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律师事务所电子新闻简报

2019 年 5 月-第 95 期

国际贸易 法律月刊

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May
2019



Article 文章

Consequence of non-participation by India in CVD investigations conducted by USA

印度不参加美国发起的反补贴调查可能引起的后果

By Bhargav Mansatta

Government of the exporting country is an interested party in a countervailing duty investigation. Apart from exporters of the subject product, Government of the exporting country is also required to file response to the questionnaire issued by the investigating authority and provide necessary information.¹

The United States is one of the biggest users of countervailing duty investigation against imports from India. In many cases, the USDOC has determined that Government of India did not provide complete information in response to the questionnaire issued by the United States Department of Commerce ("USDOC"). In other words, as per the USDOC, there was absence of complete information or response by Government of India regarding certain subsidy programs under investigation. Section 776(a) of the Tariff Act 1930 ("The Act") provides that the USDOC can rely on facts available when an interested party does not provide complete information. Section 776(b) of the Act further provides that the USDOC may use an adverse inference in selecting from among the facts otherwise available.

USDOC has the discretion in deciding the application of adverse facts available in a given case. Final determinations issued by the USDOC in the following countervailing duty investigations against India illustrates the practice adopted by the USDOC in applying adverse facts available

when complete information is not provided by GOI:

- (i) Polyethylene Terephthalate Film, Sheet and Strip from India, Administrative Review, Final Determination dated March 18, 2019
- (ii) Polytetrafluoroethylene Resin from India, Original Investigation, Final Determination dated May 14, 2018
- (iii) Stainless Steel Flanges from India, Original Investigation, Final Determination dated August 10, 2018

In *Polyethylene Terephthalate Film, Sheet, and Strip from India*, the USDOC, among others, examined the countervailability of the income tax program under Section 32AC (1A) ("sub-section 32AC") of the Income Tax Act.² Sub-section 32AC provides that when a company is engaged in the business of manufacture acquires and installs new assets exceeding prescribed amount, then such company shall be allowed in computing total income a deduction of 15 percent of the actual cost incurred for such new assets.

During this administrative review proceedings, the exporters of the subject product and the mandatory respondents namely SRF and Jindal provided full data of the benefits received during the POR under sub-section 32AC. Jindal reported that it received benefit under sub-

¹ Article 12 of the SCM Agreement.

² Issues & Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India, AR 2016, Comment 2, March 18, 2019.

section 32AC of the Income Tax Act. SRF submitted and demonstrated that it did not benefit from this program. However, GOI did not provide program description, explanation and other requested information in the appendix in the questionnaire response.³

The USDOC determined that GOI withheld the information and an adverse inference is warranted under section 776(b) of the Act. Consequently, the USDOC determined that the GOI *vide* sub-section 32AC provides financial contribution in the form of revenue foregone and benefit is equal to the difference between the amount of income tax that would be payable absent this program and the actual amount of taxes paid by recipient after availing this benefit.⁴ The USDOC specifically relied on the application of adverse facts to summarily determine that the income tax program is *de facto* specific.⁵ The USDOC did not deem it appropriate to analyze claims concerning non-specificity in absence of relevant information in this regard from the GOI.⁶

Determination of specificity of a subsidy program is crucial. Subsidy program will not be considered as countervailable if it is not specific. Subsidy program is not specific if the eligibility of the program is based on objective criteria and conditions i.e. criteria or conditions which are neutral, which do not favor certain enterprise over others and which are economic in nature and horizontal in application (eg. Size of enterprise, number of employees).⁷ Section 771(5A)(D) of the Act also provides that if the relevant statute incorporates objective criteria and conditions

governing the eligibility of the program, then such program will not be considered as specific.

Sub-section 32AC of the Income Tax Act provides eligibility for enterprises based on objective criteria i.e. the amount of investment made in new assets and is therefore not specific. However, as already noted, the USDOC resorted to the application of adverse facts available and determined that the program is *de facto* specific because GOI did not provide any explanation regarding the sub-section 32AC in its questionnaire response.⁸ It is acknowledged that absence of specificity is a difficult legal criterion to establish and practice shows that it is not easily accepted by the investigating authorities.⁹ However, full co-operation by the GOI may have rendered a different result regarding the specificity and countervailability of this program.

