

国际贸易 法律月刊

内容

文章

印度保障措施法的程序性难题 2

案件聚焦

争端解决专家组裁决美国的法律条文
违反世贸组织的补贴与反补贴协定 7

贸易救济新闻

对中国采取的贸易救济行动 8

中国采取的贸易救济行动 13

世贸组织新闻 14

新闻精华 14

判决理由 15

August
2014

Article 文章

Procedural conundrum of Indian safeguard law

印度保障措施法的程序性难题

By **T.D. Satish**

Even though the mechanism set up by India in applying the provisions of Article XIX of GATT and Agreement on Safeguards (AOS) in India through its domestic safeguard provisions¹ satisfy the basic requirements required for its implementation, however, when compared to other countries, there remain a lot of procedural loop-holes still to be filled in to make the safeguard investigation process more transparent and clear. The present write-up compares and examines four problem areas concerning procedures currently adopted by India in conducting safeguard investigations vis-à-vis other Members of WTO, namely, European Union and United States, which may be suitably adopted by India to cover the existing loopholes.

Initiation of safeguard investigation

Though there is duty casts on Indian Safeguard Authority to prima-facie satisfy itself with contents of application filed by the Applicant/s.², but there is no provision for a time-period within which such an application is to be considered. The issue merits consideration since the Applicant/s may already be severely impacted at the time of making the application and hence anticipates early initiation of proceedings.

However, with no time limit to consider the application, Applicant/s have no option but to constantly keep in touch or even lobby with the Authority to get the investigation initiated. Such a practice puts a big question mark on the transparency of the investigation.

Compared to the practice of 'open-ended' time frame in India, safeguard provisions in EU and USA provide definite time period to Authorities to consider the request for initiation of safeguard investigation. Article 6.1 of the EU Regulation³ requires the Commission to initiate the investigation within one month of receipt of information from a Member state in EU and publish the notice in official journal apart from holding consultations with the concerned Member state making application on behalf of its domestic industry within an Advisory Committee to consider the request⁴.

On the other hand, US Regulations⁵ are quite different from EU regulations for there is no time limit provided, per-se, for initiating the investigation. Having said that, the entire safeguard investigation in US revolves around the date of filing of Application by representative domestic industry as the time line for making determinations hinge on this the date of filing of petition⁶.

¹ Section 8B of Customs Tariff Act, 1975 and Indian Safeguard Rules

² Rule 5(3) of Safeguard Rules

³ Council Regulation (EC) No 260/2014 dated 26th February 2009

⁴ Article 4.3 of Council Regulation 260/2009

⁵ Section 201 to 204 of Trade Act, 1974

⁶ Section 202(b)(2A) of the Trade Act

India neither has a provision similar to EU to fix a time limit for making a decision to initiate the proceedings or like that of US, where date of filing of petition assumes criticality. To cause undue delay in initiating an investigation, as is more likely in cases, with no set time limits, would be like keeping the patient waiting for treatment, while the epidemic continues to kill it.

Provisional safeguard measure determination

One of the most noticeable part of AoS is the regulation relating to provisional safeguard measures. Article 6 of AoS, inter-alia, allows Member countries to impose provisional safeguard measures in critical circumstances where delay would cause damage, which would be difficult to repair. The terms ‘critical circumstances’ and ‘delay would cause damage which it would be difficult to repair’ indicate urgency in the proceedings. But how early remains early is a difficult question, which need to be decided on facts and circumstances of each case. Further, there is also no time limit prescribed for taking a decision on imposing provisional safeguard measure.

Much like AoS, Indian Safeguard Rules also does not prescribe any minimum time to make a preliminary determination nor a maximum time period to take a decision on provisional safeguard measure. Only deviation in Indian Safeguard Rules from AoS

with respect to preliminary determination is that the Safeguard Authority is required to proceed expeditiously.

Result: Uncertainty in the market whether there will be a provisional safeguard measure to restrict fair imports or not, making the position of exporters from exporting nations, importers as well as end-users difficult to take short term as well as long term business decisions. This is apparent from past investigations conducted by India, wherein preliminary determinations have been made as early as fourth day⁷ from the date of initiation of investigation to over 3 months⁸ as well.

EU’s regulations also do not lend much light on this aspect. However, unlike India, EU has used safeguard measure as trade remedy measure very rarely and provisional measures even more sparingly since conducting the first investigation in 1982. From 1982 till 2005, EU has conducted 15 safeguard investigations – general as well as China specific, of which provisional determination was made in only 4 investigations⁹. Further, since 2005, EU has so far not conducted any safeguard investigation. Thus, provisional safeguard measure is an uncommon affair in EU, unlike India.

