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内容

文章

中国：非市场经济或市场经济？..... 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..... 11

世贸组织新闻

..... 12

判决理由

..... 13

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Article 文章

China: NME or ME?

中国：非市场经济或市场经济？

By **Greetika Francis**

Recent WTO discussions have centered on the question of China's entitlement to Market Economy status (MES) post 11 December, 2016. China has always interpreted the clause to mean that post-2016, it would automatically be accorded MES. The Members of the WTO appear to be divided on the issue, with Brazil,¹ Japan² and EU leaning towards granting MES to China and the US, Canada, Mexico and India opposed to it. Some Members have already granted MES to China long ago.

The controversial Section 15 of the Chinese Protocol of Accession provides:

“15. Price Comparability in Determining Subsidies and Dumping

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“Anti-Dumping Agreement”) and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs

for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

- (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
- (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*

...

(d) Once China has established, under the national law of the importing WTO

¹ Brazil signed a Memorandum of Understanding with China, in 2004 (*Memorando de entendimento entre a República Federativa do Brasil e a República Popular da China sobre cooperação em matéria de comércio e investimento*), recognizing China as a Market Economy. However, the extent of practical grant of MES is unknown.

² In 2007, Japan introduced a non-binding deadline to grant MES to China by December 2016, by way of amendment to its guidelines for procedures relating to anti-dumping. However, Japan has made no official commitment on the issue.

Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non market economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

Thus, if China establishes, pursuant to the national law of the importing WTO member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of sub paragraph (a) shall no longer apply to that industry or sector. Further, in terms of Section 15(d), the provisions of sub paragraph (a) (ii) shall expire 15 years after the date of China's accession to the WTO. However, while the provisions of Section 15(a)(ii) shall expire in December, 2016, provisions of Section 15(a)(i) continue to be available and cannot be read out of China's Protocol of Accession. The latter provision places the initial burden on the producers to show that the market economy conditions prevail in the industry producing the like product and in case the Investigating Authority (IA) disregards the same, the burden

of proof shifts to the IA. The IA would then be required to inform the reasons for not accepting that the industry of China is functioning under market economy conditions. As of now, the practical consequences of Non-MES to China are that an IA ignores Chinese producers' own costs and domestic prices when investigating whether to impose antidumping duties. The practice results in higher margins and more uncertainty for both Chinese producers and investigating countries' domestic importers.

This interpretational conundrum leads to two questions, firstly, whether China can be treated as a Non-Market Economy at all post December, 2016 and secondly, whether China will be treated as a Market Economy post December, 2016 by leading users of the Anti-Dumping (AD) provisions.

Regarding whether China can be treated as a Non-Market Economy at all post December, 2016, an understanding of the framework within which the deletion of Section 15(a)(ii) occurs is necessary. The provision is succeeded by the chapeau of paragraph 15(a) and subparagraph 15(a)(i). The chapeau refers to an "alternative methodology" whereas the alternative methodology provision stated in Section 15(a)(ii) will be deleted from December, 2016. Thus, if the domestic producers voluntarily provide enough evidence, subparagraph 15(a)(i) will come into play. Recalling that subparagraph 15(a)(i) uses the word "shall", the importing Member under such circumstances has the obligation to use domestic prices or costs. Hence, this remaining

subparagraph will not be reduced to inutility after 2016. On the other hand, if domestic producers do not provide such evidence, it will be left to legal interpretation³ of the value of the continuing phrase in the chapeau permitting the usage of an alternative methodology but without the benefit of a prescribed ‘alternate methodology’.

The IA could resort to either the Second Ad Note of Article VI of GATT or Article 2.2 of the AD Agreement which provide an alternative to Members unwilling to grant China MES. The Second Ad Note to Article VI of GATT can only be used in case of complete monopolization of trade by a Member⁴ and the case of China may not always meet this high threshold. However, Article 2.2 of the AD Agreement provides for using “third country prices” or “constructed values” where *domestic sales do not permit a proper comparison for any of the reasons listed, such as there are no sales of the like product in the **ordinary course of trade** in the domestic market of the exporting country or when, because of **the particular market situation** or **the low volume of sales** in the domestic market of the exporting country.* In fact, US DOC considered this approach

in 2002 [when Russia graduated from its NME status], even mentioning the same in *Magnesium Metal from Russia*, when US DOC considered ignoring the actual price paid for energy by a Russian firm on the ground that the Russian energy market was overly regulated and insufficiently competitive.⁵

Regarding whether China *will* be treated as a Market Economy by leading users of the AD provisions, Members and industries remain divided. In the end, granting or not granting China MES is a politico-legal issue.

