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Article 文章

India-EU free trade agreement: State of play and way forward

印度-欧盟自由贸易协定：进展情况及前进方向

By **Edouard Descotis**

India and the European Union (EU) have been negotiating a bilateral free trade agreement known as the Broad-based Trade and Investment Agreement (BTIA) since 2007. The negotiations cover a wide range of topics including tariff reductions, market access for services, intellectual property rights and investments. The last round of discussions took place in November 2013 and the negotiations have stalled ever since. Recent events including the ongoing Brexit negotiations and the termination of investment treaties might however have a direct impact on the BTIA and one can expect negotiations to resume in the near future.

Trading partners with different interests

The BTIA is a comprehensive agreement covering all aspects of trade in goods, services, intellectual property and investment. The EU is India's largest trading partner (13.5% of India's overall trade in 2015-16, well ahead of China (10.8%), the USA (9.3%), the UAE (7.7%) and Saudi Arabia (4.3%)). India was the EU's 9th trading partner in 2016 and Indian exports accounted for 2.2% of EU's overall trade. Despite the mutual interest in fostering bilateral trade and investments, India and the EU have diverging interests in the BTIA negotiations.

India is aiming to get a greater market access for services, especially for mode 1 services which cover cross border activities such as business process outsourcing (BPO) and knowledge process outsourcing (KPO). India is also interested in more liberal rules for the

temporary movement of workers (mode 4 services) which would allow more skilled professionals like IT engineers to access the EU labour market and send higher remittances back to India in return. Non-tariff barriers such as sanitary and phytosanitary measures and technical barriers to trade are also a key aspect of the negotiations for India. The EU has been imposing stringent sanitary measures and labelling rules which hinder India's exports to the EU. In 2014 the EU temporarily banned the imports of Alphonso mangoes and four vegetables from India due to fruit flies and other pest infestation.

The EU is particularly interested in tariff reductions on imports of cars, wine and spirits on which India still levies stiff customs duties. The EU also wishes to negotiate more favourable rules governing the commercial presence (mode 3 services) for retailing, banking, legal services and insurance. Intellectual property protection is also at the core of the negotiations. Brussels wants New Delhi to adopt stringent intellectual property protection which goes beyond the obligations of the so-called Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. According to the TRIPS, India is allowed by the WTO to disregard intellectual property in order to protect public health which is seen by several developed countries, including the EU, as a threat of their intellectual property rights. The EU also wants more protection for foreign direct investment in India.

Despite several rounds of negotiations, the

agreement is still far from being concluded. India and the EU have failed to agree on substantial issues, including tariffs cut, intellectual property protection and liberalization in trade in services. The recent Brexit decision and the denunciation of investment treaties by India have modified the conditions prevailing during the last round of talks in 2013. Hence there is a possibility of resumption of the negotiations in the near future.

Ongoing Brexit and its consequences for the BTIA

In June 2016, the UK decided to pull out of the EU. Negotiations on the UK withdrawal are ongoing and the Brexit may make it easier for India and the EU to conclude the BTIA. Indeed, amongst the elements that have stalled the negotiations are the liberalization of visa rules for Indian workers and the reduction of tariffs on spirits. The UK has a substantive interest in both issues as it is opposed to liberal visa rules for Indian skilled labour and wants its whiskey and other spirits to face lower customs duties in India. Once the UK is out of the BTIA talks, one can safely expect easier negotiations. However, the recent decision of India to terminate bilateral investment treaties appears to be the main reason for the stalemate.

Termination of bilateral investment treaties

India signed bilateral investment treaties (BITs) with several Member States of the EU in order to protect investments. However, in 2016 India unilaterally decided to terminate BITs with 57 countries including the UK, Germany and France scraping key protection for foreign investors. The BIT with the Netherlands expired on 30 November 2016 meaning that Indian investments in the Netherlands and vice versa made before the termination will still be protected for a 15-year period but new investments will not receive any protection. New Delhi decided to terminate the BITs in order to re-negotiate the old

treaties on the basis of a new model text BIT. The contentious issue with the new model BIT lies with a refined Investor State Dispute Settlement (ISDS) provision requiring investors to exhaust all domestic procedures before seeking international arbitration. The new ISDS also limits the power of the arbitral tribunal to awarding monetary compensation alone. The EU is opposed to the new ISDS provision and has urged India to extend the old-investment treaties by six months before resuming the BTIA talks. India, however, wants a new BIT based on the model text to be part of the free-trade negotiations. The recent visit of Indian Prime Minister to Germany and France might help in finding a solution to break the deadlock as German companies are calling for a swift solution to protect investments.