On the other hand, US divide application of provisional relief in 2 parts: one for perishable products and citrus fruits and other for other products. Regulations require adherence

⁷ Coated Paper and Paper Board (Initiation: 20th April 2009)

⁸ Certain Fatty Alcohols (Initiation 13th February 2014); Carbon Black from China PR (Initiation: 2nd December 2011)

⁹ Farmed Salmon (2004), Certain prepared or preserved citrus fruits (2003), Certain Steel Products(2002) and Urea (1986)

to following time-line for preliminary determinations, which may be summed up as follows:

Perishable products:

- Determination whether product is a perishable product and indicates serious injury or threat thereof due to increased imports: Within 21 days from date of request¹⁰.
- ❖ If affirmative: Trade Representative to request the Commission to make a preliminary determination: Within 21 days from the date of filing of request¹¹.
- ❖ The President to proclaim such provisional relief: Within 7 days from the date of receiving of report from the Commission¹².

Other products:

- Where critical circumstances alleged, determination by Commission of increased imports causing or threatening to cause serious injury and delay in taking action would cause damage that would be difficult to repair: Within 60 days from the date of filing petition¹³.
- ❖ If affirmative: the President, within 30 days from receiving of the report, shall proclaim such a provisional relief¹⁴.

Thus, there is a clear-cut time limit provided

under US law to keep the investigation time-bound and transparent.

Comparison with US and EU provisions indicate the necessity of a set deadline for taking provisional safeguard measures or in its absence, desist from taking any such action unless there are compelling circumstances – a practice adopted by EU. If a detailed time period for making preliminary determination is prescribed in the Indian law, like that made by US, it will increase transparency and bring certainty in international trade.

Time limit for taking decision on duty imposition

The task of putting a time limit for completion of safeguard investigation has been left with Member countries to decide for them as AoS does not provide any such time limit. However, being an emergency measure, it is expected that the Member countries would fix a definite time period for completion of investigation, including a buffer time limit to meet any exigencies.

India, in its wisdom, considered 8 months as sufficient time period for completion of investigation from the date of initiation of investigation.¹⁵ This is irrespective of the fact whether any preliminary determination, examining the existence of critical circumstances, have been made or not. On the other hand, US has kept separate deadlines – (a) case where no allegation of existence of critical

¹⁰ Section 202(d)(1)(A) of Trade Act 1974

¹¹ Section 202(d)(1)(C)

¹² Section 202(d)(1)(G)

¹³ Section 202(d)(2)(A)

¹⁴ Section 202(d)(2)(D)

¹⁵ Rule 11 of Indian Safeguard Rules

circumstances is made and (b) where existence of critical circumstances has been alleged in the petition. The logic behind keeping two separate deadlines is to provide for additional time to Commission to consider the existence of additional facts pertaining to existence of critical circumstances. In addition to keeping a deadline for making a determination, there is a time-limit prescribed for the President to take a decision on imposition of safeguard measures within 60 days (50 days if provisional relief proclaimed) from making of the affirmative report¹⁶. EU, on its part, provides for 9 months for conclusion of investigation, which is inclusive of time-period to examine critical circumstances.

However, EU Regulations do provide for an additional period of 2 months, in exceptional circumstances¹⁷, which is required to be intimated vide public notice of extension in its Official Journal setting forth the reasons for such extension. India, on its part also, provides for extension of time for completion of investigation. However, the provision is couched in such a manner that the empowered authority has a free hand to extend the investigation for as much time as it desires¹⁸. Such an unrestricted power nullifies the real intent behind safeguard investigations, which require speedier and time bound determinations. As a result, there is no ultimate time limit for completion of

safeguard investigations in India. This results in uncertainty in proceedings. In *Hot Rolled Flat Products of Stainless Steel*, the Indian Authority could not finish its investigation within stipulated 8 months ending on 25th February 2013. It was only on subsequent day after expiry of stipulated 8 months that time was again extended by 3 months until 25th May 2013 to complete the investigation. Further, the time limit of 8 months under Safeguards Rules is only for making a determination and does not include time taken for imposition of safeguard measures. Thus, once the Safeguard Authority in India recommends imposition of safeguard measures, there is no prescribed time period within which the Ministry of Finance or Standing Board of Safeguards has to consider the recommendation of Safeguard Authority.

