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Article 文章

Time-limit in anti-dumping reviews in India – Rule 23 analyzed

印度在反倾销复审方面的时限规定-对第23条的法律分析

By **T.D. Satish**

In the Indian context, the scheme of anti-dumping provisions under the Customs Tariff Act, 1975 (“the Act”) and the Anti-Dumping Rules (“AD Rules”)¹ broadly divide the proceedings into two forms – original investigation and reviews. The procedure followed by the Designated Authority, Anti-Dumping (“DA”) in a review is more or less similar to that followed in original investigation as the DA examines dumping and injury de-novo in a review in addition to examining likelihood of recurrence of dumping and injury. In view of similarity of procedure followed, the DA considers the time limit in both the proceedings as same, even though the anti-dumping provisions provide for different time periods for both kind of proceedings.

Section 9A (5) of the Act and Rule 23(1B) of the AD Rules provides that anti-dumping duty once imposed shall be in force for a period not exceeding five years from the date of imposition. The Designated Authority may also initiate and conduct a mid-term review before the expiry of the five year period, say after two years or three years from the date of imposition of Anti-dumping Duty, wherein duty may be continued, modified or revoked as the case may be. In case of sunset review, the DA is required to initiate the review before the expiry of existing anti-dumping duty. In such a case, second proviso to Section 9A(5)

empowers the Central Government to extend the levy of anti-dumping duty for a period of one year, if the sunset review is not concluded before the expiry of five years from the date of imposition of the duty.

Rule 23(1) of the Anti-Dumping Rules is *pari-materia* to Article 11.1 of ADA, which provides that “*an antidumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.*” Article 11.1 does not impose independent obligations upon Members, but rather, establishes the general principle that duties may only continue to be imposed so long as they remain necessary, which principle is operationalized in Articles 11.2 and 11.3². Articles 11.2 and 11.3 which relate to mid-term reviews and sunset reviews respectively, are similar to Rule 23(1A) and 23(1B) of the Anti-Dumping Rules respectively. Thus, in terms of interpretation by WTO Panel, the general principle enshrined in Rule 23(1) has to be read in conjunction with Rules 23(1A) and 23(1B), as the case may be.

It is interesting to note that though the law-makers introduced Rules 23(1A) and 23(1B) in 2011 by suitably modifying Rule 23(1), they omitted to amend Rule 23(2), which had reference to Rule 23(1). Resultantly, Rule 23(2) which was framed with respect to old Rule 23(1) continues to apply to new Rule 23(1)

¹ Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995.

² United States - Anti-Dumping Measures on Certain Shrimp from Viet Nam, (DS-429) Panel Report

only but not to recently introduced Rule 23(1A) and Rule 23(1B). Resultantly, though the time limit prescribed under Rule 23(2) should have been applicable to all types of review covered under Rules 23(1A) and 23(1B), however, in the absence of specific mention of both the rules, Rule 23(2) is only applicable to new Rule 23(1), which does not even mention the term “review”.

Given the inadvertent omission on the part of the legislators to amend Rule 23(2) suitably, there is now an anomaly as explained above subsisting in the Anti-Dumping Rules with regard to time limit applicable to reviews. The present article examines the relevance of Rule 23(2) *considering the rule as it should have been* and the *pari-materia* provisions under Rule 23(3), that are to apply in case of reviews.

Time-limits in reviews – The law

Unlike original investigations, where the time limit under Rule 17 prescribed is positively worded; in case of reviews (Mid-Term Review or SSR), Rule 23(2) of Anti-Dumping Rules is negatively worded by providing that such reviews shall be concluded within a period “*not exceeding twelve months from the date of initiation of such review*”.

The scheme of the anti-dumping duties and proceedings as a whole also substantiates the same considering the fact that the extension of period of anti-dumping duty during the pendency of sunset review is also for “one” year under the second proviso to Section 9A(5). Considering the fact that the Central

Government may also take substantial time to take a decision on the recommendation of the DA, Rule 23(2) requires that the reviews shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

The importance of adhering to the prescribed time limit of 12 months for completion of review is also buttressed by the communication³ from Central Government to the DA, which requires the DA to initiate the sunset review, send the proposal for extension of anti-dumping duty for one year and conclude the review well in advance, so as to enable the Central Government to take a decision on the recommendations; and in case of affirmative decision, continue the anti-dumping before expiry of extended anti-dumping duty.

