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Article 文章

Panel report in *Australia – Plain packaging*: A “healthy” verdict

澳大利亚-素包装案的专家组报告：“健康”结论

By Jayant Raghu Ram

Introduction

On 28 June 2018, the WTO circulated the much-awaited panel report in the *Plain Packaging* complaints brought against Australia by five WTO members. The measures at issue were Australia’s domestic laws and regulations concerning the retail packaging of tobacco products. The measures require that, *inter-alia*, the retail packaging have physical features that are plain, and be drab dark brown in colour. The measures also prohibit the appearance of trademarks and marks anywhere on the retail packaging of tobacco products, with the exception of the brand name, business or company name, etc. The purpose of the measures is to discourage tobacco consumption by making the retail packages unattractive to consumers.

The complainants’ claims primarily centered on the consistency of these measures with provisions of the TRIPS Agreement and the TBT Agreement. Much to the delight of anti-tobacco activists, the panel dismissed *all* the claims and ruled in favour of Australia’s measures. Besides establishing critical jurisprudence on issues concerning the intersection of IPR and trade-related measures, the ruling has important implications for designing of public health policy.

The implication of the ruling is that other countries are likely to follow suit not just in adopting anti-tobacco measures in their

respective countries, but it may also encourage similar measures against other consumable products that may be harmful to human health such as carbonated drinks, alcohol, junk food, etc. This article is aimed at discussing how some of the jurisprudence in *Plain Packaging* may be relevant in shaping public policy aimed at protecting public health.

Claims under the TBT Agreement

The TBT Agreement enables countries to institute non-tariff measures such as labelling, technical specifications, packaging, etc. as long as these measures are taken for achieving legitimate objectives such as public health. In *Plain Packaging*, the complainants claimed that the impugned measures violated Article 2.2 of the TBT Agreement as they were more trade-restrictive than necessary in fulfilling the legitimate objective of protection of public health. The panel however rejected this claim on the basis that the objective of the plain packaging measures was to improve public health by reducing the use of, and exposure to, tobacco products and that the plain packaging measures made a material contribution to this objective.

The panel further stated that the nature of the risks that would arise from non-fulfilment of this objective was that public health would not be improved and would in fact be jeopardized. The complainants proposed alternative measures such as social marketing campaigns, increased

taxation, that they claimed would be less trade restrictive than the plain packaging measures. These alternative measures were, however, rejected by the panel on the ground that the complainants did not demonstrate that they would make a contribution equivalent to that made by the plain packaging measures, to Australia's regulatory objectives. The panel thus held that these measures were not more trade restrictive than necessary.

An important determination that the panel made under the above issue pertains to those provisions of the WHO's Framework Convention on Tobacco Control (FCTC) which pertain to plain packaging. Australia had claimed the measures to be based on the FCTC, which it claimed to be the relevant international standard. It thus argued that under Article 2.5 of the TBT Agreement the measures were presumed to not create an unnecessary obstacle to international trade. The panel however held that these FCTC provisions did not constitute a "standard" as they were not intended to provide a unified document "for common and repeated use" in respect of tobacco plain packaging, which is one of the attributes of a "standard" within the meaning of Annex 1.2 to the TBT Agreement. In its analysis, the panel found an absence of uniformity in the different features of plain packaging measures as recommended under the FCTC.

The implication of the above finding is that in case a WTO Member takes measures aimed at reducing the consumption of, and exposure to, products such as carbonated drinks, etc., it would be imperative for such a Member to prove that the measures are not more trade restrictive than necessary. This is an *extra burden* that would arise for defending Members as, international legal frameworks on health issues on products

such as junk food, that are in the nature of a standard, are largely absent. This is an important point that must be kept in mind when the international community engages in decision-making in this field.

Claims under TRIPS Agreement

At the heart of the dispute were the claims made by the complainants under the TRIPS Agreement, particularly pertaining to trademark since the usage of trademarks was directly affected by the measures. Out of the nine TRIPS-related claims, only the claim under Article 20 is discussed in this article as it pertains to the encumbrance, by the measures, of the use of trademarks *in the course of trade*.

