

国际贸易 法律月刊

内容

文章

欧盟 – 生物柴油案中构造正常价
值的“投入成本” 2

贸易救济新闻

对中国采取的贸易救济行动 6

中国采取的贸易救济行动 13

世贸组织新闻 13

判决理由 15

January
2017

Article 文章

EU-Biodiesel: “Input Costs” in Constructed Normal Value

欧盟-生物柴油案中构造正常价值的“投入成本”

By **Greetika Francis**

The WTO Appellate Body (AB) has recently delivered the final word on construction of normal value. In *European Union - Anti-Dumping Measures on Biodiesel from Argentina* (DS 473) [see End Note 1], the Appellate Body rendered its decision in the matter in October, 2016 and the key issue in the dispute was with respect to EU’s use of reference benchmark prices for calculation of “costs” in the construction of normal value of Biodiesel originating in Argentina. The present article examines the nature of the examination in terms of Article 2.2 and 2.2.1.1 of the Anti-Dumping Agreement in the light of findings of the Panel and Appellate Body Reports in *EU-Biodiesel*.

Factual Background

The present dispute arose due to technical and substantive issues raised by Argentina against EU’s conduct of anti-dumping proceedings against imports of biodiesel from Argentina. In the investigation, the EU investigating authorities used ‘reference prices’ published by the Argentine Ministry of Agriculture to establish the costs of soybeans and soybean oil, the main raw materials, used in the production of biodiesel, in the calculation of a constructed normal value (CNV). The EU authority disregarded the domestic sales prices, as provided by the Argentinean producers, since the “domestic sales of biodiesel in Argentina were not made in

the ordinary course of trade due to government intervention”.

The “government intervention” which led to the price distortion was a Differential Export Taxation (DET) system maintained by Argentina, as per EU claims. The DET applied to the export of soybean and soybean oil at a higher level and to the export of biodiesel at a lower level, causing the price of soybean and soybean oil to remain suppressed and artificially low in the domestic market. Before the panel, Argentina claimed that both the EU Basic Regulation [see End Note 2] authorizing the use of reference prices for input costs (i.e. “as such” claims) and the EU’s application of the regulations in this investigation (i.e. “as applied” claims) were in breach of the AD Agreement.

Legal provisions

AD Agreement Articles 2.2 and 2.2.1.1 provide:

2.2 When 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 the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an

appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.

Issues

The primary issues raised in this dispute concern the calculation of the CNV, and questions:

1. The investigating authority's replacement of actual input costs incurred by exporters with a benchmark/reference input cost in the calculation of the CNV, on the ground that the actual input costs are distorted or artificially lowered;
2. Whether the use of a benchmark/reference input cost in the calculation of a CNV would result in the imposition of anti-dumping duties in excess of the dumping margins that should have been established in accordance with the WTO AD Agreement?
3. Where a reference price is used, whether "fair comparison" mandates an analysis by the authority to make due allowance for export taxes in both Normal Value (as was done) and export price (which was not done);

Examination and Conclusion

In its examination, both the Panel and the Appellate Body concurred that the EU acted inconsistently with the AD Agreement Article 2.2.1.1 by failing to calculate the cost of production on the basis of records kept by producers. It held that the EU investigating authority's determination violated the AD Agreement (Article 2.2 and GATT VI:1(b) (ii)) in so far as it used a "cost" for inputs that was not the cost prevailing "in the country of origin". EU also breached Article 9.3 of

the AD Agreement and Article VI:2 of GATT by imposing anti-dumping duties in excess of the margins that would have been rightly established under Article 2.

Specifically, the Appellate Body observed that the second condition under Article 2.2.1.1, “*provided that such records ... reasonably reflect the costs associated with the production and sale of the product under consideration*” is concerned with the maintenance of records by the exporters regarding costs which are reflective of actual costs of production in the country of origin rather than whether the prices of the goods were “fair” prices, in normal circumstances excluding the alleged distortion [See End Note 3]. Thus, according to the Appellate Body, the EU determination that domestic prices of soybeans in Argentina were “artificially low” due to the Argentine differential export tax system was not, in itself, a sufficient basis for concluding that the producers’ records did not reasonably reflect the costs of soybeans associated with the production and sale of biodiesel in Argentina.