Way forward

A year ago, everyone was expecting the conclusions of two mega-trade agreements: the Trans-Atlantic Trade and Investment Partnership (TTIP) between the EU and the USA and the Trans-Pacific Partnership (TPP) involving 12 Pacific-rim countries including the USA. However, the Brexit and the new trade policy of the United States following the election of new US President have dramatically changed the picture. Indeed, the USA decided to pull out of the TPP, and the TTIP negotiations are stalled. In addition, the EU is now entering uncharted waters in the Brexit negotiations and India is busy negotiating the Regional Comprehensive Economic Partnership (RCEP), a mega-regional trade agreement with the ASEAN countries plus Australia, China, Japan, South Korea and New Zealand. However, RCEP negotiations are complex and involve sixteen countries at different level of development and with diverging interests. Resuming the BTIA negotiations could therefore be good move for India for the following reasons: first, the EU is India's first trading partner; the

benefits might thus be easier to reap given the trade volume. Second, both parties have a substantial market and big population. Third, an improved market access for services and a better integration in the global value chains are key elements for India's continuous economic

development. It is hence believed that the upcoming months might see the revival of the BTIA.

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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
Alloy round Steel Bar 合金钢圆棒	Australia 澳大利亚	ADD - Extension of time granted to issue statement of Essential Facts and Final Report 反倾销-延期发布重要事实披露及最终裁决	Anti-dumping Notice No. 2017/80, dated 19-6-2017 2017年6月19日, 反倾销公告第2017/80号
Aluminium Extrusions 铝型材	Australia 澳大利亚	ADD - Initiation of an Accelerated Review 澳大利亚-发起快速复审	Anti-dumping Notice No. 2017/77, dated 30-5-2017 2017年5月30日, 反倾销公告第2017/77号
Aluminium Road Wheels 铝制车轮	Australia 澳大利亚	ADD and CVD continued after sunset review 日落复审后继续反倾销和反补贴税	Anti-Dumping Notice No. 2017/75, dated 16-6-2017 2017年6月16日, 反倾销公告第2017/75号
Aluminium wheel 铝合金轮毂	Argentina 阿根廷	ADD affirmative preliminary finding 反倾销肯定性初裁	MOFCOM news dated 2-6-2017 2017年6月2日, 商务部新闻
Carbon and Alloy Steel Cut-to-Length Plate 碳合金钢定尺板	USA 美国	CVD - Initiation of Expedited Review 反补贴-发起快速复审	C-570-048 [82 23197], dated 22-5-2017 2017年5月22日, C-570-048 [82 23197],
Cast Iron Pipe Fittings including the Malleable Cast Iron Pipe Fittings 可锻铸铁管配件和球墨铸铁管配件	Argentina 阿根廷	Accepting price undertaking after ADD sunset review 日落复审后接受价格承诺	MOFCOM news dated 24-5-2017 2017年5月24日, 商务部新闻
Ceramic Rollers 陶瓷辊	India 印度	ADD – Time for submission of questionnaire extended till 26-6-2017 反倾销-提交问卷时限延长至2017年6月26日	F.No.14/47/2016-DGAD, dated 30-5-2017 2017年5月30日, 第14/47/2016-DGAD号

