

# amicus

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## 国际贸易 法律月刊

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## Article 文章

### Brexit: Invalidation of existing trade remedy measures in the EU

英国脱欧：对欧盟现行有效的贸易救济措施无效

By **Bhargav Mansatta**

With the UK parliament passing the Brexit Bill on 14th of March 2017 paving the way for the government to trigger Article 50 of the EU Treaty (which allows the UK to begin the process to exit from the European Union), Brexit may now only be a matter of time.

Among the plethora of trade related issues that may arise on the first day of Brexit, an important issue is that of the continuation of existing trade remedy measures by the EU. As of December 2016, 114 AD measures and 15 CVD measures were in force by the EU.<sup>1</sup>

#### Invalidation of existing anti-dumping and countervailing duties

Two most essential elements under any anti-dumping investigations are (i) determination

of export price for comparison with normal value to arrive at dumping margin and (ii) Injury caused to domestic industry (i.e. the EU industry).

#### (i) Determination of export price

Ordinarily, the export price is the price paid or payable for the product when sold for export from the exporting country to the Union.<sup>2</sup> The export price that is so determined for the product under investigation in the EU is in effect the weighted average of the prices at which the product under investigation was imported by 28 EU member states.

Hypothetical illustration: Imports of stainless steel in the EU in 2013

Country	Import Price (\$)	Quantity (Kg)
Czech Republic	10	50
Spain	15	20
UK	5	100

Weighted average export price of stainless steel determined by the EU would be 7.66\$ per kg. If the normal value for the like product was 10\$, the dumping margin would have been 2.4\$ or 31% (i.e. as the percentage of export price).

Weighted average export price for stainless steel for the EU in the above situation in

absence of the UK i.e. after Brexit would be 11.42\$. Keeping all other factors (normal value, other adjustments) constant, the consequent dumping margin will be negative. The positive dumping margin of 31% becomes incorrect and thereby also the consequent imposition of anti-dumping duty when the UK leaves the EU. The anti-dumping measures in

<sup>1</sup> Anti-dumping, Anti-subsidy, Safeguard statistics covering the 12 months of 2016 (December 2016); 9 AD measures and 6 CVD measures are in force against India.

<sup>2</sup> Article 2(8) of the EU AD Regulation.

force in the EU will be without any factual or legal basis and cannot be continued from the first day of Brexit for this reason alone.<sup>3</sup>

## **(ii) Determination of injury**

Since, export price does not form the basis for determination of subsidy margin or imposition of countervailing duty, countervailing determinations are not affected for the stated reason. However, the injury determination, in both anti-dumping and countervailing duty investigations will get invalidated because of Brexit. Anti-dumping and countervailing duties are imposed only when the injury was caused to the EU industry because of dumped or subsidized imports. The positive determination regarding injury in all the cases is made after analysing a host of economic factors of the Union industry such as profit, return on investment, capacity etc. All the injury determinations that accounted for injury caused to the segment of industry situated in the UK for its conclusion are invalidated on the first day of Brexit. In short, as is the case of export price and the consequent dumping margin, the injury determinations are also without any factual or legal basis.<sup>4</sup>

It will not suffice to suggest, which may be the situation in some of the cases, that the

domestic industry was not located in the UK, and therefore the injury assessment in those cases is not affected by Brexit. Various injury parameters are analysed by the authority for determining injury such as domestic sales, export sales, domestic market share, etc. Exclusion of UK from the EU will affect these indices. For example, EU domestic sales that included sales to the UK are now actually to be accounted as export sales and any loss arising out of decline in such sales have to be considered as an injury caused due to other factors. Needless to say, the change of these indices will eventually affect and perhaps reverse the conclusion regarding existence of material injury.<sup>5</sup>

## **Re-validation of anti-dumping and countervailing duties - Review investigations**

It is arguable that the EU should initiate review investigations in these cases so as to allow continuation of existing duty.

