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### 内容

#### 文章

玻璃纤维反规避调查：解决实践和法律解释的不一致 ..... 2

#### 贸易救济新闻

对中国采取的贸易救济行动 ..... 5

中国采取的贸易救济行动 ..... 8

世贸组织新闻 ..... 9

印度海关和贸易政策更新 ..... 10

判决理由 ..... 11

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## Article 文章

### Anti-circumvention investigation concerning *Glass Fibre*: Resolving inconsistencies in practice and interpretation

玻璃纤维反规避调查：解决实践和法律解释的不一致

By Jayant Raghu Ram

#### Introduction

Circumvention of anti-dumping duty is one of the foremost challenges for investigating authorities. In spite of the absence of normative provisions concerning circumvention in the WTO's Anti-Dumping Agreement, Member nations of the WTO have developed their own frameworks for dealing with anti-circumvention.

In India, even though the provisions concerning anti-circumvention have been in place since 2011, there have been a very limited number of anti-circumvention investigations. As a result, the jurisprudence and the Designated Authority's practice concerning anti-circumvention investigations is still developing. This article discusses the Indian Authority's practice and jurisprudence concerning various aspects of an anti-circumvention investigations, particularly the requirement for determination of material injury.

In an investigation of circumvention under sub-rule (3) of Rule 25 of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the investigating authority examines whether there has been a change in trade practice, pattern of trade or channel of sales by the notified exporters/producers. This examination is done by analyzing whether there is (a) an absence of a justification for such a change, economic or

otherwise, other than imposition of anti-dumping duty; (b) evidence that the remedial effects of the anti-dumping duty are undermined in terms of the price and the quantity of the like articles. However, the crucial issue is whether an analysis of "undermining remedial effects" requires the Authority to conduct a detailed examination of material injury to the domestic industry, as is done in an original investigation. Even though the relevant explanation to sub-rule (3) does not stipulate such a requirement, the Indian Authority's practice in its anti-circumvention investigations on this aspect has been inconsistent.

On 30<sup>th</sup> July 2018, the Designated Authority notified the final findings in an investigation into alleged circumvention of anti-dumping duty on imports of Glass Fibre from China PR by imports of Chopped Strand Mats ("CSM"), one of the types of Glass Fibre (the product subject to anti-dumping duty). The investigation was initiated subsequent to the domestic industry's complaint that M/s Asia Composite Materials (Thailand) Co. Ltd. ("ACM Thailand"), was importing Assembled Glass Roving ("AR", also a type of glass fibre) from China PR into Thailand, converting it into CSM, and thereafter exporting it to India. The domestic industry contended that CSM was being imported into India from Thailand to circumvent the anti-dumping duty on imports of Glass Fibre

from China PR, that was notified in the original investigation.

In the course of the investigation, it was determined that ACM Thailand was a step-down subsidiary of Sichuan Weibo New Material Group Co. Ltd. (China), which was a non-cooperating entity during the original investigation and was thus assigned a residual duty rate of 47%. The Authority determined that the manufacturing setup in Thailand was a continuation of Sichuan Weibo's production line, where AR manufactured by it was simply sent to its affiliate company in Thailand for final conversion to CSM.

Against this background, the Authority examined whether there was a change in trade pattern and undermining of remedial effects in terms of sub-rule (3) of Rule 25. The Authority's analysis regarding the same are discussed below.

### ***Change in pattern of trade***

In this investigation, the Authority noted that after imposition of the anti-dumping duty, the volume of AR imported from China PR into Thailand increased. At the same time, the volume of CSM exported by ACM to India from Thailand increased. The Authority further noted that in the injury investigation period, there was a steady decline in the market share of CSM imported from China PR into India, while that of CSM imported from Thailand into India increased in the same period. The Authority thus came to the inevitable conclusion that there was a very clear and distinct change in the pattern of trade amongst India, China PR and Thailand.

In the investigation, the Authority noted that it had been advertised on ACM Thailand's website regarding its ability to provide 'good (export) service to customers world-over, particularly in

areas where anti-dumping duty was imposed on CSM made in China'. The Authority took note of this statement as evidence, which was not rebutted by ACM Thailand.