This uncertainty in addition to the fact that there exists no mechanism to find out whether safeguard duty will ultimately be imposed or not, places everyone concerned with the investigation in a vulnerable position as on the one side, domestic industry is deprived of the safeguard duty to protect itself while on the other hand, exporters become wary of exporting their goods into India, which may at any time be subjected to safeguard duties. Thus, both sides remain on an uncertain wicket as they are not able to strategize their future business. Resultantly, there needs to

¹⁶ Section 203(a)(4)(A) of Trade Act of 1974

¹⁷ Article 7.3 of Council Regulation

¹⁸ Rule 11(1) of Indian Safeguard Rules

be a certain time limit for interested parties to know, whether safeguard duty will be imposed or not.

Oral Hearings

Unlike EU and US, Indian Safeguard provisions with respect to oral hearings is not explicit and does not clearly spell out the procedure for requesting a hearing or rights of parties during a hearing. Rule 6(6) of the Indian Safeguard Rules requires the Safeguard Authority to provide an opportunity to interested party to present information orally. But the said provision also states that such oral submission will only be considered, when subsequently provided in writing. There is no provision under Indian law as to when oral hearing will be held or at whose behest oral hearing may be held. EU in contrast provides that Commission may hear interested parties where they have made a written application within the period prescribed in the notice of initiation. There is also a requirement to show special reasons, why an interested parties requires an oral hearing¹⁹. However, India cannot have such a provision since India follows natural justice principles in quasi-judicial proceedings as well. Thus, Authority has to give a hearing, irrespective of whether it has been requested by interested parties or not. However, when such hearing will be granted, whether before or after preliminary determination, is not clear. US, in this

regard, provides that Commission within a reasonable period after commencement of proceeding, hold public hearings, wherein interested parties and consumers shall be afforded an opportunity to be present, present evidence, comment on adjustment plan, if any, respond to presentation of other parties and otherwise be heard. India on the other hand, provides an opportunity of rejoinder to only domestic industry, while it allows one time opportunity to present their views orally, without giving them an opportunity to comment on submission of domestic industry.

Conclusion

While safeguard mechanism remains an effective mechanism for domestic industry, which is structurally unable to meet import competition, however, in the interest of justice, there is a need to give weight to certainty of proceedings and keep interested parties aware, whether there will be safeguard duty imposition or not. After all it is their legitimate business interest. Indian safeguard law has its own set of problems with many procedures still not codified properly. A look at other jurisdictions can help overcome these problems to a large extent and provide certainty to the proceedings.

[The author is a Senior Associate, International Trade Team, Lakshmikumaran & Sridharan, New Delhi]

¹⁹ Article 6.5 of Council Regulation No 260/2009

IN FOCUS 案件聚焦

争端解决专家组裁决美国的法律条文违反世贸组织的补贴与反补贴协定

2014年7月14日，世贸组织争端解决机构组成的专家组发布了美国-对来自中国的某些热轧碳钢板实施反补贴措施案的专家组报告。该争端是由印度于2012年提交的，并且该争端涉及美国有关反补贴调查的法律条文和对生产自并出口自印度的热轧碳钢产品实施反补贴措施是否符合世贸组织的相关规定。印度在专家组程序中提出了四项“本身”以及许多“应用”的诉讼请求。“本身”诉求是有关印度抗议美国法律的某些条文本身违反了其世贸组织的义务。“应用”诉求是有关在案件中对事实部分的法律适用。

专家组认为美国法律的条文，即关于损害调查时的数量累计“本身”违反了世贸组织补贴与反补贴协定的相关规定。另外，专家组也支持印度提出的美国调查机关对于某些补贴项目发起调查缺乏事实依据，并且确定了不正确的补贴、不正确的利益、不正确地“适用”于损害认定以及无根据地对于不合作出口商适用可获得的不利事实。本案中，代表印度政府的是Lakshmikumaran & Sridharan律师事务所的国际贸易和世贸组织团队。此文章向读者提供专家组报告中认定的主要裁决的概述。

调查中的损害评估

专家组认为19 USC § 1677(7)(G)包含的法律条文，即为了在原始调查中确定实质损害而对进口产品使用累计评估的做法违反了补贴与反补贴协定第15.3条（条文“本身”和“应用”）。该法律条文要求对于被补贴的进口商品的影响与没有受到反补贴税的进口产品累计评估所造成的损害影响。另外，该条文（再次包括条文“本身”和“应用”）还被认为违反了补贴与反补贴协定第15.1, 15.2, 15.4和15.5