However, both the Panel and the Appellate Body rejected Argentina’s “as such” claims against Article 2(5) of the Basic Regulation since the law does not *require* EU to determine that a producer’s records do not reasonably reflect the costs associated with the production and sale of the product under consideration when these records reflect prices considered to be “artificially or abnormally low” as a result of a distortion. Moreover, the Panel and

Appellate Body were also of the opinion that Article 2(5) of the Basic Regulation prescribes what has to be done *after* the EU authorities have determined that a producer’s records do not reasonably reflect the costs of production, and does not govern the determination of *whether* those records reasonably reflect the costs of production, and thus, the Argentinean claim was misguided.

Further, since the “costs”, and thereby the CNV, were found to be inflated, the AB also determined that EU violated Article 9.3 by imposition of anti-dumping duties in excess of the dumping margins that should have been established in accordance with the AD Agreement.

With respect to the “fair comparison” issue, the Appellate Body and the Panel rejected Argentina’s claims that the EU investigating authority was required to make an adjustment to the export price of the exporter reflecting actual prices of soybean and soybean oil because it had made such an adjustment to the normal value by including export taxes on soybean and soybean oil in the CNV leading to an “artificial imbalance”. The Panel observed that “*the perceived distortion itself was caused by the export tax, and the undistorted price ultimately used by the EU authorities closely resembled the domestic price plus the export tax. But this does not transform the export tax on soybeans into an identifiable component of the constructed normal value itself. Unlike the examples in the illustrative list in Article 2.4, it*

is not a characteristic of the transactions being compared. It was a methodological approach that affected the price of biodiesel, but it did not affect the price comparability of the normal value and the export price.” On this basis, the Panel rejected the Argentinean claim. The Appellate Body, on the other hand, felt that once the issue of CNV had been settled, it was unnecessary to rule on Argentina’s “fair comparison” claim.

Conclusion

On the basis of the foregoing findings, the Appellate Body has unequivocally clarified the need to establish Constructed Normal Value on the basis of the exporters’ records, rather than resort to construction on another basis. This provides definitive understanding on the Authority’s inability to deviate from the exporters’ records in the calculation of normal value, a practice that has seen booming usage, particularly with investigations involving Non Market Economy countries, like China.

The EU has already begun amendment of its Basic Regulation, keeping in mind the graduation of China from NME status, and the proposed amendments affect provisions which had been challenged in *EU-Biodiesel* as well. The amendments [See End Note 4] have gathered support and may find acceptance from EU Members. It is foreseeable that the enactment of these amendments may be put forth by EU as its “compliance” in the present case. However, the scope, impact and vulnerability of the amendments or any

compliance can only be gauged once the proposals are formally enacted.

In any case, it is hoped that the *EU-Biodiesel* finding would discourage authorities from unduly constructing normal value by usage of reference / benchmarks even where appropriately maintained exporter’s records are available.

End Notes:

1. Appellate Body Report, *European Union - Anti-Dumping Measures on Biodiesel from Argentina*, WT/DS473/AB/R.
2. Article 2 (5) of the Council Regulation (EC) No. 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), Official Journal of the European Union, L Series, No. 343 (22 December 2009), pp. 51-73, and corrigendum thereto, L Series, No. 7 (12 January 2010), pp. 22-23
3. *EU-Biodiesel*, Appellate Body Report at paragraphs 6.54-6.57.
4. *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union*, dated 9 November, 2016.

