	Final determination of dumping and subsidizing 最终确定存在倾销及补贴	Dumping case number: AD/1393 and Subsidy case number: CV/130, decision dated 31-10-2012 2012年10月31日，倾销案件号AD/1393，补贴案件号CV/130

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日 期
Carbon Black for rubber application 橡胶用碳黑	India 印度	Safeguard duty imposed till 31-12-2013 保障措施税征收到2013年12月31日	4/2012-Cus. (SG), dated 5-10-2012 2012年10月5日，第4/2012-Cus. (SG)
Choline Chloride for animal feed 动物饲料用氯化胆碱	India 印度	ADD recommended 建议反倾销税	14/19/2011-DGAD, dated 4-10-2012 2012年10月4日，第14/19/2011-DGAD
Compact Disk Recordable (CDR) 可写光盘	India 印度	ADD recommended to be withdrawn in the sunset review 日落复审中建议取消反倾销税	15/4/2011-DGAD, dated 3-10-2012 2012年10月3日，第15/4/2011-DGAD
Digital Offset Printing Plates 数字平板印刷版	India 印度	ADD recommended with separate reference prices for three categories of digital plates 对三种规格的数字印刷版建议单独的参考价格	14/7/2011-DGAD, dated 3-10-2012 2012年10月3日，第14/7/2011-DGAD
Hardwood and decorative plywood 硬木和装饰胶合板	USA 美国	Initiated ADD and Subsidiary Investigation 发起反倾销反补贴调查	News Release, dated 18-10-2012 2012年10月18日，发布新闻
Honey 蜂蜜	USA 美国	USITC to expedite sunset review 美国国际贸易委员会加快日落复审	News Release 12-104, dated 5-10-2012 2012年10月5日，发布新闻12-104
Iron or steel fasteners 铁或钢紧固件	EU 欧盟	ADD revised in re-assessment as per DSB report 根据争端解决机构的报告重新评估反倾销税	Council Implementing Regulation (EU) No. 924/2012, dated 4-10-2012 2012年10月4日，欧盟委员会执行规定第924/2012

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日 期
Ironing boards 烫衣板	EU 欧盟	Definitive ADD re-imposed 再次征收最终反倾销税	Council Implementing Regulation (EU) No. 987/2012, dated 22-10-2012 2012年10月22日，欧盟委员会执行规定第987/2012
Plain Gypsum Plaster Board 石膏灰泥平板	India 印度	Time limit extended for completion of original investigation till 20-1-2013 原始调查完成期限被延期到2013年1月29日	14/45/2010-DGAD, dated 4-10-2012 2012年10月4日，第14/45/2010-DGAD
Peroxosulphates 过硫酸盐	EU 欧盟	Initiation of expiry review 发起期终复审	EU 2012/C 305/06, dated 10-10-2012 2012年10月10日，欧盟第2012/C 305/06
PVC Suspension Grade Resin 悬浮级PVC树脂	India 印度	Sunset review initiated 发起日 落复审	21/29/2011-DGAD, dated 5-10-2012 2012年10月5日，第21/29/2011-DGAD
Red Phosphorous 红磷	India 印度	ADD investigation initiated 发起反倾销调查	14/12/2012-DGAD, dated 28-9-2012 2012年9月28日，第14/12/2012-DGAD
Seamless casing 无缝套管	Canada 加拿大	Sunset review determination of resumption of dumping and subsidizing 日 落复审确认恢复倾销和补贴	Expiry Review No.: RR-2012-002, decision dated 25-10-2012 2012年10月25日，期终复审第RR-2012-002
Silicomanganese 硅锰合金	USA 美国	Affirmative sunset review 日 落复审肯定性裁定	News Release 12-106, dated 11-10-2012 2012年10月11日，发布新闻12-106
Crystalline Silicon Photovoltaic Cells 太阳能电池	USA 美国	Affirmative final determination by USDOC 美国商务部做出肯定性终裁	News Release, dated 10-10-2012 2012年10月10日，发布新闻