EU has been facing a sensitive period for its Steel industry, and will look to safeguard the same but is required to counter balance the potential influx of foreign investment expected from China. More importantly, the granting of MES spells prosperity for the bilateral relationship with China that every Member is looking to protect and the promise of which has been an effective incentive for China’s progress towards being a Market Economy.⁶

US has conducted a hearing⁷ before the US-China Economic and Security Review Commission to review the national security implications of trade and economic ties between the United States and the People’s

³ The interpretation of Section 15 (a) of China’s Protocol of Accession has been partially discussed in the AB Report in *EC-Fasteners (China)*, DS397. However, the issue under challenge was widely different from the one under consideration here.

⁴ EC – Fasteners (WT/DS397/AB/R), Para. 285, Footnote 460

⁵ *Magnesium Metal from the Russian Federation*, 70 Fed. Reg. 9041 (February 24, 2005).

⁶ Laura Puccio, “Granting Market Economy Status to China : An analysis of WTO law and of selected WTO members’ policy”, December, 2015 [available at: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/571325/EPRS_IDA\(2015\)571325_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/571325/EPRS_IDA(2015)571325_EN.pdf)]

⁷ *Hearing on China’s Shifting Economic Realities and Implications for the United States* [documents available at: <http://www.uscc.gov/Hearings/hearing-china%E2%80%99s-shifting-economic-realities-and-implications-united-states>]

Republic of China by the granting or not granting of MES to China. The Fourth Panel therein was concerned with the *Evaluation of China's Non Market Economy Status* and received testimonies. The trend of the testimonies advises against granting MES to China for a variety of reasons. It is foreseen that once the status is granted, China will be under no pressure to continue to move towards MES and Investigating Authorities around the world will have no mechanism with which to genuinely measure the differences in the markets in China and another country. Gary Claude Hufbauer⁸ makes a very valid counter argument, that the United States would lose more than it gains from withholding full-

fledged MES, it would ruin bilateral relations with China with negligible profits to select industries that initiate AD proceedings only.

India cannot withhold the grant of MES from China for very long either, especially considering the geopolitical tensions that arise from its territorial proximity with China and also its competitive relation with the country.

On an overall balance, it appears that countries will continue the practice of using non-market economy methodology on a case by case basis, while *prima facie* granting MES to China.

