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Article 文章

Analysis of “Material Retardation”: A WTO jurisprudential perspective on DGTR’s recent findings

对“实质阻碍”的分析：从世贸组织的法理学角度分析贸易救济调查局最近的裁决

By Greetika Francis

The Directorate General of Trade Remedies (DGTR) in India has had scant opportunity to address situations of injury in the form of “material retardation to the establishment of an industry”. In fact, since 1995, there have been less than twenty investigations into such situations, and of these, a majority were conducted and concluded during 2017 and 2018. We examine some findings of the DGTR in view of recent jurisprudential guidance provided by the WTO Panel in *Morocco-Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey* (DS 513) in a Panel Report issued on 31 October, 2018. Specifically, the Final Findings with respect to the following investigations are examined:

- Final Findings dated 13 February 2018 with respect to Veneered Engineered Wooden Flooring from China PR, Malaysia, Indonesia and European Union;
- Final Findings dated 2 September 2017 with respect to Non-Woven Fabrics from Malaysia, Indonesia, Thailand, Saudi Arabia and China PR;
- Final Findings dated 12 July 2017 with respect to Styrene Butadiene Rubber of 1500 Series and 1700 Series from European Union, Korea and Thailand; and
- Final Findings dated 23 May 2017 with respect to O-Acid from China PR.

The Panel in *Morocco-AD measures on Steel from Turkey* (DS 513) examines the situation

wherein an Investigating Authority while assessing injury in the form of material retardation to the establishment of an industry, determines or relies on a determination that a particular producer is “unestablished”. The Panel holds that in relying on such a determination, in terms of Article 3.1 of the WTO Anti-Dumping Agreement, an investigating authority must base its assessment on positive evidence. It went on to note that while no specific methodology for such assessment is recorded, the same must be based on “substantiated” facts or inferences. In this regard, the Panel’s observations, as reproduced below, are relevant:¹

“Similar to the Appellate Body’s views, our view is that Article 3.1 does not prescribe a particular methodology that an investigating authority must follow in assessing whether a domestic industry is established.”²²⁹ While an investigating authority enjoys a certain degree of discretion in adopting a methodology to guide its analysis, it may, within the bounds of that discretion, have to rely on reasonable assumptions or draw inferences. The exercise of this discretion must nonetheless comply with the requirements of Article 3.1. Accordingly, when an investigating authority’s determination rests upon assumptions, these assumptions should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently

¹ *Morocco-Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey* (DS 513), Para 7.155

*explained so that their objectivity and credibility can be verified. An investigating authority that uses a methodology premised on unsubstantiated assumptions does not conduct an examination based on positive evidence. An assumption is not properly substantiated when the investigating authority does not explain why it would be appropriate to use it in the analysis.*²³⁰

Original Footnote 229: Appellate Body Report, Russia – Commercial Vehicles, para. 5.52.

Original Footnote 230: Appellate Body Report, Russia – Commercial Vehicles, para. 5.52 (referring to Appellate Body Report, Mexico – Anti-Dumping Measures on Rice, paras. 204-205

In light of this, an examination of the DGTR's Final Findings in investigations involving claims of material retardation to the domestic industry displays a woeful lack of analysis with respect to the status of the Domestic Industry as "established" or "unestablished". At the same time, the assessment of the injury parameters rely on a repeated and absolute reliance on the fact of "unestablishment"- often depicted in the form of an unachieved- but expected- import substitution or increased capacity utilization, etc.

This is particularly notable in the investigation pertaining to *Veneered Engineered Wooden Flooring* where the Authority's injury examination opens with "*The Authority has taken note of the submissions made by the interested parties and the Authority has examined the injury- both material injury and material retardation to the establishment of the domestic industry in accordance with the Anti-dumping Rules and considering the submissions made by the interested parties.*" This is neither preceded nor followed by any determination regarding the status of the domestic industry under consideration. In response to claims regarding the nascency of the domestic industry, the

Authority sets up a vague standard for determining the same, without any meaningful assessment or evidence to establish even such a vague standard. The Authority notes, at paragraph 78 therein, "*As regards the contention that the petitioner's business is not in nascent stage, the Authority notes that the domestic industry commenced its production of the subject goods in August, 2014 only and despite reporting capacity on one shift basis (as against three shift basis working for which capacities have been installed), the capacity utilization of the domestic industry is quite low. The domestic industry is not able to operationalize its production on three shift basis and utilising production capacities to the extent the petitioner had envisaged while setting up the plant based on its projection.*" As such, the standard for nascency which can be devolved from a reading of this paragraph is:

- How long the domestic industry had been producing the domestic like product?
- Is the domestic industry able to achieve capacity utilization as projected?

