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摘要

- 估定反倾销税和组合税率
- 对非市场经济国家征收反补贴税
— 美国欲修改法规
- 反倾销调查中的“归零” — 美国着手修改法规
- 欧盟对来自中国的钢丝绳征收最终反倾销税
- 欧盟碳排放税将受到报复
- 美国-韩国自由贸易协定自 2012年3月15日生效



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内容

文章

估定反倾销税和组合税率 3

贸易救济新

针对中国发起的贸易救济措施

中国发起的贸易救济措施 5

世贸组织新闻 6

自由贸易协定新闻 7

新闻精华 7

Article 文章

Anti-dumping duty assessment and combination rates

估定反倾销税和组合税率

By **Bhargav Mansatta**

Introduction

In India, anti-dumping duty rates are designated for a combination of 'producer and exporter'. In many other countries, such a combination rate is not being followed. It is common knowledge that producers may export goods directly to their customers abroad or they may export through independent trading houses. On several occasions, producers rely on trading houses for their export sales as such trading houses are familiar with international customers, pricing and market situation. The question arises regarding the applicable anti-dumping duty rate on such exports. Extent of dumping done by a particular producer-reseller combination may differ from direct exports by the producer or from another producer-reseller combination. Anti-dumping Agreement does not provide any guidance for assessment of duty in such a situation.

In India, there is no express legal basis for the use of combination rates. However, the Director General of Anti-dumping (DGAD) has invariably resorted to use of combination rates in anti-dumping investigations. Rationale for use of combination rate is not found in the findings of the authority. It is understandable that the basic objective for using the combination rate is to avoid dumping by the reseller. Combination rate approach is not without its problems. When the subject merchandise is exported by the reseller which is sourced from several producers or when the subject merchandise produced by a single producer is exported through several exporters, then co-operation of all the producers and exporters becomes relevant in order to prescribe a combination rate.

Failure to co-operate by any one reseller or producer in such a situation may result in an adverse determination and the residual duty rate may be prescribed for all the parties, including those who have cooperated fully with the authority in the investigation.

United States Practice

In the United States, Title 19, Part 351 of Code of Federal Regulations (19 C.F.R § 351) provides for rules relating to anti-dumping and countervailing duty investigations. When the goods are exported by a non-producing exporter 19 C.F.R § 351.107 (b) (1) (i) provides that "*Secretary may establish a "combination" cash deposit rate for each combination of the exporter and its supplying producer(s)*".

As highlighted by the United States Court of Appeals, the rationale for using combination rate may be that the producer is held responsible only for its own dumping unlike in case of single rate method where he is held responsible for the reseller's dumping. Despite the express provision, United States has rarely resorted to the use of combination rates in the case of anti-dumping investigations. It is significant to note that the U.S. has adopted a knowledge based approach in case of application of combination rates. The regulation inserted in 1997 [See 62 FR 27296, dt. May 19, 1997] by which the aforementioned rule relating to combination rate was inserted also provided as below:

"The Department also believes it is not appropriate to establish combination rates in an investigation or review

of a producer i.e. where a producer sells to an exporter with knowledge of exportation to the United States. In these situations, the establishment of separate rates for a producer in combination with each of the exporters through which it sells to the United States could lead to manipulation by the producer. . . . In such situations, the Department generally intends to establish a single rate for such a respondent based on its status as a producer, although unusual circumstances may warrant the application of a combination rate.”

This is evident in the case of *Tung Mung Development Co. Ltd. v. United States*, 354 F.3d 1371 wherein the United States Court of Appeals upheld the determination made by Department of Commerce when it used a combination rate for producers who were unaware of middleman (reseller) dumping. Even in case of non-market economy countries, application of combination rates is prescribed by the U.S. [See Import Administration: Policy Bulletin 05.1, 5 April 2005]. It is also provided that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This was adopted to prevent avoidance of payment of anti-dumping duties by shifting exports through exporters with the lowest assigned rate.