However, such review investigations can only validate the existing anti-dumping duty if the outcome of the review investigation is brought into effect on the first day of Brexit. If the review is initiated on the day of Brexit, anti-dumping or countervailing duty will

<sup>3</sup> The calculation (involving country wise data) for arriving at one export price is not disclosed during the investigation process but it is reasonable to presume the export price determined did also involve the price at which product was imported in the UK and therefore the export price is no longer accurate.

<sup>4</sup> Assessment of Union Interest under Article 21 of the EU Basic Anti-Dumping Regulation is also affected due to Brexit. Interest of domestic industry, user and consumers in the UK should be excluded. However, since there is no corresponding obligation under the WTO Agreements in this regard, the EU will not be under an obligation to carry out re-assessment. Obviously, it does have an obligation to do so under its own law.

<sup>5</sup> The illegality of the determination is even more glaring if the industry was in the UK because in such cases the sales made by that industry to the rest of EU are no longer domestic sales at all but on the contrary are to be accounted as exports made by other non-subject countries.

remain in force pending the review. It is to be noted that anti-dumping duty cannot be levied in excess of the margin of dumping at any point in time.<sup>6</sup> Moreover, no anti-dumping duty or countervailing duty can be imposed in absence of material injury. As noted above, determination regarding dumping and injury are no longer valid and therefore continuation of anti-dumping or countervailing duty after Brexit cannot be considered as legal and consistent under the WTO obligations even during the review investigation period.<sup>7</sup>

It is also not credible to suggest considering the EU system of prospective levy, the anti-dumping duties or the countervailing duties in question were imposed based on the data during the identified period of investigation (POI) - a definite period in the past, and therefore the imposition of duty is legally valid. The argument would effectively imply that the

EU is entitled to continue to collect the duty even though the exporter is dumping goods or is exporting the subsidized goods that is causing injury (at least in part) to a third country.

Article 11(3) of the EU Basic Anti-Dumping Regulation provides for *suo moto* initiation of interim review by the Commission. It is advisable that the EU initiates review investigation beforehand to arrive at a revised determination of dumping and injury on the day of Brexit in all the cases where anti-dumping /counter vailing duty is in force. If the EU fails to amend the existing measures or withdraw the measures altogether, challenge against the existing measures before the WTO DSB can be expected.

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<sup>6</sup> Anti-dumping Agreement, Article 9.3; Article 19.4, Agreement on Subsidies and Countervailing Measures.

<sup>7</sup> Subsequent refund of anti-dumping duty under Article 11(8) of the EU Basic Regulation may not be the appropriate remedy, even assuming it will be possible under the existing cumbersome mechanism. From among the other issues associated with the refunds, it is only possible in case the anti-dumping duty exceeds the dumping margin. Refund of duty is not contemplated for lack of material injury. See Commission Notice concerning the reimbursement of anti-dumping duty, 2002, OJ C 127/10.