### ***Undermining remedial effects of anti-dumping duty***

In order to determine whether the remedial effects of the subject measure were being undermined, the Authority first compared the landed value of CSM exports by ACM Thailand to India with the domestic industry's selling prices of CSM. The Authority found that price undercutting was quite significant, being in the range of 20-30%.

The Authority also noted that 'preventing deterioration of the domestic industry's market share' is an important objective of anti-dumping duty and therefore considered it important in a determination of "undermining remedial effects". In its examination, the Authority found that while the market shares of both the domestic industry and imports from China PR had decreased, that of the exports from Thailand had increased. The Authority thus concluded that the remedial effects of the original anti-dumping duty were being undermined in terms of quantity as well.

### ***Analysis of material injury to the domestic industry***

In the course of the investigation, ACM Thailand submitted that a determination of "undermining remedial effects" required a detailed analysis of material injury under Annexure II to the AD Rules. ACM Thailand seemed to suggest that an examination of the domestic industry's economic parameters such as capacity, capacity utilization, profits, sales, etc. was required in an anti-circumvention investigation. In support of its submissions, ACM

Thailand relied upon the final findings in *Indolinone from China PR* where the Authority examined injury to the domestic industry as per Rule 11 and Annexure II by evaluating these factors. The Authority's analysis seems to have been based on Rule 6 (1) (iv) which requires summarization of factors of alleged injury, and Rule 26 (5), which stipulates that provisions regarding evidence and procedure under Rule 6 would apply *mutatis mutandis* to anti-circumvention investigations.

However, in the subsequent anti-circumvention investigation on *Cold-Rolled Stainless Steel from China PR, Korea, European Union, South Africa, Taiwan, Thailand and USA*, the Authority adopted a contrary approach. In this investigation, the Authority stated that the AD Rules do not have explicit provisions of either Rule 11 or Annexure II for anti-circumvention investigation. The Authority limited its examination of "undermining remedial effects" by examining only price effect and volume effect. Even though the Authority's practice in *Cold-Rolled Stainless Steel* seems consistent with the provisions of AD Rules, the result was that the practice on examining "undermining remedial effects" had become inconsistent and conflicting.

This ambiguity has however been resolved in the present investigation where the Authority has expressed the view that, in an anti-circumvention investigation, the AD Rules require only a determination of whether the remedial effects are being undermined in terms of price effect and

volume effect; the AD Rules do not require a detailed material injury analysis to be conducted by the Authority in an anti-circumvention investigation. Therefore, no detailed examination of material injury was carried out in this investigation. The Authority has confirmed its interpretation and practice in *Cold-Rolled Stainless Steel*, and thus settled the ambiguities that existed earlier.

### Conclusion

The AD Rules are clear that the Authority should determine "undermining remedial effects" by examining only price effect and volume effect in an anti-circumvention investigation. The inconsistency in practice regarding examination of material injury in the context of "undermining remedial effects" has now been clarified. The Authority's findings are consistent with the approach of other investigating authorities in countries such as the European Union and Australia. This approach is also a logical one since the purpose of an anti-circumvention investigation is merely to determine whether the existing measures are being circumvented, thus frustrating the objectives of anti-dumping duty. It remains to be seen whether the Authority will maintain this consistent approach given that the Authority is conducting a number of anti-circumvention investigations at present.