Moreover, in the United States, when the reseller who has exported subject merchandise does not have its own rate of duty, then instead of the ‘all others’ rate, the rate specified for the producer whose merchandise has been exported by the reseller will be made applicable unless review is requested against such producer or reseller or when the producer did not know that the merchandise sold to the reseller was meant for export to the U.S. Also, in the course of review, knowledge based approach is adopted. If the Department determines that the producer knew, or should have known that the merchandise it

sold to the reseller was meant for export to the United States, the reseller’s merchandise will be liquidated at the producer’s assessment rate which the Department calculates for the producer in the review. [See 63 FR 55361, Dt. Oct. 15, 1998 and 68 FR 23954, dt. May 6, 2003]

However, in India, If there is no specific rate prescribed for a reseller who has exported the subject merchandise, then in such a situation, as a matter of practice, the goods will be subject to the anti-dumping duty at ‘all others’ rate.

Conclusion

Generally, use of combination rate may result in fair assessment of anti-dumping duty in as much as it attributes dumping to the person responsible for it. However, as highlighted in the introductory portion, it is important to warn against the use of combination rate in each and every investigation. Use of combination rate by reason of mere apprehension of reseller dumping may result in unnecessary prejudice to the producer or reseller who are ready to co-operate but are subject to a higher rate of ‘all others’ duty for want of cooperation by other independent reseller or producers, as the case may be. To avoid such problems, as a matter of practice, countries have increasingly resorted to use of single rate instead of a combination rate.

The problem is significant in India for its consistent use of combination rate whereas in the United States, adoption of knowledge based approach has, in effect, resulted in a situation whereby there are only a few cases where the department has resorted to use of combination rate. It is high time that India aligns its practices with international practices and discontinues the practice of using combination rates.

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Trade Remedy News 贸易救济新闻

对中国发起的贸易救济措施 Trade remedy measures against China

Product 产品	Country 国家	Measures 措施	Notification/Notice 通知
Aluminium Extrusions 铝型材	Canada 加拿大	Re-investigation of subsidy amount concluded 重新调查补贴金额	Subsidy file 4218-26, dated 20-2-2012 2012年2月20日 补贴文件 4218-26
Ceramic Tableware and Kitchenware 陶瓷餐具和厨房用具	EU 欧盟	Initiation of anti-dumping proceedings 发起反倾销程序	2012/C 44/07, dated 16-2-2012 2012年2月16日 2012/C 44/07
Citric Acid 柠檬酸	Ukraine 乌克兰	Initiation of anti-dumping investigation 发起反倾销调查	Notice No. 268/2012/4423-09, dated 23-1-2012 2012年1月23日 第268/2012/4423-09通知
Coumarin 香豆素	India 印度	ADD confirmed after remand by Tribunal (CESTAT) 经过上诉法庭发回 重审确定反倾销税	12/2012-Cus. (ADD), dated 8-2-2012 2012年2月8日, 12/2012-Cus.
Electric Cables 电缆	Australia 澳大利亚	ADD investigation terminated 反倾销调查终止	Notice No. 2012/04, dated 6-2-2012 2012年2月6日 第2012/04通知
Formulated Glyphosate 草甘	Australia 澳大利亚	Initiation of anti-dumping investigation 发起反倾销调查	Notice No. 2012/05, dated 6-2-2012 2012年2月6日 第2012/05通知
Hand Pallet Trucks and their essential parts 手动液压托盘车和主要零件	EU 欧盟	Initiation of partial interim review of anti-dumping measures 发起反倾销措施的部分临时复审	2012/C 41/06, dated 14-2-2012 2012年2月14日, 2012/C 41/06
Malleable Tube Fittings (Threaded tube or pipe cast fittings, of malleable cast iron) 玛钢管件	EU 欧盟	Initiation of Anti-dumping investigation 发起反倾销调查	2012/C 44/08, dated 16-2-2012 2012年2月16日, 2012/C 44/08
Organic Coated Steel Products 有机镀层钢产品	EU 欧盟	Initiation of anti-subsidy proceedings 发起反补贴程序	2012/C 52/05, dated 22-2-2012 2012年2月22日, 2012/C 52/05
Silicon Metal 金属硅	USA 美国	Sunset review expedited 快速日落复审	News Release 12-011, dated 6-2-2012 2012年2月6日 发布新闻 12-011

