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内容

Article 文章

Targeted dumping: An examination
评议目标倾销

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Targeted dumping is dumping that is targeted at a certain purchaser, region or time period. The law permits the use of an alternative methodology for computation of the dumping margin if there is targeted dumping. The legal provisions relating to targeted dumping are set forth in Article 2.4.2 of the Agreement on Implementation of Article VI of GATT 1994 ("Anti-dumping Agreement"). The manner of triggering the provisions for using a different basis for comparison was examined in a recent ruling of the WTO Dispute Settlement Body and provides guidance on the issue.

The WTO Appellate Body in *United States – Anti-dumping Measures and Countervailing Measures on Large Residential Washers from Korea*[1] was issued in September and a key issue in the dispute was concerning the United States' use of alternative methodologies for price comparison based on the fact that there was targeted dumping. The present article analyzes the nature of the examination to be undertaken under Article 2.4.2 of the Anti-dumping Agreement in light of the findings of the WTO Appellate Body in the above dispute.

Legal provisions relating to targeted dumping

Article 2.4.2 of the Anti-dumping Agreement relates to the nature of the fair comparison to be undertaken while computing the dumping margin in investigations. It provides, in relevant part, as under:

> "[. . .] the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison."

The first sentence of Article 2.4.2 of the Anti-dumping Agreement sets out comparison methodologies that should normally be used in determining the dumping margin in investigations. There is flexibility provided on whether to undertake a weighted average-to-weighted average ("W-W") comparison or a transaction-transaction ("T-T") comparison.

[1] Appellate Body Report, *United States – Anti-dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R (7 September, 2016)

The second sentence sets out a third comparison methodology, that may be used only in exceptional cases.[2]

The requirements or conditions for use of the third methodology may be segregated into three parts[3] – the "methodology clause", the "pattern clause" and the "explanation clause". The "methodology clause" sets forth that a comparison may be undertaken of the weighted average normal value with prices of individual export transactions ("W-T"). The conditions that are to be met for use of the W-T comparison are provided in the "pattern clause" and the "explanation clause". The authority must identify a pattern that is present in respect to export prices differing significantly among "purchasers, regions or time periods". Lastly, an explanation must be provided as to why the differences that are identified in the pattern cannot be taken into account by use of the W-W or T-T methodology. Set forth below is an examination of the key requirements under each clause.

The 'methodology clause"

The "methodology clause" relates to the transactions on which the W-T comparison methodology may be used. In particular, the W-T methodology can be used only in respect to individual transactions and not all export transactions. In other words, the W-T comparison should be used only for the pattern transactions or the transactions which are considered as being targeted.

The Panel held that the W-T methodology cannot be used for all transactions and must be restricted only to the targeted transactions. The same is also apparent from the intent of Article 2.4.2 of the Anti-dumping Agreement. In particular, Article 2.4.2 of the Anti-dumping Agreement was included with the intent of dealing with "masked, selective dumping". If the W-T methodology were used for all export transactions, then the very intent of provision would be lost. Therefore, once the requirements relating to the "pattern clause" and "explanation clause" are satisfied, the W-T comparison methodology may be used only in respect to the pattern transactions.

The "pattern clause"

The pattern clause is integral as identification of the pattern is the trigger for resorting to the W-T methodology. The Panel defined a pattern as a "regular and intelligible form or sequence discernible in certain actions or situations." The Appellate Body agreed with this definition and noted that a pattern would consist of a certain set of transactions, termed as targeted transactions, that differ significantly from the other transactions in respect to their export prices. These pattern

[2] Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada (Recourse to Article 21.5 of the DSU by Canada)*, WT/DS264/AB/RW (15 August, 2006), Paras 86 and 97; Appellate Body Report, *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (9 January, 2007), Para 131.

[3] Panel Report, *United States – Anti-dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/R (11 March, 2016), Para 7.9.

transactions would therefore be a sub-set in the primary set of export transactions that have been identified based on differences arising in reference to purchasers, region or time period, pursuant to Article 2.4.2 of the Anti-dumping Agreement.