条的规定，因为该法条要求损害评估应当基于未被补贴或者是仅仅存在倾销的进口产品的数量、效果和产生的影响。专家组同意印度的观点，认为补贴和反补贴协定第15.3条中的“同时”术语指的是涉案的进口产品必须是在同一时期受到反补贴调查的所有产品。并且专家组发现第15条规定的仅仅是“被补贴进口产品”因此根据该条文所做出的分析应当是由“被补贴进口产品”造成的损害，而不是任何“不公平贸易中的进口产品”或者是倾销产品造成的损害。专家组还接受的印度关于1994年关税和贸易总协定第6.6(a)条的解释，即交叉累计是不允许的，也就是未受补贴的、倾销的进口产品不能与被补贴进口产品一起在反补贴调查中被累计。

国家矿业发展公司供应的铁矿石

由于美国调查机关在确定国家矿业发展公司所供应的高级铁矿石的事实上专项性（补贴是特定的）时未能考虑补贴与反补贴协定第2.1(c)条中规定的所有强制因素，也被专家组裁定违反了补贴与反补贴协定。专家组凭借上诉机构在美国-反倾销和反补贴（中国）案中的裁决，认为第2.1(c)条的确包含了成员方可能未能遵守的法律义务。虽然专家组拒绝了印度提出的只有当补贴在类似地位的企业之间存在区别才能认定补贴存在专项性，但是专家组认为根据补贴与反补贴第2.1(c)条事实上专项性的认定方面美国商务部没有考虑印度经济的多元化程度以及相关补贴计划运行的时间跨度等强制因素。

美国商务部的做法也被认为违反了补贴与反补贴协定第14(d)条，因为美国调查机关在没有任何理由的情况下未能适用国内的基准以评估国家矿业发展公司向某些企业的销售估

价。由于事后合理化，专家组拒绝了美国对调查机关的认定所提出的新论据，因为专家组发现在临时或最终裁决中或者任何其他美国商务部的文件中均没有相关国内价格数据的参考。专家组认为印度政府提交的数据的确与印度铁矿石的国内价格有关，因此应当被作为价格基准进行考虑。另外，由于美国在评估国家矿业发展公司提供的产品所获得的利益时未能充分告知其不使用国内基准的情况，违反了补贴与反补贴协定第22.5条。

自主开采铁矿石和煤

专家组认为美国商务部未能基于准确的信息适当地确立自主开采铁矿石计划，违反了补贴与反补贴协定第12.5条。在此，专家组认为虽然美国商务部依据Dang报告和Hoda报告确定自主开采铁矿石计划，但是这两份报告均没有明确任何自主开采铁矿石计划，或者印度政府存在对这些矿场的优惠政策。同时专家组也注意到向钢铁生产企业提供的矿产租赁权与提供给其他矿场的有所不同。另外，专家组对于这些所谓的自主开采计划的专项性诉讼请求方面行使了司法经济原则。

尽管专家组依据之前的专家组在美国-软木案中发布的报告，认为美国调查机关裁定印

度通过授予铁矿石或煤的开采权的方式提供产品没有违反第1.1(a)(1)(iii)[财政资助条文，即政府或公共机构以低于足够报酬的价格“提供”产品]，专家组认为没有证据证明印度政府根据煤炭开采国有化法向塔塔提供煤炭开采租赁权。美国未能确立塔塔有义务根据1956年矿场和矿产（开发和监管）法支付特许费，并且美国未能明确任何支持该结论的法律条文。虽然一开始塔塔开采煤炭的运作是被排除在煤炭开采国有化法的范围之外，而在1976年修改后的法律中包含了这些煤炭开采的运作。最终，美国商务部拒绝在评估铁矿石开采权所获得的利益时拒绝使用某些国内价格信息的做法也被专家组认为违反了补贴与反补贴协定第14(d)。

可获得的不利事实-使用不利事实

尽管专家组拒绝了印度对于1677e(b)和351.308(a), (b) 和(c)部分“本身”违反补贴与反补贴协定第12.7条的诉讼请求（法条规定如果有不合作的出口商，将使用可获得的不利事实），但是专家组认为在该案中对于事实适用该法律违反了相关的世贸组织规定。专家组认为85个举例说明中的73个适用该法条时缺乏事实基础。

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
Aluminium Extrusions 铝型材	Australia 澳大利亚	ADD anti-circumvention inquiry - Extension of time to issue final report 反倾销反规避调查-延长发布终 裁报告	Anti-dumping Notice No. 2014/61, dated 22-7-2014 2014年7月22日， 反倾销公告第2014/61