The complainants claimed that the plain packaging measures were inconsistent with Article 20 of the TRIPS Agreement as they *unjustifiably* encumbered the use of tobacco trademarks in the course of trade. The complainants stated that trademarks played an important role in differentiating goods and services for facilitating competition. Article 20 thus played a crucial role by seeking to ensure that trademarks performed this basic function of distinction in commerce.

In its analysis, the panel noted that by disallowing the use of the design features of trademarks, the measures prevented a trademark owner from using such features to convey any information (whether functional or intangible) about the product to the market and thereby deriving any economic benefit from the use of such features. In principle, therefore, the panel was in agreement with the complainants that the measures encumbered the use of the trademarks.

The panel however noted that the practical implications of these prohibitions were partly mitigated by the fact that the measures allow tobacco manufacturers to use wordmarks such as brand names, company names, product and variant names, to distinguish their products from each other. Further, the complainants had not demonstrated that as a result of these encumbrances, consumers were unable to distinguish between the various tobacco products, which is the key function performed by trademarks.

The panel then proceeded to examine the *justifiability* of the encumbrances. The panel found justification in Australia's objective to protect public health by curbing use of, and exposure to, tobacco products. The panel drew strength from Article 8.1 (general principle that allows Members to protect public health when formulating measures) of the TRIPS Agreement in support of the justification of the measures under Article 20, and also from the Doha Declaration on TRIPS and Public Health. The panel noted that the use of the term "unjustifiably" under Article 20 provides a degree of latitude to a Member to choose an intervention to address a policy objective, which in this particular case was public health. In sum, the panel determined that the complainants had not proved that the plain packaging measures unjustifiably encumbered the use of tobacco trademarks by their respective owners.

Conclusion

The panel report is a shot in the arm for governments who are interested in taking measures similar to the scale, design and effect of plain packaging for curtailing consumption of, and exposure to, consumables such as junk food

and carbonated beverages. The panel report has shown how balance can be achieved between protection of public health objectives and private rights of trademark owners. The panel did not straight away dismiss the complainants' claims. Rather the panel took care to intricately assess each of their claims and in the process, has generated crucial jurisprudence under both the TBT Agreement and the TRIPS Agreement. The case serves as an important precedent for governments who wish to utilize the policy space available under the various WTO agreements and enact measures aimed at achieving public health objectives but are wary of doing so.

Even though the panel has upheld the right to encumber the use of tobacco trademarks (on justifiable grounds), the panel has noted the right to use word marks such as brand names, company names, product names, etc. If the measures would have constrained the owners' right to use these marks as well, then it is possible that the panel would have struck down this aspect of the measures. Therefore, the wiggle room available to tobacco manufacturers is to innovate with their wordmarks in order to add weight to the distinction between different tobacco brands.

Given the importance of the findings for the interface between international trade rules and public health objectives, *Australia – Plain Packaging* is definitely a landmark ruling. The verdict is however yet to see some finality since Honduras has filed an appeal. It now remains to be seen how the panel findings will be analysed by the Appellate Body (or what is left of it).