Be that as it may, it is also noted that the USDOC did not reject the information provided by the mandatory respondents namely, Jindal and SRF entirely. The USDOC determined the subsidy margin for this program based on the data furnished by the mandatory exporters. The USDOC determined the benefit for Jindal under this program by dividing the amount of benefit with the total sales during the POR and accepted the substantiated and verified claim of SRF that it

³ Issues & Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India, AR 2016, March 18, 2019, pg. 6.

⁴ *Ibid.*, pg. 14

⁵ *Ibid.*, Comment 2, pg. 24

⁶ *Ibid.*

⁷ Section 771(5A)(D) of Tariff Act 1930; Article 2, SCM Agreement, Footnote 2.

⁸ Issues & Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India, AR 2016, Comment 2, March 18, 2019.

⁹ In *Certain graphite electrode systems originating in India*, the European Commission evaluated Section 80IA of Income Tax Act by which an amount corresponding to the profit generated by the power generating activities was exempted from tax for 10 consecutive years for companies that started operation on or after the 1 April 2003 and up to 31 March 2010. The European Commission determined that the subsidy program is not specific because scheme appears to be available to all companies on the basis of objective criteria. Council Regulation (EC) No 1354/2008 of 18 December 2008 amending Regulation (EC) No 1628/2004 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India and Regulation (EC) No 1629/2004 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India, Official Journal of the European Union, L 350/24, 30.12.2018, paras. 60 to 66.

did not benefit from this program. To this extent, it is required to be acknowledged that the USDOC's application of adverse facts available did not penalize mandatory respondents by imposing high rate of countervailing duty for the concerned program.¹⁰

In *Polytetrafluoroethylene Resin from India*, the GOI filed questionnaire response. However, the USDOC noted that GOI did not provide any substantive response regarding two programs namely (i) Exemption from electricity duty by the State Government of Gujarat (SGOG)¹¹ and (ii) Renewable Energy Certificates program by the GOI.¹² Consequently, USDOC determined that application of adverse facts available is warranted in accordance with Section 776(b) of the Tariff Act. The exporter of the subject product and the mandatory respondent Gujarat Fluorochemicals Limited ("GFL"), provided complete information regarding the use of both these programs.

Regarding exemption from electricity duty by SGOG, GFL reported that it received two different types of exemptions from electricity duty, (i) electricity consumed by its new manufacturing unit in accordance with the Electricity Duty Act, 1958 and (ii) duty exemption for its wind power generation in accordance with Wind Power Policy-2013. However, because GOI did not provide information regarding the nature of the program, the USDOC applied adverse facts

available for determined countervailability of the program. USDOC determined that GOI conferred a financial contribution in the form of revenue foregone, benefit and the program is specific.¹³ For this purpose, USDOC relied on the information provided by the domestic industry in the petition.¹⁴ Once again, the USDOC determined that because GFL provided information regarding the benefits it received under this program during the POI, it is relying on this information to calculate the subsidy margin and the countervailing duty rate for GFL.

Regarding Renewable Energy Certificate ("REC") Program, GFL explained that GOI identifies energy intensive consumers and requires them, through the Central Electricity Regulatory Commission ("CERC"), to generate a certain percentage of green energy either from self-generation or by purchasing RECs through a CERC administered power exchange. GFL reported that it generated a number of RECs during the POI through its captive windfarm and these RECs were sold during the POI at prices set by CERC.¹⁵ The USDOC specifically observed that it normally relies on the government to provide specific program information with regard to the administration and specificity of programs. Because the GOI did not provide any information regarding this program, USDOC was not able to confirm GFL's description of how this program is administered.¹⁶ Therefore, USDOC determined that this program provides financial contribution, benefit and is *de facto* specific.¹⁷ However, the USDOC

¹⁰ Issues & Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India, AR 2016, Comment 2, March 18, 2019

¹¹ GOI provided only a brief statement that information regarding this program, administered by the State Government of Gujarat, could be collected from the mandatory respondent; Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Polytetrafluoroethylene Resin from India, February 28, 2018, pg. 9.