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Biaxially oriented polyester film 双向拉伸聚酯薄膜	Indonesia 印度尼西亚	ADD investigations initiated 发起反倾销调查	MOFCOM Notice dated 29-7-2014 2014年7月29日，商务部新闻
Calcium Hypochlorite 次氯酸钙	USA 美国	ADD - Preliminary determination of sales at less than fair value 反倾销-初步裁定低于正常价值销售	79 FR 43393 [A-570-008], dated 25-7-2014 2014年7月25日， 79 FR 43393 [A-570-008]
Carbon and certain alloy steel wire rod 碳素及合金钢盘条	USA 美国	CVD - Preliminary affirmative countervailing duty and critical circumstances determination 反补贴-初步肯定性裁定反补贴以及确定紧急情形	79 FR 38490 [C-570-013], dated 8-7-2014 2014年7月8日， 79 FR 38490 [C-570-013]
Carbon Black 碳黑	India 印度	ADD extended till 29-7-2015 pending sunset review investigation 因日落复审调查反倾销税延至2015年7月29日	31/3014-Cus. (ADD), dated 23-7-2014 2014年7月23日， 31/3014-Cus. (ADD)
Carbon steel welded joint 碳钢焊接接头	Mexico 墨西哥	Initiation of ADD sunset review 发起反倾销日落复审调查	MOFCOM Notice dated 28-7-2014 2014年7月28日，商务部新闻
Ceramic tile 瓷砖	Brazil 巴西	Provisional ADD imposed for six months 征收6个月的临时反倾销税	MOFCOM Notice dated 10-7-2014 2014年7月10日，商务部新闻
Citric acid and certain citrate salts 柠檬酸钠及柠檬酸盐	USA 美国	CVD – US ITC to conduct sunset reviews 反补贴-美国国际贸易委员会开始日落复审	USITC News Release 14-069, dated 7-7-2014 2014年7月7日，美国国际贸易委员会发布新闻14-069
Colorless flat glass 无色平板玻璃	Brazil 巴西	Provisional ADD imposed for six months 征收6个月的临时反倾销税	MOFCOM Notice dated 22-7-2014 2014年7月22日，商务部新闻
Crystalline Silicon Photovoltaic Cells 晶体硅光伏电池	USA 美国	ADD - Initiation of new shipper review 反倾销-发起新出口商复审	79 FR 43710 [A-570-979], dated 28-7-2014 2014年7月28日， 79 FR 43710 [A-570-979]
Crystalline silicon photovoltaic products 晶体硅光伏产品	USA 美国	ADD - Affirmative Preliminary determination of sales at less than fair value 反倾销-肯定性初步裁决低于正常价值销售	79 FR 44399 [A-570-010], dated 31-7-2014 2014年7月31日， 79 FR 44399 [A-570-010]