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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
4, 4 Diamino Stilbene 2, 2 Disulphonic Acid (DASDA) 4,4'-二氨基二苯乙烯-2,2'-二磺酸	India 印度	Initiation of Sunset Review investigation 发起日落复审	F.No.7/22/2018-DGAD, dated 26-6-2018 2018年6月26日, 第7/22/2018-DGAD号
Activated Carbon 活性炭	USA 美国	Antidumping Duty Order continued after sunset review 日落复审后继续反倾销征税令	83 FR 32269 [A-570-904], dated 12-7-2018 2018年7月12日, 83 FR 32269 [A-570-904]
Aluminium Extrusions 铝型材	Australia 澳大利亚	ADD investigation in respect of exports from specified entities terminated 指定企业的反倾销调查终止	Anti-dumping Notice No. 2018/120, dated 24-7-2018 2018年7月24日, 反倾销公告第2018/120号
Aluminium Extrusions 铝型材	Australia 澳大利亚	ADD - Initiation of a Review 反倾销-发起复审	Anti-dumping Notice No. 2018/111, dated 12-7-2018 2018年7月12日, 反倾销公告第2018/111号
Aluminum Extrusions 铝型材	USA 美国	Initiation and Preliminary Results of Expedited Changed Circumstances Review 发起和初步裁决情势变更复审	83 FR 34548 [A-570-967], dated 20-7-2018 2018年7月20日, 83 FR 34548 [A-570-967]
Aluminum radiators for home use 家用铝制散热器	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 29-6-2018 2018年6月29日, 商务部新闻
Ammonium nitrate 硝酸铵	Australia 澳大利亚	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 26-6-2018 2018年6月26日, 商务部新闻
Belting Fabric 带织物	India 印度	Final Findings issued terminating the ADD investigation 发布最终裁决终止反倾销调查	F.No.14/35/2016-DGAD, dated 30-6-2018 2018年6月30日, 第14/35/2016-DGAD号

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Carbon and Alloy Steel Cut-to-Length Plate 碳合金钢定尺板	USA 美国	Final Results of Countervailing Duty Expedited Review 反补贴快速复审最终裁决	83 FR 34115 [C-570-048], dated 19-7-2018 2018年7月19日, 83 FR 34115 [C-570-048]
Carbon Steel Butt-Weld Pipe Fittings 碳钢对焊管件	USA 美国	Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order 初步肯定性裁决规避反倾销征税令	83 FR 35205 [A-570-814], dated 25-7-2018 2018年7月25日, 83 FR 35205 [A-570-814]
Cast Iron Soil Pipe 铸铁污水管	USA 美国	Preliminary Affirmative Countervailing Duty Determination 初步肯定性补贴裁决	83 FR 30914 [C-570-080], dated 2-7-2018 2018年7月2日, 83 FR 30914 [C-570-080]
Cast Iron Soil Pipe Fittings 铸铁污水管配件	USA 美国	Final Affirmative Countervailing Duty Determination 最终肯定性反补贴裁决	83 FR 32075 [C-570-063], dated 11-7-2018 2018年7月11日, 83 FR 32075 [C-570-063]
Cast Iron Soil Pipe Fittings 铸铁污水管配件	USA 美国	Final Affirmative Determination of Sales at Less Than Fair Value 最终肯定性低于正常价值裁决	83 FR 33205 [A-570-062], dated 17-7-2018 2018年7月17日, 83 FR 33205 [A-570-062]
Ceramic tiles 瓷砖	Korea RP 韩国	ADD – affirmative final finding after sunset review 反倾销 – 日落复审后肯定性终裁	MOFCOM news, dated 25-7-2018 2018年7月25日, 商务部新闻
Chlorinated Isocyanurates 三氯异氰尿酸	USA 美国	Preliminary finding on weighted average dumping margin 初步裁决加权平均倾销幅度	83 FR 31953 [A-570-898], dated 10-7-2018 2018年7月10日, 83 FR 31953 [A-570-898]
Corrosion-resistant steel sheet 耐腐蚀钢板	Canada 加拿大	ADD investigation initiated 发起反倾销调查	Canada Border Service Agency Press Release dated 26-7-2018 2018年7月26日, 加拿大边境服务署发布新闻
Crystalline Silicon Photovoltaic Cells 太阳能光伏电池	USA 美国	ADD and CVD – Initiation of changed circumstances review 反倾销和反补贴-发起情势变更复审	83 FR 34542 [A-570-979, C-570-980], dated 20-7-2018 2018年7月20日, 83 FR 34542 [A-570-979, C-570-980]
Drawn Stainless Steel Sinks 不锈钢拉制水槽	USA 美国	ADD – Affirmative sunset review 反倾销-肯定性日落复审	83 FR 34544 [A-570-983], dated 20-7-2018 2018年7月20日, 83 FR 34544 [A-570-983]