Whether time limit in review extendable beyond 12 months?

Rule 23(2) of Anti-Dumping Rules specifically provides for a time limit for completion of review initiated and conducted by the Designated Authority. However, Rule 23(3) also provides that the provisions of, inter-alia, Rule 17 shall be *mutatis mutandis* applicable in case of review. Rule 17(1) provides the period within which the DA is required to conclude the *original investigation*. Rule 23(2) provides the time period for the investigating authorities for the concluding *reviews*. Rule 23(2) prohibits any extension of the period to conclude the review. Application of proviso to Rule 17 in case of reviews may result in

³ Office Memorandum F. No. 354/179/2002-TRU (Pt-V) dated August 4, 2014

following issues:

Issue 1: If the proviso to Rule 17(1) is borrowed for the purpose of Rule 23, it would render the provision of Rule 23(2) as redundant. If Rule 17(1) and its proviso are borrowed in-toto for the purpose of Rule 23, then there would not have been any requirement to frame Rule 23(2) for the completion of review separately.

Issue 2: Rule 23(2) is worded negatively and states that the any review shall be concluded within a period ‘not’ exceeding twelve months. Thus, while Rule 17(1) positively specifies a time period of one year because such time period is subject to extension under the proviso, Rule 23(2) on the other hand, stresses on the strictness of the time period available for review by clearly stating that it is shall ‘not’ exceed twelve months. It is settled position in law that if the rule is clear and does not present any ambiguity then such meaning has to be adopted.

Issue 3: Rule 23(3) borrows certain other rules from the AD Rules such as Rules 6, 17, 19, 20 including Rule 17 which are applicable *mutatis mutandis* in case of review. However, by specifically inserting a provision prescribing a time limit in case of reviews, the requirement under Rule 17 in as much as it relates to period available for the conclusion of the investigation will not be applicable for conclusion of a review.

The term “*mutatis mutandis*”, which means

“*All necessary changes having been made; with the necessary changes*”⁴ used in Rule 23(3) of the Anti-Dumping Rules does not mean to apply the borrowed rules to amend the substantial provisions in the rule which borrowed. The term is to be understood as the rule of ‘adaptation’ and not a rule of ‘adoption’⁵. Thus, Rule 17 is required to be borrowed for the purpose of Rule 23 with necessary changes and read in conjunction with Rule 23(2), which will make it clear that with the specific timeline for the review provided under Rule 23(2), Rule 17 will not be applicable.

Practice adopted by India

The Designated Authority invariably extends the time limit beyond 12 months in case of review proceedings despite Rule 23(2) specifically prohibiting to do so. The DA has continuously adopted proviso to Rule 17(1) to justify extension of time in case of review. Even the Tribunal in *Grauer & Weil (I) Ltd. v. Designated Authority*⁶ held that time limit in case of a review may be extended. However, the Tribunal in that case did not go into the time limit prescribed under Rule 23(2) of the Anti-Dumping Rules as well as whether the term ‘*mutatis mutandis*’ in Rule 23(3) allowed borrowing of extension of time under proviso to Rule 17(1) of the Anti-Dumping Rules.

The practice adopted by the DA to extend the time limit by wholly borrowing proviso to Rule 17(1) of Anti-Dumping Rules, is contrary to its practice. In case of a sunset review, the DA ‘*mutatis mutandis*’ applies other provisions

⁴ Black’s Law Dictionary (9th ed. 2009)

⁵ *University of Cochin v. Dr. N. Raman Nair & Ors.* (1975) 3 SCC 628

⁶ 2011 (271) E.L.T. 112 (Tri. - Del.)

by suitably modifying them but in case of time limit, the proviso to Rule 17(1) is applied as it is, without any change. For example, though Rule 17(1)(b) provides that the anti-dumping duty to be imposed should be equivalent to the lesser of dumping margin or injury margin, however, contrary to the aforesaid rules, on several occasions, the Designated Authority has recommended continued imposition of anti-dumping duty, irrespective of the dumping margin or injury margin so determined in the review.^{7, 8} The Designated Authority in these cases, in light of the specific provision under Rule 23(1B) overcame the application of Rule 17(1) (b) while recommending anti-dumping duty.