[The author is Senior Associate, International Trade Practice, Lakshmikumaran & Sridharan, New Delhi]

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
A4 copy paper A4复印纸	Australia 澳大利亚	ADD and CVD affirmative preliminary finding issued 发布反倾销和反补贴肯定性初裁	MOFCOM news dated 20-12-2016 2016年12月20日， 商务部新闻
Air conditioner equipment 空调设备	Argentina 阿根廷	ADD affirmative final finding after sunset review 日落复审后发布反倾销肯定性终裁	MOFCOM news dated 15-12-2016 2016年12月15日， 商务部新闻
Alloy round steel bar 合金圆钢棒	Australia 澳大利亚	ADD investigation initiated 发起反倾销调查	Anti-Dumping Notice No. 2017/002, dated 10-1-2017 2017年1月10日， 反倾销公告第2017/002号
Aluminium Extrusions 铝型材	Australia 澳大利亚	ADD new shipper accelerated review initiated 发起反倾销新出口商快速复审	Anti-dumping Notice No. 2017/03, dated 10-1-2017 2017年1月10日， 反倾销公告第2017/03号
Biaxial Integral Geogrid Products 双轴土工格栅	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	82 FR 3284[A-570-036], dated 11-1-2017 2017年1月11日， 82 FR 3284[A-570-036]
Biaxial Integral Geogrid Products 双轴土工格栅	USA 美国	CVD – Subsidy rates determined 反补贴-确定补贴税率	82 FR 3282[C-570-037], dated 11-1-2017 2017年1月11日， 82 FR 3282[C-570-037]
Carbon and alloy steel pipe with longitudinal seam section of circular, Square and rectangular 焊接钢管	Mexico 墨西哥	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 8-12-2016 2016年12月8日， 商务部新闻
Cast iron articles 铸铁产品	EU 欧盟	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 13-12-2016 2016年12月13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
Ceramic tableware 陶瓷餐具	Columbia 哥伦比亚	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM news dated 3-1-2017 2017年1月3日， 商务部新闻
Choi steel plate 彩钢板	Indonesia 印度尼西亚	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 27-12-2016 2016年12月27日， 商务部新闻
Citric acid and certain citric acidsalts 柠檬酸和柠檬酸盐	Brazil 巴西	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM news dated 8-12-2016 2016年12月8日， 商务部新闻
Coated paper 铜版纸	Argentina 阿根廷	ADD anti-circumvention investigation initiated 发起反规避调查	MOFCOM news dated 15-12-2016 2016年12月15日， 商务部新闻
Coated Paper Suitable for High-Quality Print Graphics using Sheet-Fed Presses 铜版纸	USA 美国	ADD and CVD Orders continued after sunset review 日落复审后继续反倾销和反补贴征税令	82 FR 1692 [A-570-958, C-570-959], dated 6-1-2017 2017年1月6日，82 FR 1692 [A-570-958, C-570-959]
Colour coated/pre-painted flat products of alloy or non-alloy steel 合金或非合金彩色涂板	India 印度	Provisional ADD imposed 征收临时反倾销税	2/2017-Cus. (ADD), dated 11-1-2017 2017年1月11日， 2/2017-Cus. (ADD)
Concrete Reinforcing Bar 混凝土钢筋	Canada 加拿大	ADD – Final inquiry to determine injury initiated 反倾销-发起损害最终调查	Canadian International Trade Tribunal News Release dated 4-1-2017 2017年1月4日，加拿大国际贸易服务署发布新闻
Corrosion resistant steels 耐腐蚀钢	EU 欧盟	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 13-12-2016 2016年12月13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
Domestic dish washing machines 家用洗碗机	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 14-12-2016 2016年12月14日， 商务部新闻
Evaporators and radiators for automobiles and tractors 车载空调蒸发器和冷凝器	Argentina 阿根廷	ADD affirmative final finding 发布反倾销肯定性终裁	MOFCOM news dated 15-12-2016 2016年12月15日， 商务部新闻
Flat bars of alloy steel 合金钢条	Brazil 巴西	ADD affirmative final finding and levy duty 反倾销肯定性终裁并征税	MOFCOM news dated 7-12-2016 2016年12月7日， 商务部新闻
Fresh Garlic 新鲜大蒜	USA 美国	ADD new shipper review initiated 发起反倾销新出口商复审	82 FR 82[A-570-831], dated 3-1-2017 2017年1月3日， 82 FR 82[A-570-831]