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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	Measures 措施	Notification No. and date 通知号及日期
1-Hydroxyethylidene-1, 1-Diphosphonic Acid 1,1,1,2-四氟乙烷	USA 美国	ADD - Initiation of Less-Than-Fair-Value Investigation 反倾销-发起低于正常价值调查	81 FR 25377 [A-570-045], dated 28-4-2016 2016年4月28日, 81 FR 25377 [A-570-045]
1-Hydroxyethylidene-1, 1-Diphosphonic Acid 1,1,1,2-四氟乙烷	USA 美国	Countervailing Duty Investigation initiated 发起反补贴调查	81 FR 25383 [C-570-046], dated 28-4-2016 2016年4月28日, 81 FR 25383 [C-570-046]
A4 Copy Paper A4复印纸	Australia 澳大利亚	ADD and CVD investigations initiated 发起反倾销和反补贴调查	Anti-dumping Notice No. 2016/33, dated 12-4-2016 2016年4月12日, 反倾销公告第2016/33号
Acrylic carpet 腈纶毯	South Africa 南非	Terminated ADD duty 终止反倾销税	MOFCOM news, dated 14-4-2016 2016年4月14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
Aluminum exclusion 铝挤压材	Trinidad and Tobago 特立尼达和多巴哥	Affirmative ADD final determination 肯定性反倾销终裁	MOFCOM new, dated 12-4-2016 2016年4月12日, 商务部新闻
Aluminum wheel 铝制车轮	Australia 澳大利亚	ADD accelerate review initiated 发起反倾销加速复审	MOFCOM new, dated 12-4-2016 2016年4月12日, 商务部新闻
Amoxycillin 阿莫西林	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F. No. 14/06/2015, dated 27-4-2016 2016年4月27日, 第14/06/2015号公告
Barium Carbonate 碳酸钡	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	14/2016-Cus. (ADD), dated 21-4-2016 2016年4月21日, 14/2016-Cus. (ADD)
Biaxial Integral Geogrid Products 双轴土工格栅	USA 美国	CVD investigation – Preliminary determination postponed 反补贴调查-延期发布初裁	81 FR 19954 [C-570-037], dated 6-4-2016 2016年4月6日, 81 FR 19954 [C-570-037]
Carbon and Alloy Steel Cut-To-Length Plate 碳合金钢定尺板	USA 美国	ADD - Initiation of Less-Than-Fair-Value Investigations 反倾销-发起低于正常价值调查	81 FR 27089 [A-570-047], dated 5-5-2016 2016年5月5日, 81 FR 27089 [A-570-047]
Carbon and Alloy Steel Cut-to-Length Plate 碳合金钢定尺板	USA 美国	Countervailing Duty Investigation initiated 发起反补贴调查	81 FR 27098 [C-570-048], dated 5-5-2016 2016年5月5日, 81 FR 27098 [C-570-048]
Carbon steel tube 碳钢管	Canada 加拿大	CVD – sunset review industry injury investigation initiated 反补贴-发起日落复审产业损害调查	MOFCOM news, dated 7-4-2016 2016年4月7日, 商务部新闻
Citric acid 柠檬酸及柠檬酸盐	Brazil 巴西	Terminated price undertaking 终止价格承诺	MOFCOM news, dated 26-4-2016 2016年4月26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
Cold rolled/cold reduced flat steel products of iron or non-alloy steel, or other alloy steel 冷轧扁钢	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F.No. 14/12/2016, dated 19-4-2016 2016年4月19日, 第14/12/2016号
Cold-rolled stainless steel 冷轧不锈钢	Viet Nam 越南	Increased ADD duty 增加反倾销税	MOFCOM news, dated 4-5-2016 2016年5月4日, 商务部新闻
Crystalline silicon photovoltaic cells 太阳能光伏电池	USA 美国	Terminated new shipper review 终止新出口商复审	MOFCOM news, dated 7-4-2016 2016年4月7日, 商务部新闻
Electric heater 电加热器	Argentina 阿根廷	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM news, dated 9-5-2016 2016年5月9日, 商务部新闻
Flange 法兰	Turkey 土耳其	Continue ADD duty after sunset review 日落复审继续征收反倾销税	MOFCOM news, dated 22-4-2016 2016年4月22日, 商务部新闻
Grinding Balls 研磨球	Australia 澳大利亚	Preliminary affirmative determination and imposition of securities 肯定性初裁并征收保证金	Anti-dumping Notice No. 2016/45, dated 21-4-2016 2016年4月21日, 反倾销公告第2016/45号
Hot Rolled and Cold Rolled Stainless Steel Flat Products 不锈钢产品	India 印度	Countervailing Duty Investigation initiated 发起反补贴调查	F.No. 14/18/2015, dated 12-4-2016 2016年4月12日, 第14/18/2015号
Hot-rolled carbon flat and alloy flat 热轧碳钢板和合金钢板	Canada 加拿大	ADD and CVD expiry review - affirmative ADD determination 反倾销和反补贴期终复审-肯定性反倾销终裁	MOFCOM news, dated 11-4-2016 2016年4月11日, 商务部新闻
Hot-rolled flat 热轧钢板	Indonesia 印度尼西亚	Continue ADD duty after sunset review 日落复审继续征收反倾销税	MOFCOM news, dated 19-4-2016 2016年4月19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
Hot-rolled flat 热轧平板钢材	Turkey 土耳其	Terminated ADD investigation 终止反倾销调查	MOFCOM news, dated 22-4-2016 2016年4月22日, 商务部新闻
Hot-rolled flat products of alloy or non-alloy steel in coils 热轧平板产品	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F. No. 14/9/2016, dated 11-4-2016 2016年4月11日, 第14/9/2016号
Hot-rolled steel bar and rod 钢铁热轧条杆	Chile 智利	Affirmative final safeguard determination 最终肯定性保障措施裁决	MOFCOM news, dated 3-5-2016 2016年5月3日, 商务部新闻
Iron Mechanical Transfer Drive Components 铁制机械传动部件	USA 美国	CVD investigation - Preliminary Affirmative Determination 反补贴调查-肯定性初裁	81 FR 21316 [C-570-031], dated 11-4-2016 2016年4月11日, 81 FR 21316 [C-570-031]
Laminated woven bag 复合编织袋	USA 美国	CVD final finding revised 修改反补贴终裁	MOFCOM news, dated 25-4-2016 2016年4月25日, 商务部新闻
Methyl Acetoacetate 乙酰乙酸甲酯	India 印度	Anti-dumping duty recommended 建议征收反倾销税	F. No. 14/7/2014, dated 1-4-2016 2016年4月1日, 第14/7/2014号
Methylene Chloride 二氯甲烷	India 印度	Anti-dumping duty recommended 建议征收反倾销税	F. No. 14/33/2014, dated 30-3-2016 2016年3月30日, 第14/33/2014号
Plastic swimming pool 塑料游泳池	Argentina 阿根廷	Terminated ADD investigation 终止反倾销调查	MOFCOM news, dated 5-5-2016 2016年5月5日, 商务部新闻
Poly Vinyl Chloride (PVC) Paste/Emulsion Resin 聚氯乙烯糊/乳液树脂	India 印度	Anti-dumping duty recommended 建议征收反倾销税	F. No. 15/19/2016, dated 26-4-2016 2016年4月26日, 第15/19/2016号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Polypropylene film 聚丙烯薄膜	Turkey 土耳其	Terminated ADD investigation due to no injury 无损害终止反倾销调查	MOFCOM news, dated 25-4-2016 2016年4月25日, 商务部新闻
Polyethylene Retail Carrier Bags 零售用聚乙烯塑料袋	USA 美国	Antidumping Duty Orders continued after sunset review 日落复审继续反倾销税征税令	81 FR 27087 [A-570-886], dated 5-5-2016 2016年5月5日, 81 FR 27087 [A-570-886]
Polyethylene Terephthalate Resin 聚对苯二甲酸乙二醇酯树脂	USA 美国	Countervailing duty orders issued while rates corrected 发布反补贴税令并修改结果	81 FR 27977 [C-570-025], dated 6-5-2016 2016年5月6日, 81 FR 27977 [C-570-025]
Sandals and slippers 凉鞋、凉拖鞋	Peru 秘鲁	Continue ADD duty after sunset review 日落复审继续征收反倾销税	MOFCOM news, dated 14-4-2016 2016年4月14日, 商务部新闻
Sodium formate 甲酸钠	Turkey 土耳其	ADD duty imposed 征收反倾销税	MOFCOM news, dated 14-4-2016 2016年4月14日, 商务部新闻
Stainless Steel Sheet and Strip 不锈钢板材和带材	USA 美国	CVD investigation - Postponement of Preliminary Determination 反补贴调查-延期发布初裁	81 FR 23457 [C-570-043], dated 21-4-2016 2016年4月21日, 81 FR 23457 [C-570-043]
Stainless steel tableware 不锈钢餐具	Argentina 阿根廷	Continue ADD duty after sunset review 日落复审继续征收反倾销税	MOFCOM news, dated 12-4-2016 2016年4月12日, 商务部新闻
Steel grating 钢格板	Canada 加拿大	ADD and CVD - Affirmative sunset review 反倾销和反补贴-肯定性日落复审裁决	Canadian International Trade Tribunal, News Release dated 18-4-2016 2016年4月18日, 加拿大国际贸易法院发布新闻
Steel Reinforcing Bar 钢筋	Australia 澳大利亚	Definitive ADD imposed 征收最终反倾销税	Public Notice dated 12-4-2016 2016年4月12日, 发布公告