Perhaps the only way by which DA extends the time period in case of review is by considering that Rule 23(3) will be applicable to all kind of reviews. Thus once Rule 17(1) is applied *mutatis mutandis*, its proviso also gets applied, which is linked to Rule 17(1). But this interpretation is also debatable as it will give way to new questions such as (i) whether with Rule 17(1), its proviso may also be borrowed; (ii) If both may be borrowed, then whether Rule 23(2) have any significance; and (iii) If time limit under Rule 17(1) may not be borrowed, then whether only its proviso may be borrowed and be read with Rule 23(2)?

Effect & Conclusion

Anti-Dumping provisions mandate that unless there is dumping by exporters leading to injury to the established industry in India, there cannot be any anti-dumping duty imposed. Review proceedings require that in case

sufficient evidence exists for non-continuation of anti-dumping duty in a sunset review or for termination/reduction of anti-dumping duty in a mid-term review, the DA is required to make appropriate recommendation in time so that the duty may be terminated/reduced accordingly at the earliest. In other words, if the period to conclude the review is allowed to be extended, collection of anti-dumping duty will continue illegally in an unjustified manner for longer period, though there may not be a need for anti-dumping duty.

Even in case of domestic industry, if the review is extended for a further period of six months and if the existing anti-dumping duty lapses, there would not be an anti-dumping duty protection to the domestic industry after the end of one year as it would break the continuity of the anti-dumping duty, prejudicing the continuation of duty in case of likelihood of continuation of dumping and injury, for a further period of five years.

As said earlier, by not amending Rule 23(2) at the time of amendment of Rule 23(1), Rule 23(2) is *stricto-sensu* not applicable to Rules 23(1A) and (1B). However, if both the rules are read in conjunction with Rule 23(1), it will be clear that Rule 23(2) is applicable in case of Rules 23(1A) and (1B) as well. The issue thus remains open ended, which may only be clarified upon a suitable amendment to the rules. Until then, the time limit for reviews in India will remain a hotly contested topic.

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⁷ Acrylonitrile Butadiene Rubber imported from Korea (2008)