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## 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	Measure 措施	Notification No. and date 公告文号和日期
1, 1, 1, 2, Tetrafluoroethane (R 134a) R134a	India 印度	Final Findings issued terminating the New Shipper Review 发布终止新出口商复审的最终裁决	F.No.15/22/2016- DGAD, dated 26-7-2018 2018 年 7 月 26 日, 第 15/22/2016- DGAD 号
Aluminium Alloy Road Wheels (ARWs) 铝制车轮	India 印度	Initiation of Anti-Dumping Sun Set Review investigation 发起反倾销日落复审调查	F. No. 7/31/2018-DGTR, dated 10-8-2018 2018 年 8 月 10 日, 第 7/31/2018-DGTR 号
Aluminium Extrusions 铝型材	Australia 澳大利亚	Initiation of an exemption inquiry 发起免税调查	Anti-dumping Notice No. 2018/127, dated 9-8-2018 2018 年 8 月 9 日, 反倾销公告 第 2018/127 号
Aluminium Road Wheels 铝制车轮	Australia 澳大利亚	Extension of time granted to issue Statement of Essential Facts and the Final Report 延期发布重要事实披露和最终裁决	Anti-dumping Notice No. 2018/124, dated 6-8-2018 2018 年 8 月 6 日, 反倾销公告 第 2018/124 号
Carbon and Alloy Steel Cut-to-Length Plate 碳合金钢定尺板	USA 美国	Amended Final Results of Countervailing Duty Expedited Review 修改反补贴快速复审的最终裁决	83 FR 42638 [C-570-048], dated 23-8-2018 2018 年 8 月 23 日, 83 FR 42638 [C-570-048]
Cast iron soil pipe 铸铁污水管	USA 美国	Affirmative preliminary ADD finding 肯定性反倾销初裁	MOFCOM news, dated 28-8- 2018 2018 年 8 月 28 日, 商务部新闻
Cold-rolled steel in coils or cut lengths 冷轧钢卷/板	Canada 加拿大	Preliminary determinations of dumping and subsidizing 初步裁决存在倾销和补贴	CRS 2018 IN, dated 23-8-2018 2018 年 8 月 23 日, CRS 2018 IN
Common Alloy Aluminum Sheet 铝合金薄板	USA 美国	Preliminary Affirmative Determination of Sales at Less Than fair Value amended 修改低于正常价值销售的初步肯定性 裁决	83 FR 39056 [A-570-073], dated 8-8-2018 2018 年 8 月 8 日, 83 FR 39056 [A-570-073]
Corrosion-resistant steel sheet 耐腐蚀钢板	Canada 加拿大	Initiation of an investigation into the dumping 发起反倾销调查	COR 2018 IN, dated 10-8-2018 2018 年 8 月 10 日, COR 2018 IN



<b>Product</b> 产品	<b>Country</b> 国家	<b>Measure</b> 措施	<b>Notification No. and date</b> 公告文号和日期
Crystalline Silicon Photovoltaic Cells 晶体硅光伏电池	USA 美国	Preliminary Results of Changed Circumstances Reviews 情势变更复审初裁	83 FR 42112 [A-570-979, C-570-980], dated 20-8-2018 2018 年 8 月 20 日, 83 FR 42112 [A-570-979, C-570-980]
Flat Base Steel wheels 平底钢圈	India 印度	Final Findings issued in the Sunset Review recommending continued imposition of anti-dumping duty 日落复审发布最终裁决建议继续征收反倾销税	F.No.7/1/2018-DGAD, dated 9-8-2018 2018 年 8 月 9 日, 第 7/1/2018-DGAD 号
Fluoroelastomers (FKM) 氟橡胶	India 印度	Initiation of Countervailing Duty / Anti-Subsidy Investigation 发起反补贴调查	F.No.6/21/2018- DGTR, dated 14-8-2018 2018 年 8 月 14 日, 第 6/21/2018- DGTR 号
Glass Fibre 玻璃纤维	India 印度	Final Findings issued recommending extension of anti-dumping duty imposed vide customs Notification No.48/2016-Customs, dated 1/09/2016 to cover imports of Chopped Strand Mats (a type of glass fibre) from Asia Composite Materials (Thailand) Co., Ltd of Thailand 最终裁决建议反倾销税的征税范围延伸至泰国亚洲材料有限公司	F.No.7/25/2017- DGAD, dated 30-7-2018 2018 年 7 月 30 日, 第 7/25/2017- DGAD 号
Graphite Electrodes 石墨电极	India 印度	Final Findings issued in the Mid-Term Review (MTR) investigation recommending dis-continuation of anti-dumping duty 期中复审发布最终裁决建议终止反倾销税	F.No.7/13/2018-DGAD, dated 8-8-2018 2018 年 8 月 8 日, 第 7/13/2018-DGAD 号
Grinding Balls 研磨球	Australia 澳大利亚	Findings in relation to accelerated review of anti-dumping measures 发布反倾销快速复审最终裁决	Anti-dumping Notice No. 2018/117, dated 16-8-2018 2018 年 8 月 16 日, 反倾销公告第 2018/117 号
High Speed Steel of Non-Cobalt Grade 不含钴高速钢	India 印度	Initiation of Anti-dumping Investigation 发起反倾销调查	F.No.6/23/2018-DGTR, dated 14-8-2018 2018 年 8 月 4 日, 第 6/23/2018-DGTR 号
Large Diameter Welded Pipe 大口径焊管	USA 美国	Preliminary Determination of Sales at Less Than Fair Value 初步裁决低于正常价值销售	83 FR 43644 [A-570-077], dated 27-8-2018 2018 年 8 月 27 日, 83 FR 43644 [A-570-077]