One of the issues before the DSB in reference to the "pattern clause" was whether the practice of the United States where it identifies a pattern based on an examination of export transactions across all three categories cumulatively is permissible. In particular, the United States identifies a pattern *across* purchasers, regions *and* time periods rather than "among purchasers, regions or time periods". The Panel and Appellate Body held that a pattern can be found only if the prices are found to differ among different purchasers or among different regions or among different time periods. It is not possible for a "regular" and "intelligible" sequence to be present across the three categories. The Appellate Body noted that there is the possibility that a pattern that is found in respect to transactions to a particular purchaser is in a certain region, therefore there would be a pattern of significantly differing prices among different purchasers and among different regions.

Nonetheless, it is fairly clear that a pattern under Article 2.4.2 of the Anti-dumping Agreement will be present only if the exports prices to a particular purchaser are lower than export prices to other purchasers, or export prices to a particular region are lower than export prices to other regions, or export prices during a particular time period are lower than export prices during other time periods. There is the possibility of an overlapping of the sequences or patterns but the same cannot be determined based on an examination of factors cumulatively across the three factors.

Another issue that arose in regard to identification of pattern under the second sentence of Article 2.4.2 of the Anti-dumping Agreement is whether the identification of the "targeted" transactions can be based purely on quantitative criteria or is there also an obligation to undertake a qualitative analysis. The Panel had found that a quantitative analysis is sufficient and that there is nothing in the text of Article 2.4.2 that indicates that the authority should go into the factual aspects surrounding the transactions identified. This was however reversed by the Appellate Body.

The Appellate Body clarified that the legal provision provides that a pattern exists only if prices "differ significantly". The inclusion of the word significant imposes not only an obligation to undertake a quantitative analysis but also a qualitative analysis. The Appellate Body made it clear that the authority would not need to consider the cause or the reasons for the price differences but would need to consider certain objective market factors. An example provided in the findings provides clarity. A minor numerical difference in cases where the prices are high would not be considered as "significant" but if the prices were low, the same would be "significant". Therefore, the identification of the pattern should be pursuant to a quantitative and qualitative analysis.

The "explanation clause"

The last requirement under the second sentence of Article 2.4.2 of the Anti-dumping Agreement is to provide an explanation as to why the price differences identified in the pattern transactions cannot be accounted for by using the W-W or the T-T comparison methodology. The issue that arose in regard to the obligation under the "explanation clause" in the dispute was whether the authority must provide an explanation for why both the W-W *and* T-T comparison methodology cannot be used or whether the W-W *or* T-T comparison methodology cannot be used.

The Panel held that the authority would satisfy the requirements under the "explanation clause" if it provides an explanation in respect to only one type of comparison and not both. It noted that the provision requires that an explanation be provided for why "*a* weighted average-to-weighted average *or* transaction-to-transaction comparison" does not take into account the price differences. The use of "a" and "or" imply that the explanation is to be provided for one of the methodologies and not both.

However, the Appellate Body reversed the Panel's findings and held that the W-T comparison is an exceptional methodology that is permitted to be used only when the normal comparison methodologies are not suitable. If the explanation provides reasons for the inappropriateness of only one of the normal comparison methodologies and fails to account for the other methodology, although it may have taken into account the price differences, then the rationale for making the W-T methodology permissible only in exceptional circumstances is defeated. Thus, an authority would need to provide an explanation for both the methodologies prior to resorting to the W-T methodology.

The other ambit of the obligation under the "explanation clause" is the nature of the explanation that needs to be provided. The obligation, in essence, is what would be considered as "appropriate" in the context of the second sentence of Article 2.4.2 of the Anti-dumping Agreement. In the facts of the dispute, the explanation that had been provided by the United States was that the W-W comparison conceals differences and further that there was a difference between the margin of dumping using the W-W comparison and the margin of dumping using the W-T methodology.