¹² Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Polytetrafluoroethylene Resin from India, May 14, 2018, Comment 2.

¹³ Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Polytetrafluoroethylene Resin from India, February 28, 2018, pg. 17

¹⁴ *Ibid.* footnote, 92

¹⁵ *Ibid.*, pgs. 18 & 19

¹⁶ *Ibid.*, pg. 19

¹⁷ *Ibid.* Preliminary determination was confirmed by the USDOC in the Final Determination issued on August 10, 2018.

determined subsidy margin for GFL based on the verifiable benefit amount actually reported by GFL during the POI to arrive at a countervailable subsidy rate.¹⁸

In *Stainless Steel Flanges from India*, the United States examined host of subsidy programs alleged by the petitioners.¹⁹ The USDOC noted that GOI did not provide complete information regarding eight programs²⁰ including (i) Provision of stainless steel, billet and bar by SAIL at less than adequate remuneration and (ii) Ten State Government of Andhra Pradesh Programs (“SGAP”). Exporter of the subject product from India and a mandatory respondent in the investigation, Echjay Forging Industries Pvt. Ltd (“Echjay”) provided complete information regarding the use of these two subsidy programs.

Regarding provision of stainless steel, billet and bar by SAIL, domestic industry in the United States argued that GOI failed to provide response to USDOC questionnaire and therefore adverse facts available should be applied for Echjay to determine countervailing duty rate of this subsidy program.²¹ The USDOC determined the provision of steel inputs by SAIL at less than adequate remuneration provides a countervailable subsidy. The USDOC did not accept the GOI’s argument that the provision of steel inputs by SAIL for less than adequate remuneration is not a program that confers a benefit from the GOI because SAIL is not a public body and it neither possesses governmental authority nor discharges any government

function.²² However, USDOC observed that Echjay reported properly regarding this program and submitted that it had no purchases of any kind from SAIL during the POI. USDOC observed the no evidence was uncovered during the verification that called into question the claim of Echjay. Accordingly, USDOC determined that Echjay did not benefit from this program.²³

Similarly, in absence of information regarding SGAP programs from the GOI, the USDOC applied adverse facts available to determine that SGAP programs provides countervailable subsidy.²⁴ However, the USDOC accepted the verifiable claim that Echjay did not receive any benefit under ten SGAP programs.²⁵

Conclusion

Following conclusions are evident regarding the application of adverse facts available by the USDOC when it determined that GOI has not provided complete information regarding certain subsidy programs:

- (i) Application of adverse facts available is determined for each subsidy program. Absence of information regarding certain subsidy programs by the GOI will not result in rejection of the entire GOI questionnaire response.
- (ii) GOI information and explanation of the program is necessary to determine the nature of subsidy programs and its countervailability in accordance with the provisions of the SCM Agreement as incorporated in the US Statute and as implemented by the USDOC.

¹⁸ *Ibid.*

¹⁹ Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Stainless Steel Flanges from India, August 10, 2018

²⁰ (i) GOI Loan Guarantee (ii) Status Certificate Program (iii) Provision of Stainless Steel, Billet and Bar by SAI at LTAR (iv) Infrastructure Assistance for Mega Projects under the Maharashtra Industrial Policy of 2013 (v) Other State Government of Maharashtra Industrial Promotion Policy to Support Mega Projects & (vi) Incremental Export Incentive Scheme (vii) Steel Development Fund. *Ibid.*, Comment 6

²¹ *Ibid.*, Comment 3.

²² Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Stainless Steel Flanges from India, August 10, 2018, pg. 16

²³ *Ibid.*

²⁴ *Ibid.*, Comment 6.

²⁵ Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Stainless Steel Flanges from India, Programs Preliminarily Determined to Be Not Used by, or Not Confer a Measurable Benefit to Echjay, S.No. 28, January 16, 2018.