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Multilayered Wood Flooring 多层木地板	USA 美国	Notice of Court Decision Not in Harmony with Final Rescission of the Antidumping Duty New Shipper Review 法院公告与反倾销新出口商复审不一致	83 FR 40748 [A-570-970], dated 16-8-2018 2018 年 8 月 16 日, 83 FR 40748 [A-570-970]
Ofloxacin 氧氟沙星	India 印度	DGAD recommendation for corrigendum to Customs Notification. Addition of HS codes relating to Chapter 29 建议就相关的第 29 章 HS 代码做出修正	F.No.14/6/2016-DGAD, dated 2-8-2018 2018 年 8 月 2 日, 第 14/6/2016-DGAD 号
Paracetamol 扑热息痛	India 印度	ADD extended till 26-4-2019 consequent to initiation of sunset review 发起日落复审后反倾销税延期至 2019 年 4 月 26 日	39/2018-Customs (ADD), dated 20-8-2018 2018 年 8 月 20 日, 39/2018-Customs (ADD)
Plastic Decorative Ribbon 塑料装饰丝带	USA 美国	Postponement of Final Determination of Sales at Less Than Fair Value 延期发布低于正常价值销售最终裁决	83 FR 40226 [A-570-075, C-570-076], dated 14-8-2018 2018 年 8 月 14 日, 83 FR 40226 [A-570-075, C-570-076]
Saccharin 糖精	India 印度	Initiation of Countervailing Duty / Anti-Subsidy Investigation 发起反补贴调查	F.No.6/18/2018- DGAD, dated 10-8-2018 2018 年 8 月 10 日, 第 6/18/2018- DGAD 号
Solar cells whether or not assembled in modules or panels 不论是否组装的太阳能电池	India 印度	Safeguard Duty imposed. However collection of duty provisionally kept in abeyance 征收保障措施税, 然而临时暂停征收	1/2018-Customs (SG), dated 30-7-2018 and Customs Instruction No.12/2018-Customs, dated 13-8-2018 2018 年 7 月 30 日, 1/2018-Customs (SG),和 2018 年 8 月 13 日, 海关指示第 12/2018-Customs 号
Steel Propane Cylinders 钢制丙烷气瓶	USA 美国	Postponement of Preliminary Determination in the Countervailing Duty Investigation 反补贴调查延期发布初裁	83 FR 37463 [C-570-087], dated 1-8-2018 2018 年 8 月 1 日, 83 FR 37463 [C-570-087]
Steel Wheels 钢制轮毂	USA 美国	Preliminary Affirmative Determination in the CVD Investigation 肯定性反补贴调查初裁	MOFCOM news, dated 28-8-2018 2018 年 8 月 28 日, 商务部新闻

<b>Product</b> 产品	<b>Country</b> 国家	<b>Measure</b> 措施	<b>Notification No. and date</b> 公告文号和日期
Sucker rods 抽油杆	Canada 加拿大	Preliminary determinations of dumping and subsidizing 初裁存在倾销和补贴	SR 2018 IN, dated 16-8-2018 2018 年 8 月 16 日, SR 2018 IN
SUS 300 series flat-rolled products of stainless steel, cold-rolled, whether in coils or sheets 300 系冷轧不锈钢卷和钢板	Taiwan Region 台湾地区	Initiation of Anti-Dumping Sun Set Review investigation 发起反倾销日落复审调查	MOFCOM news, dated 9-8-2018 2018 年 8 月 9 日, 商务部新闻
Tin plate 镀锡铁皮	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 28-8-2018 2018 年 8 月 28 日, 商务部新闻
Uncovered Innerspring Units 非封闭内置弹簧部件	USA 美国	Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order 初步肯定性裁决存在规避反倾销	83 FR 42254 [A-570-928], dated 21-8-2018 2018 年 8 月 21 日, 83 FR 42254 [A-570-928]
Welded Stainless Steel Pipes and Tubes 焊接不锈钢管	India 印度	Initiation of Countervailing Duty / Anti-Subsidy Investigation 发起反补贴调查	F.No.6/22/2018-DGAD, dated 9-8-2018 2018 年 8 月 9 日, 第 6/22/2018-DGAD 号