The Panel held that the above reasons would not be considered as satisfying the requirements of the "explanation clause". The mere presence of the difference in the dumping margin based on the two methodologies cannot be a reason for using the W-T comparison methodology as the rationale for permitting the use of the W-T methodology is to unmask such individual transactions that are protected under the W-W methodology. Therefore, the explanation would need to examine the factual circumstances surrounding the investigation to satisfy the requirements under Article 2.4.2 of the Anti-dumping Agreement.

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Trade Remedy News 贸易救济新闻

Trade remedy measures against China
对中国采取的贸易救济行动

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日 期
1,1,1,2-Tetrafluoroethane (R-134a) 1,1,1,2-四 氟乙 烷	USA 美国	ADD - Preliminary Determination of Sales at Less-Than-Fair Value 反倾销-初步裁决低于正常价值倾销	81 FR 69786 [A-570-044], dated 7-10-2016 2016年10月7日， 81 FR 69786 [A-570-044]
4,4Diamino Stilbene2, 2 Disulphonic Acid 4,4'-二氨基二苯乙烯-2,2'-二磺酸	India 印度	Mid-term review recommends continuation of revised ADD 期中复审建议继续修改后的反倾销税	15/18/2015-DGAD, dated 26-9-2016 2016年9月26日， 15/18/2015-DGAD
A4 Copy Paper A4复印纸	Australia 澳大利亚	ADD and CVD - Preliminary affirmative determination and imposition of securities 反倾销和反补贴-初步肯定性裁决并征收保证金	Anti-Dumping Notice No. 2016/100, dated 29-9-2016 2016年9月29日， 反倾销公告第2016/100号
AA Dry Cell Batteries AA干电 池	India 印度	DGAD recommends non-imposition of ADD 调查机关建议不征收反倾销税	14/31/2014-DGAD, dated 27-9-2016 2016年9月27日， 14/31/2014-DGAD
Aluminium Road Wheels 铝制车轮	Australia 澳大利亚	Interim ADD and CVD rates fixed 最终裁决反倾销税和反补贴税	Notice dated 20-9-2016 2016年9月20日 反倾销公告第2016/49号
Aluminium Zinc Coated Steel 镀锌铝板	Australia 澳大利亚	ADD – Review initiated for particular exporter 反倾销-对特定出口 商发起复审	Anti-Dumping Notice No. 2016/102, dated 22-9-2016 2016年9月22日， 反倾销公告第2016/102号
Artist Canvas 艺术画布	USA 美国	ADD Sunset review initiated 发起反倾销日 落复审	81 FR 67967 [A-570-899], dated 3-10-2016 2016年10月3日， 81 FR 67967 [A-570-899]
Axle for Trailers 挂车轴	India 印度	Definitive ADD recommended 建议最终反倾销税	14/17/2015-DGAD, dated 30-9-2016 2016年9月30日， 14/17/2015-DGAD