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Steel rods in coils 盘条	Australia 澳大利亚	Definitive ADD imposed 征收最终反倾销税	Public Notice dated 22-4-2016 2016年4月22日， 发布公告
Steel spring washer 钢制弹簧垫圈	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 18-4-2016 2016年4月18日， 商务部新闻
Steel wire rod 钢铁线材	Pakistan 巴基斯坦	ADD affirmative preliminary finding 肯定性反倾销初裁	MOFCOM news, dated 21-4-2016 2016年4月21日， 商务部新闻
Synchronous Digital Hierarchy Transmission Equipment SDH传输设备	India 印度	Definitive anti- dumping duty imposed 征收最终反倾销税	15/2016-Cus. (ADD), dated 26-4-2016 2016年4月26日， 15/2016-Cus. (ADD)
Synthetic fibre 合成纤维织布	Brazil 巴西	ADD sunset investigation initiated 发起反倾销日落复审	MOFCOM news, dated 11-4-2016 2016年4月11日， 商务部新闻
Tyres - New/unused pneumatic radial tyres for buses and trucks 轮胎-新/未使用的 卡车和客车用充气 轮胎	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F.No.14/14/2015, dated 3-5-2016 2016年5月3日， 第14/14/2015号公告
Tyre for agricultural machine 农机轮胎	Brazil 巴西	ADD affirmative preliminary finding 肯定性反倾销初裁	MOFCOM news, dated 25-4-2016 2016年4月25日， 商务部新闻
Unwrought Aluminium 未锻造铝	India 印度	Provisional Safeguard duty recommended 建议临时保障措施税	F.No. D-22011/10/2016/ Pt II, dated 21-4-2016 2016年4月21日， 第D-22011/10/2016/ Pt II号 公告