## Trade Remedy News 贸易救济新闻

### Trade remedy measures 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
1,1,1,2 Tetrafluoroethane or R-134a 1,1,1,2-四氟乙烷	USA 美国	ADD Order issued 发布反倾销征税令	82 FR 18422 [A-570-044], dated 19-4-2017 2017年4月19日 , 82 FR 18422 [A-570-044]
1,1,1,2- Tetrafluoroethane or R-134a 1,1,1,2-四氟乙烷	India 印度	ADD - Provisional assessment for certain new shippers during pendency of New Shipper Review 反倾销-对某些新出口商在新出口 商复审调查阶段临时免税	10/2017-Cus. (ADD), dated 24-3-2017 2017年3月24日 , 10/2017-Cus. (ADD)
1- Hydroxyethylidene-1, 1-Diphosphonic Acid 羟基乙叉二磷酸	USA 美国	ADD - Final Determination of Sales at Less Than Fair Value 反倾销-最终裁决低于正常价值 销售	82 FR 14876 [A-570-045], dated 23-3-2017 2017年3月23日 , 82 FR 14876 [A-570-045]
1- Hydroxyethylidene-1, 1-Diphosphonic Acid 羟基乙叉二磷酸	USA 美国	CVD - Final Affirmative Determination 反补贴-最终肯定性裁决	82 FR 14872 [C-570-046], dated 23-3-2017 2017年3月23日 , 82 FR 14872 [C-570-046]
A4 Copy Paper A4复印纸	Australia 澳大利亚	CVD – Affirmative findings of subsidisation 反补贴-肯定性补贴裁决	Anti-dumping Notice No. 2017/40, dated 18-4-2017 2017年4月18日 , 反倾销公告第2017/40号
Aluminium Extrusions 铝型材	Australia 澳大利亚	ADD – New shipper accelerated review initiated 反倾销-发起新出口商快速复审	Anti-dumping Notice No. 2017/42, dated 27-3-2017 2017年3月27日 , 反倾销公告第2017/42号
Aluminium road wheels 铝制车轮	Australia 澳大利亚	ADD - Time granted to issue Final Report in continuation inquiry, extended 反倾销-延期发布最终裁决	Anti-dumping Notice No. 2017/56, dated 19-4-2017 2017年4月19日 , 反倾销公告第2017/56号
Aluminum Foil 铝箔	USA 美国	ADD and CVD - Initiation of Inquiry into the Status of China as Nonmarket Economy Country 反倾销和反补贴-就中国的非市场 经济国家问题发起调查	82 FR 16162, dated 3-4-2017 2017年4月3日 , 82 FR 16162

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Aluminum Foil 铝箔	USA 美国	ADD - Initiation of Less-Than-Fair-Value Investigation 反倾销-发起低于正常价值调查	82 FR 15691 [A-570-053], dated 30-3-2017 2017年3月30日 , 82 FR 15691 [A-570-053]
Aluminum Foil 铝箔	USA 美国	CVD investigation initiated 发起反补贴调查	82 FR 15688 [C-570-054], dated 30-3-2017 2017年3月30日 , 82 FR 15688 [C-570-054]
Aluminum Radiators, Aluminium Radiator Sub- Assemblies and Aluminium Radiator Core, including in CKD or SKD conditions, for use in used/on road vehicles and generator sets,excludingaluminum radiators meant for use in new automobiles 铝制散热器 , 铝制散 热器组件	India 印度	Definitive anti-dumping duty recommended to be imposed 建议征收最终反倾销税	F.No.14/24/2015-DGAD, dated 20-3-2017 2017年3月20日 , 第14/24/2015-DGAD号
Amoxicillin 阿莫西林	India 印度	Definitive anti-dumping duty recommended to be imposed 建议征收最终反倾销税	F.No.14/05/2015-DGAD, dated 3-4-2017 2017年4月3日 , 第14/05/2015-DGAD号
Artist Canvas 画布	USA 美国	Antidumping Duty Order continued 继续反倾销征税令	82 FR 14502 [A-570-899], dated 21-3-2017 2017年3月21日 , 82 FR 14502 [A-570-899]
Bicycles consigned from Sri Lanka 来自斯里兰卡的自 行车	EU 欧盟	ADD - Anti-circumvention investigation reopened 反倾销-重启反规避调查	EU 2017/C 113/05, dated 11-4-2017 2017年4月11日 , EU 2017/C 113/05
Carbon and Alloy Steel Cut-to-Length Plate 合金钢定尺板	USA 美国	ADD and CVD Orders issued 发布反倾销和反补贴征税令	82 FR 14349 [A-570-047] and 82 FR 14346 [C-570-048], both dated 20-3-2017 2017年3月20日 , 82 FR 14349 [A-570-047] 和82 FR 14346 [C-570-048]