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日 期
Cased pencils 盒装铅笔	USA 美国	ADD - Affirmative sunset review 反倾销-肯定性日 落复审	81 FR 69513 [A-570-827], dated 6-10-2016 2016年10月6日， 81 FR 69513 [A-570-827]
Ceramic products for daily use 日 用陶瓷产品	Turkey 土耳其	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 28-9-2016 2016年9月28日， 商务部新闻
Deep Drawn Stainless Steel Sinks 深拉不锈钢水槽	Australia 澳大利亚	Initiation of an exemption inquiry 发起免税调查	Anti-dumping Notice No. 2016/104, dated 11-10-2016 2016年10月11日， 反倾销公告第2016/104号
Fabricated Industrial Steel Components 焊接工业钢铁部件	Canada 加拿大	ADD and CVD investigation initiated 发起反倾销和反补贴调查	Canada Border Service Agency Notice dated 27-9-2016 2016年9月27日， 加拿大边境服务署公告
Footwear with uppers of leather 皮鞋	EU 欧盟	Definitive ADD imposed in respect of specific entity 对某些企业征收最终反倾销税	Commission Implementing Regulation (EU) 2016/1731, dated 28-9-2016 2016年8月29日， 欧盟执行委员会第2016/1731号
Grinding balls 研磨球	Australia 澳大利亚	CVD – affirmative final finding 反补贴-肯定性终裁	MOFCOM news dated 27-9-2016 2016年9月27日， 商务部新闻
H section steel H型钢	Viet Nam 越南	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 10-10-2016 2016年10月10日， 商务部新闻
Hand pallet trucks and their essential parts 手推车及其部件	EU 欧盟	ADD sunset review initiated 发起反倾销日 落复审	2016/C 373/04, dated 12-10-2016 2016年10月12日， 2016/C 373/04,
Heavy plate of non-alloy or other alloy steel 非合金或其他合金厚板	EU 欧盟	Provisional ADD imposed 征收临时反倾销税	Commission Implementing Regulation (EU) 2016/1777, dated 6-10-2016 2016年10月6日， 欧盟执行委员会公告第2016/1777号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日 期
High-viscosity PET 高粘聚对苯二甲 酸乙二醇	Japan 日 本	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 11-10-2016 2016年10月11日， 商务部新闻
Hot-rolled flat products of iron, non-alloy or other alloy steel 热轧平板钢材、非合金或其他合金钢	EU 欧盟	Provisional ADD imposed 征收临时反倾销税	Commission Implementing Regulation (EU) 2016/1778, dated 6-10-2016 2016年10月6日， 欧盟执行委员会公告第2016/1778号
Large Line Pipe (welded large diameter carbon and alloy steel line pipe) 焊接大口 径碳合金钢管	Canada 加拿大	ADD and CVD – Final determination of dumping and subsidization 反倾销和反补贴-最终确定存在倾销和补贴	Canada Border Service Agency Notice dated 5-10-2016 2016年10月5日， 加拿大边境服务署
Narrow Woven Fabric 窄幅织布	India 印度	ADD continued after sunset review 日 落复审后继续征收反倾销税	50/2016-Cus. (ADD), dated 6-10-2016 2016年10月6日， 50/2016-Cus. (ADD)
Narrow Woven Ribbons With Woven Selvedge 带织边窄幅织带	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令	81 FR 65341 [A-570-952 and C-570-953], dated 22-9-2016 2016年9月22日， 81 FR 65341 [A-570-952 和C-570-953]
Ofloxacin 氧氟沙星	India 印度	ADD investigation initiated 发起反倾销调查	14/06/2016-DGAD, dated 4-10-2016 2016年10月4日， 14/06/2016-DGAD
Ofloxacin Acid (O-Acid) 氧氟沙星羧酸	India 印度	ADD investigation initiated 发起反倾销调查	14/31/2016-DGAD, dated 21-9-2016 2016年9月21日， 14/31/2016-DGAD
Paper clips 回形针	USA 美国	ADD - Affirmative sunset review 反倾销-肯定性日 落复审裁决	81 FR 69512 [A-570-826], dated 6-10-2016 2016年10月6日， 81 FR 69512 [A-570-826]

