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# 国际贸易 法律月刊



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# US steel and aluminium tariffs and the WTO's security exception: Unsecuring multilateral trade?

美国对钢铁和铝加征关税和世贸组织的安全预期:不确定的多边贸易?

## By Jayant Raghu Ram

The United States has instituted measures imposing high duties on all imports of steel and aluminium into the United States. While the US has sought to justify these measures on the basis of its national security requirements, the real underlying motive would seem to be to afford protection to its domestic steel and aluminium industries given the rhetoric that preceded these measures. Though these measures seemingly inconsistent with WTO law, the US may attempt to defend them under, inter-alia, the provisions of GATT Article XXI, which pertains to security exceptions. However, the possibility that Article XXI may provide a credible defence in this instance is tenuous, as this article attempts to argue.

On 8<sup>th</sup> March 2018, US President issued two proclamations imposing tariffs of 25% and 10% on steel and aluminium articles respectively imported from all countries (except Canada and Mexico). These proclamations were issued pursuant to recommendations made in February 2018 by the Commerce Secretary ("Secretary") under Section 232 of the Trade Expansion Act, 1962, which permits the Department of Commerce to investigate the effects of imports on national security.

The motif of the recommendations made by the Secretary is that the displacement of American-produced steel and aluminium by excessive imports and their consequent adverse impact on American domestic industries was weakening the internal economy and therefore threatened the US' national security. The Secretary was also of the opinion that rising levels of imports of steel and aluminium threatened to impair national security by displacing the capacity and thereby disrupting the supply required to produce steel for critical infrastructure and national defense.

It is highly possible that the US would intend to defend these measures under, inter-alia, GATT Article XXI. Though Article XXI has long been understood to be a self-judging exception, it must be noted that Article XXI allows a WTO Member to derogate from its GATT obligations only in the limited circumstances defined therein. For the purposes of this article, focus is limited to those provisions of Article XXI which are directly applicable and relevant to understanding the impugned measures - paragraph (b), clause (iii). Paragraph (b) allows a WTO Member to take any action which it considers necessary for the protection of its essential security interests in only three limited circumstances, of which clause (iii) pertains to actions "taken in time of war or other emergency in international relations.

Factually, it may be argued that there exists both a "time of war" given the US' ongoing war in Afghanistan and also an "emergency in international relations" given the situation in Syria. However, the mere *existence* of either of these factors may not be sufficient to justify the invocation of clause (iii). It would need to be demonstrated that the existence of either of these situations directly or indirectly necessitates the



need to resort to the impugned measures. In my opinion, in addition to the above, the threat to the United States' security interests stemming from such circumstances should be imminent or foreseeable and not based on conjecture or remote possibility.

It would also be important to note that the US has not cited either of the aforesaid factors as for reasons implementing the impuaned measures. Instead, the US has cited the weakening of its internal economy on account of increased imports as one of the two major reasons. Even if its internal economy is considered to fall within the ambit of "essential security interests", derogation from GATT obligations for protection of the same can be permitted only if there is a reasonable nexus with a state of war or an emergency in international relations which the US might be facing, which is clearly not the case. To otherwise permit such a derogation would open a Pandora's box whereby every WTO Member would then attempt to defend protectionist measures under the guise of national security, howsoever obscure, thereby throwing the entire multilateral trading system into disarray.

This is not the first time that national security has been invoked in defence of trade measures, nor is the US the only country to have done so. A similar measure was taken way back in 1975 by Sweden when it had established an import quota for certain footwear and sought to defend the same under Article XXI. Sweden argued that the decrease in domestic production had become a critical threat to Sweden's economic defence and therefore necessitated the maintenance of a minimum domestic production capacity in vital industries. Sweden further argued that such capacity was necessary to secure the provision of essential products necessary to meet basic needs in case of war or other emergency in international relations. Though this measure did not culminate into a dispute, many GATT members questioned the feasibility of defending these measures under Article XXI.