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Drawn Stainless Steel Sinks 不锈钢控制水槽	USA 美国	CVD – Affirmative sunset review 反补贴-肯定性日落复审	83 FR 35212 [C-570-984], dated 25-7-2018 2018年7月25日, 83 FR 35212 [C-570-984]
Electric bicycles 电动自行车	EU 欧盟	Provisional anti-dumping duty imposed 征收临时反倾销税	Commission Implementing Regulation (EU) 2018/1012, dated 17-7-2018 2018年7月17日, 欧盟执行委员会第2018/1012号
Fabricated industrial steel components 工业用钢构件	Canada 加拿大	Initiation of scope proceeding 发起产品范围调查	Canada Border Service Agency Press Release dated 26-7-2018 2018年7月26日, 加拿大边境服务署发布新闻
Fine Denier Polyester Staple Fiber 细旦涤纶短纤	USA 美国	Anti-dumping duty Orders issued 发布反倾销征税令	83 FR 34545 [A-570-060], dated 20-7-2018 2018年7月20日, 83 FR 34545 [A-570-060]
Flat rolled silicon steel 无取向硅钢	Brazil 巴西	ADD – Initiation of sunset review 反倾销-发起期终复审	MOFCOM news, dated 27-7-2018 2018年7月27日, 商务部新闻
Folding Gift Boxes 折叠礼物盒	USA 美国	Antidumping Duty Order continued after sunset review 日落复审后继续反倾销征税令	83 FR 32073 [A-570-866], dated 11-7-2018 2018年7月11日, 83 FR 32073 [A-570-866]
Fresh Garlic 新鲜大蒜	USA 美国	Initiation of Semi-annual ADD New Shipper Review; 2017-2018 发起半年度反倾销新出口商复审	83 FR 31734 [A-570-831], dated 9-7-2018 2018年7月9日, 83 FR 31734 [A-570-831]
Frozen Warmwater Shrimp 冷冻暖水虾	USA 美国	Rescission of Antidumping Duty Administrative Review; 2017-2018 取消反倾销行政复审	83 FR 31727 [A-570-893], dated 9-7-2018 2018年7月9日, 83 FR 31727 [A-570-893]
Galvanized Iron 镀锌铁	Malaysia 马来西亚	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 26-7-2018 2018年7月26日, 商务部新闻
Galvanized steel cable net hexagonal shape 镀锌六边形钢缆网	Mexico 墨西哥	ADD – affirmative final finding in sunset review 反倾销-日落复审肯定性终裁	MOFCOM news, dated 4-7-2018 2018年7月4日, 商务部新闻

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Galvanized steel sheet 镀锌板	Eurasian Economic Commission 欧亚经济委员会	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 2-7-2018 2018年7月2日, 商务部新闻
Grinding Media Balls 研磨球	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	36/2018-Cus. (ADD), dated 13-7-2018 2018年7月13日, 36/2018-Cus. (ADD)
High Pressure Steel Cylinders 高压钢瓶	USA 美国	Preliminary finding on net countervailable subsidy rate 初步裁决净补贴税率	83 FR 31951 [C-570-978], dated 10-7-2018 2018年7月10日, 83 FR 31951 [C-570-978]
High Tenacity Polyester Yarns (HTPY) 聚酯高强力纱	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	35/2018-Cus. (ADD), dated 9-7-2018 2018年7月9日, 35/2018-Cus. (ADD)
Hot-Rolled Carbon Steel Flat Products 热轧碳钢板	USA 美国	Preliminary Results of ADD Administrative Review; 2016-2017 – Specific entities found not separate from China-wide entry 初步裁决反倾销行政复审-个别企业无法获得单独税率	83 FR 30912 [A-570-865], dated 2-7-2018 2018年7月2日, 83 FR 30912 [A-570-865]
Ironing boards 烫衣板	EU 欧盟	ADD - Initiation of expiry review 反倾销-发起期终复审	EU 2018/C 253/09, dated 19-7-2018 2018年7月19日, EU 2018/C 253/09
Low carbon ferro-chrome 低碳铬铁	EU 欧盟	Anti-dumping proceeding terminated 终止反倾销程序	Commission Implementing Decision (EU) 2018/1037, dated 20-7-2018 2018年7月20日, 欧盟执行委员会第 2018/1037 号
New/unused Pneumatic Radial Tyres 新/未使用充气子午胎	India 印度	Notification of Provisional assessment for certain new shippers during pendency of New Shipper Review 为某些新出口商在新出口商复审中临时中止支付反倾销税	34/2018-Cus. (ADD), dated 25-6-2018 2018年6月25日, 34/2018-Cus. (ADD)