⁸ Nonyl Phenol originating in or exported from Chinese Taipei

Trade Remedy News 贸易救济新闻

Trade remedy actions 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
1,1,1,2-Tetrafluoro-ethane or R-134a 四氟乙烷	India 印度	ADD sunset review initiated 发起反倾销日落复审	F.No. 15/27/2014-DGAD, dated 10-4-2015 2015年4月10日, 第15/27/2014-DGAD号
53-Foot Domestic Dry Containers 53英尺内陆干货集装箱	USA 美国	CVD – Final affirmative determination 反补贴-肯定性终裁	80 FR 21209 [C-570-015], dated 17-4-2015 2015年4月17日, 80 FR 21209 [C-570-015]
53-Foot Domestic Dry Containers 53英尺内陆干货集装箱	USA 美国	ADD - Final Determination of Sales at Less Than Fair Value 反倾销-最终裁定低于正常价值销售	80 FR 21203 [A-570-014], dated 17-4-2015 2015年4月17日, 80 FR 21203 [A-570-014]
Aluminium extrusions 铝型材	Australia 澳大利亚	ADD - Initiation of continuation inquiry 反倾销-发起日落复审调查	Anti-dumping Notice No. 2015/48, dated 24-4-2015 2015年4月24日, 反倾销公告第2015/48号
Barium Carbonate 碳酸钡	India 印度	Anti-dumping duty extended up to 22-3-2016 反倾销税延长至2016年3月22日	15/2015-Cus. (ADD), dated 22-4-2015 2015年4月22日, 第15/2015-Cus. (ADD)号
Barium Chloride 氯化钡	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 24900 [A-570-007], dated 1-5-2015 2015年5月1日, 80 FR 24900 [A-570-007]
Citric acid 柠檬酸	EU 欧盟	ADD circumvention investigation initiated in respect of imports from Malaysia 就来自马来西亚的进口发起反倾销反规避调查	Commission Implementing Regulation (EU) 2015/706, dated 30-4-2015 2015年4月30日, 欧盟委员会执行公告第2015/706号
Coumarin 香豆素	India 印度	Anti-dumping duty extended up to 22-3-2016 反倾销税延长至2016年3月22日	8/2015-Cus. (ADD), dated 7-4-2015 2015年4月7日, 第8/2015-Cus. (ADD)号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Crystalline Silicon Photovoltaic Cells 晶体硅光伏电池	USA 美国	ADD - Preliminary Rescission of New Shipper Review 反倾销-初步取消新出口商复审	80 FR 09206 [A-570-979], dated 21-4-2015 2015年4月21日, 80 FR 09206 [A-570-979]
Crystalline silicon photovoltaic modules and key components 晶体硅光伏组件及关键零部件	EU 欧盟	ADD and CVD - Initiation of partial interim review 反倾销和反补贴-发起部分期中复审	2015/C 147/03, dated 5-5-2015 2015年5月5日, 第2015/C 147/03号
Electronic Calculators 电子计算器	India 印度	Anti-dumping duty recommended 建议征收反倾销税	Dated 13-4-2015 2015年4月13日
Electrical Insulators of Glass or Ceramics / Porcelain 玻璃制或陶瓷制电子绝缘子	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	11/2015-Cus. (ADD), dated 11-4-2015 2015年4月11日, 第11/2015-Cus. (ADD)号
Floor-Standing Metal Top Ironing Tables and Parts 落地式金属台面烫衣板及部件	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 24900 [A-570-888], dated 1-5-2015 2015年5月1日, 80 FR 24900 [A-570-888]
High fatigue performance steel concrete reinforcement bars 高抗疲劳性能混凝土钢筋	EU 欧盟	ADD investigation initiated 发起反倾销调查	2015/C 143/13, dated 30-4-2015 2015年4月30日, 2015/C 143/13
Melamine 三聚氰胺	USA 美国	CVD - Preliminary Affirmative Countervailing Duty Determination 反补贴-初步肯定性反补贴裁决	80 FR 21706 [C-570-021], dated 20-4-2015 2015年4月20日, 80 FR 21706 [C-570-021]
Methylene Chloride 二氯甲烷	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F.No. 14/33/2014-DGAD, dated 7-4-2015 2015年4月7日, 第14/33/2014-DGAD号
Nylon Tyre Cord Fabric (NTCF) 尼龙帘子布	India 印度	Anti-dumping duty continuation recommended in sunset review 日落复审建议继续征收反倾销税	F.No. 15/32/2013-DGAD, dated 13-4-2015 2015年4月13日, 第15/32/2013-DGAD号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Oil country tubular goods 石油管材	Canada 加拿大	CVD reinvestigation initiated 发起反补贴再调查	Canada Border Services Agency Notice dated 4-5-2015 2015年5月4日， 加拿大边境服务署公告
Oil Country Tubular Goods 石油管材	USA 美国	CVD – Affirmative sunset review 反补贴-肯定性日落复审终裁	80 FR 19282 [C-570-944], dated 10-4-2015 2015年4月10日， 80 FR 19282 [C-570-944]
Oil country tubular goods pup joints 石油管材短节	Canada 加拿大	CVD reinvestigation initiated 发起反补贴再调查	Canada Border Services Agency Notice dated 4-5-2015 2015年5月4日，加拿大边境服 务署公告
Poly Vinyl Chloride (PVC) Paste/Emulsi-on Resin 聚氯乙烯糊树脂	India 印度	ADD sunset review initiated 发起反倾销日落复审	F.No.15/19/2014-DGAD, dated 27-4-2015 2015年4月27日， 第15/19/2014-DGAD号
Preserved Mushrooms 罐装蘑菇	Australia 澳大利亚	ADD - Initiation of Revocation Review 发起反倾销日落复审	Anti-dumping Notice No. 2015/52, dated 4-5-2015 2015年5月4日， 反倾销公告第2015/52号
Prestressed Concrete Steel Wire Strand 预应力混凝土用钢绞线	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 24900 [A-570-945], dated 1-5-2015 2015年5月1日， 80 FR 24900 [A-570-945]
Prestressed Concrete Steel Wire Strand 预应力混凝土用钢绞线	USA 美国	CVD sunset review initiated 发起反补贴日落复审	80 FR 24900 [C-570-946], dated 1-5-2015 2015年5月1日， 80 FR 24900 [C-570-946]
Purified Terephthalic Acid (PTA) 精对苯二甲酸	India 印度	ADD recommended on imports from Korea RP and Thailand. Imports from China and EU found to be de minimis 对来自韩国和泰国的进口建议征收反倾销税。而来自中国和欧盟的进口被认为可忽略不计	F.No. 14/7/2013-DGAD, dated 7-4-2015 2015年4月7日， 第14/7/2013-DGAD号
Seamless carbon or alloy steel oil and gas well casing 无缝钢制油气套	Canada 加拿大	CVD reinvestigation initiated 发起反补贴再调查	Canada Border Services Agency Notice dated 4-5-2015 2015年5月4日， 加拿大边境服务署公告