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日 期
Presensitized Aluminum Plate for Offset Printing 铝制预涂感光板	Korea RP 韩国	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 18-9-2016 2016年9月18日， 商务部新闻
Pure Magnesium 纯镁	USA 美国	ADD Sunset review initiated 发起反倾销日 落复审	81 FR 67967 [A-570-832], dated 3-10-2016 2016年10月3日， 81 FR 67967 [A-570-832]
Rod in coil 盘条	Australia 澳大利亚	CVD investigation partly terminated 部分终止反补贴调查	Anti-dumping Notice No. 2016/92, dated 19-9-2016 2016年9月19日， 反倾销公告第2016/92号
Seamless steel tube 无缝钢管	EU 欧盟	ADD investigation restarted 重启反倾销调查	MOFCOM news dated 26-9-2016 2016年9月26日， 商务部新闻
Soda Ash 碳酸钠	India 印度	Mid-term review recommends revocation of ADD 期中 复审建议取消反倾销税	15/28/2014-DGAD, dated 23-9-2016 2016年9月23日， 15/28/2014-DGAD
Stainless Steel Sheet and Strip 不锈钢板和钢带	USA 美国	ADD - Preliminary affirmative determination of sales at less than fair value 反倾销-初步肯定性裁决低于正常价值销售	81 FR 64135 [A-570-042], dated 19-9-2016 2016年9月19日， 81 FR 64135 [A-570-042]
Steel concrete reinforcing bar products 热轧混凝土钢筋条	Malaysia 马来西亚	Affirmative safeguard preliminary finding 肯定性保障措施初裁	MOFCOM news dated 12-10-2016 2016年10月12日， 商务部新闻
Steel Reinforcing Bar 钢筋	Australia 澳大利亚	CVD investigation partly terminated 部分终止反补贴调查	Anti-dumping Notice No. 2016/94, dated 19-9-2016 2016年9月19日， 反倾销公告第2016/94号
Toluene Di-Isocyanate (TDI) 甲苯二异氰酸	India 印度	ADD investigation initiated 发起反倾销调查	14/36/2016-DGAD, dated 5-10-2016 2016年10月5日， 14/36/2016-DGAD

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日 期
Wire Rod of Alloy or Non-Alloy Steel 合金或非合金盘条	India 印度	Provisional ADD recommended 建议临时反倾销税	14/17/2016-DGAD, dated 27-9-2016 2016年9月27日，14/17/2016-DGAD
Zinc Coated (Galvanised) Steel 镀锌板	Australia 澳大利亚	ADD – Review initiated for particular exporter 反倾销-对特定出口商发起复审	Anti-Dumping Notice No. 2016/101, dated 22-9-2016 2016年9月22日，反倾销公告第2016/101号

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
Broiler Products or Chicken Products 白羽肉鸡产品	USA 美国	ADD continued after sunset review 日落复审后继续征收反倾销税	MOFCOM Announcement No. 40 of 2016, dated 26-9-2016 2016年9月26日，商务部2016年第40号公告
Carbon steel fastener 碳钢紧固件	EU 欧盟	ADD mid-term review initiated 发起反倾销期中复审调查	MOFCOM Announcement No. 51 of 2016, dated 20-9-2016 2016年9月20日，商务部2016年第51号公告
Distiller's Dried Grains with or without Solubles 干玉米酒糟	USA 美国	ADD – affirmative preliminary finding 反倾销-肯定性临时裁决	MOFCOM Announcement No. 49 of 2016, dated 23-9-2016 2016年9月23日，商务部2016年第49号公告
Distiller's Dried Grains with or without Solubles 干玉米酒糟	USA 美国	CVD – affirmative preliminary finding 反补贴-肯定性临时裁决	MOFCOM Announcement No. 48 of 2016, dated 28-9-2016 2016年9月28日，商务部2016年第48号公告

WTO News 世贸组织新闻

印度对太阳能产品的国内成分要求违反世贸组织规则-上诉机构支持专家组报告

2016年9月16日，世贸组织争端解决机构的上诉机构在其报告中维持了专家组的裁决，认为印度对太阳能电池和模块国内成分要求违反了1994年关税和贸易总协定

第3.4条以及与贸易有关的投资协定第2.1条（DS456）。凭借其在加拿大–可再生能源和加拿大–电价方案争端案（DS426）的报告，上诉机构的观点是，该措施并不在1994年关税和贸易总协定第3.8（a）条的政府采购免除范围内，因为所采购的产品（电）与受到歧视的产品（生产电力的太阳能电池和模块）不存在“竞争关系”。上诉机构认为第3.8（a）条，通过政府采购获得的产品与外国受到歧视的产品必须“类似”，或“直接竞争”或“有替代性”。