Furfuryl Alcohol 糖醇	USA 美国	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM news dated 3-1-2017 2017年1月3日， 商务部新闻
Galvanized steel coil 镀锌板卷	New Zealand 新西兰	CVD investigation initiated 发起反补贴调查	MOFCOM news dated 22-12-2016 2016年12月22日， 商务部新闻
Garment 服装	Argentina 阿根廷	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM news dated 15-12-2016 2016年12月15日， 商务部新闻
Glass tableware 玻璃餐具	Brazil 巴西	ADD affirmative final finding after sunset review 日落复审后发布反倾销肯定性终裁	MOFCOM news dated 27-12-2016 2016年12月27日， 商务部新闻
Glycine 甘氨酸	USA 美国	Affirmative ADD final finding after accelerated sunset review 快速日落复审肯定性反倾销终裁	MOFCOM news dated 8-12-2016 2016年12月8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
Grilles, metal protection 金属护网	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 14-12-2016 2016年12月14日， 商务部新闻
Hardwood Plywood Products 硬木胶合板	USA 美国	CVD investigation initiated 发起反补贴调查	81 FR 91131[C-570-052], dated 16-12-2016 2016年12月16日， 81 FR 91131[C-570-052]
Hardwood Plywood Products 硬木胶合板	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 91125[A-570-051], dated 16-12-2016 2016年12月16日， 81 FR 91125[A-570-051]
Heavy Forged Hand Tools 重锻造手动工具	USA 美国	ADD Orders continued after sunset review 日落复审后继续反倾销征税令	82 FR 1695[A-570-803], dated 6-1-2017 2017年1月6日， 82 FR 1695[A-570-803]
High carbon steel wire 高碳钢丝绳	Brazil 巴西	ADD preliminary finding issued and provisional duty levied 发布反倾销临时裁决并征收临时反倾销税	MOFCOM news dated 14-12-2016 2016年12月14日， 商务部新闻
Hot-rolled steel sheet 热轧板	Turkey 土耳其	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 22-12-2016 2016年12月22日， 商务部新闻
Iron Construction Castings 铁制建筑铸件	USA 美国	ADD Orders continued after sunset review 日落复审后继续反倾销征税令	82 FR 1699 [A-570-502], dated 6-1-2017 2017年1月6日， 82 FR 1699 [A-570-502]
Large residential washers 家用大型洗衣机	USA 美国	Affirmative ADD final finding 肯定性反倾销终裁	MOFCOM news dated 12-12-2016 2016年12月12日， 商务部新闻
Multi-function apparatus with interchangeable accessories, food processing, use manual; manual mixer, 多用途手动食品料理机	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 14-12-2016 2016年12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
Nylon Filament Yarn 尼龙纱线	India 印度	ADD sunset review initiated 发起反倾销日落复审调查	F.No. 15/17/2016-DGAD, dated 9-1-2017 2017年1月9日, F.No. 15/17/2016-DGAD
Offset Printing Ink 胶印油墨	Pakistan 巴基斯坦	ADD affirmative preliminary finding 发布反倾销肯定性初裁	MOFCOM news dated 15-12-2016 2016年12月15日, 商务部新闻
Oil and gas pipeline 输油输气钢管	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 14-12-2016 2016年12月14日, 商务部新闻
PET resin PET树脂	Brazil 巴西	ADD affirmative final finding issued and duty levied 发布反倾销肯定性终裁并征税	MOFCOM news dated 20-12-2016 2016年12月20日, 商务部新闻
Plates, sheets, film, foil and strip of poly (methyl methacrylate) 聚甲基丙烯酸甲 制板、条	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 14-12-2016 2016年12月14日, 商务部新闻
Preserved Mushrooms 罐装蘑菇	USA 美国	ADD new shipper review rescinded 取消反倾销新出口商复审	82 FR 1317[A-570-851], dated 5-1-2017 2017年1月5日, 82 FR 1317[A-570-851]
Rubber balloons of different shapes, sizes and colors, printed or not, including water balloons 橡胶球	Argentina 阿根廷	ADD preliminary finding issued and provisional duty recommended 发布反倾销临时裁决并建议征收 临时反倾销税	MOFCOM news dated 14-12-2016 2016年12月14日, 商务部新闻
Saccharin 糖精钠	India 印度	ADD sunset review initiated 发起反倾销日落复审调查	F.No. 15/23/2016-DGAD, dated 10-1-2017 2017年1月10日, F.No. 15/23/2016-DGAD