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Solar glass 太阳能玻璃	EU 欧盟	ADD revised 修改反倾销税	Commission Implementing Regulation (EU) 2015/588, dated 14-4-2015 2015年4月14日, 欧盟委员会执行公告第2015/588号
Tetrahydrofurfuryl Alcohol 四氢糠醇	USA 美国	ADD Order to continue 继续反倾销税令	[A-570-887]
Nail clipper 修甲钳	Brazil 巴西	Affirmative preliminary determination but not to impose duty 肯定性临时裁决但不征收临时反倾销税	MOFCOM news dated 14-4-2015 2015年4月14日, 商务部新闻
Hot-rolled steel tube 热轧钢管	Peru 秘鲁	ADD affirmative final determination 肯定性反倾销终裁	MOFCOM news dated 5-5-2015 2015年5月5日, 商务部新闻
Plastic blood tube 塑料采血管	Brazil 巴西	ADD imposed 征收反倾销税	MOFCOM news dated 05-05-2015 2015年5月5日, 商务部新闻
Electric ironing machine 电动熨烫机	Argentina 阿根廷	ADD investigation continued but not to impose preliminary duty 继续反倾销调查但不征收反倾销税	MOFCOM news dated 4-5-2015 2015年5月4日, 商务部新闻
Plastic swimming pool 塑料游泳池	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 4-5-2015 2015年5月4日, 商务部新闻
Welded tube 焊缝管	Australia 澳大利亚	ADD mid-term review initiated 发起反倾销期中复审	MOFCOM news dated 13-4-2015 2015年4月13日, 商务部新闻
Synthetic fibre carpet 合成纤维毯	Brazil 巴西	Initiated ADD sunset review 发起反倾销日落复审	MOFCOM news dated 30-4-2015 2015年4月30日, 商务部新闻
Polyving alcohol 聚乙烯醇	USA 美国	Affirmative industry injury determination in sunset review 日落复审肯定性产业损害裁决	MOFCOM news dated 29-4-2015 2015年4月29日, 商务部新闻
Cold-rolled stainless sheet 冷轧不锈钢板	Malaysia 马来西亚	Initiated ADD investigation 发起反倾销调查	MOFCOM news dated 29-4-2015 2015年4月29日, 商务部新闻
Pre-coated/painted/coloured steel coil 预涂/漆/彩色涂层钢卷	Malaysia 马来西亚	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 29-4-2015 2015年4月29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
Polyester staple fiber 涤纶短纤维	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 27-4-2015 2015年4月27日，商务部新闻
PET paste resin 聚对苯二甲酸乙二醇酯树脂	USA 美国	Affirmative industry injury determination in ADD and CVD 双反肯定性产业损害裁决	MOFCOM news dated 24-4-2015 2015年4月24日，商务部新闻
Electric iron 电熨斗	Argentina 阿根廷	Affirmative determination in sunset review 日落复审肯定性裁决	MOFCOM news dated 22-4-2015 2015年4月22日，商务部新闻
Non-self-suction centrifuge electric pump 非自吸式离心电泵	Argentina 阿根廷	Affirmative ADD final determination 肯定性反倾销终裁	MOFCOM news dated 22-4-2015 2015年4月22日，商务部新闻
Aluminum cookware 铝制炊具	Mexico 墨西哥	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 17-4-2015 2015年4月17日，商务部新闻
TDI 甲苯二异氰酸	Japan 日本	ADD imposed 征收反倾销税	MOFCOM news dated 17-4-2015 2015年4月17日，商务部新闻
Steel bar 钢筋	Egypt 埃及	Affirmative industry injury determination 肯定性产业损害裁决	MOFCOM news dated 17-4-2015 2015年4月17日，商务部新闻