## Trade Remedy actions by China

### 中国采取的贸易救济行动

<b>Product</b> 产品	<b>Country</b> 国家	<b>Measure</b> 措施	<b>Notification No. and date</b> 公告文号和日期
Halogenated Butyl Rubber 卤化丁基橡胶	USA, EU and Singapore 美国、欧盟和新加坡	Anti-dumping duty imposed 征收反倾销税	MOFCOM Announcement No.40 of 2018, dated 10-8-2018 2018 年 8 月 10 日, 商务部公告 2018 年第 40 号
White feather broilers 白羽肉鸡	Brazil 巴西	ADD investigation period extended 延长反倾销调查期限	MOFCOM Announcement No.65 of 2018, dated 18-8-2018 2018 年 8 月 18 日, 商务部公告 2018 年第 65 号





## WTO News 世贸组织新闻

### 印尼的金属关税并非保障措施：世贸组织上诉机构报告

8月15日，世贸组织上诉机构就中国台北和越南提出的“印尼—某些钢铁产品的保障措施案”(DS490和DS496)发布了上诉机构报告。上诉中，印尼、中国台北和越南均对专家组的结论提出异议，即印尼对进口镀锌钢板征收的特别关税不是受世贸组织保障措施协议约束的保障措施。然而，上诉机构发现，专家组不仅有权，而且确实需要根据自己的动议确定所讨论的措施是否是受世贸组织保障措施协议约束的保障措施。上诉机构还讨论了使措施具有“保障措施”资格所必须满足的要素，即(i)措施必须全部或部分中止关贸总协定的义务或撤回或修改关税减让；和(ii)中止、撤回或修改有关措施必须旨在防止或补救由于受到该涉案产品的进口增加或威胁而对成员国的国内产业造成严重损害。因此，经审查，上诉机构同意专家组的意见，即本争端中涉及的措施不受世贸组织保障措施协议的约束。上诉机构还就提起上诉的其他方面维持了专家组的裁决。

### 欧盟的某些能源行业措施违反了世贸组织法：争端解决专家组报告

8月10日，世贸组织在由俄罗斯提出的“欧盟—与能源行业有关的某些措施案”(DS476)发布了专家组报告。俄罗斯对欧盟及其三个成员国，即克罗地亚、匈牙利和立陶宛采取的某些能源措施提出质疑，这些国家管理天然气部门，并寻求激励在欧盟境内发展天然气基础设施。专家组确定，欧盟及其成员国维持的七项措施中有两项不符合世贸组织法律，因此违反了世贸组织法律。

### 俄罗斯对乌克兰铁路设备措施案-世贸组织发布专家组报告

7月30日，世贸组织就乌克兰提出的“俄罗斯—影响铁路设备及其零部件进口的措施案”(DS499)发布了专家组报告。乌克兰质疑俄罗斯向乌克兰的铁路车辆、铁路开关和其他铁路设备(铁路产品)供应商适用铁路产品