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Seamless pipes and tubes of stainless steel 不锈钢无缝钢管	EU 欧盟	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM news dated 14-12-2016 2016年12月14日， 商务部新闻
Seamless tubes, pipes & hollow profiles of iron, alloy or non-alloy steel 无缝钢管	India 印度	Definitive ADD recommended 建议最终反倾销税	F.No.14/02/2015-DGAD, dated 9-12-2016 2016年12月9日， F.No.14/02/2015-DGAD
Shoes 鞋类	Peru 秘鲁	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM news dated 3-1-2017 2017年1月3日， 商务部新闻
Soda Ash 碳酸钠	India 印度	Notification imposing ADD rescinded however recessions shall remain in abeyance pending final order of the Gujarat High Court 取消征收反倾销税，但是仍有待古吉拉特高等法院的最终裁决	55/2016-Cus. (ADD), dated 21-12-2016 2016年12月21日， 55/2016-Cus. (ADD)
Sodium gluconate 葡萄糖酸钠	EU 欧盟	ADD mid-term review rescinded 取消反倾销期中复审	MOFCOM news dated 16-12-2016 2016年12月16日， 商务部新闻
Steel bar 钢筋	Egypt 埃及	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 10-1-2017 2017年1月10日， 商务部新闻
Steel rods, rolls, and skewers 钢制棒、卷和杆产品	Egypt 埃及	ADD and CVD investigation initiated 发起反倾销和反补贴调查	MOFCOM news dated 29-12-2016 2016年12月29日， 商务部新闻
Steel spring washer 钢弹簧垫圈	Argentina 阿根廷	ADD preliminary finding issued and provisional duty recommended 发布反倾销临时裁决并建议征收临时反倾销税	MOFCOM news dated 14-12-2016 2016年12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
Sulfanilic Acid 磺胺酸	USA 美国	ADD – Affirmative finding in sunset review 反倾销日落复审肯定性裁决	82 FR 1321 [A-533-806], dated 5-1-2017 2017年1月5日, 82 FR 1321 [A-533-806]
Tableware and Kitchenware of Plastics (Melamine) 塑料餐具	Egypt 埃及	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 8-12-2016 2016年12月8日, 商务部新闻
Towel 毛巾	Taiwan 台湾	ADD sunset review initiated 发起反倾销日落复审调查	MOFCOM news dated 8-12-2016 2016年12月8日, 商务部新闻
Trays made of urea 托盘	Egypt 埃及	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 8-12-2016 2016年12月8日, 商务部新闻
Trichloroisocyanuric acid 三氯异氰尿酸	EU 欧盟	ADD – Expiry review initiated 反倾销-发起期终复审	2016/C 476/05, dated 20-12-2016 2016年12月20日, 2016/C 476/05
Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys) 未锻造铝	India 印度	Final Finding recommends no Safeguard duty 最终裁决建议不征收保障措施税	F.No.22011/10/2016/Pt-VIII, dated 13-12-2016 2016年12月13日, F.No.22011/10/2016/Pt-VIII
Wool fabric 含羊毛织物	Argentina 阿根廷	ADD preliminary finding issued and provisional duty recommended 发布反倾销临时裁决并建议征收临时反倾销税	MOFCOM news dated 14-12-2016 2016年12月14日, 商务部新闻