上诉机构维持了专家组认为太阳能电池和模块在印度并不是按照1994年关税和贸易总协定第20（j）条中规定的“总体的或局部的供不应求的“的裁决，因此上诉机构认为该措施并不符合相关条款的规定。为了评估产品是否符合第20（j）条中规定的“总体的或局部的供不应求的“的目的，专家组也设定的在这方面的某些准则。最后，该措施也被认为违反了关税和贸易总协定第20（d）条，该条规定了措施的一般例外必须是世贸组织成员国的“法律或法规”的“安全合规”所必须的”而不是本身是否与关贸总协定一致。上诉机构认为印度无法证明国内法律规定已经制定了相关规则”来保证生态的可持续发展，解决印度的能源安全挑战，并确保其与气候变化相关的义务”，上诉机构建议争端解决机构要求印度采取措施以遵守其WTO协议中规定的义务。

有趣的是，印度也对美国提出了可再生能源领域的国内成分争端案（DS510）。在此争端中，印度认为华盛顿，加利福尼亚，蒙大纳，马萨诸塞州，康涅狄格，密歇根，特拉华和明尼苏达州也在可再生能源部门提供了非法补贴。

此外，需要注意的是由印度提出的在印度和美国另一个关于限制农产品争端案（DS430），尽管印度已提出相关的要求，即为报复程序仲裁程序建立执行专家组，但是美国认为，在世贸组织规则中没有这样的条款。

欧盟飞机补贴案-发布执行专家组报告

根据第21.5条（争端解决机构建议的执行），世贸组织执行专家组对欧洲共同体和某些成员国-影响大型民用飞机贸易措施争端案发布了专家组报告。2004年美国声称欧洲共同体（现在的欧盟）及其某些成员国提供补贴，违反了他们在补贴和反补贴协议及1994年关税和贸易总协定中规定的义务，影响了大型民用飞机的贸易。执行委员会认为，欧盟及某些成员国未能执行争端解决机构的建议，因此裁决他们应当修改措施，符合补贴和反补贴协议中的义务。专家组认为在欧盟采取的36项执行措施中，只有两项符合影响了对“空客”进行补贴的“行动”，剩下的34项只是事实陈述或者主张的陈述，以支持欧盟的执行。

需要注意的是在2011年上诉机构认为欧盟的措施与补贴和反补贴协议第5（C）条不一致，而欧盟在2011年12月通知争端解决机构，它已经采取措施符合世贸组织规则。然而，执行专家组发现欧盟未能执行争端解决机构的建议和裁决，以采取措施

符合补贴与反补贴协定下的义务，目前该专家组的看法是，欧盟的措施对无效/使美国利益受损。

有趣的是，欧盟也对美国的某些措施提出争端解决，如美国向大型飞机提供禁止性补贴（DS353），而执行专家组报告仍悬而未决。

中国发起白糖保障措施调查

2016年9月22日，中国发起对进口白糖的保障措施调查。有意提供证据和对调查有意见的利害关系方应自发起之日起的20天内向贸易救济调查提供。此外，利害关系方应自发布公告之日起的20天内登记。

俄罗斯对“猪肉进口限制”案专家组报告提起上诉

俄罗斯已经向争端解决机构上诉机构提起上诉，反对专家组在俄罗斯联邦–对来自欧盟的生猪、猪肉和其他猪肉产品争端案（DS475）报告中的某些裁决。需要注意的是今年8月专家组认为对于欧盟全境的禁令以及对从爱沙尼亚、拉脱维亚、立陶宛和波兰就问题产品实施的进口禁令，违反了关于卫生和植物检疫措施应用协定第6.1条。俄罗斯认为专家组未能对俄罗斯联邦的入世议定书给予完全的法律效力，并未能承认双边兽医证书的固有属性。俄罗斯认为专家组因此错误地适用SPS协议第1.1，2.2，2.3，3.1，5.1，5.2，5.3，5.6，5.7，6.1，6.3，8和附录C。此外，俄罗斯还上诉了专家组认定的欧盟客观地表明在欧盟境内已经排除了非洲猪瘟病的结论。