However, even on this perfunctory and basic standard, the Authority did not discuss nor disclose any evidence with respect to the reliability or underlying facts as contained in the projections put forward by the Petitioner. This very issue, the confidentiality of certain projected "threshold", was discussed by the Panel in its Report on *Morocco-AD Measures on Steel from Turkey*. Owing to limitations of the challenge raised by Turkey, the Panel limited the finding to the nature of evidence considered by the Moroccan Authority in its assessment of the status of the domestic industry in consonance with Article 3.1 of the WTO Anti-Dumping Agreement. The Panel noted:²

"In the underlying investigation, the MDCCE's

² *Morocco-Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey (DS 513), Para 7.148*

finding that the domestic industry was unestablished, and that the establishment of the domestic industry was materially retarded, formed part of the MDCCE's inquiry into the impact of dumped imports on domestic producers. In particular, the MDCCE proceeded to examine whether the domestic industry had suffered injury in the form of material retardation of its establishment, rather than material injury, only upon finding that the domestic industry was unestablished.[original footnote omitted] Given that the MDCCE, in examining the impact of dumped imports on domestic producers, relied on its finding that the domestic industry was unestablished, we consider that Article 3.1 required the MDCCE to base that finding on positive evidence and objective examination. [original footnote omitted] In the event that the record of the underlying investigation shows that the MDCCE did not base that finding on positive evidence and objective examination, we will then conclude that the MDCCE acted inconsistently with Article 3.1.

Coming back to the facts and analysis of the DGTR in *Veneered Engineered Wooden Flooring*, we note that the Authority simply did not assess the status of the domestic industry at all, but rather, proceeded to injury assessment on the basis of *both*, “material injury” and “material retardation to the establishment of the industry”. The Authority did not consider or present any “evidence”, much less positive evidence, that the projected capacity utilization claimed by the domestic industry was reliable or the context pertaining to the same. In some sense, the temporal condition regarding how long the said producer had been producing the subject goods was considered. However, even then the Authority did not consider what the “start-up” period for producers in the subject industry was and whether the subject domestic industry was within that period or not.

It is noted that the Indian Anti-Dumping Rules, at paras. (i) and (vii) of Annexure II provide the

principles for determination of injury and threat of material injury, respectively. However, no such principles exist for the determination of material retardation. Therefore, it is critical for the Authority to disclose the standard and mechanism it would rely on to examine material retardation in every case. Material Retardation is a unique standard in which neither actual injury nor threat of material injury is considered but the injury to the establishment of the domestic industry needs to be determined by the Authority.

Interestingly, while the Indian Authority does not enter into an assessment of whether or not the domestic industry is “established” or not, the assumed determination in this regard colours the entire injury assessment of the Authority. Similar trends can be noted in the other named Final Findings as well. In the Final Findings pertaining to *Styrene Butadiene Rubber of 1500 Series and 1700 Series*, the Authority split the domestic industry based on constituents, treating one part of the industry as established and examining “material injury” with respect thereto and the other part of the industry as unestablished and examining “material retardation to the establishment of the industry” with respect thereto.

Finally, while the Panel’s Findings in *Morocco-Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey (DS 513)* clear the murky waters, requiring investigating authorities to first examine the status of the domestic industry, the Panel Report itself has been appealed by Morocco. On 15 January 2019, the Appellate Body (AB) expressed its inability to issue the AB Report by 19 January 2019 and stated that the expected date of issue for the same will be notified to participants at a later date.³

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³ *Morocco-Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey (DS 513)- Communication from the Appellate Body dated 15 January 2019 and circulated on 20 February 2019, WT/DS513/6*