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
Dispersion Unshifted Single-mode Optical Fiber 非色散位移单模光纤	Japan and Korea RP 日本和韩国	ADD duty continued after sunset review 日落复审后继续征收反倾销税	MOFCOM Announcement No. 78 of 2016, dated 30-12-2016 2016年12月30日，商务部公告2016年第78号
Distiller's Dried Grains with or without Solubles 干玉米酒糟	USA 美国	ADD affirmative final finding issued 发布反倾销肯定性终裁	MOFCOM Announcement No. 79 of 2017, dated 11-1-2017 2017年1月11日，商务部公告2016年第79号
Distiller's Dried Grains with or without Solubles 干玉米酒糟	USA 美国	CVD affirmative final finding issued 发布反补贴肯定性终裁	MOFCOM Announcement No. 80 of 2017, dated 11-1-2017 2017年1月11日，商务部公告2016年第80号

WTO News 世贸组织新闻

日本对印度就钢铁进口的措施提出争端解决

日本已通知WTO秘书处，日本就印度对钢铁进口的保障措施提出磋商请求，“印度-对钢铁产品进口的某些措施”（DS 518）。日本认为，印度的措施似乎违反了1994年关税和贸易总协定以及保障措施协议本身的义务，因为印度就其所为的不可预见的发展、确定国内产业、存在所谓的实质损害和/或实质损害威胁及因果关系方面未能做出合理和充分的裁决和结论。2017年1月9日的文件WT/DS518/1对此还指出，印度实施的保障措施超出必要的防止或补救严重损害的程度。此外，日本认为通过对钢铁产品进口实施最低限价制度，印度似乎禁止或限制

钢铁产品的进口，从而违反了1994年关贸总协定第11.1条。

欧盟对来自印度尼西亚的脂肪醇征收反倾销税-发布专家组报告

2016年12月16日，世界贸易组织已发布了一份专家组报告，该案是由印度尼西亚发起的“欧盟-对从印度尼西亚进口某些脂肪醇实施反倾销措施案”（DS442）。在这场争端中，印度尼西亚质疑欧盟对从印度尼西亚进口某些脂肪醇的反倾销调查。两个问题中的一个关于欧盟调查机关在脂肪醇出口价格中进行了折让调整，以解释新加坡的贸易商的加价，从而销售到欧盟。印度尼西亚声称，由于印尼的生产商和新加坡的贸易商是关联企业，在出口价格中不应进行加价调整。印度尼

西亚认为，加价不是影响价格可比性的一个因素，而是在单一经济实体内分配利润的一种方式。然而，专家组认为，印度尼西亚的主张在反倾销协议文本中没有法律依据，印度尼西亚声称在计算一个产品倾销幅度的过程中，不能对一个单一的经济实体扣除其发生的成本。

第二个问题涉及到欧盟未能披露对印度尼西亚生产商现场核查的结果。在这里，专家组认为欧盟未能向有关公司披露核查结果违反了反倾销协议第6.7条。该专家组认为，欧盟没有披露核查结果是因为它没有解释哪些信息是要求公司提供的，公司是否有提供所要求的信息以及是否调查机关已经能够确认公司书面提供的信息的准确性。

印度尼西亚农产品进口限制违反世贸组织规则

由美国和新西兰提出的“印度尼西亚-园艺产品、动物和动物产品进口案”（DS477和DS478）中，世贸组织已于2016年12月22日发布了专家组报告。专家组支持了美国和新西兰的主张，认为印度尼西亚的措施实质上是贸易限制，如有限的申请窗口期（对未来6和月内的进口只有15天的批准期限）、周期性和固定性的进口条款，因为在进口许可文件中明确了进口产品的数量、来源和准入港口从而限制进口，以消除进口商应对市场力量和外部因素的能力。