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日 期
Sodium Hydrosulphite 亚硫酸氢纳	India 印度	ADD rate recommended to be enhanced in the second sunset review 第二次日 落复审中 建议提高 反倾销税税率	15/34/2010-DGAD, dated 3-10-2012 2012年10月3日， 第15/34/2010-DGAD
Steel Concrete Reinforcing Bars 钢筋混凝土配筋	USA 美国	USITC to conduct sunset review 国际贸易委员会发起日 落复审	News Release 12-105, dated 9-10-2012 2012年10月9日， 发布新闻12-105
Tyres - New/unused pneumatic non- radial bias tyres, tubes and flaps for buses and lorries 客车和卡车用轮胎-新的/未使用充气非子午斜交胎，内胎和气垫	India 印度	ADD continued in the first sunset review at reduced rate 第一次日 落复审建议降 低税率 继续征收反倾销税	47/2012-Customs (ADD), dated 8-10-2012 2012年10月8日， 第47/2012-Customs (ADD)

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
Polyurethane 氨纶	Japan/ Singapore/ South Korea / Taiwan/ USA 日本／新加坡／韩国／台湾／美国	ADD continued in the sunset review 继续征收反倾销税	MOFCOM announcement No.62/2012, dated 12-10-2012 2012年10月12日， 商务部公告第62号
Automobile 小轿车和越野车	Nissan North America Inc. 日产（北美）汽车有限公司	Initiated new shipper review 发起新出口商复审	MOFCOM announcement No.68/2012, dated 18-10-2012 2012年10月18日， 商务部公告第68号
IMP / GMP / I+G 核苷酸类食品添加剂	Indonesia / Thailand 印度尼西亚 / 泰国	Initiated mid-term review 发起期中 复审	MOFCOM announcement No.65/2012, dated 29-10-2012 2012年10月29日， 商务部公告第65号
Solar-grade Polysilicon 太阳能多晶硅	EU 欧盟	Initiation of anti-dumping and anti-subsidy investigation 发起反倾销和反补贴调查	MOFCOM announcement No. 70 and 71/2012, dated 1-11-2012 2012年11月1日， 商务部公告第70和71号

Findings digest 案件分析

对来自中国和日本的“数码印刷版”反倾销调查做出的最终裁决

根据印度反倾销法第17条的规定，印度中央政府行使其权利，对来自中国和日本的数码印刷版的反倾销调查完成期限延长了两次后，2012年10月3日印度发布了本案的最终裁定。所涉及的调查包括在印刷行业用于将数据以图片（光点或文字）形式转移到纸张或不被吸收的基板上如锡板或聚乙烯胶片等材质上的“数码印刷版”。调查发起于2011年6月13日，并于2012年3月16日发布了临时裁决。

在此次调查中，某些印刷版如“计算机直接制版”('CtCP')被认为应当排除在调查范围之外，但是调查机关认为不同于模拟印版，即图片被第一次从计算机中转移到绘图胶片，随后被转移到模拟印版的过程，计算机直接制版可以将图片直接从计算机转移到印刷版上，因此，计算机直接制版事实上是数字印刷版。然而，调查机关也认为“VP版”和“VPSA版”不是经激光预感光，与计算机直接制版不同，因此被排除在调查产品范围外。

尽管涉案产品范围没有被修改，“数码印刷版”被分为了三个不同的类别，即热敏、紫激光和计算机直接制版。倾销幅度和损害幅度也根据这三个分类被分别确定。调查机关也建议对这三类产品分别实施单独的反倾销税率。[1]

在授予中国出口商市场经济地位的问题上，调查机关认为作为生产数码印刷版的主要原材料铝材主要是由出口商在国内采购的，并且中国的“铝行业”受到政府不同方式的促进，因此，出口商不能被认为是在市场经济条件下运作的。

国内产业认为根据合同的协议随产品免费提供的化学品应当在确定“无损害价格”时包括在成本之中，该主张被调查机关接受。然而，由于国内产业没有证实所供应的这些化学品的数量和价格，因此在计算国内产业无损害价格时，它们的成本无法被包含在内。