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 文号和日期
Acrylic fibers 腈纶	Turkey 土耳其	Terminated ADD and CVD investigations 终止反倾销和反补贴调查	MOFCOM news, dated 31-1-2019 2019 年 1 月 31 日, 商务部新闻
Bicycle tire 自行车轮胎	Brazil 巴西	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 26-2-2019 2019 年 2 月 26 日, 商务部新闻
Chamois leather 油鞣革	EU 欧盟	Definitive ADD imposed after expiry review 期终复审后征收最终反倾销税	Commission Implementing Regulation (EU) 2019/297, dated 21-2-2019 2019 年 2 月 21 日, 欧盟执行委员会第 2019/297 号
Chemical fiber carpet 化纤地毯	Turkey 土耳其	ADD sunset review investigation initiated 发起反倾销日落复审	MOFCOM news, dated 31-1-2019 2019 年 1 月 31 日, 商务部新闻
Cold-reduced flat-rolled sheet products of carbon steel 冷轧钢卷/板	Canada 加拿大	ADD and CVD – Determination that imports causing injury to domestic industry 反倾销和反补贴-确定进口对国内产业造成损害	Canadian International Trade Tribunal – Press Release dated 18-2-2019 2019 年 2 月 18 日, 加拿大国际贸易法庭发布新闻
Common alloy aluminum sheet 普通铝合金卷材	USA 美国	Antidumping duty and Countervailing duty Orders issued 发布反倾销和反补贴征税令	84 FR 2157 [C-570-074], dated 6-2-2019 and 84 FR 2813 [A-570-073], dated 8-2-2019 2019 年 2 月 6 日, 84 FR 2157 [C-570-074]和 2019 年 2 月 8 日, 84 FR 2813 [A-570-073]
Copper pipe fittings 铜管件	Canada 加拿大	ADD and CVD reinvestigations initiated 发起反倾销和反补贴再调查	MOFCOM news, dated 3-2-2019 2019 年 2 月 3 日, 商务部新闻
Corrosion-resistant flat-rolled steel sheet products of carbon steel 耐腐蚀钢板	Canada 加拿大	ADD – Determination that imports threatening to cause injury to domestic industry 反倾销-确定进口威胁国内产业造成损害	Canadian International Trade Tribunal – Press Release dated 21-2-2019 2019 年 2 月 21 日, 加拿大国际贸易法庭发布新闻

Product 产品	Country 国家	Measure 措施	Notification No. and date 文号和日期
Ethylene vinyl acetate (EVA) sheet for solar module 太阳能电池组件用 EVA 塑料片	India 印度	Definitive anti-dumping duty recommended 建议最终反倾销税	F.No.6/9/2018-DGAD, dated 21-2-2019 2019 年 2 月 21 日, 第 6/9/2018-DGAD 号
Fluoroelastomers 氟橡胶	India 印度	Termination of CVD investigation pursuant to request by the applicant 根据申请人请求终止反补贴调查	F.No. 6/21/2018-DGTR, dated 5-2-2019 2019 年 2 月 5 日, 第 6/21/2018-DGTR 号
Fluoroelastomers 氟橡胶	India 印度	Definitive ADD imposed for 18 months 征收 18 个月的最终反倾销税	6/2019-Cus. (ADD), dated 28-1-2019 2019 年 1 月 28 日, 第 6/2019-Cus. (ADD)号
Hot-rolled carbon steel flat products 热轧碳钢板	USA 美国	ADD sunset review initiated 发起反倾销日落复审	84 FR 1705 [A-570-865], dated 5-2-2019 2019 年 2 月 5 日, 84 FR 1705 [A-570-865]
Laminated woven sacks 复合编织袋	USA 美国	ADD and CVD sunset reviews initiated 发起反倾销和反补贴日落复审	84 FR 1704 [A-570-916 and C-570-917], dated 5-2-2019 2019 年 2 月 5 日, 84 FR 1704 [A-570-916 和 C-570-917]
Metaphenylene diamine 间苯二胺	India 印度	Definitive ADD continued after sunset review 日落复审后继续最终反倾销税	5/2019-Cus. (ADD), dated 24-1-2019 2019 年 1 月 24 日, 5/2019-Cus. (ADD)
New pneumatic off-the road tires 新的充气工程轮胎	USA 美国	ADD and CVD sunset reviews initiated 发起反倾销和反补贴日落复审	84 FR 1705 [A-570-912 and C-570-913], dated 5-2-2019 2019 年 2 月 5 日, 84 FR 1705 [A-570-912 和 C-570-913]
Non-malleable cast iron pipe fitting 非可锻铸铁管件	USA 美国	ADD sunset review initiated 发起反倾销日落复审	84 FR 1705 [A-570-875], dated 5-2-2019 2019 年 2 月 5 日, 84 FR 1705 [A-570-875],
Paracetamol 扑热息痛	India 印度	ADD Sunset Review – Non-recommendation of continuance of anti-dumping duty 反倾销日落复审-不建议继续征收反倾销税	F. No. 7/16/2018-DGAD,dated 29-1-2019 2019 年 1 月 29 日, 第 7/16/2018-DGAD 号