加拿大对最终被认定为微不足道倾销幅度的中国台北出口商实施反倾销税违反

了世贸组织规则

2016年12月21日，专家组发布了由中国台北提出的“加拿大-对某些碳钢焊管进口实施反倾销措施案”（DS482）的专家组报告。争端解决中的问题涉及到加拿大调查行为的技术问题。专家组支持中国台北声称对某一特定的存在微量倾销幅度的出口商应当终止对其的反倾销调查程序，并且在损害和因果关系的最终裁决分析中该出口商的进口不应被视为“倾销”。中国台北提出的一些加拿大反倾销立法中潜在的“本身”主张，即关于对微量倾销幅度出口商的处理也得到了专家组某种程度上的支持，条款与最终微量倾销幅度的出口商的处理有关，但专家组不认为这些认定与在初裁中被认定为微量倾销幅度出口商的处理有关。然而，专家组拒绝了中国台北的主张，即对来自印度的进口补贴影响和加拿大国内行业产能过剩的影响这些非归因主张。

就反倾销方法和铁轨设备进口争端案成立专家组

世贸组织争端解决机构已于2016年12月16日成立了两个专家组。第一个涉及到俄罗斯就欧盟的成本调整方法的投诉，第二个争端是针对某些俄罗斯的措施影响了从乌克兰进口铁路设备。值得注意的是，在“欧盟-从俄罗斯进口的成本调整方法和反倾销措施（第二次投诉）案”（DS494）中，阿根廷、澳大利亚、巴西、加拿大、中国、印度、印度尼西亚、日本、韩国、墨西哥、挪威、乌克兰、美

国和越南保留了其参与专家组程序的第三方权利。而根据乌克兰的第二次请求成立的“俄罗斯-影响铁路进口设备及其零件的措施案”专家组程序中 (DS499) , 加拿大、中国、欧盟、印度尼西亚、日本、新加坡和美国都保留了第三方的权利。

美国对专家组就民用航空器的生产给予税收优惠的裁决提出上诉

2016年12月16日, 美国提交了上诉通知, 抗议专机组在欧盟提出的“美国-对大型民用飞机有条件地实施税收优惠案” (DS487) 中的裁决。美国请求上诉机构审查专家组在华盛顿州生产和销售波音777X飞机的B&O航空税 (“B&O航空税”) 裁决和结论与补贴与反补贴措施协议 (“SCM协议”) 第3.1 (b) 和3.2条不一致, 因为它事实上是取决于国内产品的使用而非进口产品的使用。

中国请求与美国、欧盟就价格比较方法进行磋商

2016年12月12日, 中国已经通知世贸组织秘书处, 其请求与美国(DS515)和欧

盟(DS516)就美国和欧盟在反倾销程序中适用的特殊计算方法进行磋商。该争端案是由中国提出的就美国和欧盟在对待中国的反倾销程序中认定中国是“非市场经济”有关。根据中国代表团于2016年12月15日发布的文件WT/DS515/1, 中国要求世贸组织成员在2016年12月11日以后根据入世协议第15(a)(ii)条终止适用某些方法 (不是基于中国的国内价格或成本进行的严格比较) 。文件认为继续适用这些方法实际上是违反了成员国在相关协议中的义务。

美国质疑中国在农产品进口中的关税配额

在中国提出有关的非市场经济问题磋商请求之后, 美国已经通知世贸组织秘书处请求与中国就“中国-某些农产品的关税配额案” (DS517) 进行磋商。该争端的主要问题集中在中国政府维持某些关税配额的作法, 其中包括小麦、中短粒大米, 长粒大米, 玉米。美国声称维持关税配额违背了中国入世议定书中的承诺以及违反了关税和贸易总协定第10.3条。

Ratio Decidendi 判决理由

反倾销调查-抗议倾销、损害或因果关系证据的充分性: 在一个涉及从巴基斯坦进口征收反倾销税的案件中, 欧盟法院驳回了来自巴基斯坦的床上用品出口商的请求。出口商认为欧盟国内产业在其起诉书中提出的倾销、损害和因果关系证据不足。