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Diamond sawblades and parts 金刚石锯片	USA 美国	ADD – Affirmative sunset review 反倾销-肯定性日落复审终裁	79 FR 40062 [A-570-900], dated 11-7-2014 2014年7月11日, 79 FR 40062 [A-570-900]
Front Axle Beams & Steering Knuckles for heavy and medium commercial vehicles 中重型商用车的前桥梁和转向关节	India 印度	ADD extended till 14-6-2015 pending sunset review investigation 因日落复审调查反倾销税被延长至2015年6月14日	30/2014-Cus. (ADD), dated 23-7-2014 2014年7月23日, 30/2014-Cus. (ADD)
H-shaped steel H型钢	Korea RP 韩国	ADD investigation initiated 发起反倾销调查	MOFCOM Notice dated 25-7-2014 2014年7月25日, 商务部新闻
High-carbon ferromanganese 高碳锰铁	Mexico 墨西哥	ADD – Affirmative sunset review 反倾销-肯定性日落复审终裁	MOFCOM Notice dated 4-8-2014 2014年8月4日, 商务部新闻
Iron or non-alloy steel plate 铁或非合金钢平板轧材	Indonesia 印度尼西亚	Affirmative safeguard final finding 做出肯定性保障措施终裁	Dated 23-7-2014 2014年7月23日
Kitchen appliance shelving and racks 厨房用搁板和网架	USA 美国	ADD and CVD sunset review initiated 发起反倾销和反补贴日落复审调查	79 FR 44743 [A-570-941, C-570-942], dated 1-8-2014 2014年8月1日, 79 FR 44743 [A-570-941, C-570-942]
Malleable cast iron pipe fittings 可锻铸铁管附件	USA 美国	ADD - Affirmative sunset review 反倾销-肯定性日落复审终裁	79 FR 42291 [A-570-881], dated 21-7-2014 2014年7月21日, 79 FR 42291 [A-570-881]
Non-oriented silicon steel 无取向硅钢	Brazil 巴西	Modified ADD duty 调整反倾销税率	MOFCOM Notice dated 8-7-2014 2014年7月8日, 商务部新闻
Phenolic laminate 酚醛胶合板	Argentina 阿根廷	Terminated ADD investigation 终止反倾销调查	MOFCOM Notice dated 8-7-2014 2014年7月8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
Polyethylene terephthalate 聚对苯二甲酸乙二酯	Turkey 土耳其	Safeguard sunset review initiated 发起保障措施日落复审调查	MOFCOM Notice dated 18-7-2014 2014年7月18日，商务部新闻
Pick, hoe and harrow 镐 锄和耙	Columbia 哥伦比亚	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM Notice dated 21-7-2014 2014年7月21日，商务部新闻
Polyvinyl Alcohol 聚乙烯醇	USA 美国	ADD - Affirmative sunset review 反倾销-肯定性日落复审终裁	79 FR 38278 [A-570-879], dated 7-7-2014 2014年7月7日， 79 FR 38278 [A-570-879]
Potassium Carbonate 碳酸钾	India 印度	ADD extended till 9-6-2015 pending sunset review investigation 因日落复审调查反倾销税被延长至 2015年6月9日	34/2013-Cus. (ADD), dated 23-7-2014 2014年7月23日， 34/2013-Cus. (ADD)
Power transformers 变压器	Australia 澳大利亚	ADD - Further extension of time granted to issue statement of essential facts 反倾销-再次延期发布重要事实公告	Anti-dumping Notice No. 2014/56, dated 10-7-2014 2014年7月10日，反倾销公告第 2014/56
Printing paper, writing paper and copying paper 印刷纸、书写纸和 复印纸	Turkey 土耳其	Initiation of safeguard investigation 发起保障措施调查	MOFCOM Notice dated 18-7-2014 2014年7月18日， 商务部新闻
Purified Terephthalic Acid 精对苯二甲酸	India 印度	Provisional ADD imposed for six months 征收6个月的临时反倾销税	36/2014-Cus. (ADD), dated 25-7-2014 2014年7月25日， 36/2014-Cus. (ADD)
PVC products 用于制造门窗及隔 断的PVC型材	Argentina 阿根廷	Affirmative ADD final finding 做出肯定性反倾销终裁	MOFCOM Notice dated 17-7-2014 2014年7月17日， 商务部新闻
Rubber Chemicals, namely, MBT, CBS, TDQ, PVI, TMT and PX-13(6PPD) 橡胶助剂	India 印度	ADD re-imposed for five years 继续征收5年的反倾销税	35/2014-Cus. (ADD), dated 24-7-2014 2014年7月24日， 35/2014-Cus. (ADD)

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Saccharine 糖精	USA 美国	ADD – US ITC to conduct sunset reviews 反倾销-美国国际贸易委员会开始日落 复审	USITC News Release dated 4-8-2014 2014年8月4日， 美国国际贸易委员会发布公告
Sodium hexameta- phosphate 六磷酸钠	Mexico 墨西哥	Initiation of ADD investigation 发起反倾销调查	MOFCOM Notice dated 22-7-2014 2014年7月22日， 商务部新闻
Sodium Hydrogen Carbonate 碳酸氢钠	Australia 澳大利亚	ADD - Revocation review initiated 反倾销-发起日落复审调查	Anti-dumping Notice No. 2014/58, dated 22-7-2014 2014年7月22日， 反倾销公告第2014/58
Steel and Fibre Glass Tapes and their parts and components 测量卷尺	India 印度	ADD extended till 14-5-2015 pending sunset review investigation 因日落复审调查反倾销税被延长至 2015年5月14日	29/2014-Cus. (ADD), dated 4-7-2014 2014年7月4日， 29/2014-Cus. (ADD)
Steel Grating 钢格板	USA 美国	Modified ADD final finding subject to the USCIT's judgment 根据美国国际贸易法院的判决修 改反倾销终裁结果	MOFCOM Notice dated 28-7-2014 2014年7月28日， 商务部新闻
Steel stranded wire, ropes, cables 钢铁绞股线、绳、缆	South Africa 南非	ADD – Affirmative sunset review 反倾销-肯定性的日落复审终裁	MOFCOM Notice dated 24-7-2014 2014年7月24日， 商务部新闻
Steel threaded rod 钢制螺杆	USA 美国	ADD – Affirmative sunset review of industry injury 反倾销-肯定性的日落复审产业损 害终裁	MOFCOM Notice dated 23-7-2014 2014年7月23日， 商务部新闻
Sulphur Black 硫化黑	India 印度	ADD – Continuation for five years recommended 反倾销-建议继续征收5年的反倾销税	15/18/2012-DGAD, dated 3-7-2014 2014年7月3日， 15/18/2012-DGAD
Thermoelectric containers 半导体冷热箱	Canada 加拿大	Re-investigation of normal values, export prices and amounts of sub- sidy concluded 做出正常价值、出口价格和补贴金 额的再次调查裁决	CBSA Notice dated 30-7-2014 2014年7月30日， 加拿大边境服务署公告