Product 产品	Country 国家	Measure 措施	Notification No. and date 文号和日期
Peroxosulphates (Persulphates) 过硫酸盐	India 印度	Notification No. 11/2013-Cus. (ADD), rescinded 取消第 11/2013-Cus. (ADD)号公告	11 /2019-Cus. (ADD), dated 12-2-2019 2019 年 2 月 12 日, 第 11 /2019-Cus. (ADD)号
Persulfates 过硫酸盐	USA 美国	ADD sunset review initiated 发起反倾销日落复审	84 FR 1704 [A-570-847], dated 5-2-2019 2019 年 2 月 5 日, 第 84 FR 1704 [A-570-847]号
Plastic decorative ribbon 塑料装饰丝带	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	84 FR 1055 [A-570-075], dated 1-2-2019 2019 年 2 月 1 日, 84 FR 1055 [A-570-075],
Plastic decorative ribbon 塑料装饰丝带	USA 美国	CVD - Final affirmative countervailing duty determination 反补贴-最终肯定性补贴裁决	84 FR 1064 [C-570-076], dated 1-2-2019 2019 年 2 月 1 日, 84 FR 1064 [C-570-076]
Polyester textured yarn 拉伸变形丝	USA 美国	Postponement of preliminary determinations in the countervailing duty investigations 延期发布反补贴调查初裁	84 FR 1062 [C-570-098], dated 1-2-2019 2019 年 2 月 1 日, 84 FR 1062 [C-570-098]
Poplin Fabric 府绸织物	Peru 秘鲁	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 19-2-2019 2019 年 2 月 19 日, 商务部新闻
PVC flat electrical cables 聚氯乙烯扁平电缆	Australia 澳大利亚	ADD and CVD – Amendments to securities 反倾销和反补贴-修改保证金	Anti-dumping Notice No. 2019/25, dated 22-2-2019 2019 年 2 月 22 日, 反倾销公告第 2019/25 号
Raw flexible magnets 未加工橡胶磁	USA 美国	ADD and CVD sunset reviews initiated 发起反倾销和反补贴日落复审	84 FR 1705 [A-570-922 and C-570-923], dated 5-2-2019 2019 年 2 月 5 日, 84 FR 1705 [A-570-922 和 C-570-923]
Rubber bands 橡皮筋	USA 美国	Antidumping duty and Countervailing duty Orders issued 发布反倾销和反补贴征税令	84 FR 4774 [A-570-069, C-570-070], dated 19-2-2019 2019 年 2 月 19 日, 84 FR 4774 [A-570-069, C-570-070]
Seamless pipes and tubes of iron or steel 无缝钢管	EU 欧盟	ADD terminated on imports from specified entity (Hubei Xinyegang Steel Co., Ltd.) 对某一企业终止反倾销税 (湖北新冶钢有限公司)	Commission Implementing Regulation (EU) 2019/251, dated 12-2-2019 2019 年 2 月 12 日, 欧盟执行委员会第 2019/251 号