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Ceramic tableware and kitchenware 陶瓷餐具和厨具	EU 欧盟	ADD – Partial interim review initiated 反倾销-发起部分期中复审	EU 2017/C 117/11, dated 12-4-2017 2017年4月12日 , EU 2017/C 117/11
Certain concrete reinforcing bar 混凝土钢筋	Canada 加拿大	Affirmative final finding 肯定性最终裁决	MFOFCOM news, dated 5-4-2017 2017年4月5日 , 商务部新闻
Cold-Rolled flat products of alloy or non-alloy steel 合金或非合金冷轧扁钢产品	India 印度	Affirmative final finding and recommend reference price 肯定性最终裁决并且建议最低限价	F.No.14/12/2016-DGAD, dated 10-4-2017 2017年4月10日 , 第 14/12/2016-DGAD号
Cut-To-Length Carbon Steel Plate 定尺碳钢板	USA 美国	ADD circumvention inquiry rescinded 取消反倾销反规避调查	82 FR 17633 [A-570-849], dated 12-4-2017 2017年4月12日 , 82 FR 17633 [A-570-849]
Dimethylacetamide 二甲基乙酰胺	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F.No.14/41/2016-DGAD [Case No. OI- 15/2017], dated 17-3-2017 2017年3月17日 , 第 14/41/2016-DGAD号
Elastomeric Filament Yarn 弹性纱线	India 印度	Definitive anti-dumping duty recommended to be imposed 建议征收最终反倾销税	F.No.14/29/2015-DGAD, dated 24-3-2017 2017年3月24日 , 第 14/29/2015-DGAD号
Fishing net 渔网	India 印度	ADD investigation initiated 发起反倾销调查	F.No.14/44/2016-DGAD, dated 31-3-2017 2017年3月31日 , 第 14/44/2016-DGAD号
Fresh Garlic 新鲜大蒜	USA 美国	ADD sunset review initiated 发起反倾销日落复审	82 FR 16159 [A-570-831], dated 3-4-2017 2017年4月3日 , 82 FR 16159 [A-570-831]
Galvanized plate 镀锌板	Viet Nam 越南	Affirmative final finding 肯定性最终裁决	MFOFCOM news, dated 31-3-2017 2017年3月31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
Genus agaricus mushrooms 落叶松茸	Mexico 墨西哥	ADD Order continued after sunset review 日落复审后继续反倾销征税令	MFOFCOM news, dated 10-4-2017 2017年4月10日, 商务部新闻
Glassware 玻璃餐具	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F.No.14/45/2016-DGAD [Case No. OI-20/2017], dated 28-3-2017 2017年3月28日, 第14/45/2016-DGAD号
Glazed/Unglazed Porcelain/Vitrified tiles 瓷砖	India 印度	Affirmative final finding 肯定性最终裁决	F.No.14/14/2014-DGAD, dated 8-4-2017 2017年4月8日, 第14/14/2014-DGAD号
H section steel H型钢	Viet Nam 越南	Affirmative preliminary finding 肯定性临时裁决	MOFCOM news, dated 23-3-2017 2017年3月23日, 商务部新闻
Hardwood Plywood Products 硬木胶合板	USA 美国	CVD affirmative preliminary finding 反补贴肯定性初裁	MFOFCOM news, dated 20-4-2017 2017年4月20日, 商务部新闻
Hot-Rolled flat products of alloy or non-alloy steel 合金或非合金热轧钢板产品	India 印度	Affirmative final finding and recommend reference price 肯定性最终裁决并且建议最低限价	F.No.14/9/2016-DGAD, dated 10-4-2017 2017年4月10日, 第14/9/2016-DGAD号
Hot-rolled flat products of iron or steel 热轧板材	EU 欧盟	Definitive ADD imposed 征收最终反倾销税	Commission Implementing Regulation (EU) 2017/649, dated 5-4-2017 2017年4月5日, 欧盟执行委员会公告第2017/649号
Indolinone 吲哚酮	India 印度	Definitive anti-dumping duty imposed (related to anti-circumvention of Diclofenac Sodium) 征收最终反倾销税 (关于双氯芬酸钠的反规避)	9/2017-Cus. (ADD), dated 24-3-2017 2017年3月24日, 9/2017-Cus. (ADD)



Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Linear Alkyl Benzene 直链烷基苯	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	12/2017-Cus. (ADD), dated 11-4-2017 2017年4月11日 , 12/2017-Cus. (ADD)
Multilayered Wood Flooring 复合木地板	USA 美国	ADD and CVD - Wood flooring products consisting of only two layers clarified as being outside scope 反倾销和反补贴-木地板产品范围排除两层产品	82 FR 18420 [A-570-970; C-570-971], dated 19-4-2017 2017年4月19日 , 82 FR 18420 [A-570-970; C-570-971]
Okoumé plywood 胶合板	EU 欧盟	Definitive ADD imposed after sunset review 日落复审征收最终反倾销税	Commission Implementing Regulation (EU) 2017/648, dated 5-4-2017 2017年4月5日 , 欧盟执行委员会第2017/648号
Oxalic Acid 草酸	EU 欧盟	ADD - Expiry review initiated 反倾销-发起期终复审	EU 2017/C 117/12, dated 12-4-2017 2017年4月12日 , EU 2017/C 117/12
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 - Provisional assessment for certain new shippers during pendency of New Shipper Review 反倾销-对某些新出口商在新出口商复审调查阶段临时免税	8/2017-Cus. (ADD), dated 15-3-2017 2017年3月15日 , 8/2017-Cus. (ADD)
Phosphorus Pentoxide or P2O5 五氧化二磷	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F.No.14/47/2016-DGAD [Case NO. OI 17/2017], dated 17-3-2017 2017年3月17日 , 第14/47/2016-DGAD号
Photovoltaic module 光伏组件	Turkey 土耳其	Affirmative final finding 肯定性最终裁决	MFOFCOM news, dated 6-4-2017 2017年4月6日 , 商务部新闻
Playing card 纸牌	India 印度	ADD investigation initiated 发起反倾销调查	F.No.14/43/2016-DGAD, dated 30-3-2017 2017年3月30日 , 第14/43/2016-DGAD号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Pure Magnesium 纯镁	USA 美国	ADD Order continued after sunset review 日落复审后继续反倾销征税令	82 FR 18114 [A-570-832], dated 17-4-2017 2017年4月17日, 82 FR 18114 [A-570-832]
Stainless Steel Sheet and Strip 不锈钢板材卷和带材卷	USA 美国	ADD and CVD Orders issued 发布反倾销和反补贴征税令	82 FR 16160 [A-570-042] and 82 FR 16166 [C-570-043], both dated 3-4-2017 2017年4月3日, 82 FR 16160 [A-570-042] 和82 FR 16166 [C-570-043]
Stainless steel sinks 不锈钢水槽	Canada 加拿大	ADD and CVD sunset review initiated 发起反倾销和反补贴日落复审	MFOFCOM news, dated 6-4-2017 2017年4月6日, 商务部新闻
Stainless steel tube and pipe butt-welding fittings 钢铁管对焊件	EU 欧盟	Definitive ADD revised 修改最终反倾销税	Commission Implementing Regulation (EU) 2017/659, dated 6-4-2017 2017年4月6日, = 欧盟执行委员会公告第 2017/659号
Stilbenic Optical Brightening Agents 光学增白剂	USA 美国	ADD sunset review initiated 发起反倾销日落复审	82 FR 16159 [A-570-972], dated 3-4-2017 2017年4月3日, 82 FR 16159 [A-570-972]
Tartaric acid 酒石酸	EU 欧盟	ADD - Expiry review initiated 反倾销-发起期终复审	EU 2017/C 122/06, dated 19-4-2017 2017年4月19日, EU 2017/C 122/06
Toluene Di Isocyanate 甲苯二异氰酸酯	India 印度	Provisional anti-dumping duty recommended to be imposed 建议征收临时反倾销税	F.No.14/36/2016-DGAD, dated 28-3-2017 2017年3月28日, 第14/36/2016-DGAD号
Tyre 轮胎产品	Turkey 土耳其	Safeguard investigation initiated 发起保障措施调查	MFOFCOM news, dated 10-4-2017 2017年4月10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
Veneered Engineered Wooden Flooring 工程木地板	India 印度	Extension of time for filing questionnaire response up to 24 April, 2017 提交问卷回复日期延长至2017年 4月24日	F.No.14/34/2016-DGAD, dated 13-4-2017 2017年4月13日, 第14/34/2016-DGAD号
Welded carbon pipe connector 碳钢焊接管道连接件	Japan 日本	ADD investigation initiated 发起反倾销调查	MFOFCOM news, dated 1-4-2017 2017年4月1日, 商务部新闻