WTO News 世贸组织新闻

墨西哥寻求与重挫就纺织类产品进行磋商

然而，值得注意的是在欧盟-床单案以及美国-软木案的上诉报告中，上诉机构认为在一个调查中为单独产品确定单独的税率被认为是违反了世贸组织的规定。

2012年10月15日，墨西哥就其认为中国支持服装纺织品生产商和出口商的做法请求与中国进行磋商。墨西哥认为，中国保留了广泛的各种措施支持服装和纺织品行业中的生产商和出口商以及棉花和化纤行业中的供应商。这些措施包括对某些企业免税；减少进口关税；对由某些企业购买设备减少增值税以及那些地方性的政策措施，如根据使用国产商品的情况以及视出口表现而定的税收减免；国有银行对某些行业提供的低成本贷款；土地使用权优惠价格；电费折扣；对生产、销售、运输棉花的农民以及中国的石化行业提供支持；和来自政府部门的现金支付。这些措施被认为是违反了中国在补贴和反补贴协议、1994关税和贸易总协定、农业协定以及中国入世议定书中应承担的义务。

墨西哥认为这些措施包括了禁止性和可诉补贴，正对墨西哥向美国的出口造成或威胁造成严重损害，并且通过显著的削价，损失了其在美国的销售。

美国诉中国取向电工钢反倾销反补贴案 – 世贸组织上诉机构支持专家组报告

在中国的上诉案（DS414），即反对专家组在关于中国对来自美国的某些取向电工钢征收反倾销和反补贴税案中的裁决，上诉机构已经发布了其报告。在关于价格影响以及相关潜在事实的披露方面，上诉机构认为中国错误地认为调查机关不需要考虑进口商品和价格压低或价格抑制之间存在的任何联系。上诉机构也支持专家组的裁决，认为中国的做法违反了世贸组织反倾销协定，在一定程度上，中国未能在其临时裁决

[1] 然而，值得注意的是在欧盟-床单案以及美国-软木案的上诉报告中，上诉机构认为在一个调查中为单独产品确定单独的税率被认为是违反了世贸组织的规定。

中以及最终的损害披露文件中披露其做出价格影响裁决依据的涉案进口商品“低价”方面的所有“必要事实”。

中国对美国汽车双反案以及美国波音公司补贴执行案成立专家组

2012年10月23日，争端解决机构批准成立专家组，研究美国诉中国对美国的汽车实施反倾销和反补贴的争议（DS 440）。美国认为中国在调查中确定的倾销和补贴涉及到程序和实质上的缺陷。中国试图通过与美国的双边谈判解决争议，然而在成立了专家组之后，这些努力都是徒劳的。印度、欧盟、日本、土耳其、行、沙特阿拉伯、哥伦比亚以及阿曼已经在争议中要求行使第三方的权利。

在欧盟提出的波音公司补贴案中，尽管美国于2012年9月通知争端解决机构其已经根据争端解决机构的建议取消了向其大型民用航空器行业所提供的补贴。执行专家组成立以评估美国是否事实上遵守了争端解决机构的建议。争端解决机构也参考了欧盟提出的要求对美国采取120亿美元的反制措施的仲裁请求。

印度被催促逐步停止出口补贴

印度被要求对其纺织和服装行业逐步停止出口补贴。在补贴和反补贴措施委员会的会议上，美国和土耳其催促印度停止补贴，因为这两个行业被世贸组织自2007年视为存在出口竞争。然而印度认为他需要明确他的义务，并且可以展开任何双边讨论。与此同时，委员会也批准对19个发展中国家出口补贴项目过渡时期的最后延期。对于这些国家取消出口补贴的最后期限为2013年底，并且最终过渡期为两年。

News Nuggets 新闻精华

又一项印度原产的产品被列入美国人口贩运受害者保护法

美国劳工部已经将原产自印度的纱线列入其人口贩运受害者保护法中。根据2012年9月26日发布的报告，更多的产品被列入了原来的清单中。当美国劳工部有“理由相信”这些产品在生产过程中使用了童工或强迫劳工，劳工部将发布该产品清单。人口贩运受害者保护法（TVPRAct）清单原本包括来自印度的20种产品，如服装、地毯、宝石和皮制品。然而清单旨在引起重视，而不是对这些产品的进口实施限制。可以注意到在最近的研究中，美国劳工部已经根据印度利益相关方提交的陈述，复审是否有必要排除原产自印度的两种产品，即服装和装饰的纺织品。然而，美国劳工部并没有同意将这两项排除在外。