(iii) When the GOI does not provide details regarding the benefit provided to the mandatory respondent under the concerned program, the USDOC will rely on the actual information and data provided by the exporter for determining subsidy

margin and countervailing duty rate for such co-operating exporter for the concerned program.

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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
Aluminium extrusions 铝型材	Australia 澳大利亚	Affirmative finding in ADD and CVD review investigations 反倾销和反补贴复审调查肯定性裁决	Anti-dumping Notice No. 2019/44, dated 8-5-2019 2019 年 5 月 8 日, 反倾销公告第 2019/44 号
Aluminum extrusions 铝型材	USA 美国	Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders 反倾销和反补贴反规避调查肯定性初裁	[FR Doc No: 2019-10275] [A-570-967, C-570-968], dated 17-5-2019 2019 年 5 月 17 日 [FR Doc No: 2019-10275] [A-570-967, C-570-968]
Aluminum foil paper 铝箔纸卷	Mexico 墨西哥	Imposed ADD preliminary duty 征收临时反倾销税	MOFCOM news, dated 27-5-2019 2019 年 5 月 27 日, 商务部新闻
Aluminum strip 铝带	Eurasian Economic Union 欧亚经济联盟	ADD - Initiation of investigation 反倾销-发起调查	MOFCOM news, dated 8-5-2019 2019 年 5 月 8 日, 商务部新闻
Aluminum tube 铝管	Argentina 阿根廷	ADD - Initiation of investigation 反倾销-发起调查	MOFCOM news, dated 9-5-2019 2019 年 5 月 9 日, 商务部新闻
Ammonium Nitrate 硝酸铵	Australia 澳大利亚	Notice issued for longer period for decision of Minister 延长调查时限	Anti-dumping Notice No. 2019/69, dated 16-5-2019 2019 年 5 月 16 日, 反倾销公告第 2019/69 号
Carbon steel plate 碳钢板	Taiwan Region 台湾地区	Affirmative preliminary CVD result but not to impose duty 肯定性反补贴初裁但不征收反补贴税	MOFCOM news, dated 24-5-2019 2019 年 5 月 24 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
Ceramic tile 瓷砖	USA 美国	ADD and CVD - Initiation of investigation 反倾销和反补贴-发起调查	MOFCOM news, dated 5-5-2019 2019 年 5 月 5 日, 商务部新闻
Certain Carbon Cold-rolled Steel Products 冷轧碳钢	Taiwan Region 台湾地区	Affirmative preliminary ADD and CVD result but not to impose duty 肯定性反倾销和反补贴初裁但不征收反补贴税	MOFCOM news, dated 24-5-2019 2019 年 5 月 24 日, 商务部新闻
Certain Flat-rolled Products of Stainless Steel, Hot-rolled 不锈钢热轧扁钢	Taiwan Region 台湾地区	Affirmative preliminary ADD and CVD result but not to impose duty 肯定性反倾销和反补贴初裁但不征收反补贴税	MOFCOM news, dated 24-5-2019 2019 年 5 月 24 日, 商务部新闻
Certain Flat-rolled Steel Products, Plated or Coated with Zinc or Zinc-alloys 镀锌、锌合金扁轧钢	Taiwan Region 台湾地区	Affirmative preliminary CVD result but not to impose duty 肯定性反补贴初裁但不征收反补贴税	MOFCOM news, dated 24-5-2019 2019 年 5 月 24 日, 商务部新闻
Copper tube 铜管	Canada 加拿大	ADD and CVD – Affirmative expiry review determinations 反倾销和反补贴-肯定性期终复审终裁	CT 2018 ER, dated 3-5-2019 2019 年 5 月 3 日, CT 2018 ER
Digital Offset Printing Plates 数码印刷版	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F.No.6/7/2019-DGTR, dated 16-5-2019 2019 年 5 月 16 日, 第 6/7/2019-DGTR 号