Trade remedy actions by China

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
Nylon 6 chips 锦纶6切片	USA, EU, Russia and Taiwan 美国、欧 盟、俄罗 斯和台湾	ADD sunset review initiated 发起反倾销日落复审	MOFCOM Announcement No. 10 of 2015, dated 21-4-2015 2015年4月21日，商务部公告 2015年第10号

WTO News 世贸组织新闻

中国就禽肉产品对欧盟发起争端解决

2015年4月8日，中国已通知世贸组织秘书处，请求与欧盟就后者修改对某些禽肉产品的关税让步所采取的措施(DS492)进行磋商。欧

盟在2007年和2012年与泰国和巴西根据1994年关税和贸易总协定第XXVIII条进行的谈判中已经修改了其关税让步。欧盟认为这些国家与

相关的产品存在主要的或实质的供应利益。根据修改，欧盟对巴西和泰国保留了关税配额，而在配额外约束税率则大大超过了修改前的绑约束税率。中国认为这些措施不符合欧盟根据1994年关税和贸易总协定第I, II, XIII和XXVIII条中的义务。

美国和中国就所谓的补贴的争端成立了专家组

2015年4月22日，世贸组织的争端解决机构成立了专家组，以评估美国和中国之间就后者所谓的补贴的争端案(DS489)。美国认为中国通过建立“外贸转型升级示范基地和公共服务平台”项目提供出口补贴。美国认为，中国根据在示范基地（产业集群）中企业的出口表现进行识别，并通过免费或打折服务或资助而向这些企业提供因出口而产生的补贴，同时中国政府也向中国的生产商、制造商和农民提供其他某些因出口而产生的补贴。根据磋商文件，大约有182项中国措施被认为违反了补贴和反补贴措施协议(SCM协议)第3.1(a)和3.2条。然而中国指出找到一个双方达成一致的解决方案是首选的争端解决方法，特别是在资源受限的体系中。

埃及和土耳其发起了保障措施调查

2015年4月15日，埃及通知世贸组织保障措施委员会该国将于2015年4月16日对白糖发起保障措施调查。同样的，土耳其在2015

年4月28日也通知世贸组织保障委员会该国已经于2015年4月25日对陶瓷餐具和厨具发起保障措施调查。

本地成分要求-关注有利于本地产品的投资措施

4月16日，与贸易有关的投资措施委员讨论了14件有关投资措施的投诉，这些措施引起了所谓的通过本地成分要求在国内和进口产品之间对国内产品造成偏袒。其中5项投诉与印度尼西亚的措施有关，3项措施与俄罗斯联邦有关，而2项投诉与印度采取的措施有关。欧盟表达了对印度在太阳能发电项目的本地成分要求和某些印度对国内生产电子产品和通讯产品的优先选择的关注。日本、美国和加拿大进一步与欧盟一同关注电子产品问题。然而印度已经表示这些措施与关贸总协定和与贸易有关的投资措施协议一致。

塞舌尔成为世贸组织第161名成员

2015年4月26日，塞舌尔成为了世贸组织第161名成员。作为世贸组织的一员，塞舌尔因此致力于为所有世贸组织成员改善市场准入的机会，按照最惠国原则，国家不得歧视他们的贸易伙伴。对于商品贸易，塞舌尔做出了关税让步和承诺，“约束”所有产品的平均关税税率为9.5%。对于农产品，平均税率是16.9%，而非农产品的平均税率是8.3%。

Ratio Decidendi 判决理由

反倾销期中复审-要求持续的情事变更效果

欧盟常设法院（第二法庭）指出期中复审的目的是检验是否需要继续实施反倾销措施，法院认为如果复审的结果是决定修改原始征收的反倾销税，那么这样的评估要求调

查机关得出不仅有关倾销的情况发生显著变化，并且这样的变化是持续性的结论。法院进一步认为调查机关已经得出结论变化不存在持续性，而且调查机关认定的事实是相比原始调查结束期间倾销可能在复审期间降到

最低水平,但这不足以成为修改生效措施的基础。法院还认为没有证据,即(i)在损害期间按照退税后所计算的倾销幅度(2)出口价格水平在复审过程中达到最高(iii)在复审程序中倾销幅度的近似评估,使其能够评估或更有理由证明所谓的持久的变化情况。