产品	国家	措施	通知
Soda Ash 碳酸钠	India 印度	Anti-dumping duty recommended 建议反倾销税	Notification No.14/17/2010-DGAD, dated 17-2-2012 2012年2月17日, 第14/17/2010-DGAD通知
Sodium Tripoly Phosphate 三聚磷酸钠	India 印度	Anti-dumping duty withdrawn 撤销反倾销税	13/2012-Cus.(ADD), dated 22-2-2012 2012年2月22日, 13/2012-Cus.(ADD)
Steel Ropes and Cables 钢丝绳	EU 欧盟	Implementation of definitive ADD 征收最终反倾销税	Regulation No. 102/2012, dated 9-2-2012 2012年2月9日 第102/2012规定
Steel Wheels 钢圈	USA 美国	Determination of critical circumstances for CVD 反补贴税紧急情况的确定	US Commerce Department C-570-974, dated 27-2-2012 2012年2月27日, 美国商务部 C-570-974
Thermoelectric Coolers and Warmers 半导体冷热箱	Canada 加拿大	Re-investigation of subsidy amount concluded 重新调查补贴金额	Subsidy file 4218-25, dated 1-3-2012 2012年3月1日 补贴文件4218-25
Utility Scale Wind Towers 应用级风塔	USA 美国	ADD and subsidy investigations to continue 继续双反调查	News Release 12-013, dated 10-2-2012 2012年2月10日 发布新闻12-013

中国发起的贸易救济措施 Trade remedy measures by China

产品	国家	措施	通知
Potato Starch 马铃薯淀粉	EU 欧盟	Expiry Review of ADD 反倾销终期复审	Announcement No. 2/2012, dated 3-2-2012 2012年2月3日 第2/2012通知

WTO News 世贸组织新闻

反倾销调查中的“归零” – 美国着手修改法规

美国在计算反倾销税时采取的归零做法长期受到质疑并且经多个世贸组织争端解决专家组认定为不符合反倾销协议。根据上个月的进展，美国很有可能修改其法律并且与日本和欧盟就相关事项签订谅解备忘录，这将解决在DS322、DS294和DS350案件中长期悬而未决的争议。美国同时也在与巴西就这一争议进行讨论的过程中。而在复审调查中计算反倾销税时，当出口商国内市场的产品价格低于美国市场同类产品的价格时，美国拒绝这些交易（把这些交易视为零）。这已经导致了反倾销税的增加，否则倾销幅度应根据比

较平均国内价格和出口价格进行计算。2010年12月，美国发布了通知，宣布其有意通过废除在行政复审中的归零做法修改其法律，并且目前这一通知在经过一些修改后采纳。

有趣的是，韩国请求争端解决机构成立专家组以研究美国对来自韩国防锈钢板产品的反倾销措施（DS420）已经于2012年2月22日被世贸组织争端解决机构接受。该争议涉及到在确定上述产品反倾销时与使用“归零”做法有关的某些美国法律法规、行政程序和实务操作。另外，越南也寻求与美国进行磋商，旨在解决后者在美国对来自越南的某些暖水虾征收反倾销税（DS491）涉及到的相关法律争议。

FTA News 自由贸易协定新闻

美国 - 韩国自由贸易协定自 2012年3月15日 生效

美国-韩国的自由贸易协定将于今年3月15日生效。美国已经与韩国交换通牒，并且各方已经确定他们完成了使该协定生效的适用法律要求和程序。该协定原定于2007年签署，但是由于包括涉及美国汽车生产商进入韩国市场在内的一些争议而被推迟。目前该协定将对三分之二的美国农产品以及四分之三的工业品出口到韩国取消关税。