然而，在最近的欧盟和俄罗斯之间的另一个争端案（DS485），俄罗斯的某些措施导致适用的关税超过关税减让表中的规定，专家组认为这违反了1994年关税和贸易总协定第2.1（b）条第一句，俄罗斯已决定不对此专家组报告提出上诉。

另外值得注意的是，最近乌克兰，即昔日的苏联成员，向俄罗斯就俄罗斯的交通限制提出争端解决。根据2016年9月21日发布的文件WT/DS512/1，在乌克兰决定自2016年1月1日起开始深入、全面的实施与欧盟的自由贸易区后，俄罗斯最近通过并实施的交通限制违反了俄罗斯在世贸组织的义务。

美国就中国对农产品的补贴提出争端解决

美国寻求与中国就中国对某些农产品的生产商提供超过限度的国内支持提出磋商请求。根据2015年9月13日美国代表团提交的文件，中国似乎提供了超过其在CLII计划表第4部分第1章所承诺水平的国内支持，因为它对小麦、籼稻、粳稻和玉米这些特定产品的国内支持超过了8.5%的最低水平。根据2016年9月20日发布的列举了中国提供国内支持的各种法律文件，美国认为这些措施似乎与中国在农业协定第3.2、6.3和7.2（B）的义务不一致。

可以说，这是在世贸组织的第一次此类纠纷，特别是在2013年在印度尼西亚巴厘岛举行的部长级会议后，成员都同意不通过WTO争端解决机制对发展中成员是否符合农业协定第6.3条和第7.2（b）条就为传统的粮食作物出于公众利益，为了食品安

全目的而提供支持这一义务提出质疑。

就哥伦比亚和欧盟之间的软饮料进口争端案成立专家组

2016年9月26日，争端解决机构就哥伦比亚和欧盟之间的争端成立了专家组。这是欧盟提出了第二次请求而哥伦比亚停止了其第一次请求后建立的。

这一争端涉及到有关哥伦比亚在国家级和部门级对进口酒精饮料实施某些措施。巴西、加拿大、智利、中国、萨尔瓦多、危地马拉、印度、哈萨克斯坦、韩国、墨西哥、巴拿马、俄罗斯、中国台北和美国保留第三方权利。

Ratio Decidendi 判决理由

反倾销-在计算正常价值生产成本时的可替代方法的适用

欧洲法院认为，并不是出口国公共部门的每一个措施，可能会对原材料价格产生影响（如棕榈油），因此，所争议的产品价格可以被看作是一种变形，允许进口国当局为了计算正常价值的目的不考虑包括调查中利害方的价格。在这方面，法院认为如果不是这样，那么基本法第2（5）条第一款的原则（即在确定生产成本时，有关当事人的记录是信息的主要来源）将不起作用。法院认为只有当措施造成原材料价格明显失真时，价格才可以被忽略，调查机构必须依靠直接证据，或者至少有间接证据指向调整因素的存在而作出调整。

可以指出的是，根据第2（5）的基本规定，如果产品的生产成本和销售费用的不合理体现在当事人的记录中，应当根据同一国家其他生产商或出口商的成本进行调整或确立，或者如果根据任何其他合理基础，没有这些信息或信息无法使用，包括从其他有代表性的市场信息，也应当进行调整。

欧洲法院进一步认为，有必要评估欧盟当局是否已经建立了必要的法律标准从而不考虑包含在出口商记录中的原材料价格。法院认为虽然欧盟当局声称为了保证大量的原材料可在国内市场获得，DET系统对产品实施不同的出口关税从而扭曲了价格。但是这不能表明在何种程度上该系统导致出口国的国内市场价格明显失真。欧洲法院因此废止2013年11月19日发布的欧盟执行委员会公告第1194/ 2013号第1条和第2条对原产于阿根廷和印度尼西亚的生物柴油某些出口商征收最终反倾销税。[2016年9月15日*PT Wilmar Bioenergi Indonesia* v. *Council of the European Union* – 欧洲常设法院（第九庭），案件号T-139/14]

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