Ductile Iron Pipes 球墨铸铁管	India 印度	Anti-dumping duty extended for a period of 45 days from 9 th May, 2019 up to 23 rd June 2019 in pursuance of the Order of the Gujarat High Court dated 3 May 2019. 根据 2019 年 5 月 3 日古吉拉特高等法院的裁决反倾销征税期延长 45 天	21/2019-Customs -(ADD), dated 9-5-2019 2019 年 5 月 9 日, 21/2019-Customs -(ADD)
Electronic wall clock 电子挂钟	Turkey 土耳其	Affirmative ADD final finding after sunset review 日落复审后肯定性反倾销终裁	MOFCOM news, dated 24-5-2019 2019 年 5 月 24 日, 商务部新闻
Fiber fabric 纤维织物	Turkey 土耳其	Affirmative ADD anticircumvention final finding 肯定性反倾销反规避终裁	MOFCOM news, dated 8-5-2019 2019 年 5 月 8 日, 商务部新闻
Furniture hinge 家具铰链	Turkey 土耳其	Affirmative ADD anticircumvention final finding 肯定性反倾销反规避终裁	MOFCOM news, dated 8-5-2019 2019 年 5 月 8 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
Grinding balls 研磨球	Australia 澳大利亚	Accelerated review of ADD and CVD notice for exports by specific entity 对特殊企业的出口进行快速反倾销和反补贴复审	Anti-dumping Notice No. 2019/63, dated 14-5-2019 2019 年 5 月 14 日, 反倾销公告第 2019/63 号
Multilayered Wood Flooring 多层木地板	USA 美国	Final Results of Antidumping Duty New Shipper Review; 2014-2015 2014-2015 年反倾销新出口商复审最终裁决	[FR Doc No: 2019-09900] [A-570-970], dated 14-5-2019 2019 年 5 月 14 日, [FR Doc No: 2019-09900] [A-570-970]
New/Unused Pneumatic Radial Tyres 新的/未使用的充气子午胎	India 印度	Final Findings issued recommending continuation of residual rate of anti-dumping duties with respect to 3 concerned New Shippers. 对三家新出口商最终裁决建议适用普遍税率	F No. 7 / 08 / 2018 – DGAD, dated 2-5-2019 2019 年 5 月 2 日, 第 7 / 08 / 2018 – DGAD 号
Organic coated steel products 有机涂层钢产品	EU 欧盟	Definitive ADD imposed after affirmative expiry review 肯定性期末复审后征收最终反倾销税	Commission Implementing Regulation (EU) 2019/687, dated 2-5-2019 2019 年 5 月 2 日, 欧盟执行委员会公告第 2019/687 号
Organic coated steel products 有机涂层钢产品	EU 欧盟	Definitive CVD imposed after affirmative expiry review 肯定性期末复审后征收最终反补贴税	Commission Implementing Regulation (EU) 2019/688, dated 2-5-2019 2019 年 5 月 2 日, 欧盟执行委员会公告第 2019/688 号
Pencil 铅笔	Mexico 墨西哥	ADD - Initiation of an expiry reviews 反倾销-发起期末复审	MOFCOM news, dated 20-5-2019 2019 年 5 月 20 日, 商务部新闻
Polyester Textured Yarn 拉伸变形丝	USA 美国	Preliminary Affirmative Countervailing Duty Determination 肯定性反补贴初裁	[FR Doc No: 2019-09065] [C-570-098], dated 3-5-2019 2019 年 5 月 3 日, [FR Doc No: 2019-09065] [C-570-098]
PVC flat electrical cables 聚氯乙烯扁平电缆	Australia 澳大利亚	Affirmative finding in ADD and CVD investigation 肯定性反倾销和反补贴裁决	Anti-dumping Notice No. 2019/47, dated 8-5-2019 2019 年 5 月 8 日, 反倾销公告第 2019/47 号
Quartz Surface Products 石英石台面	USA 美国	Final Affirmative Determination of Sales at Less Than Fair Value 低于正常价值肯定性终裁	[FR Doc No: 2019-10800] [A-570-084], dated 23-5-2019 2019 年 5 月 23 日, [FR Doc No: 2019-10800] [A-570-084]