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Ceramic Tableware and Kitchenware, excluding knives and toilet items 陶瓷餐具和厨房用具（除了刀具和厕所用具）	India 印度	Provisional ADD imposed 征收临时反倾销税	27/2017-Cus. (ADD), dated 12-6-2017 2017年6月12日, 27/2017-Cus. (ADD),
Citric acid and certain citric acid salts 柠檬酸和柠檬酸盐产品	Brazil 巴西	ADD sunset review affirmative preliminary finding 反倾销日落复审肯定性初裁	MOFCOM news dated 12-6-2017 2017年6月12日, 商务部新闻
Coated paper 铜版纸	Argentina 阿根廷	ADD sunset review investigation initiated 发起反倾销日落复审调查	MOFCOM news dated 19-6-2017 2017年6月19日, 商务部新闻
Coated steel plate 涂镀钢板	Mexico 墨西哥	ADD affirmative final finding 反倾销肯定性终裁	MOFCOM news dated 7-6-2017 2017年6月7日, 商务部新闻
Color coated steel coils and sheets 彩色涂层钢卷/板	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 13-6-2017 2017年6月13日, 商务部新闻
Deformed Concrete Reinforcing Steel Bars 异形混凝土钢筋	Pakistan 巴基斯坦	ADD affirmative preliminary finding 反倾销肯定性初裁	MOFCOM news dated 24-5-2017 2017年5月24日, 商务部新闻
Digital Offset Printing Plates 数字印刷版	India 印度	ADD extended till 3-6-2018 consequent to initiation of sunset review 发起日落复审后反倾销征税期延长至2018年6月3日	24/2017-Cus. (ADD), dated 2-6-2017 2017年6月2日, 24/2017-Cus. (ADD)
Digital Offset Printing Plates 数字印刷版	India 印度	ADD sunset review – Time for submission of questionnaire response extended till 27-6-2017 反倾销日落复审-提交问卷时间延长至2017年6月27日	F.No.15/24/2016-DGAD, dated 2-6-2017 2017年6月2日, 第15/24/2016-DGAD号
Elastomeric Filament Yarn of all deniers upto and including 150 deniers excluding coloured yarns and Beam type Elastomeric yarns 150丹尼尔以内的弹性纱线, 除了染色纱线和梁式弹性纱线	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	No.15/2017-Cus. (ADD), dated 3-5-2017 2017年5月3日, 第15/2017-Cus. (ADD)号
Frozen Warmwater Shrimp 冷冻暖水虾	USA 美国	ADD continued after sunset review 日落复审后继续反倾销税	A-570-893 [82 FR 25242], dated 1-6-2017 2017年6月1日, A-570-893 [82 FR 25242],

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Glazed/Unglazed Porcelain/Vitrified tiles 上釉/未上釉瓷砖	India 印度	Definitive ADD imposed 征收最终反倾销税	29/2017-Cus. (ADD), dated 14-6-2017 2017年6月14日, 29/2017-Cus. (ADD)
Helical Spring Lock Washers 螺旋弹簧锁紧垫圈	USA 美国	ADD Orders continued after sunset review 日落复审后继续反倾销征税令	A-570-822 [82 FR 24301], dated 26-5-2017 2017年5月26日, A-570-822 [82 FR 24301]
Hot-rolled flat products of iron, non-alloy or other alloy steel 热轧板材	EU 欧盟	Definitive CVD imposed 征收最终反补贴税	Commission Implementing Regulation (EU) 2017/969, dated 8-6-2017 2017年6月8日, 欧盟执行委员会第 2017/969号
Hot-rolled steel tube 热轧钢管	Peru 秘鲁	ADD measure terminated 撤销反倾销措施	MOFCOM news dated 12-6-2017 2017年6月12日, 商务部新闻
Naphthalene – Crude and refined 磺化萘甲醛	India 印度	ADD – Time period for completion of investigation extended till 31-8-2017 反倾销-完成调查时限延长至2017年8月31日	F.No.354/86/2017-TRU, dated 30-5-2017 2017年5月30日, 第354/86/2017-TRU号
Non-Woven Fabric 无纺布	India 印度	ADD – Time period for completion of investigation extended till 14-9-2017 反倾销-完成调查时间延长至2017年9月14日	File No.14/23/2015-DGAD, dated 6-6-2017 2017年6月6日, 第14/23/2015-DGAD号
O-Acid 氧氟羧酸	India 印度	ADD - Preliminary Findings issued recommending provisional duties 反倾销-发布临时裁决建议征收临时反倾销税	F. No. 14/31/2016-DGAD, dated 23-5-2017 2017年5月23日, 第14/31/2016-DGAD号
Plain Gypsum Plaster Boards 石膏板	India 印度	ADD extended till 6-6-2018 as consequent to initiation of sunset review 发起日落复审后反倾销征税期延长至2018年6月6日	26/2017-Cus. (ADD), dated 7-6-2017 2017年6月7日, 26/2017-Cus. (ADD),
Plywood 胶合板	Morocco 摩洛哥	ADD sunset review investigation initiated 发起反倾销日落复审调查	MOFCOM news dated 7-6-2017 2017年6月7日, 商务部新闻
PVC Resin Suspension Grade 聚氯乙烯	Pakistan 巴基斯坦	ADD affirmative preliminary finding 反倾销肯定性初裁	MOFCOM news dated 16-6-2017 2017年6月16日, 商务部新闻
Sewing Machine Needles 缝纫机针	India 印度	ADD sunset review recommends definitive duty 反倾销日落复审建议最终反倾销税	F.No.15/02/2016-DGAD, dated 23-5-2017 2017年5月23日, 第15/02/2016-DGAD号