The US' import tariffs are similar to Sweden's measure. However, what makes the former hugely unpopular in the world trading community besides the absence of any reasonable nexus with protection of its essential security interests is the very scale of these measures and the protectionist rhetoric underlying them. Though a full-blown global trade war has not broken out (yet) post the implementation of the impugned measures, these actions set a very unhealthy precedent for other WTO Members to provide an excuse for defending their trade measures under the guise of protecting their security interests.

It would be important to note that the possibility that the security exceptions would be exploited to claim protection for everything under the sun was noted way back in 1947 itself during negotiations leading to the GATT. Commenting on the possibility of abuse of this exception, the Chairman of the Preparatory Committee expressed his view that:

"I think there must be some latitude here for security measures. It is really a question of a balance. We have got to have some exceptions. We cannot make it too tight, because we cannot prohibit measures which are needed purely for security reasons. On the other hand, we cannot make it so broad that, under the guise of security, countries will put on measures which really have a commercial purpose."

According to the Chairman, the only guarantee against any such abuse would be the spirit of Members while designing their measures. In this regard, it should be mentioned that while the United States and even other Members have implemented measures in the past with the objective of protecting their security interests, the

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United States' *spirit* and motivation for implementing the impugned measures is highly suspect for the reasons discussed in the foregoing paragraphs. It would be in the best interests of the United States and the world trading community that such measures are made

more rational and designed in keeping with the *spirit* of Article XXI that GATT negotiators envisaged.

[The author is a 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	Measure 措施	Notification No. and date 公告文号和日期
Acrylic Fiber	India	ADD investigation terminated	F.No.14/50/ 2016-DGAD, dated 16-
亚克力纤维	印度	终止反倾销调查	4-2018 2018年4月16日,第14/50/ 2016- DGAD 号
Aluminium Extrusions 铝型材	Australia 澳大利亚	Extension of time granted to issue statement of essential facts 延期发布重要事实披露	Anti-dumping Notice No. 2018/66, dated 20-4-2018 2018年4月20日,反倾销公告第 2018/66号
Aluminum Foil 铝箔	USA 美国	Final determination of sales at less than fair value and antidumping duty order amended 修改低于正常价值的最终裁决和征税令	83 FR 17362 [A-570-053], dated 19-4-2018 2018年4月19日, 83 FR 17362 [A- 570-053]
Apparatus for emergency lighting 紧急照明设备	Argentina 阿根廷	Initiation of ADD investigation 发起反倾销调查	MOFCOM news, dated 27-4-2018 2018年4月27日,商务部新闻
Bleached Board/ Folding Box Board with White Back 涂布白底漂白板/折叠 箱板	Parkistan 巴基斯坦	Affirmative ADD final finding 肯定性反倾销终裁	MOFCOM news, dated 11-4-2018 2018年4月11日,商务部新闻
Carbon steel plate 碳钢板	Taiwan Region 台湾地区	Initiation of CVD investigation 发起反补贴调查	MOFCOM news, dated 19-4-2018 2018年4月19日,商务部新闻
Cast Iron Soil Pipe 铸铁污水管	USA 美国	CVD - Postponement of preliminary determination 反补贴-延期发布初裁	83 FR 15129 [C-570-080], dated 9-4-2018 2018年4月9日,83 FR 15129 [C-570-080]
Certain carbon cold- rolled steel products 冷轧碳钢	Taiwan Region 台湾地区	Initiation of ADD and CVD investigation 发起反倾销和反补贴调查	MOFCOM news, dated 18-4-2018 2018年4月18日,商务部新闻