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Quartz Surface Products 石英石台面	USA 美国	Final Affirmative Countervailing Duty Determination 肯定性反补贴终裁	[FR Doc No: 2019-10799] [C-570-085], dated 23-5-2019 2019 年 5 月 23 日, [FR Doc No: 2019-10799] [C-570-085]
Seamless casing and oil country tubular goods 无缝石油管	Canada 加拿大	Initiation of Scope Proceeding 发起范围程序	SC OCTG1 2019 SP, dated 10-5-2019 2019 年 5 月 10 日, SC OCTG1 2019 SP
Sodium naphthalenesulphonate 磺化萘甲醛	Egypt 埃及	ADD - Initiation of investigation 反倾销-发起调查	MOFCOM news, dated 20-5-2019 2019 年 5 月 20 日, 商务部新闻
Solar glass 太阳能玻璃	EU 欧盟	ADD and CVD - Initiation of an expiry reviews 反倾销和反补贴-发起期终复审	2019/C 165/06 and 2019/C 165/07, both dated 14-5-2019 2019 年 5 月 14 日, 2019/C 165/06 和 2019/C 165/07
Steel Nails 钢钉	USA 美国	ADD - Final Results of the Expedited Sunset Review 反倾销-加速日落复审最终裁决	[FR Doc No: 2019-10272] [A-570-909], dated 17-5-2019 2019 年 5 月 17 日, [FR Doc No: 2019-10272] [A-570-909]
Steel pallet racking 钢托盘货架	Australia 澳大利亚	Affirmative finding in ADD investigation 反倾销调查肯定性裁决	Anti-dumping Notice No. 2019/45, dated 6-5-2019 2019 年 5 月 6 日, 反倾销公告第 2019/45 号
Steel products 钢产品	EU 欧盟	Initiation of review of Safeguard measures 发起保障措施复审	2019/C 169/08, dated 17-5-2019 2019 年 5 月 17 日, 2019/C 169/08
Steel tube 钢管	Ukraine 乌克兰	ADD - Initiation of investigation 反倾销-发起调查	MOFCOM news, dated 20-5-2019 2019 年 5 月 20 日, 商务部新闻
SUS 300 Series Flat-rolled Products of Stainless Steel, Cold-rolled 300 系冷轧不锈钢	Taiwan Region 台湾地区	Affirmative preliminary CVD result but not to impose duty 肯定性反补贴初裁但不征收反补贴税	MOFCOM news, dated 24-5-2019 2019 年 5 月 24 日, 商务部新闻
Synthetic fiber blanket 合成纤维毯	Mexico 墨西哥	ADD - Initiation of an expiry reviews 反倾销-发起期终复审	MOFCOM news, dated 20-5-2019 2019 年 5 月 20 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
Vertical Metal File Cabinets 立式金属文件柜	USA 美国	ADD and CVD - Initiation of investigation 反倾销和反补贴-发起调查	MOFCOM news, dated 22-5-2019 2019 年 5 月 22 日, 商务部新闻
Woven and/or stitched glass fibre fabrics 玻璃纤维织物	EU 欧盟	Notice of initiation of an anti-subsidy proceeding 发起反补贴调查	2019/C 167/07, dated 16-5-2019 2019 年 5 月 16 日, 2019/C 167/07