合格评定程序。乌克兰的主张集中在三个措施上，对这些措施的整体影响提出了质疑。专家组关于这一点的调查结果如下：

- (a) 俄罗斯通过14项“指示”，暂停向乌克兰铁路产品供应商颁发合格证书。专家组认定乌克兰确立了在俄罗斯发布的14项指示中，有两项没有将评估结果以准确和完整的方式传达给申请人的有限的违反行为，这违反了TBT协定第5.2.2条中的义务。
- (b) 俄罗斯通过三项决定，拒绝了乌克兰铁路产品供应商根据CU技术条例第001/2011号和第003/2011号而提交的新的证书申请。专家组确定，在四起被拒绝的案件中，有三起俄罗斯采取了比必要更严格地措施，并且未能传达关于为何拒绝这些申请的准确和完整的信息。
- (c) 某些俄罗斯当局拒绝承认白俄罗斯或哈萨克斯坦等其他海关联盟国家签发的合格证书。专家组认定，这种做法违反了1994年关贸总协定第1.1条和第3.4条，本质上具有歧视性。
- (d) 俄罗斯通过上述措施，系统性地阻止乌克兰铁路产品进入俄罗斯。关于所谓的俄罗斯有计划地阻止乌克兰铁路产品的进口，专家组发现，乌克兰没有证实其主张的俄罗斯违反了非歧视义务(1994年关贸总协定第1.1条和第13.1条)，并且俄罗斯有义务对国际贸易不采取限制(1994年关贸总协定第11.1条)，因为乌克兰没有证明俄罗斯存在系统地阻止乌克兰铁路产品进入俄罗斯。

### 乌克兰对肥料征收反倾销税-争端解决专家组认定乌克兰的调查违规

7月20日，世贸组织就俄罗斯提出的乌克兰-对硝酸铵实施反倾销措施案(DS493)发布了专家组报告。俄罗斯质疑乌克兰对从俄罗斯进口硝酸铵采取的反倾销措施。乌克兰当局是在原始反倾销调查之后对这些进口产品实施反倾销措施的，这些措施是根据期中复审和期末复审而决定延长的。俄罗斯对乌克兰当局的审查决定提出了实质性和程序性的主张，同时对原始调

查中确定的某些方面提出质疑。专家小组支持了对俄罗斯有利的大多数问题，认定乌克兰进行的调查与反倾销协议存在各种不一致之处。所讨论的问题涉及倾销和倾销可能性的认定、与损害有关方面的认定，以及他们决定在复审阶段包括据称在原始调查阶段被认定为微不足道倾销幅度的俄罗斯生产商。

俄罗斯还根据反倾销协定第 6.2 和 6.9 条、第 6.8 条和附件 2 第 3、5 和 6 段以及第 12.2 和 12.2.2 条提出了程序性主张。专家组支持俄罗斯根据第 6.9 条提出的大部分主张，同时拒绝根据第 6.2 条和第 6.9 条提出的一系列主张。

## 中国对美国的太阳能电池征税以及可再生能源措施发起争端解决

8 月 16 日，世贸组织向其成员分发了中国提出的与美国进行磋商的两项请求。请求的主题涉及美国对晶体硅光伏产品的进口征收保障措施税，以及州和市一级对使用国内来源的可再生能源产品和技术的给予激励措施。

中国认为美国对晶体硅光伏产品实施的保障措施不符合美国根据 1994 年关贸总协定和保障措施协定所承担的义务。同样，有关可再生能源的措施也被认为违反了关贸总协定、TRIM 协定和 SCM 协定的各种规定。



## India Customs & Trade Policy Update 印度海关和贸易政策更新

### 印度延期对美国的弥补贸易损失的报复措施

2018 年 6 月 20 日财政部发布的公告修改了海关关税附表 1，并修改了大部分的免税公告，以根据第 7、8、28、38、72 和 73 章增加从美国进口的货物关税，有效期自 2018 年 8 月 4 日起。这种对诸如杏仁、新鲜苹果和其他诊断试剂等商品的附加税现在将从 2018 年 9 月 18 日起生效。进口关税的增加与美国对从印度进口某些铝和钢制品的某些措施有关。

### 纺织品-各种纺织品的关税增加

自 8 月 7 日起，印度增加了多种纺织品的关税。这一次的产品清单包括地毯和纺织品地板，以及各种服装和服装配件物品，包括海关关税第 57、61 和 62 章。此举主要是为了扩大对国内产业的保护。值得注意的是，印度最近增加了手机和墨盒的进口关税，据报道，日本已经向印度政府正式提出抗议。