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Tyres - Passenger vehicle and light truck tyres 乘用车和轻型货车轮胎	USA 美国	ADD and CVD - Initiation of Investigations 反倾销和反补贴-发起调查	79 FR 42292 [A-570-016] and 79 FR 42285 [C-570-017], both dated 21-7-2014 2014年7月21日, 79 FR 42292 [A-570-016]和79 FR 42285 [C-570-017]
Vitamin C 维生素C	India 印度	ADD extended till 15-6-2015 pending sunset review investigation 因日落复审调查反倾销税被延长至2015年6月15日	33/2014-Cus. (ADD), dated 23-7-2014 2014年7月23日, 33/2014-Cus. (ADD)
Welded steel chain 焊接钢链	Mexico 墨西哥	ADD - Affirmative sunset review 反倾销-肯定性的日落复审终裁	MOFCOM Notice dated 22-7-2014 2014年7月22日, 商务部新闻
Wire rod 盘条	EU 欧盟	ADD - Initiation of sunset review 反倾销-发起日落复审调查	Dated 2-8-2014 2014年8月2日
Wooden bedroom furniture 木质卧室家具	USA 美国	ADD - Initiation of changed circumstances review 反倾销-发起情势变更复审	79 FR 41260 [A-570-890], dated 15-7-2014 2014年7月15日, 79 FR 41260 [A-570-890]
Zinc coated (galvanised) steel 镀锌板	Australia 澳大利亚	ADD - Findings of exemption inquiry 反倾销-免税调查终裁	Anti-dumping Notice No. 2014/53, dated 23-6-2014 2014年6月23日, 反倾销公告第2014/53

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
Broiler or chicken products 白羽肉鸡产品	USA 美国	ADD and CVD re-investigation - Affirmative results 反倾销和反补贴再调查-肯定性终裁	MOFCOM Announcement No. 44 of 2014, dated 10-7-2014 2014年7月10日, 商务部2014年第44号公告
Coated paper 铜版纸	Japan and Korea RP 日本和韩国	To terminate the ADD measures after the expiry 到期终止反倾销措施	MOFCOM Announcement No. 48 of 2014, dated 4-8-2014 2014年8月4日, 商务部2014年第48号公告

WTO News 世贸组织新闻

中美反补贴争端案 - 专家组判决美国的法律违反补贴与反补贴协定

世贸组织争端解决机构在同一天 (2014年7月14日) 除了做出支持印度对美国提出的众多诉讼请求以外, 在另一由中国发起的涉及到世贸组织补贴和反补贴协定的案件中, 争端解决机构的裁决再次打击美国。美国商务部所谓的“可反驳的推定”, 即大部分国有企业是“公共机构”并且因此获得财政资助的裁决被认为违反了补贴与反补贴协定的第1.1(a)(1)条。专家组认为美国的法律条款“本身”违反了世贸组织协议, 并且由此实施的措施是可以被质疑的。在这方面的依据也体现在上诉专家组的美国-反倾销和反补贴税 (中国) 争端案件报告中。专家组还认为美国商务部在12起反补贴调查中违反了补贴和反补贴协定第2.1(c)条的最后一句话, 因为美国商务部未能考虑该条款中所罗列的相关因素。另外, 中国提出的有关美国调查机关认为某些补贴属于区域性专项补贴以及由于中国实施的出口限制而存在财政资助的裁决的诉讼请求也得到争端解决机构专家组的支持。

欧盟和俄罗斯意见不合 – 两个专家组成立

世贸组织争端解决机构于2014年7月22日在涉及欧盟和俄罗斯的争端案件 (DS474和DS475) 成立了两个专家组。第一个由俄罗斯提交的争端涉及欧盟的成本调整方法和对来自俄罗斯的进口产品的某些反倾销措施。另一争端 (DS475) 是由欧盟提交的有关俄罗斯对来自欧盟的生猪、猪肉和其他猪肉制品的某些进口措施/限制。俄罗斯认为欧盟的法律违反了反倾销协议的诸多条款, 如第2, 3, 5, 6, 9, 11和18条; 补贴与反补贴协议第10和32.1条; 以及1994年关税和贸易总协定第1和6条。另一方面, 欧盟指责俄罗斯的措施违反了关于卫生和植物检疫措施应用协定第2, 3, 5, 6, 7和8条, 以及1994年关税和贸易总协定第1.1, 3.4和11.1条。【具体内容请参阅国际贸易法律月刊-2014年1月和5月期】阿根廷、澳大利亚、加拿大、中国、印度尼西亚、挪威、土耳其、乌克兰和美国在第一个争端案中保留其作为第三方参加专家组程序的权利。而澳大利亚、中国、印度、日本、韩国、挪威、中国台北和美国在第二个争端案中保留其第三方权利。