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
Heat-resistant Pressure-bearing Seamless Alloy Steel Tubes 高温承压用合金钢无缝钢管	USA and EU 美国和欧盟	Initiation of expiry review 发起期终复审	MOFCOM Announcement No. 20 of 2019, dated 10-5-2019 2019 年 5 月 10 日, 商务部 2019 年公告第 20 号
Phenol 苯酚	USA, EU, Korea RP, Japan and Thailand 美国、欧盟、韩国、日本和泰国	Affirmative preliminary ADD determination 肯定性反倾销初裁	MOFCOM Announcement No. 2=2 of 2019, dated 27-5-2019 2019 年 5 月 27 日, 商务部 2019 年公告第 22 号



WTO News 世贸组织新闻

日本就印度对手机和零部件征收关税提出争端解决

日本于 2019 年 10 月 5 日向世贸组织提出请求与印度就某些货物的进口税进行磋商, 据称这些货物与印度在 1994 年关贸总协定所附的减让和承诺

不符。根据 5 月 14 日发布的日本通告, 印度对手机网络或其他无线网络和部件、基站以及用于接收、转换和传输或再生语音、图像或其他数据的机器和部件征收进口税, 日本认为其违反了 GATT 第二条第 1 款 (a) 项和第 (b) 项。

世贸组织就中国对农产品进口的关税配额发布专家组报告

4月18日，世贸组织就美国在“中国对某些农产品的关税配额争端案”（DS517）发布了专家组报告。美国质疑中国对小麦、大米和玉米关税配额的管理。这些管理包括获得分配资格的基本标准、分配程序以及未使用或退回的关税配额的重新分配等。专家组发现：

- 中国小麦、大米和玉米关税配额管理所采用的基本资格标准与透明、可预测和公平地管理关税配额以及通过明确要求的方式管理关税配额的义务不一致；
- 中国小麦、大米和玉米关税配额管理中使用的分配原则与透明、可预测和公平地管理关税配额以及通过明确管理程序的方式管理关税配额的义务不一致；
- 中国小麦、大米和玉米关税配额管理中使用的再分配程序与通过明确管理程序的方式管理关税配额的义务不一致；
- 中国小麦、大米和玉米关税配额管理中使用的公开评论程序与透明、可预测和公平地管理关税配额以及通过明确管理程序的方式管理关税配额的义务不一致；
- 中国小麦、大米和玉米关税配额的 STE 和非 STE 部分的管理与透明、可预测和公平地管理关税配额、通过明确管理程序的方式管理关税配额以及不妨碍分配每个关税配额管理关税配额的义务不一致；
- 美国未能证明，中国小麦、大米和玉米的分配、返还和再分配有关的公告的范围与透明和可预

测的管理关税配额的义务不一致，也没有证明以不妨碍分配关税配额的方式管理每个关税配额的义务不一致；

- 中国小麦、玉米关税配额管理同样适用于进口小麦、玉米的要求，不符合可预见地管理关税配额、通过明确管理程序的方式管理关税配额、以不妨碍分配关税配额的方式管理每个关税配额的义务；
- 美国未能证明，中国大米关税配额管理同样适用于进口大米的要求，与以不妨碍每个关税配额分配的方式管理关税配额的义务不一致；

最后，专家组认为，中国对小麦、大米和玉米关税配额的管理总体上不符合透明、可预测和公平地管理关税配额、通过明确管理程序的方式管理关税配额以及以不会影响关税配额的方式管理每个关税配额的义务。并建议 DSB 要求中国按照中国工作组报告第 116 段的规定以及中国《加入议定书》第 1.2 段履行其义务。

欧盟对电子商务发布联合声明

欧盟于 4 月 26 日发表了《电子商务联合声明》，提出了世贸组织有关电子商务的纪律和承诺。该声明涵盖了《世贸组织电子商务规则》的文本建议和《世贸组织电信服务参考文件》的修订。欧盟还要求其他成员国加入《信息技术协定》及其扩展，对计算机和相关服务作出承诺，并对电信服务作出某些承诺。

菲律宾在世贸组织政府采购委员会提交观察员请求

5 月 6 日，菲律宾驻世贸组织常驻大使 Manuel A. J. Teehankee 向世贸组织提交请求，请求菲律宾在政府采购委员会成为一个观察员。



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

出口-引入新的海运单据规则

CBIC 引入了《2019 年海运单（电子综合申报和无纸化处理）条例》。该新条例延续了 2011 年《取代海运单（电子综合申报）条例》，要求授权人保留经评估的海运单副本和所有证明文件原件，为期 5 年。此外，条例还对经认证的海运单据副本作出了规定。根据 2019 年 4 月 25 日颁布的规定，如有违反，将处以最高 5 万卢比的罚款。

经济特区-管理和商业顾问服务是经过授权的服务

经济特区核准委员会在其第 85 次会议上决定，“管理和商业顾问服务”可列入特区的默认授权服务清单。根据 2019 年 8 月 5 日发布的第 94 号经济特区指引，此类服务仅限于经济特区实体提供/使用的服务。此外，该单位必须提供证据证明所述服务仅用于其授权的业务。值得注意的是印度政府已经允许 66 项服务作为默认授权服务。