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Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Certain flat-rolled products of stainless steel, hot-rolled 不锈钢热轧扁钢	Taiwan Region 台湾地区	Initiation of ADD and CVD investigation 发起反倾销和反补贴调查	MOFCOM news, dated 18-4-2018 2018年4月18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	Initiation of CVD investigation 发起反补贴调查	MOFCOM news, dated 19-4-2018 2018年4月19日,商务部新闻
Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel 冷拔机械管	USA 美国	Affirmative final determination of sales at less-than-fair value and final determination of critical circumstance 肯定性低于正常价值终裁并且最终裁决存在紧急情况	83 FR 16322 [A-570-058], dated 16-4-2018 2018年4月16日, 83 FR 16322 [A- 570-058]
Common Alloy Aluminum Sheet 铝合金薄板	USA 美国	Preliminary affirmative countervailing duty (CVD) determination 初步肯定性反补贴初裁	83 FR 17651 [C-570-074], dated 23-4-2018 2018年4月23日, 83 FR 17651 [C-570-074]
Common Alloy Aluminum Sheet 铝合金薄板	USA 美国	Postponement of preliminary determination of the less-than-fair-value investigation 延期发布低于正常价值调查初裁	83 FR 14262 [A-570-073], dated 3-4-2018 2018年4月3日,83 FR 14262 [A-570-073]
Crystalline Silicon Photovoltaic Cells 晶体硅太阳能电池	USA 美国	CVD – Subsidy percentage revised in respect of specific entities 反补贴-修改某些企业的反补贴税率	83 FR 15364 [C-570-980], dated 10-4-2018 2018年4月10日, 83 FR 15364 [C-570-980]
Diamond Sawblades and Parts 金刚石锯片及其部件	USA 美国	Rescission of Antidumping duty administrative review, in Part; 2016-2017 部分取消2016-2017年反倾销行政复审	83 FR 18776 [A-570-900], dated 30-4-2018 2018年4月30日, 83 FR 18776 [A-570-900]
Digital Offset Printing Plates 数码印刷版	India 印度	Sunset review recommends non-extension of ADD 日落复审建议不延长反倾销税	F. No. 15 / 24 / 2016 / DGAD, dated 23-4-2018 2018年4月23日,第15 / 24 / 2016 / DGAD 号
Dish washing machines, of the household type 家用洗碗机	Argentina 阿根廷	Affirmative ADD final finding 肯定性反倾销终裁	MOFCOM news, dated 26-4-2018 2018年4月26日,商务部新闻
Epoxy Resins 环氧树脂	India 印度	ADD investigation initiated 发起反倾销调查	F.No.6/10/ 2018- DGAD, dated 4-4-2018 2018年4月4日,第6/10/ 2018- DGAD号
Ethylene Vinyl Acetate (EVA) Sheet for Solar Module 太阳能电池组件用 EVA 塑料片	India 印度	ADD investigation initiated 发起反倾销调查	F.No.6/9/ 2018-DGAD, dated 4-4-2018 2018年4月4日,第6/9/ 2018-DGAD 号