争议的焦点是就某些特定的产品而言, 并

非代表从巴基斯坦的出口, 或者是通过出口商出口到欧盟, 该主张被法庭驳回, 认为基本法并不要求当涉案产品包含多种型号时, 申请人应当对所有这些产品型号提供信息。在这方面, 法院依赖世贸组织专家组在“美国-对来自加拿大的软木最终倾销裁决案”的报告。此外, 该法院的观点是, 为了确定发起反倾销程序的目的, 产

品在线程数量和重量方面略有差异，即起诉状中是‘22/22 60/60’，而申请人出口的类型是‘20/20 60/60’并不是考虑这些产品不是属于同一类型产品的充足理由。

关于在起诉状中的正常价值不可信的主张，法院指出基本法中没有要求起诉人提供起诉人无法合理获得的信息，法院从而支持起诉方根据欧盟生产商的数据构造正常价值。法院还观察到出口商不能证明调查当局在考虑欧盟生产商和巴基斯坦出口商之间成本差异而进行的价格调整是不充分的。在损害分析方面，法院注意到，基本法第5条并不要求所有损害评估的因素是消极的，以便展开调查。因此法院认

为欧盟委员会在考虑了市场份额、盈利能力和业绩或投资减少等重要指标后，欧盟委员会有权认为有关受损害的欧盟产业可以发起调查。

同样，出口商认为调查当局没有正确评估取消之前反倾销税的影响和对涉案产品实施关税优惠，也被法院驳回，法院认为任何立法措施对进口产品存在影响，那么通过分析在欧盟市场上同类产品的数量和进口产品的价格影响及对对欧盟产业的影响，调查当局也已经考虑了这些措施的影响。[*Gul Ahmed Textile Mills Ltd. v. Council of the European Union* – 2016年12月15日，欧盟法院裁决，案件号T-199/04 RENV, CJEU]

NEW DELHI

5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9811

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI

2nd floor, B&C Wing,
Cnergy IT Park,
Appa Saheb Marathe Marg,
(Near Century Bazar)Prabhadevi,
Mumbai - 400025.
Phone : +91-22-24392500
E-mail : lsbom@lakshmisri.com

CHENNAI

2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU

4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West, Bangalore-560 055.
Ph: +91(80) 49331800
Fax: +91(80) 49331899
E-mail : lsblr@lakshmisri.com

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church,
Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD

B-334, SAKAR-VII,
Nehru Bridge Corner,
Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE

607-609, Nucleus, 1 Church Road,
Camp, Pune - 411 001.
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

KOLKATA

2nd Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH

1st Floor, SCO No. 59,
Sector 26,
Chandigarh - 160026
Phone : +91-172-4921700
E-mail : lschd@lakshmisri.com

GURGAON

OS2 & OS3, 5th floor,
Corporate Office Tower,
Ambience Island,
Sector 25-A,
Gurgaon- 122001
Phone: +91- 0124 - 477 1300
Email: lsurgaon@lakshmisri.com

ALLAHABAD

3/1A/3, (opposite Auto Sales),
Colvin Road, (Lohia Marg),
Allahabad -211001 (U.P.)
Phone : +0532 - 2421037, 2420359
Email: lsallahabad@lakshmisri.com

免责声明： 国际贸易法律月刊旨在提供信息，而不是为了提出建议或法律意见。我们提供信息的目的是为了建立律师-客户关系，也不是为了宣传或招揽业务。Lakshmikumaran&Sridharan律师事务所没有企图通过此新闻简报宣传其服务或招揽业务。Lakshmikumaran&Sridharan律师事务所和其律师对在本新闻简报中出现的任何错误或疏漏或者对基于该内容采取的任何行动不承担任何责任。本新闻简报的文章中所表达的观点系作者个人观点。主动向Lakshmikumaran&Sridharan发出的邮件或信息将不被采取保密措施并且不构成与Lakshmikumaran&Sridharan之间的律师-客户关系。本期所包含的新闻截至2017年1月15日。取消订阅邮件请发至 newsletter.itrade@lakshmisri.com

www.lakshmisri.com www.addb.lakshmisri.com

www.lakshmisri.ch www.lakshmisri.cn