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Oriental polyester yarn 定向举止纱线	Turkey 土耳其	Affirmative ADD circumvention final finding 肯定性反倾销反规避终裁	MOFCOM news, dated 27-6-2018 2018年6月27日, 商务部新闻
Oxalic acid 草酸	EU 欧盟	Definitive anti-dumping duty imposed 征收最终反倾销税	Commission Implementing Regulation (EU) 2018/931, dated 28-6-2018 2018年6月28日, 欧盟执行委员会第2018/931号
Railway Wheels 铁路车轮	Australia 澳大利亚	ADD - Extension of time granted to issue Statement of Essential Facts and the Final Report 反倾销-延期发布重要事实披露和最终裁决	Anti-dumping Notice No. 2018/121, dated 27-7-2018 2018年7月27日, 反倾销公告第2018/121号
Roller bearing 滚动轴承	Eurasian Economic Commission 欧亚经济委员会	ADD – affirmative final finding in sunset review 反倾销-日落复审肯定性终裁	MOFCOM news, dated 6-26-2018 2018年6月26日, 商务部新闻
Rubber Bands 橡皮筋	USA 美国	Preliminary Affirmative Countervailing Duty Determination 初步肯定性反补贴裁决	83 FR 31729 [C-570-070], dated 9-7-2018 2018年7月9日, 83 FR 31729 [C-570-070]
Seamless casting 无缝钢制油气套管	Canada 加拿大	ADD – affirmative final finding in sunset review 反倾销-日落复审肯定性终裁	MOFCOM news, dated 6-26-2018 2018年6月26日, 商务部新闻
Seamless pipes and tubes of iron or steel 钢铁无缝钢管	EU 欧盟	Re-opening of ADD investigation terminated 终止反倾销再调查	Commission Implementing Decision (EU) 2018/928, dated 28-6-2018 2018年6月28日, 欧盟执行委员会公告第2018/928号
Small Diameter Graphite Electrodes 小口径石墨电极	USA 美国	Final results on Administrative Review in respect of specified entity 就某些企业做出行政复议终裁	83 FR 32833 [A-570-929], dated 16-7-2018 2018年7月16日, 83 FR 32833 [A-570-929]
Sodium Gluconate, Gluconic Acid, and Derivative Products 葡萄糖酸钠、葡萄糖酸及衍生物	USA 美国	Preliminary Determination of Sales at Less Than Fair Value 初步裁决低于正常价值	83 FR 31949 [A-570-071], dated 10-7-2018 2018年7月10日, 83 FR 31949 [A-570-071]