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Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Freshwater Crawfish Tail Meat 淡水小龙虾尾肉	USA 美国	Initiation of antidumping Duty New Shipper Review 发起反倾销新出口商复审	83 FR 18775 [A-570-848], dated 30-4-2018 2018年4月30日, 83 FR 18775 [A-570-848]
Glassware 玻璃器皿	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	22/2018-Cus. (ADD), dated 18-4- 2018 2018年4月18日,22/2018-Cus. (ADD)
Glycine 甘氨酸	USA 美国	Initiation of countervailing duty investigations 发起反补贴调查	83 FR 18002 [C-570-081], dated 25-4-2018 2018年4月25日, 83 FR 18002 [C-570-081]
Graphite Electrodes 石墨电极	India 印度	Initiation of Mid-Term Review 发起期中复审	F. No. 7/13/ 2018-DGAD, dated 4-4-2018 2018年4月4日,第7/13/ 2018- DGAD号
Grinding balls 研磨球	Australia 澳大利亚	ADD and CVD – Initiation of accelerated review 反倾销和反补贴-发起快速复审	Anti-dumping Notice No. 2018/71, dated 24-4-2018 2018年4月24日,反倾销公告第 2018/71号
Hollow Steel Sections 空心型钢	New Zealand 新西兰	Initiation of ADD and CVD investigation 发起反倾销和反补贴调查	MOFCOM news, dated 11-4-2018 2018年4月11日,商务部新闻
Honey 蜂蜜	USA 美国	Continuation of Antidumping Duty Order 继续反倾销征税令	83 FR 18277 [A-570-863], dated 26-4-2018 2018年4月26日, 83 FR 18277 [A-570-863]
Large Diameter Welded Pipe 大口径焊管	USA 美国	Postponement of preliminary determinations in the countervailing duty investigations 延期发布反补贴调查初裁	83 FR 13946 [C-570-078], dated 2- 4-2018 2018年4月2日,83 FR 13946 [C- 570-078]
Methyl Ethyl Ketone 甲基乙基酮	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	23/2018-Cus. (ADD), dated 24-4- 2018 2018年4月24日, 23/2018-Cus. (ADD),
New Pneumatic Off- the-Road Tires 新的非公路用轮胎	USA 美国	Final Results of antidumping Duty administrative review and new shipper review; 2015-2016 最终裁决反倾销行政复审和新出口商复审	83 FR 16829 [A-570-912], dated 17-4-2018 2018年4月17日,83 FR 16829 [A- 570-912]
New Pneumatic Tyres for Buses and Lorries 卡车和客车用充气轮胎	India 印度	Countervailing duty investigation initiated 发起反补贴调查	F.No.6/8/2018-DGAD, dated 27-3-2018 2018 年 3 月 27 日 , 第 6/8/2018-DGAD 号
Partially Oriented Yarns 定向聚酯纱线	India 印度	Sunset review recommends non-extension of ADD 日落复审建议不延长反倾销税	F.No. 7/1/2017-DGAD, dated 23-4-2018 2018 年 4 月 23 日 ,第 7/1/2017-DGAD 号

Product	Country	Measure	Notification No. and date
产品	国家	措施	公告文号和日期
Phosphoric Acid - Technical Grade and Food Grade 磷酸-技术级和食品级	India 印度	Revokes provisional assessment upon withdrawal of New Shipper Review Application 由于撤销新出口商复审申请取消临时免税	18/2018-Cus. (ADD), dated 6-4- 2018 2018 年 4 月 6 日 , 18/2018-Cus. (ADD)
Phosphorus Pentoxide 五氧化二磷	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	19/2018-Cus. (ADD), dated 6-4-2018 2018年4月6日,19/2018-Cus. (ADD)
Pipe fitting 管件	Turkey 土耳其	Affirmative final finding after ADD sunset review 肯定性反倾销日落复审终裁	MOFCOM news, dated 27-4-2018 2018年4月27日,商务部新闻
Plain Gypsum Plaster Boards 石膏板	India 印度	Sunset review recommends non-extension of ADD 日落复审建议不延长反倾销税	F.No.7/8/2017-DGAD, dated 19-4- 2018 2018 年 4 月 19 日 , 第 7/8/2017- DGAD 号公告
Polyester Staple Fiber 聚酯短纤	USA 美国	ADD Order continued 继续征收反倾销税	83 FR 14415 [A-570-905], dated 4-4-2018 2018年4月4日,83 FR 14415 [A-570-905]
Railway Wheels 铁道轮毂	Australia 澳大利亚	ADD and CVD investigation initiated 发起反倾销和反补贴调查	Anti-Dumping Notice No. 2018/59, dated 18-4-2018 2018年4月18日,反倾销公告第 2018/59号
Rubber Bands 橡皮筋	USA 美国	Postponement of preliminary determinations in the countervailing duty investigations 延期发布反补贴初裁	83 FR 15789 [C-570-070], dated 12-4-2018 2018年4月12日,83 FR 15789 [C- 570-070]
Shock Absorbers 弹簧减震器	Argentina 阿根廷	Initiation of ADD investigation 发起反倾销调查	MOFCOM news, dated 28-4-2018 2018年4月28日,商务部新闻
Sodium Perchlorate 高氯酸钠	India 印度	Rejection of initiation of Sunset Review investigation 拒绝发起日落复审调查	F. No.7/6/ 2018-DGAD, dated 23-3-2018 2018年3月23日,第7/6/ 2018-DGAD号
Stainless Steel Flanges 不锈钢法兰	USA 美国	Final affirmative determination of countervailable subsidies 反补贴肯定性终裁	83 FR 15790 [C-570-065], dated 12-4-2018 2018年4月12日, 83 FR 15790 [C- 570-065]
Steel Rod in Coil 钢卷	Australia 澳大利亚	Initiation of review of Anti-dumping Measures 发起反倾销复审	Anti-Dumping Notice No. 2018/56, dated 3-4-2018 2018年4月3日,反倾销公告第 2018/56号
Steel ropes and cables 钢绳和钢缆	EU 欧盟	ADD – Extension of anti-dumping duty on goods consigned from Morocco and the Republic of Korea 反倾销-对来自摩洛哥和韩国的进口征收反倾销税	Commission Implementing Regulation (EU) 2018/607, dated 20-4-2018 2018年4月20日,欧盟执行委员会公告第2018/607号





Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Steel Wheels 钢制轮毂	USA 美国	Initiation of less-than-fair-value investigation, and CVD investigation 发起反倾销和反补贴调查	83 FR 17798 [A-570-082], dated 24-4-2018, and 83 FR 17794 [C-570-083], dated 24-4-20018 2018年4月24日, 83 FR 17798 [A-570-082]和83 FR 17794 [C-570-083]
SUS 300 series flat- rolled products of stainless steel, cold- rolled 300系冷轧不锈钢	Taiwan Region 台湾地区	Initiation of CVD investigation 发起反补贴调查	MOFCOM news, dated 19-4-2018 2018年4月19日,商务部新闻
Synthetic and manmade fabric 合成及人造纤维织物	Turkey 土耳其	Initiation of ADD sunset review investigation 发起反倾销日落复审	MOFCOM news, dated 23-4-2018 2018年4月23日,商务部新闻
Table knives, forks and spoons 餐用刀叉勺	Argentina 阿根廷	Affirmative ADD final finding 肯定性反倾销终裁	MOFCOM news, dated 27-4-2018 2018年4月27日,商务部新闻
Tool Chests and Cabinets 工具箱	USA 美国	Final affirmative determination of sales at less than fair value 肯定性低于正常价值终裁	83 FR 15365 [A-570-056], dated 10-4-2018 2018年4月10日,83 FR 15365 [A-570-056]
Uncoated Writing / PrintingPaper 未涂布书写纸和印刷纸	Parkistan 巴基斯坦	Affirmative ADD final finding 肯定性反倾销终裁	MOFCOM news, dated 11-4-2018 2018年4月11日,商务部新闻
Viscose Filament Yarn 粘胶纤维纱线	India 印度	Sunset review recommends non-extension of ADD 日落复审建议不延长反倾销税	F. No. 15 / 16 / 2016 - DGAD, dated 20-4-2018 2018年4月20日,第15 / 16 / 2016 - DGAD 号

# 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
Electrolytic Capacitor Paper 电解电容器纸	Japan 日本	ADD sunset review initiated 发起反倾销日落复审	MOFCOM Announcement No. 28 of 2018, dated 17-4-2018 2018年4月17日,商务部公告2018年第28号
Ethylene Glycol Monobutyl Ether 乙二醇和二甘醇的单丁醚	US and EU 美国和欧盟	Partly changed dumping margin after Mid-term review 期中复审后部分修改倾销幅度	MOFCOM Announcement No. 32 of 2018, dated 4-4-2018 2018年4月4日,商务部公告2018年第32号
Grain Sorghum 高粱	USA 美国	ADD – Preliminary Ruling issued 反倾销-发布初裁	MOFCOM Announcement No. 38 of 2018, dated 17-4-2018 2018年4月17日,商务部公告2018年第38号