对此,法院还指出,根据欧盟基本法第11(3)条,调查机关在期中复审中有宽泛的自由裁量权,但仅限于倾销,并且如果调查机关认为这样做是合适的,就可以开始预期性的评估,然后如果他们认为导致原始调查期末发现的倾销减少或消除的情势变更不是持久性的,那么他们可以不必在复审过程中精确计算倾销幅度。[2015年4月28日,欧洲常设法院(第二法庭)对*Chelyabinsk Electrometallurgical Integrated Plant OAO*诉欧盟理事会的裁决-案件号T-169/12]

反补贴调查-“有意义地控制”和“明显的市场扭曲”

美国国际贸易法院已经将美国国际贸易委员会有关从土耳其进口石油管材的反补贴调查案发回重审。法院认为调查机关的分析只支持了两家公司在土耳其占了至少HRS市场(石油管材原材料的一种)的“大部分”,并且土耳其政府虽然存在模糊但是仍可以明显地感觉到“有意义地控制”了这些公司这一结论。法院指出从该结论开始分析简单地从由于土耳其政府“在土耳其占到HRS市场的大部分”跳跃到“明显”扭曲了市场从而导致土耳其的收支平衡的改善的结论。因此,法院认为商务部没有在记录中充分解释以支持这样的跳跃,同时也没有对此向被告进行“长期实践”的详细阐述。土

耳其政府曾声称它不持有两家公司的任何股票,也没有政府公告、规定、法律法规或政策就这两家公司提出任何的政府目标。根据土耳其政府,军队养老基金OYAK是这两家公司的大股东的事实并不能将这些公司认为是政府机构。[2015年4月22日,美国国际贸易法院*Borusan Mannesmann Boru Sanayi*诉美国-判决简报15-36]

反倾销日落复审-进口累积

欧洲常设法院(第五法庭)认为在反倾销措施的期终复审中,为了确定倾销的进口数量,调查当局有权使用来自出口国可能的进口数量而不是在特定期间的实际进口数量,并且为了确定再次发生损害的可能性可累积进口。法院指出,在第1225/2009号法规的第3(4)条中规定的条件-特别是从各个国家进口的数量不是微不足道的事实-在期终复审中不会自动适用,因为在这种情况下,损害再次发生的风险是通过倾销进口产品的前瞻性分析而确定的。申请人认为欧盟理事会累积了来自俄罗斯和来自乌克兰的进口,已经违反基本法的第3(4)条,即使从俄罗斯进口的可以忽略不计,因为他们在复审调查期间达不到欧盟市场的1%。

依据世贸组织专家组的报告,法院在这方面还指出反倾销协议第3.3条没有规定对潜在的负面数量影响、它们的发展和倾销进口产品的价格作为累积评估所有倾销进口产品的影响的一个先决条件而分国别进行分析。[2015年3月30日,欧洲常设法院(第五法庭)*Volžskij Trubnyi Zavod OAO*诉欧盟理事会裁决-案件号T-432/12]

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反倾销和公平竞争

完美的竞争远非实际的并且包括了商业策略、市场渗透和营销的一系列措施最终被归结为价格战。反倾销是否在保持公平竞争的和谐方面存在保护主义和反垄断一直是一个长期的辩题。欧盟法院在最近的一次检查中评估了国内产业发起的反竞争行为是否成为决定海外供应商是否事实上向欧盟倾销商品或实施反倾销税而造成的价格差异是否只是幻想的相关因素。

出口商认为第2320/97号法规确定的损害和因果关系从而实施最终反倾销税是不正确的，因为一些公司的反竞争行为违反了欧盟条约第81(1)条，在反倾销调查中应当被考

虑。另外在决定了反竞争行为后，欧盟委员会暂停了反倾销税。因此出口商认为有充分的证据证明国内产业受到的损害至少有一部分是由于其自身造成的。

有趣的是，欧盟法院认为除了与进口有关的这些因素可能相关，法院认为出口商没有给出有根据的案件以反对征收反倾销税。欧盟法院认为应当由当事人证明除了与进口有关的因素可能非常重要，从而对在欧盟产业受到的损害与倾销进口之间因果关系的存在产生疑问。由于在实施裁决的时候这样的反竞争行为还没有开始，因此不能被认为是欧盟在确定损害是应当考虑的“已知因素”。

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