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Solar Cells whether or not assembled in modules or panels 光伏电池及组件	India 印度	Final Findings issued recommending imposition of Safeguard duty for two years 最终裁决建议征收两年保障措施税	F.No.22/1/2018-DGTR, dated 16-7-2018 2018年7月16日, 第22/1/2018-DGTR号
Stainless steel product 不锈钢产品	Viet Nam 越南	ADD duty imposed 征收反倾销税	MOFCOM news, dated 11-7-2018 2018年7月11日, 商务部新闻
Steel Nails 钢钉	USA 美国	ADD - DoC revises dumping margin subsequent to court decision 反倾销-根据法院裁决商务部修改倾销幅度	83 FR 31731 [A-570-909], dated 9-7-2018 2018年7月9日, 83 FR 31731 [A-570-909]
Steel piling pipe 钢管桩	Canada 加拿大	ADD and CVD – affirmative industrial injury final finding in sunset review 反倾销和反补贴-日落复审肯定性产业损害终裁	MOFCOM news, dated 18-7-2018 2018年7月18日, 商务部新闻
Steel products 钢铁产品	EU 欧盟	Provisional safeguard measures imposed 征收临时保障措施税	Commission Implementing Regulation (EU) 2018/1013, dated 17-7-2018 2018年7月17日, 欧盟执行委员会公告第2018/1013号
Steel Racks 钢货架	USA 美国	Initiation of Countervailing Duty Investigation 发起反补贴调查	83 FR 33201 [C-570-089], dated 17-7-2018 2018年7月17日, 83 FR 33201 [C-570-089]
Steel Racks 钢货架	USA 美国	Initiation of Less-Than-Fair-Value Investigation 发起低于正常价值调查	83 FR 33195 [A-570-088], dated 17-7-2018 2018年7月17日, 83 FR 33195 [A-570-088]
Steel Reinforcing Bar 混凝土钢筋	Australia 澳大利亚	ADD review - Extension of time granted to issue the Statement of Essential Facts and the Final Report 反倾销复审-延期发布重要事实披露和最终裁决	Anti-dumping Notice No. 2018/118, dated 20-7-2018 2018年7月20日, 反倾销公告第2018/118号
Steel Rod in Coils 钢卷	Australia 澳大利亚	ADD review - Extension of time granted to issue the Statement of Essential Facts and the Final Report 反倾销复审-延期发布重要事实披露和最终裁决	Anti-dumping Notice No. 2018/119, dated 20-7-2018 2018年7月20日, 反倾销公告第2019/119号

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Sucker rods 抽油杆	Canada 加拿大	ADD and CVD – affirmative industrial injury preliminary finding 反倾销和反补贴-肯定性产业损害初裁	MOFCOM news, dated 18-7-2018 2018年7月18日, 商务部新闻
Table fan 台扇	Brazil 巴西	ADD – Initiation of sunset review 反倾销-发起期终复审	MOFCOM news, dated 27-7-2018 2018年7月27日, 商务部新闻
Tapered Roller Bearings and Parts 圆锥滚子轴承和部件	USA 美国	Preliminary determination that sales made below normal value 初步裁决低于正常价值销售	83 FR 32263 [A-570-601], dated 12-7-2018 2018年7月12日, 83 FR 32263 [A-570-601]
Tartaric acid 酒石酸	EU 欧盟	Definitive anti-dumping duty imposed 征收最终反倾销税	Commission Implementing Regulation (EU) 2018/921, dated 28-6-2018 2018年6月28日, 欧盟执行委员会公告第2018/921号
Welded pipes and tubes, austenitic stainless steels 304 and 316 奥氏体不锈钢圆形焊管	Brazil 巴西	ADD – Initiation of sunset review 反倾销-发起期终复审	MOFCOM news, dated 31-7-2018 2018年7月31日, 商务部新闻
Welded steel chain 焊接钢链	Mexico 墨西哥	ADD – Initiation of sunset review 反倾销-发起期终复审	MOFCOM news, dated 17-7-2018 2018年7月17日, 商务部新闻
Wind Towers 风塔	Australia 澳大利亚	ADD - Initiation of a continuation inquiry 反倾销-发起复审调查	Anti-dumping Notice No. 2018/115, dated 16-7-2018 2018年7月16日, 反倾销公告第2018/115号

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
Acrylonitrile-butadiene Rubber 丁腈橡胶	Republic of Korea and Japan 韩国和日本	Preliminary Ruling on the Anti-dumping Investigation 反倾销初裁	MOFCOM Announcement No.61 of 2018, dated 16-7-2018 2018年7月16日, 商务部公告2018年第61号