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Stainless steel cutlery of a thickness not exceeding 2 mm 不锈钢餐具	Peru 秘鲁	ADD affirmative final finding 反倾销肯定性终裁	MOFCOM news dated 14-6-2017 2017年6月14日, 商务部新闻
Steel rod in coil 钢铁卷材	Australia 澳大利亚	ADD – Initiation of two new shipper reviews 反倾销-发起两个新出口商复审	Anti-Dumping Notice No. 2017/76, dated 24-5-2017 2017年5月24日, 反倾销公告第2017/76号
Sulphonic Acid 磺酸	Pakistan 巴基斯坦	ADD affirmative preliminary finding 反倾销肯定性初裁	MOFCOM news dated 26-5-2017 2017年5月26日, 商务部新闻
Threaded tube or pipe cast fittings, of malleable cast iron 可锻铸铁螺纹管和接头	EU 欧盟	ADD - Initiation of a partial interim review 反倾销-发起部分期中复审	EU 2017/C 162/07, dated 23-5-2017 2017年5月23日, EU 2017/C 162/07
Toluene Di-Isocyanate (TDI) 甲苯二异氰酸酯	India 印度	Provisional ADD imposed 征收临时反倾销税	25/2017-Cus. (ADD), dated 5-6-2017 2017年6月5日, 25/2017-Cus. (ADD)
Tungsten carbide 碳化钨和熔凝碳化钨	EU 欧盟	Definitive ADD imposed after sunset review 日落复审后征收最终反倾销税	Commission Implementing Regulation (EU) 2017/942, dated 1-6-2017 2017年6月1日, 欧盟执行委员会第2017/942号
Uncoated Paper 非涂布纸	USA 美国	Affirmative preliminary determination of circumvention of ADD and CVD Orders 肯定性初步裁决存在规避反倾销和反补贴征税令	A-570-022 [82 FR 26778], dated 9-6-2017 2017年6月9日, A-570-022 [82 FR 26778]
Viscose Filament Yarn 粘胶纤维纱线	India 印度	ADD extended till 3-5-2018 subsequent to initiation of sunset review 发起日落复审后反倾销征税延长至2018年5月3日	14/2017-Cus. (ADD), dated 3-5-2017 2017年5月3日, 14/2017-Cus. (ADD)

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
Meta Phenoxy Benzal dehyde 间苯氧基苯甲醛	India 印度	ADD investigation initiated 发起反倾销调查	Announcement No. 29 of 2017, dated 8-6-2017 2017年6月8日, 商务部2017年公告第29号



印度请求与美国就“碳钢争端案”进行磋商

2017年6月5日，印度一直在寻求与美国进行磋商，内容涉及到美国根据世贸组织争端解决机构在“美国-对来自印度的某些热轧碳钢产品实施反补贴措施争端案”（DS436）中作出的建议采取措施以符合世贸组织规则。根据DSU第21.5条提起的磋商请求，印度认为美国未能修改其条款，因此并没有要求美国当局将补贴进口产品的影响及倾销但未补贴进口产品的影响累积评估，从而与争端解决机构的建议及补贴和反补贴措施协议第15.1, 15.2, 15.3, 15.4和15.5条不一致。值得注意的是，2014年争端解决机构认为美国对来自印度的某些热轧碳钢平板产品征收反补贴税违反了补贴和反补贴措施协定规定的义务。

专家组成立以审查印度提出与美国的“禽类”争端案

5月22日，根据印度第二次提出成立专家组的请求，争端解决机构已同意成立专家组以审查印度提出的就争端解决机构在“印度-对某些农产品的进口措施案”（DS430）做出的建议和裁决。澳大利亚、巴西、中国、欧盟、瓜地马拉、日本、哈萨克斯坦、韩国、俄罗斯联邦、新加坡和越南保留其作为第三方参加专家组程序的权利。

值得注意的是，在印度第一次提出成立专家组的请求时，美国提出了反对并已经启动了第22.6条程序以寻求争端解决机构授权中止减让。美国还拒绝与印度签订“随后”协议。2015年，上诉机构同意专家组的裁决，即印度的措施与卫生与植物卫生措施协定第5.1条和第5.2条不一致，因为这些措施并没有基于风险评估。印度的措施也被认为与第2.3条第一句不一致，因为他们任意和无理地对有相同或类似条件的成员国存在歧视。