Product 产品	Country 国家	Measure 措施	Notification No. and date 文号和日期
Sodium Nitrite 亚硝酸钠	USA 美国	ADD and CVD sunset reviews 发起反倾销和反补贴日落复审	84 FR 1705 [A-570-925 and C-570-926], dated 5-2-2019 2019 年 2 月 5 日, 84 FR 1705 [A-570-925 和 C-570-926]
Solid Base Angle 角钢	Australia 澳大利亚	Anti-dumping investigation initiated 发起反倾销调查	Anti-Dumping Notice No. 2019/26, dated 26-2-2019 2019 年 2 月 26 日, 反倾销公告第 2019/26 号
Steel Pallet Racking 钢制托盘货架	Australia 澳大利亚	ADD - Extension of time granted to provide the final report 反倾销-延期发布最终裁决	Anti-dumping Notice No. 2019/16, dated 4-2-2019 2019 年 2 月 4 日, 反倾销公告第 2019/16 号
Steel products 钢制品	EU 欧盟	Definitive safeguard measures imposed 征收最终保障措施税	Commission Implementing Regulation (EU) 2019/159, dated 31-1-2019 2019 年 1 月 31 日, 欧盟执行委员会第 2019/159 号
Steel road wheels 钢制轮毂	EU 欧盟	Initiation of an anti-dumping proceeding 发起反倾销程序	2019/C 60/07, dated 15-2-2019 2019 年 2 月 15 日, 2019/C 60/07
Steel wheels 钢轮	USA 美国	Postponement of final determination of sales at less-than-fair-value 延期发布低于正常价值终裁	84 FR 1063 [A-570-082], dated 1-2-2019 2019 年 2 月 1 日, 84 FR 1063 [A-570-082]
Steel wheels 12 to 16.5 Inches in diameter 直径 12-16.5 英寸钢轮	USA 美国	Postponement of the preliminary determination in the less-than-fair-value investigation 延期发布低于正常价值初裁	84 FR 2169 [A-570-090], dated 6-2-2019 2019 年 2 月 6 日, 84 FR 2169 [A-570-090]
Steel wheels 12 to 16.5 Inches in diameter 直径 12-16.5 英寸钢轮	USA 美国	Preliminary affirmative countervailing duty determination 反补贴肯定性初裁	84 FR 5989 [C-570-091], dated 25-2-2019 2019 年 2 月 25 日, 84 FR 5989 [C-570-091]
Steel wire garment hangers 钢丝衣架	USA 美国	ADD sunset review initiated 发起反倾销日落复审	84 FR 1704 [A-570-918], dated 5-2-2019 2019 年 2 月 5 日, 84 FR 1704 [A-570-918]

Product 产品	Country 国家	Measure 措施	Notification No. and date 文号和日期
Sucker rods 抽油杆	Canada 加拿大	ADD and CVD – Determination of injury 反倾销和反补贴-裁定存在损害	Canadian International Trade Tribunal – Press Release dated 22-2-2019 2019 年 2 月 22 日，加拿大国际贸易法院发布新闻
Table glassware 餐桌用玻璃器皿	Brazil 巴西	ADD mid-term review initiated 发起反倾销期中复审调查	MOFCOM news, dated 13-2-2019 2019 年 2 月 13 日，商务部新闻
Truck and bus tires 卡车和客车轮胎	USA 美国	Antidumping duty and Countervailing duty Orders issued 发布反倾销和反补贴征税令	84 FR 4436 [A-570-040], and 84 FR 4434 [C-570-041], both dated 15-2-2019 2019 年 2 月 15 日，84 FR 4436 [A-570-040]和 84 FR 4434 [C-570-041]
Woven and/or stitched glass fibre fabrics 玻璃纤维布	EU 欧盟	Initiation of an anti-dumping proceeding 发起反倾销调查	2019/C 68/09, dated 21-2-2019 2019 年 2 月 21 日，2019/C 68/09
Unitized Wall Modules 铝制单元式幕墙	Canada 加拿大	Affirmative final determination of ADD and CVD after sunset review 反倾销和反补贴日落复审肯定性终裁	MOFCOM news, dated 28-1-2019 2019 年 1 月 28 日，商务部新闻

Trade Remedy actions by China 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
Broiler products 白羽肉鸡	Brazil 巴西	Final Ruling on the Anti-dumping investigation 反倾销调查最终裁决	MOFCOM Announcement No.6 of 2019, dated 16-2-2019 2019 年 2 月 16 日，商务部公告 2019 年第 6 号
Potato starch 马铃薯淀粉	EU 欧盟	ADD - Affirmative sunset review 反倾销-肯定性日落复审裁决	MOFCOM Announcement No.4 of 2019, dated 2-2-2019 2019 年 2 月 2 日，商务部公告 2019 年第 4 号