保护和保护主义之间的选择

在佛罗里达，番茄被视为季节性的食品涌现。由于美国和墨西哥之间贸易争端的不断升温，美国试图终止墨西哥番茄的暂停协议。美国商务部发布了临时通知，试图于2012年9月终止协议并且在2013年中给出最终确定。墨西哥反对这一做法，因为这将给与佛罗里达的番茄种植者提交新的反倾销申请。1996年起生效的暂停协议是为了回应根据北美自由贸易协定后减少美国关税美国提出反倾销调查后确定的。该暂停协议涉及了签约墨西哥出口商根据每年12月重现确定的参考价格销售或高于参考价格销售番茄的承诺。然而，在2012年9月27日的沟通中，美国商务部认为“几乎所有”应当解释为生产不少于85%的同类国内产品生产商支持终止协议。去年两国力争解决允许墨西哥卡车在美国运营的争议。根据北美自由贸易协定强调的义务，墨西哥已经在过去十年间对美国的许多产品征收报复性关税。值得关注该番茄争议是否将激起持久的贸易战。

投资争议案的回应

目前的国际投资争端解决中心的判决中，行为的比例原则被提出。法庭认为尽管外国投资者-一家石油公司被指控违反了其与厄瓜多尔

签订协议中的具体规定，但是与厄瓜多尔宣布终止合同的命令相比，显然不成比例，因此东道国有义务支付损失。按照厄瓜多尔宪法所适用比例原则概念，法院认为厄瓜多尔行使期满或终止的行为违反了厄瓜多尔法律，违反了国际惯例法以及违反了条约。

外国投资者如果想要转让/分配其在油田中的被授予的利益需要从厄瓜多尔政府获得批准或者应当终止合同。外国投资者将其40%的股份转让给另一家公司。然而，法院认为在执行合同条款时未能发现其他"令人不快或不切实际的"的选择对于投资者是不公平的，并且取消合同等同于征收。法院还判定将油田中100%的利益补偿说明将补偿减少到60%将导致厄瓜多尔不当得利。对此持异议的观点理由是一旦发现转让，国际投资争端解决中心在计算赔偿时没有而任何管辖权以确定该转让是无效的。大部分观点认为根据纽约和厄瓜多尔的法律，只有法院可以决定绝对无效并且在某些情况下他们并不希望如此做。

Ratio Decidendi 判决理由

同类产品的确定以及有实质性证据支持的实质损害

美国国际贸易法院肯定了国际贸易委员会对来自中国的制成散热器产品做出的否定性实质损害。国内产业（原告）认为美国国际贸易委员会错误地在"铝挤出产品"中排除了同类产品即制成散热器，并且委员会在分析时使用了六项因素以确定同类产品是不确定的。法院认为六项因素即物理特征和用途、共同的生产设备以及生产线员工、可替换性、客户的感觉、销售渠道和价格在确定同类产品时被适当地考虑了，因此制成散热器在确定实质损害分析时构成一个单独的国内产业。另外进口的影响已经根据§ 1677(7)(C)(ii)考虑到了。法院认为原告提出的所搜集的数据存在不一致的主张没有说服力，因为制成散热器不一致的定义应在问卷中被使用。根据19U.S.C.§1516a(b)(1)(B)(i)，在有实质性证据支持及符合相关法律规定的情况下，美国国际贸易法院必须支持调查机关的裁决，因此法院拒绝发还案件重审。[2012年10月11日美国国际贸易法院，铝型材公平贸易委员会诉美国政府案]

反补贴税中"不利的可获得事实"税率 – 政府必须证实税率

美国国际贸易法院要求商务部在从印度进口某些热轧碳钢平板产品的案件中适当地证实由商务部计算的"不利的可获得事实"税率。Essar钢铁有限公司，案件中的原告认为商务部对公司在恰蒂斯加尔邦政府产业政策中的参与程度没有证实所指控的税率，而这一政策被商务部认为是一项补贴，因此对此征收反补贴税。在要求解释如何证实自动外汇分配制度税率中，由于使用了次要信息，法院认为他们准备复审支持商务部自动外汇分配制度反补贴税率的行政记录中的事实和情形是否合理准确地估计了应诉人在该政策中的实际利益以及一些为了制止不遵守行为而增加的利益，以及说明证实的可行性。然而法院拒绝了上诉人的主张，即在过去的复审中商务部从未发现他们利用了争议中的政策，税率是惩罚性的。[2012年10月15日，美国国际贸易法院，Essar钢铁有限公司 诉美国政府]