欧盟的自由贸易协定谈判陷入僵局

欧盟希望签署的自由贸易协定已经在许多国家陷入僵局。欧盟在亚洲的自由贸易协定被暂停或延期，而这些协定正在东欧备受关注。在双方领导人根据双边贸易和投资协议框架下进行的15轮

对话后仍未能达成一致意见的情况下，印度-欧盟自由贸易协定于年内被暂停了。该自由贸易协定被认为在某些方面严重偏向了欧盟的利益。同样的，菲律宾-欧盟双边自由贸易协定的谈判被搁置，先前的贸易和工业部长要求与利益相关方进行磋商。东盟-欧盟自由贸易协定已经被欧盟延期，原因是在东盟10国的利益分歧方面难以达到统一的区域协定。在东欧，欧盟正缓慢地进入乌克兰、摩尔多瓦、格鲁吉亚以及现在的亚美尼亚-这些过去曾是苏联一部分的国家。欧盟-乌克兰、欧盟-摩尔多瓦和欧盟-格鲁吉亚之间达成了深入的和广泛的自由贸易协定已经到了最后的批准阶段，而欧盟现在已经决定与亚美尼亚开展类似的谈判。所有的谈判都是在东欧伙伴关系和欧洲睦邻政策的框架下完成的。

News Nuggets 新闻精华

对非市场经济国家征收反补贴税 - 美国欲修改法规

去年，世贸组织争端解决机构的上诉专家组认定对来自非市场经济国家的同一进口产品不能同时征收反倾销税和反补贴税 (DS379)。自此，该争议受到激烈的辩论。近期美国联邦巡回上诉法院认定不能对来自非市场经济国家的进口产品征收反补贴税，并且美国目前着手修改其法律，追溯性地征收该税。立法程序已经于2006年11月20日启动，将允许美国继续执行对中国的23种进口产品现存反补贴税以及7个悬而未决的反补贴调查。根据立法的概述，法律将赋予商务部调整反倾销税以处理在这些情况下存在任何的“双重救济”。特别是，如果在倾销案件中的外国出口商有能力证明其由于国内补贴而造成其出口价格的增加并且使用了替代国价格的方法，商务部将确定是否合理估计了增加倾销幅度的程度，并且如果是，相应地减少该倾销幅度。该法律规定一旦受到质疑，将有待世贸组织对这些措施发表观点。

欧盟碳排放税将受到报复

将于2013年生效的欧盟单方面对在欧盟范围内起落的飞机征收碳排放税的决定已经受到多方批

评。上个月有包括印度、中国、美国、俄罗斯和巴西在内的30个国家在莫斯科进行会谈，旨在规划进一步的策略以反对欧盟的措施。报告指出措施可能包括针对欧盟提出诉讼、将争议提交到世贸组织争端解决机构、暂停与欧盟航空器关于新线路的谈话、审查与欧盟的双边服务和领空开放协议、阻止国内航空公司参与欧盟计划并且对欧盟航空公司征收报复性税收。之前，在德里举行的一次会议上，根据联合国气候大会进行关于减少温室气体的谈判中，这些国家已经对欧盟的单边决定发出警告。中国已经向其航空公司发布命令要求不参与欧盟排放交易制度，而美国国会也正考虑相同的禁令。有猜测认为该体系将可能引起国家之间的“贸易战争”，如果这些国家对欧盟的航空公司征收类似的报复性税收。如果该争议被提交到世贸组织，则结果将有待观察。但是欧洲法院已经声称这些措施没有违反任何国际条约。执行协将不再容易。

新西兰将不得不修改其知识产权保护法律并允许对版权保护授予更长期限，以及禁止平行进口有专利产品和提供对已知产品新用途的可专利性。开放农产品行业是加拿大和日本对成为TPP成员感兴趣的主要领域。中国，该区域的一个重要经济体，没有参与该谈判。

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