News Nuggets 新闻精华

世贸组织成员未能接纳贸易便利化协议草案

直到2014年7月31日为止, 印度的食品安全计划自巴厘岛会议后成为世贸组织关注的焦点。近期的许多讨论都是围绕着为什么印度不应当将贸易便利化协议与有关食品安全的公共利益部长宣言联系在一起。之前印度和其他发展中国家提出对农业协定中的境

内支持措施 (AMS) 进行修正的草案。另一个关注的焦点是计算的依据是1985-86年的价格而美欧考虑通货膨胀和当下的现实性。农业协定给予发展中国家余地非常小, 甚至在其签订该协定时, 而食品往往是最难受到贸易规则制约的, 这使得农业协定一再被提及。

去年的巴厘岛会议中, 世贸组织成员似

乎达成一致意见，以通过接受一项和平条款作为一项过渡机制的方式打破僵局，直到找到永久的解决方法，这样可以避免任何以储存某种主要食物的方式违反农业协定而发起的贸易争端程序。各成员一致同意执行贸易便利化协议。然而，成员们未能在2014年7月31日前召开总理事会议来接受草案，甚至一些成员已经着手通过改革海关程序、基础建设等开始便利化工作。在世贸组织总干事的闭幕词中，他号召成员能够体现并努力解决分歧以使得所有成员可以获得贸易便利化协议带来的利益。

世贸组织的海关估价协定将被修改

1994年关税和贸易总协定的第七条（海关估价协定）的相关协议履行的英文和西班牙语文本将被修改。根据2014年7月28日世贸组织发布的一份文件（参考号：WLI/100），草案建议在协定的第8.1(b)(iv)条中取消在“工作”和“计划”的连接词“和”并且在“规划”和“从事”之间增加一个逗号（关于包含在价格实付或应付中的其他）。如果没有成员在30天内对此提出异议，修正将正式生效。在印度的海关估价条例中也需要做类似的修正，即2007年海关估价（确定进口货物价值）条例第10(1)(b)(iv)条。

Ratio Decidendi 判决理由

反倾销税 - 原始公告到期后延期是无效的

原始征收最终反倾销税的公告到期后，通过修改并发布公告延长征收反倾销税的做法被认为是无效的。2014年7月11日德里高等法院在其判决中撤销由于调查机关未能完成日落复审调查程序而在原始公告到期后，发布的延期征收反倾销税公告。但是在涉及来自韩国的丁腈橡胶进口案件中，法院没有支持起诉方提出的期满之前在官方公报中没有任何告知而发起日落复审调查的做法违法的诉讼请求。

基于世贸组织反倾销协定第11条的规定，法院拒绝政府提出的在日落复审尚未结束期

间继续征收反倾销税或多或少是自动形成的观点。法院认为1975年海关关税法第9A(5)章中规定的继续征收反倾销税的权力在原始公告到期后就不再适用。一般条款法第6章规定根据被废止的法律发布的继续公告也被认为不适用于本案。然而，关于发起日落复审的告知方面，法院认为一旦在期满之前发起日落复审调查，并且自那天起的一段“接近”时间内发布公告，该调查是有效的。[2014年7月11日，德里高等法院对锦湖石化有限公司诉印度联邦- W.P.(C) Nos. 1851/2014和1866/2014案件作出的裁决]

免责声明： 国际贸易法律月刊旨在提供信息，而不是为了提出建议或法律意见。提供信息的目的是为了建立律师-客户关系，也不是为了宣传或招揽业务。Lakshmikumaran&Sridharan律师事务所没有企图通过此新闻简报宣传其服务或招揽业务。Lakshmikumaran&Sridharan律师事务所和其律师对在本新闻简报中出现的任何错误或疏漏或者对基于该内容采取的任何行动不承担任何责任。本新闻简报的文章中所表达的观点系作者个人观点。向Lakshmikumaran&Sridharan发出的任意邮件或信息将不被采取保密措施并且不构成与Lakshmikumaran&Sridharan之间的律师-客户关系。本期所包含的新闻截至2014年8月2日。取消订阅邮件请发至 newslettertrade@lakshmisri.com

<http://cn.lakshmisri.com>

www.lakshmisri.com

<http://adddb.lakshmisri.com>