墨西哥授权在与美国的“吞拿鱼案”中中止减让

争端解决机构（DSB）在2017年5月22日向墨西哥授权，以中止在“美国-对进口、营销和销售吞拿鱼和吞拿鱼产品的措施案”（DS）中对美国的关税减让。4月，仲裁员得出结论认为墨西哥可以请求争端解决机构授权中止减让并且中止减让幅度每年不超过1亿6323万美元的水平。然而，美国坚持认为，墨西哥请求授权中止减让令人遗憾，因为美国已经修改了2016年的规定，使它们符合争端解决机构的建议。

美国、越南和土耳其发起保障措施调查

成员国发起了以下保障措施调查并且通知了世贸组织保障措施委员会：

- 美国于6月10日发起的大型家用洗衣机及某些部件的保障措施调查
- 美国于5月17日发起的晶体硅光伏电池的保障措施调查
- 越南于5月12日发起的金属肥料或化学肥料的保障措施调查
- 土耳其于4月22日发起的牙刷保障措施调查

澳大利亚减少农业出口补贴

5月22日，澳大利亚修改后的承诺清单生效。该清单取消了农产品的出口补贴，使澳大利亚成为第一个有出口补贴权利的世贸组织成员从世贸组织的承诺清单中消除对农业出口的补贴。澳大利亚取消出口补贴的做法符合世贸组织成员在2015年内罗毕做出的消除农产品出口补贴的承诺。

与此同时，农业委员会在6月7日举行的会议上也注意到，经过乌拉圭回合的谈判，18个世贸组织成员已经安排了出口补贴承诺的时间表，并

且有2个成员——新西兰和巴拿马已经逐步取消了出口补贴。印度的小麦库存政策也受到了一些成员国的质疑，而美国、欧盟、乌克兰、俄罗斯、新西兰、巴拉圭、加拿大、哥伦比亚、哥斯达黎加、泰国、墨西哥、阿根廷和巴基斯坦敦促印度更多地分享其价格支持方案的信息。

俄罗斯就乌克兰对货物和服务实施贸易和运输限制提出争端解决

俄罗斯已于5月22日向世贸组织通报了其与

乌克兰的磋商请求。俄罗斯认为乌克兰采取的措施，包括限制、禁止和程序性区分俄罗斯联邦的人、商品和服务以及运输，这些都违反包括GATT、GATS、TBT、SPS和进口许可协议在内的WTO各种协定下乌克兰应遵守的义务。这些措施还被认为违反了乌克兰在其入世议定书中所作的具体承诺。有趣的是，去年乌克兰要求与俄罗斯联邦进行磋商，指称俄罗斯对从乌克兰过境俄罗斯到第三国的运输实施了多重限制。



Ratio Decidendi 判决理由

由于日落复审尚未完成而延长反倾销税的征税期应在原始公告期满前做出

印度最高法院认为，在日落复审调查的结果公布之前，必须在最初征收最终反倾销税的公告期5年到期之前作出延长反倾销税的决定。最高法院对此同意高等法院的观点，认为海关关税法第9A(5)的但书条款中用的词是“可能”，这是一个有利的条款，反倾销税并不由于在原先5年期限届满前发起了日落复审调查而自动获得延期。法院认为延期公告必须在原公告期满前发布。在这方面，法院还依据世贸组织的反倾销协定的规定，同时认为第9(5)条的但书与反倾销协定第11.1、11.2和11.3条是一致的，因此应以此加以解释。

此外，对在5年期满后发布启动日落复审的公告是否正确这一问题，最高法院作了肯定答复。

法院认为当第9A(5)条第一但书与印度反倾销条例第6条一起解读，并不会得出结论认为复审的意图必须对外公布。因此，法院认为重要的日期是政府决定启动调查的日期，而不是发起复审调查公告发布的日期。

在目前的案件中，反倾销税5年的有效期在2014年1月1日到期。虽然决定发起日落复审调查的日期是2013年12月31日，而相关的调查发起公告发送到官方公报予以公布，也就是在反倾销税期满后。其次，延长原公告效力的延期公告直到2014年1月23日才发布，即在原公告期满后。

[Union of India v. Kumho Petrochemicals Ltd. – Judgement dated 9-6-2017 in C.A. Nos. 8309 to 8314/2017, Supreme Court]

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