Statute Update 法律更新

New Shipper Review investigations – Streamlining of procedures: 新出口商复审程序 – 简化流程: 贸易救济总局于 2019 年 1 月 29 日发布第 01/2019 号贸易公告, 简化新出口复审调查的程序。此贸易公告包含了相关的指引, 即提交新出口复审的时间、调查期间、抽样、以及发

布最终裁决的时限。根据此贸易公告, 调查机关应以加速的方式在发起之日起一年内做出最终裁决, 除了一些特殊情况可以延长六个月。贸易公告将适用于所有在此公告发布之日后的新出口商复审。



WTO News 世贸组织新闻

韩国和美国的大型家用洗衣机争端案-上诉机构发布裁决

世界贸易组织仲裁员于 2019 年 2 月 8 日发布了一项关于韩国可能对美国就 *美国-对来自韩国的大型家用洗衣机的反倾销和反补贴措施 (DS464)* 争端案提出贸易中止水平的决定。仲裁员认定, 美国 2012 年对从韩国进口的大型家用洗衣机征收的“适用”不一致的反倾销和反补贴税措施所造成的无效或损害程度分别为 7440 万美元和 1041 万美元。在这两种情况下, 仲裁员认为韩国有权实施中止, 并可根据通货膨胀每年进行调整。对于韩国关于非大型家用洗衣机的请求, 仲裁员设计了一个公式, 韩国可使用该公式来确定未来因适用任何不一致反倾销措施而造成的无效或损害程度。

美国对来自西班牙的橄榄征收反倾销和反补贴税 – 欧盟发起争端解决

欧盟于 2019 年 1 月 28 日与美国就美国对来自西班牙的熟橄榄征收反补贴和反倾销税争端案进行磋商。在这方面, 欧盟声称美国违反了补贴和反补贴措施、反倾销协定和 GATT1994 的各项规定。欧盟认为, 美国的补贴措施并没有明确限制某些企业的准入, 而是在官方文件中明确说明基于自动严格遵守的客观标准或条件。在欧盟于 1 月 31 日向世贸组织散发的文件中, 美国当局的损害

裁定并非基于积极证据, 也不涉及对补贴进口量、其对价格的影响以及对国内生产商的后续影响的客观审查, 因此似乎与世贸组织的规则不一致。

新的 TRIPS 通告系统启用

世贸组织秘书处宣布启动新的 TRIPS 通知提交系统, 这是一个可供成员提交通知、审查材料和报告的可选在线工具。通过电子 TRIPS NSS, 成员将能够提交与 TRIPS 有关的新通过的法律和法规、回复 TRIPS 理事会的问卷, 以及一些成员和一些国际政府间组织提交的关于技术援助和技术转让措施的定期报告。这一公告是在 2 月 13 日的 TRIPS 理事会会议上宣布的。

2019 年第一季度贸易增长缓慢-世贸组织

世界贸易组织于 2019 年 2 月 19 日发布了最新的世界贸易展望指标 (WTOI), 根据该指标, 全球贸易疲软可能会延续到 2019 年第一季度。最近的报告显示, 今年第一季度的贸易增长趋势低于预期。然而, 值得注意的是, 指数低于趋势增长并不一定意味着基础数据下降。报告还指出, 这种持续增长势头的丧失突显了贸易下降的紧迫性, 加上持续的政治风险和金融动荡, 这可能预示着更广泛的经济衰退。



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

对来自巴基斯坦的货物的基本关税增长 200%：印度财政部修改了 1975 年关税条例法案第 1 计划，并对原产自或出口自巴基斯坦的所有货物的进口从价征收 200% 的基本关税。因此，印度政府于 2019 年 2 月 16 日公布了第 5/2019-Cus. 号公告，插入 98060000 关税条目。

所有行业退税率的修正案自 2019 年 2 月 20 日起生效：印度财政部已通过第 12/2019-Cus. (N.T.) 号通知澄清了对所有行业退税率的修订，该修订自 2019 年 2 月 20 日起生效。修订增加了真皮沙发套的退税，包括汽车内饰、合成纤维丝束、地毯、丝绸制品、靴子、黄金首饰和手机。银首饰/物品的退税已合理化。一些新的关税项目已经建立起来，以便更好地地区分出口。对此，印度政府已于 2019 年 2 月 20 日发布第 5/2019-Cus. 号通知。