## Trade remedy measures by China

### 中国采取的贸易救济措施

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Ethylene Glycol Monobutyl Ether and Diethylene Glycol Monobutyl Ether 乙二醇的单丁醚和 二甘醇的单丁醚	USA and EU 美国和欧盟	ADD mid-term investigation initiated 发起反倾销期中复审调查	MOFCOM Announcement NO. 18 of 2017, dated 12-4-2017 2017年4月12日, 商务部公告2017年第18号
Methyl Isobutyl Ketone 甲基异丁基(甲)酮	Korea RP, Japan, South Africa 韩国、日本 和南非	ADD investigation initiated 发起反倾销调查	MOFCOM Announcement NO. 16 of 2017, dated 27-3-2017 2017年3月27日, 商务部公告2017年第16号
Photographic paper 相纸	EU, USA and Japan 欧盟、美国 和日本	ADD sunset review initiated 发起反倾销日落复审	MOFCOM Announcement NO. 10 of 2017, dated 22-3-2017 2017年3月22日, 商务部公告2017年第10号

## WTO News 世贸组织新闻

### 欧盟对禽类进口的关税配额案-世贸组织发布专家组报告

3月28日, 世贸组织专家组发布了由中国提出的“欧盟-影响对某些禽类肉制品关

税减让措施案”(DS492)的报告。中国曾质疑根据关贸总协定第28条, 欧盟将某些关税配额扩展到巴西和泰国。就这场争端中十个配额问题中的两个, 专

案组认为欧盟将关税配额分配给巴西和泰国与第13.2条的规定不一致。特别是专家组认为，欧盟未能证明情势变更的因素，而中国在供应涉案产品方面存在“重大利益”。

在另一件涉及禽类的争端案中，美国阻止了印度请求根据地21.5条成立执行专家组，以研究印度是否遵守了争端解决机构在DS430“印度-关于进口某些农产品的措施”争端案中的建议。上诉机构已于2015年6月发布报告并且印度已于2016年7月通知争端解决机构其已采取必要措施，以配合有关争端的建议和裁决。有趣的是2016年7月，涉及中止减让水平的事项正在根据DSU第22.6条提交仲裁。

同样，在哥伦比亚和巴拿马之间的另一个争端案中，DSB已同意根据DSU第21.5条成立专家组，以确定哥伦比亚是否遵守WTO对于其纺织品、服装和鞋类的进口关税案较早的裁决。这里值得一提的是，此事已经由巴拿马根据第22.6条提交仲裁，以确定适当的中止让步或其他义务。

### 乌克兰质疑印度对冷轧钢板产品的反倾销税

乌克兰对印度对某些冷轧或冷轧扁钢产品征收临时反倾销税措施提出质疑。乌克兰认为在确定压低价格方面印度调查机关并未在临时裁决中认定无损害价格是如何成立的，以及每公吨594美元的金额构成无损害价格。印度根据涉案产品的到岸价格与每公吨594美元之间的差额征收临时

反倾销税。根据乌克兰在2017年3月28日反倾销委员会上发布的文件看，调查期间从乌克兰进口的产品数量少于3%。乌克兰还质疑调查机构使用的方法论，考虑所有其他因素对国内工业的单独和综合影响。