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
Optical Fibers 光纤	USA and EU 美国和欧盟	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM Announcement No. 15 of 2016, dated 22-4-2016 2016年4月22日, 商务部2016年公告第15号
Polyamide-6 锦纶6切片	USA, EU, Russia and Taiwan Region 美国、欧 盟、俄罗斯 和台湾地区	ADD continued after sunset review 日落复审继续征收反倾销税	MOFCOM Announcement No. 4 of 2016, dated 22-4-2016 2016年4月22日, 商务部2016年公告第4号
Solar-grade polycrystalline silicon 太阳能级多晶硅	EU 欧盟	ADD sunset review initiated 发起反倾销日落复审	MOFCOM Announcement No. 16 of 2016, dated 3-5-2016 2016年5月3日, 商务部2016年公告第16号
Solar-grade polycrystalline silicon 太阳能级多晶硅	EU 欧盟	CVD sunset review initiated 发起反补贴日落复审	MOFCOM Announcement No. 14 of 2016, dated 3-5-2016 2016年5月3日, 商务部2016年公告第14号
Unbleached Sack Paper 未漂白纸袋纸	USA, EU and Japan 美国、欧盟 和日 期	Definitive ADD imposed 征收最终反倾销税	MOFCOM Announcement No. 8 of 2016, dated 12-4-2016 2016年4月12日, 商务部2016年公告第8号
Vinylidene Chloride - Vinyl Chloride Copolymer Resin 偏二氯乙烯-氯乙烯 共聚树脂	Japan 日本	ADD investigation initiated 发起反倾销调查	MOFCOM Announcement No. 17 of 2016, dated 20-4-2016
Neoprene 氯丁橡胶	Japan, US and EU 日本、美国 和欧盟	ADD sunset review initiated 发起反倾销日落复审	MOFCOM Announcement No. 18 of 2016, dated 9-5-2016 2016年5月9日, 商务部2016年公告第18号

WTO News 世贸组织新闻

南非征收对平扎钢铁产品的保障措施税

2016年4月4日，南非通知世贸组织保障措施委员会，它已经开始了对于铁，非合金钢或其他合金钢的某些平轧产品发起保障措施调查。该申请由南非钢铁协会代表其成员提出的，主要成员是安赛乐米塔尔公司，占70%的市场份额。调查期间为2012年1月1日至2015年7月31日。。

世贸成员就印度最低进口价格措施提出质疑

由于全球经济衰退，导致钢铁行业产能过剩，日本与其他WTO成员提就印度的对超过170种钢铁产品实施最低进口价格（MIPS）的关注。根据WTO的报告，日本发现该最低进口价格措施与关税及贸易总协定（GATT）第十一条不一致。印度对热轧扁钢产品进口发起的保障措施调查也在2016年4月15日被WTO货物贸易理事会成为关注的问题。中国台北、加拿大、澳大利亚、欧盟和韩国也同意日本在最低进口价格和保障措施方面的观点。然而印度认为其没有违反WTO的承诺，并且认为就最低进口价格而言，关注过早，因为这些问题尚未在WTO的市场准入和保障措施委员会讨论。

同时，世贸组织成员在四月的最后一周的会议上还讨论了全球钢铁行业的问题，这促使各国政府加大对贸易救济措施的使用以保护本地生产商。有人指出，2015年

发起了41个新的针对钢铁进口的反倾销调查，而这一数字在2012年和2013年分别是23件。

印度上诉太阳能电池争端专家组报告

印度已通知其决定对由美国提出的印度-有关太阳能电池和模块某些措施争端案（DS456）的某些法律问题，以及专家组在该争端案中认定的某些法律解释提出上诉。在2016年4月20日的通报中，印度请求上诉机构推翻专家组相关的调查结果，结论和建议。印度认为专家组错误的认定1994年关税和贸易总协定第3.8（a）不适用于国内成分要求（DCR）措施。2016年4月25日印度代表团发布的WT/DS456/9文件还指出，专家组错误地不考虑印度的观点，即太阳能电池和模块与太阳能发电设备没有区别了。专家组认定第20（j）条的例外不适用国内成分要求措施，这也被印度在上诉程序中提出质疑，印度也要求上诉机构推翻专家小组的结论，即国内成分要求措施不符合1994年关税和贸易总协定第20（d）条。