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Halogenated Butyl Rubber 卤化丁基橡胶	USA, EU, Singapore 美国、欧盟和 新加坡	ADD – Preliminary Ruling issued 反倾销-发布初裁	MOFCOM Announcement No. 39 of 2018, dated 19-4-2018 2018年4月19日,商务部公告2018年第39号
Pulp 浆粕	USA, Canada and Brazil 美国、加拿大 和巴西	ADD re-investigation ruling issued 发布反倾销再调查裁决	MOFCOM Announcement No. 37 of 2018, dated 20-4-2018 2018年4月20日,商务部公告2018年第37号



## WTO News 世贸组织新闻

# 中美争端-中国就美国对钢铁、铝产品征收关税和对某些中国产品实施关税措施提出争端解决

4月9日,世贸组织发布了中国的磋商请求,中国就美国对某些钢和铝产品的进口征收进口关税请求措施。在中国的磋商请求中,中国认为美国对从列明国家以外的国家进口钢铁产品征收 25%的关税和对进口铝产品征收 10%的关税,与 1994年关贸总协定和保障措施协议不一致。具体来说,中国认为美国违反了 1994 年关贸总协定第 1.1、2.1(a)和(b)、第 10.3(a)条、第 19.1(a)条和第 19.2条以及保障措施协议第 2.1、2.2、4.1、4.2、5.1、7、11.1(a)、12.1,12.2 和 12.3条。值得注意的是印度与俄罗斯联邦、泰国、欧盟和香港(中国)也要求加入磋商

4月5日,世贸组织还发布了中国的磋商请求,请求与美国就美国对某些中国货物实施的关税措施进行磋商,这些措施是根据 1974 年美国贸易法第301 条到第 310 条执行的。中国认为,加征关税将超过美国的约束税率,与 1994 年关贸总协定第1.1条、第 2.1(a)和(b)条以及 DSU 第 23 条不一致

加拿大商业飞机争端案-专家组发布初步裁决 世贸组织争端解决专家小组于 2018 年 4 月 17 日 发布了其于 2018 年 4 月 9 日做出的加拿大-商业 飞机交易有关措施(DS522)的初步裁决。加拿 大已就初裁提出:

巴西在其专家小组的请求中就提出的"主张"提供了一份简要的摘要,足以说明该问题的严

重性 - 特别是巴西作为起诉方无法在作为法律依据的摘要中明确获得补贴的产品,以及巴西无法明确巴西的同类产品受到所谓的严重损害。

- 巴西的专家组请求相比磋商请求扩大了争端解决的范围。
- 巴西的专家组请求无法明确争议中的特定措施,也就是加拿大授予的某些所谓补贴。

关于以上三个问题,专家组决定支持巴西。专家组认为巴西的专家组请求有充分明确的主张,包括涉案产品和质疑的项目,这符合 DSU 第6.2条的要求。

韩国日本争端案-专家组就韩国对来自日本的气压 阀征收关税发布报告和就日本食品进口限制争端 案提起上诉程序

2018 年 4 月 12 日,世贸组织争端解决机构发布了由日本提起的争端案的专家组报告,即韩国一对来自日本的气动阀门征收反倾销税(DS504)。日本质疑韩国对从日本进口气动阀门征收反倾销税。具体而言,日本质疑韩国对国内产业的定义、其对进口商品显著增加的分析、对韩国国内市场价格的影响以及因果关系。就某些程序方面而言,如保密信息处理、提供非保密摘要、披露基本事实和提供详细的调查结果和结论,也受到质疑。



一开始,专家组认定日本的专家组请求有缺陷, 日本的某些主张超出了职权范围。该专家组因此 认定日本未能明确大部分实质性主张。然而,专 家组认定韩国的措施与反倾销协定不一致:

- 反倾销协定第3.1和3.5条,因为在考虑倾销 进口对国内市场价格影响方面,因果关系分 析是错误的;
- 反倾销协定第6.5条,韩国将申请人提供的信息进行保密处理而没有提供充分的理由;
- 反倾销协议第6.5.1条,韩国未能要求提供信息的各方就提供的保密信息提供充分的非保密摘要。