出口-250 条海运单现在可以在单个的 ANF 3D 在线提交

可在单个 ANF 3D 应用程序中在线提交的货运单/空运单条目数量已从 50 条增加到 250 条，用于申请出口自印度计划（MEIS）中的商品优惠。最近通知的 ANF 3D 已由对外贸易总局于 2019 年 7 月 5 日发布的第 7/2015-2020 号公告进行了修订。

MEIS 是根据《对外贸易政策》第 3 章发行的一种关税进项抵扣凭证，旨在向出口商提供奖励，以抵消基础设施效率低下和相关成本。

对外贸易政策-没有要求提交纸质版的 RCMC 以获得优惠

为获得 2015-20 年对外贸易政策下的奖励而提交 RCMC 纸质副本的要求将从 2019 年 7 月 1 日停止执行。根据 2019 年 5 月 13 日的对外贸易通知，RCMCS 的有效性将直接从对外贸易总局的数据库中进行检查，该数据库包含从 EPC 上传的 RCMCS 数据。贸易通知同时指出，截至 4 月 31 日，在对外贸易总局数据库中有 32060 个有效的 RCMCs 可用，同时建议所有出口商确保其有效的 RCMCs 由各自的 EPC 适当上传到对外贸易总局的服务器中。

来自中国的牛奶和牛奶制品-进口禁令延长

禁止从中国进口牛奶和奶制品，包括巧克力、糖果、以牛奶或奶固体为原料的食品制剂的禁令被延长了。根据 2019 年 4 月 23 日第 1/2015-20 号 DGFT 通知，在入境口岸所有实验室适当升级以提升测试三聚氰胺能力之前，该禁令将一直有效。该禁令原先的有效期至 2019 年 4 月 23 日为止。



Ratio Decidendi 判决理由

海关价值-在第 7 和 9 条之前应穷尽第 3 至 5 条

印度最高法院重申，《印度海关估价规则》第 3 至 5 条规则应在执行第 7 和 9 条规则之前穷尽。最高法院注意到，如果存在法定规则并规定按顺序执行，则评估机构没有选择权。它指出，电气装饰照明通常不是高品牌的产品，而进口同样标

有迪亚斯和曼陀罗商标并不能使他们具有排他性的。法院注意到，由于可以从英国获得类似商品的价格数据，因此可以利用这些数据。[Anil Kumar Anand v. Commissioner - Civil Appeal No. 3138 of 2018, decided on 22-4-2019, Supreme Court]

9 件套组成的圣诞老人套装可在各自的子目下单独分类

美国联邦巡回上诉法院维持了美国国际贸易法院关于商品分类的裁决，该裁决规定了 9 件套圣诞老人服装被包装成一套出售。美国国际贸易法院认为已经分别根据《美国统一关税表》第 6110.30.30 、 6103.43.15 、 6116.93.94 和 4209.92.30 号对此类货物进行了分类。上诉进口商声称，所有 9 件圣诞老人套装都属于《美国统一关税表》第 95 章的“节日的物品”而需要免税入境。然而，法院观察到，夹克和裤子是耐用品，而这些物品也是正常穿着的服装。 [*Rubies Costume Company v. US – Opinion dated 29-4-2019 in 2018-1305, US Court of Appeals for Federal Circuit*]

带塑料涂层的织物的肠衣的分类

美国联邦巡回上诉法院已确认美国国际贸易法院关于香肠肠衣分类的决定。国际贸易法院已根据第 6307.90.98 子目肠衣归类为纺织品，而上诉人已根据第 39 章请求将肠衣归类为塑料。该产品由一面涂有薄塑料层的机织织物薄片组成并且仅填充织物纤维之间的空隙。法院拒绝了外壳完全嵌入塑料中的论点，从而排除了 XI 部分。 [*Kalle USA, Inc v. US – Opinion dated 2-5-2019 in 2018-1378, US Court of Appeals of Federal Circuit*]

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