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Dispersion- unshifted Single Mode Fiber 非色散位移单模光纤	USA 美国	Affirmative ADD mid-term review 肯定性期中复审裁决	MOFCOM Announcement No.53 of 2018, dated 10-7-2018 2018年7月10日, 商务部公告 2018年第53号
Optical Fiber Preform 光纤预制棒	Japan and USA 日本和美国	Affirmative ADD sunset review 肯定性反倾销日落复审终裁	MOFCOM Announcement No.57 of 2018, dated 10-7-2018 2018年7月10日, 商务部公告 2018年第57号
Stainless Steel Billet and Hot-rolled Stainless Steel Plate (Coil) 不锈钢钢坯和不锈钢 热轧板/卷	EU, Japan, Republic of Korea and Indonesia 欧盟、日本 、韩国和印 度尼西亚	ADD Investigation initiated 发起反倾销调查	MOFCOM Announcement No. 62 of 2018, dated 23-7-2018 2018年7月23日, 商务部公告 2018年第62号
Toluidine 甲苯胺	EU 欧盟	ADD – initiation of sunset review 反倾销-发起期终复审调查	MOFCOM Announcement No. 48 of 2018, dated 27-6-2018 2018年6月27日, 商务部公告 2018年第48号



WTO News 世贸组织新闻

烟草素包装要求-洪都拉斯对专家组报告提起上诉

洪都拉斯于 2018 年 7 月 19 日, 就世贸组织对澳大利亚—关于商标、地理标志和其他适用于烟草制品的包装要求案 (DS435) 的专家组报告中某些措施提出上诉。洪都拉斯的磋商请求尚未公布。

专家组已于 2018 年 6 月 28 日发布了报告。在这一争端案中, 专家组处理了包括古巴、多米尼加共和国和印度尼西亚在内的各个国家提出的主张, 质疑澳大利亚修改烟草产品包装方面的法律措施, 以阻止使用烟草产品。实质上, 这些国家质疑该措施违反 TRIPS 协定第 2.1、3.1、15.4、16.1、20、22.2 (b) 和 24.3 条; TBT 协定第 2.1 条和第 2.2 条; 以及 1994 年关贸总协定第 3.4 条

。然而, 专家组驳回了申诉人的申诉, 并认为澳大利亚的措施符合相关规定。

美国发起争端解决抗议五个成员国对美国产品征税

7 月 19 日, 世贸组织发布了美国提出的磋商请求, 要求与加拿大、中国、欧盟、墨西哥和土耳其, 就该五个 WTO 成员国对进口美国的产品征收额外关税进行磋商。这是继美国对钢材和铝制品征收额外关税后各国实施的。

与此同时, 瑞士、俄罗斯、挪威也就美国对钢材和铝制品征收额外关税对美国启动了世贸组织争端解决。虽然在 2018 年 7 月 12 日瑞士要求与美国就美国进口的某些铝和铝产品征收关税进行磋

商，但俄罗斯联邦于 7 月 2 日以及挪威于 6 月 19 日提出了类似的请求。

美国对加拿大纸张征收反补贴税-发布专家组报告

7 月 5 日，世贸组织在加拿大提出的美国-对来自加拿大的超压纸实施反补贴措施案（DS505）公布了专家组报告。在这场争端中，加拿大质疑美国对加拿大的超压纸实施的某些反补贴措施，以及在调查过程中“正在适用可获得的不利事实”（AFA）。专家组裁定，美国关于公共机构的委托或指导的认定、通过某些方案提供利益，包括提供电力、重要事实披露，美国适用可获得的不利事实、在快速审查的背景下纳入新的补贴指控，这

些做法与补贴和反补贴协议的条款不一致。专家组拒绝就具体出口商和关于适用可获得的不利事实的问题进行裁决。

日本对韩国对不锈钢条征收反倾销税发起争端解决

6 月 21 日，世贸组织发布了日本的磋商请求，要求与韩国就韩国对从日本进口的不锈钢条征收反倾销税进行磋商。日本的主张涉及到韩国当局进行的第三次日落复审行为，该复审裁决维持反倾销税，这一裁决不符合世贸组织的反倾销协定和 1994 年关税与贸易总协定。