### 墨西哥就哥斯达黎加限制鳄梨进口提出争端，而土耳其质疑美国对钢管产品的反补贴税

墨西哥已通知WTO秘书处，请求与哥斯达黎加就后者涉嫌限制或禁止从墨西哥进口新鲜鳄梨的有关措施进行磋商。墨西哥认为，哥斯达黎加也未能履行货承认其内部的法律违反了世贸组织的《卫生与植物卫生措施协定》（SPS协定）的某些规则。

土耳其也于3月8日通报了WTO秘书处，请求与美国就关于美国对某些管道和管道产品进口的反补贴税（DS 523）进行磋商。土耳其认为在认定的某些实质性和方法论方面和对某些油井管（OCTG）、焊接线管、厚壁矩形焊接碳钢管、圆形焊接碳钢管征收反补贴税方面，美国的做法与WTO补贴和反补贴协议（SCM协定）和1994年关税与贸易总协定（GATT）不一致。

### 专家组成立以审查美国再生能源措施和俄罗斯运输限制

3月21日，争端解决机构（DSB）同意为两个新的争端案成立专家组 - 一个专家组审查由印度提出的对美国在国家层面推动可再生能源的某些措施案（DS510），

另一个专家组审查乌克兰提出的在通过俄罗斯联邦时的运输限制案。需要注意的是在2016年9月另一个印度和美国之间争端案 ( DS456 ) 即印度在可再生能源行业 ( 太阳能电池和组件 ) 的上诉机构报告中支持了美国的主张, 认为印度的措施与1994年关税和贸易总协定第3.4条WTO非歧视义务和与贸易有关的投资措施协议第2.1条不一致。

### 讨论电子商务在促进发展中的作用

WTO贸易与发展委员会最近讨论了电子商务在促进会员发展中的作用。一般来说, 会员认识到电子商务在提供方法和机会以促进全球贸易方面的作用。然而, 许多发展中成员也强调了成员国之间的数字鸿沟, 指出某些发展中国家不能获得某些基本要求, 如电源、连接、带宽或上网等。这些成员旨在推动委员

会首先集中为发展中国家成员解决这些准入问题上的作用。

### 有关消费品的问题在贸易技术壁垒委员会会议上讨论

贸易组织成员国在3月29日的贸易技术壁垒委员会的最新会议上提出了57个具体贸易问题。其中, 9个问题有关食品和酒精饮料的标签、新能源汽车、化工、网络安全、钢铁和IT设备。美国、日本、欧盟和澳大利亚对中国新的网络安全法律提出了担忧。成员国认为新的法律有可能对外国技术和资讯科技公司存在歧视, 以及法律范围和某些术语含义的不确定性。会上还提出了对欧盟在“有机”标签的法律和无线电设备的标准和指南、多明尼加共和国的进口钢筋技术法规、意大利对用于生产意大利面的谷物的标签要求等问题。

## Ratio Decidendi 判决理由

### 反倾销中的规避-涉案产品范围

新德里高等法院驳回了对发起冷轧不锈钢薄板和宽度大于1250毫米的线圈反倾销的反规避调查的质疑。对于宽度从600毫米到1250毫米的线圈实施了反倾销税措施, 起诉方依据印度调查机关在至少两次调查程序中重复的认定, 从技术上和商业上而言进口1250毫米或更宽的货物然后切割或切开成更小的宽度以在印度使用, 这种做法是不可行的。法

院在这方面认为, 之所以作出较早裁决 ( 及认定 ) 而征收反倾销税与损害的可能性有关。而规避程序中, 调查的轨迹是完全不同的。驳回令状请愿的同时法院认为, 虽然在过去调查机关关注反倾销调查程序的决定性性质, 认为不应该有一个新的调查, 但是人们不能忽视规避程序的微妙性质。法庭没有被起诉方的论点说服, 即涉案产品在之前令状和裁决中应与规避程序中得涉案产品范围是相同的。

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