同时，美国在2016年5月14日的货物委员会中对印度就一些电子产品的“义务登记程序”（CRO）表示关注。根据这一程序，需要外国产品在印度实验室进行测试，以表明他们符合印度的标准，即使这些标准与现有的国际规范相同。特别是，

美国认为需要遵守义务登记程序的产品列表仍在通过网站不断扩充和更新，而不是通过包括向利害关系方通知和评论在内的一个正式的法規程序。

巴西向印度尼西亚和泰国提出争端解决

2016年4月4日，巴西请求与印度尼西亚和泰国进行磋商。涉及的争端是对印尼相关适用于从巴西进口的牛肉的措施 (DS506)。而对泰国的争端是关于泰国向糖业提供相关

补贴 (DS507)。

巴西认为，泰国的配额和价格管制制度及其对甘蔗种植者的补偿构成了违反农业协议中的出口补贴。根据2016年4月7日由巴西代表团发布的文件，泰国还向将大量用于水稻的农业土地转成甘蔗生产提供补贴，以开发更多生产甘蔗糖的能力。巴西认为印度尼西亚一直保持和采取的限制性规则和程序，有效地禁止或限制了巴西的牛肉进入印尼市场。

Ratio Decidendi 判决理由

反倾销-依据调查期后的数据确定“损害威胁”

欧洲联盟法院认为欧盟调查机构有权在特定情况下对调查期后的数据加以考虑。它认为在调查中为了确定损害威胁的存在，就其本质而言，需要一个前瞻性分析，调查期后的数据可以提供这一方面的详细信息。对此法院认为，损害威胁的存在必须建立在采取反倾销措施时。它还指出基本法第3 (9) 条规定了，实质损害威胁的认定应当基于事实，而不是单纯的指控、推测或遥远的可能性，并且将发生倾销造成损害的变化必须是可以清楚地预见和迫在眉睫。

法院认为调查期后的数据可以用来证实或否定在临时裁决中的预测，然而法院警告当局，欧盟机构使用调查期后的数据并不能逃避欧盟的司法审查。最后，欧盟法院维持了常设法院的裁决，认为欧盟调查机关依据的调查期后的证据并不足以支持存在损害威胁的结论，因此，在这方面

委员会犯了明显的错误。【*Arcelor Mittal Tubular Products Ostrava A.S. 诉湖北新冶钢有限公司*-2016年4月7日欧盟法院判决，案件号C-186/14 P和C-193/14 P】

反倾销和反补贴-涉案产品范围，排除“完工产品”

美国国际贸易法院支持调查机关的裁决认为没有“幕”的“天井幕门成套产品”不是“最终完工产品”，应当被排除在征收反倾销税和反补贴税的范围之外。反倾销和反补贴裁决排除了以为组合成“完全的成套产品”的形式进口的含有铝合金型材中的“成品”。法院因此驳回了进口商的主张，其屏幕门没有屏幕，基本上是一个空的铝门框，是一个最终成品或在“成套成品”排除范围之外的成品。美国商务部认为，原告的货物并不是“成套成品”，因为法院认为缺乏所有必要组件以组装一个完整的天井屏幕门是正确的。[2016年4月20日，美国国际贸易法院 *Circle Glass Company v. United States* - 判决简报 16-39]

同样，法院拒绝批准排除'成套产品'而商务部已确定货物事实上在进口后已被重新打包成成套产品，因此，他们不是“成套成品”。法院对此指出，进口商没有表明需要组装成一个摊位的组件（除了铝型材）已经在集装箱运输中被排列在一起或以标记的方式表明每个箱子属于单独的成套产品，或经销商

对组件保留库存记录以防止各个成套产品的部件之间相互混合，这反过来又可证明在进口时的形式是成套产品。进口商在一票货物中进口所有部件，但是以零件方式包装在一起（即柱与柱、梁与梁，扣与扣）。[2016年4月20日，*Districargo, Inc. v. United States* – 判决简报 16-38]

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