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

亚太贸易协定-印度削减进口关税

印度进一步降低了来自孟加拉、中国、印度、韩国、老挝和斯里兰卡所有进口货物的关税，这些都是亚太贸易协定的签署国。根据孟加拉商务部于 2018 年 7 月 2 日发布的新闻，从所有成员国进口的 3142 个税目可享受关税优惠，同时在 48 个税目上对来自中国和老挝的货物进行特别优惠。第 50/2018-Cus.号公告从 2018 年 7 月 1 日起生效，并代替第 72/2005-Cus.号公告。

基于净价的事先授权-投入的问责制

印度外贸总局已制定了发布出口义务履行证书（EODC）的程序，其中，第 1 号一般说明第 4 条规定的工程产品和第 1 号第 6 条所有根据 SION 的出口产品组，如果基于净价而批准的事先授权，则需要遵守问责条款。根据最近的第 10/2018-19 号政策通告，在证明所需要的使用的进口投入时，来自具有独立领域知识的独立注册工程师的指定格式的证书，在问责声明中是必须的。此证书将需要而无关 FTP 期间。

DGFT 通知“MEIS 项下无奖励证书”的程序

DGFT 已通知当货物需要被重新进口时获得“在 MEIS 下无奖励证书”的程序。2018 年 7 月 3 日的第 17/2015-20 号公告对此在程序手册插入第 3.24 段，以及 ANF 3E 和 3F 指定格式的申请和证书。因此，如果使用 MEIS 优惠，必须一起退还利息以获得证书。未使用的单据必须暂停。如果未申请或尚未签发单据，RA 将根据出口商的承诺签发证书。

降低对日本和韩国铁矿石和浓缩物的出口关税

在长期协议下，由 MMTC 有限公司出口到日本和韩国的铁矿石和浓缩物，不论烧结或未烧结，出口关税有效税率将至 2021 年 3 月 31 日之前将为 10%。2018 年 7 月 9 日发布的第 51/2018-Cus 号通知，修改了第 27/2011-Cus.号公告第 1 列第 20B，该公告规定了减税至 2018 年 3 月 31 日。2018 年 4 月 1 日被“2021 年 3 月 31 日”取代了。



Ratio Decidendi 判决理由

拒绝退还终端货物税伤害了出口商和经济-公告限制退税是不可追溯的-观察到 FTP2009-14 授予 DTA 供应商的权利，当向 100%EOU 供货而不违反国际竞标，DTA 供应商有权要求退还终端消费税。德里高等法院允许 2011 年最后一个季度的终端货物税返还。纳税人在向 EOU 供货时使用 CENVAT 进项支付税费。法院在这方面注意到，2013 年第 4 号通知禁止在允许豁免的情况下进行此类退税，这一做法不是不可追溯的，而且这样的否认对出口商和印度经济会造成不利影响。法院还指出，政策委员会拒绝退税的决定并不一致。[*Motherson Sumi Electric Wires v. UOI – 2018 年 7 月 12 日判决* W.P. (C) No. 6151/2016, 德里高等法院]

反倾销 – “正常贸易”范围 – 高水平利润于在国内市场不相关

美国国际贸易法院维持了美国商务部修正后的最终裁定，此前商务部对某些来自印度的新的气

动越野轮胎进行反倾销调查。商务部已经确定，相关产品在美国销售可能低于公允价值。商务部注意到了高水平的盈利能力，但解释说，“仅在国内市场销售获得高水平利润，不足以确定销售超出了正常的贸易范围。”法院指出，尽管盈利水平很高，所有记录/证据支持商务部的结论，上诉人的国内市场销售是在正常的贸易过程中。法院认为商务部对销售的描述并不罕见，并且得到了大量证据的支持。

此外，关于商务部是否修改其最终裁决的决定是否违反法律，法院认为，由于最终裁定在司法审查的时间内进行了修改，通常在最终裁定后 30 天公布。因此，没有必要考虑终结性原则。[*ATC Tires Private Ltd. v. United States – Opinion dated 16-7-2018 in Slip Op. 18-88, US CIT*]

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