### 修改石化焦炭进口政策-禁止进口用作燃料的焦炭

商工部修改了石油焦炭的进口政策，只允许进口用于水泥、石灰窑、电石和作为原料或在实际使用条件下进行生产的气化行业的焦炭。禁止进口作为燃料的石油焦炭。环境、森林和气候变化部将与海关和对外贸易总局进行协商，提出有关管

制和监测进口方面的详细准则。第 6 号政策条件已被对外贸易总局于 2018 年 8 月 17 日，以第 25/2015-2020 号公告形式插入在 2017 年 ITC (HS) 第 27 章。

### SCOMET-修改附件 3，程序性放宽和出口授权

中央政府已对 2018 年进出口项目分类附表 2 的附录 3 作了 139 项修改。这些修改是为了使印度 SCOMET 清单与 2017 年 12 月签署的《关于常规武器和两用货物及技术的出口管制的瓦森纳安排》的修正相一致。因此，政府已于 2019 年 7 月 3 日发布了第 17/2015-2020 号公告。

**对于再次发布授权的程序性放宽：**在 2018 年 7 月 12 日的第 20/2015-20 号公共通知中，对外贸易总局对于再次获得 SCOMET 项目的授权放宽了程序。现在对于出口申请商再次提出向同一国家/企业出口同样的 SCOMET 产品的申请将由 IMWG 主席批准，而不需要与 IMWG 的成员进行协商。然而，如果对于向不同国家/企业出口同类 SCOMET 产品的再次申请，则只有在完成了对于国外买家/收货人/最终用户的资格审查后才给予批准。公共通知也规定了对于再次申请获得批准的标准。

**对外贸易总局签发出出口授权/许可：**对外贸易总局已决定 SCOMET 项目的出口授权将由 SCOMET

DGFT (HQRS) 部门作出。有关 SCOMET 授权到期后的重新生效、根据 FTDR 法提起刑事诉讼、授予 MEIS 和其他优惠等问题将继续由有关的司法区域管理当局根据 FTP/HBP 中现有的规定处理。贸易通知还明确规定，如果 DGFT (HQRS) 在

本贸易通知发布之前已经批准了该许可，则管辖区域的管理当局将立即就此类 SCOMET 案件签发出口许可。为此，于 2018 年 7 月 6 日发布了第 20/2018-19 号贸易通知。



## Ratio Decidendi 判决理由

### 反倾销调查-使用“全部可获得的不利事实”并不正确

美国国际贸易法院撤销了商务部的裁决，在该反倾销调查裁决中商务部全部使用了可获得的不利事实。虽然法院支持商务部对于未报告与服务有关收入和未能适当报告其国内市场销售情况的出口商的裁决结果，但法院认为没有证据支持商务部的结论，即公司保留了明确在“附件”中要求的必要信息。法院还认为，商务部关于出口商有选择地报告不完整和不可靠的单据从而妨碍审查的认定，并没有实质性证据支持。

商务部裁定 HHI 与服务相关的收入，且尽管商务部一再要求，但 HHI 未能将服务相关的收入与总单价分开报告，法院认定这一裁定得到实质证据的支持。法院注意到商务部在三个单独的情形下，要求 HHI 单独报告与服务有关的收入。然而 HHI 两次没有提供；第三

次，HHI 提供了工作表，但该工作表没有以商务要求的形式或方式作出响应。商务部认定 HHI 未能适当地报告其国内市场销售，包括涉案零件的价格，证明使用现有不利事实是有充分证据的。法院观察到，原告在其国内市场销售数据库中报告了同事也销售到美国的非涉案产品，并在美国销售数据库中正确地报告了涉案产品，并且原告没有承认或解决这一矛盾的处理。

然而，法院观察到，关于有关配件的信息，商务部没有发现任何部件都应该作为配件而进行报告。法院指出，商务部从未作出在这些销售文件中的任何参考的“配件”是非涉案产品而应当单独报告为附件的事实认定。事实上，这些从来没有被定义为“配件”。同样，在选择性报告和其他差异方面，法院发现商务部的裁决并没有任何证据。[2018 年 8 月 14 日，美国国际贸易法院 *Hyundai Heavy Industries Co. Ltd. v. United States* - Slip Op. 18-101]

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