仅授予授权在 18 个月内的合并授权，修正程序手册：对外贸易总局修改了对外贸易政策程序手册第 4.38 段关于合并授权的便利。只有在之前的授权发布之日起 18 个月内的授权可以被合并起来，并且遵守进口需在之前授权的 30 个月内完成。任何在之前授权之后超过 30 个月的进口应按照程序手册第 4.49 段进行规范化。所有按先前规定合并的案件不得重新开审。为此，印度政府发布了

日期为 2019 年 1 月 30 日的第 70/2015-2020 号公告。

代表 DTA 单位的 MEIS 将从 EOU/SEZ 的直接出口中受益：由印度的 EOU/SEZ 单位生产的出口商品并从 EOU/SEZ 直接出口给外国消费者，以 DTA 单位的名义代表起出口商品的生产，将从印度出口商品计划 (MEIS) 中受益。根据 2019 年 2 月 22 日第 20/2015-20 号 DGFT 政策通知，根据另一家公司的免责声明，MEIS 利益可由 SEZ/EOU 或 DTA 单位承担，而不是同时由两者承担。但是，为了实现这一利益，需要满足通知中规定的某些标准。

将停止在安全纸上打印事前/EPCG 授权：印度商务部对外贸易总局 (DGFT) 将停止打印事前授权和 EPCG 授权，登记窗口为电子数据交换窗口。该系统适用于自 2019 年 1 月 3 日起发布的授权。授权详情将在 ICES 上提供，授权登记和取得债券/银行担保的过程保持不变。根据 CBIC 于 2019 年 2 月 21 日发布的第 7/2019-Cus. 号通知，不得向授权持有人索取偶数修正案的副本。但是，TRA 便利不可用于此类授权



Ratio Decidendi 判决理由

根据事先授权进口的反倾销税请求

孟买中央货物和服务税法法庭拒绝了进口商提出的征税机关对进口商执行担保/LUT 不应包括根据事先授权进口的材料征收反倾销税的主张。法庭认为在 EO 未履行的情况下，应当支持征收反倾销税。法庭注意到，执行的担保书没有对征收的关税作出任何区分。*Caprihans* 的大审判席令和孟买高级法院在 *Dharampal Lalchand Chug* 的判决是有区别的。该案件也被认为符

合海关第 28 条 (相关日期) (d) 类的解释 1。
[*Kopran Ltd. v. Commissioner - Order No. A/85037/2019*, 2019 年 1 月 10 日, CESTAT Mumbai]

滞期费不包括在内——对估价规则第 10 (2) 的解释是错误的

鉴于滞期费是一种处罚，且立法机关不打算根据 1962 年《海关法》第 14 条将其列入货物价值，奥里萨邦高等法院认为估价规则中有关滞期费的规定是对海关法

第 14 条的越权。2007 年海关估价（进口货物价值确定）规则第 10（2）条关于将船舶滞期费计入货物价值的解释因此被取消。高等法院认为，由于海关法对滞期费未作规定，因此将滞期费纳入海关估价规则超出了立法权限。最高法院对 *Wipro Ltd., Essar Steel Ltd. and Mangalore Refinery* 和 *Petrochemicals Ltd.* 的案件进行了判决。[*Tata Steels v. UOI – W.P. No. 7917 of 2009 and Ors.*, 2019 年 1 月 30 日, Orissa High Court]

未经批准的限制进口可在支付赎回罚金后清关

在涉及未经授权而进口限制货物的案件中，最高法院的大审判席认为，仅仅因为之前类似的货物在支付赎

回罚款后已被海关清关，而要求目前的货物平价是不合理的。然而，法院注意到多功能设备（数码影印机和打印机）不是禁止进口，而是限制进口的，法院支持进口商有权在支付市场价格后赎回有使用期的多功能设备。

它支持高等法院的裁决，根据《废物管理规则》第 3（1）（23）条将货物归类为“其他废物”，因为它们在进口时仍具有使用效用。[*Commissioner v. Atul Automation - Civil Appeal No. 1057 of 2019*, 2019 年 1 月 24 日, Supreme Court]

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