2018年4月9日,韩国对日本提起的韩国-进口禁令,以及对放射性核素的测试和认证要求(DS495)争端案的世贸组织专家组报告提出上诉



。韩国已就专家小组的选择提出了质疑,韩国认为该专家组违反了 DSU 第 11 条的规定,选择了在这个问题上有利益冲突的专家。此外,韩国还寻求审查有关卫生和植物卫生措施协定方面专家组的某些结论。专家组已在 2018 年 2 月 22 日发布了其报告。

美国对软木征税争端案-世贸组织成立两个专家组4月9日,世贸组织争端解决机构同意成立两个专家组,以审查加拿大提出的美国对加拿大软木进口征收反倾销和反补贴税争端案(DS533 and DS534)。

## 印度尼西亚和南非发起保障措施调查

印度尼西亚已经通知世贸组织保障措施委员会 2018 年 3 月 29 日印度尼西亚发起了对瓷砖产品 的保障措施调查。同时,南非于 2018 年 4 月 20 日开始对"六角钢螺钉"发起保障措施调查。南 非已要求相关方在调查开始后 20 天内进行登记。



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

### 事前通知磋商规则发布

根据1962年海关法案,财政部发布了2018年事前磋商规则。在向被征税人或有利害关系的当事人发布征税通知之前,它给予利害关系方与适当官员进行磋商的机会。根据新规定,事先磋商必须在海关公告发出到期日前至少2个月开始,并在收到请求之日起60天内结束。此外,如果在15天内没有收到任何答复,官员应继续发布海关公告。新条款是2018年财政预算方案的一部分,而海关法案第28条的修正案已于2018年3月29日生效,即2018年财政法案由印度总统批准当天。

## 用于生产手机的某些部件的基本关税增加了

在制造手机时使用的相机模块、连接器和某些印刷电路板的进口关税已经增加。根据2018年4月2日的修正案,这些货物的基本关税将是10%,而不是零关税。制造这些产品的投入或部件包括制

造这些产品部件的子部件,将继续享受免征基本关税。由此,2018年4月2日,印度政府发布了相关的海关公告,第57/2017-Cus.、24/2005-Cus.、25/2005-Cus.和50/2017-Cus.号。此外,可以注意到,通过2018年4月2日的第36/2018-Cus.号,税则号为85177010的基本关税税率已从零提高到10%。

## 对具有旁路和/或阻断二极管的太阳能组件的澄清

CBIC已经阐明,配备旁路二极管的太阳能电池组件将被分类在8541项下。然而,配备有阻断二极管的太阳能电池组件则被分类在关税税则的8501项下。2018年4月6日的第8/2018-Cus.号公告进一步阐明了配备有阻断二极管和旁路二极管的太阳能电池组件将被分类在8501项下。对此,委员会参照世界海关组织根据旁路和阻断二极管的功能做出的决定。

# 特别额外关税返还-没有要求销售后应保持相同的形式

2018年4月24日,印度最高法院认为仅将原木进口转为锯材而不丧失原产品的属性,在随后的销售中,不会剥夺进口商有权要求返还特别额外关税的申请。根据上诉法院和高等法院在Commissioner v. Variety Lumbers案中的意见,最高法院驳回了请求,即买卖以后的货物必须与进口货物具有相同的形式。法院认为即使在最严



格的条件下解释,2007年9月14日的公告也不支持上诉人的主张。

### 进口货物的最终使用

孟买的货物和服务税上诉法院在有关澄清硝酸钙和磷酸一钾分类的争议中,认为货物应归入1975年关税税则法案第31章,而不是第28章。上诉法院在CC (Import) v. Solufeed Plant Product案中注意到,当产品根据其描述中的最终用途进行分类是不正确的。应当注意到,货物是由三种肥料中的两种组成,并且政府已经颁发了这些许可证。



# Ratio Decidendi 判决理由

#### 反倾销调查-参照国的确定

欧盟法院认为,调查当局不需要使用任何国家作为适当的参照国家,只因为它是一个同样受到调查的市场经济第三国家。法院支持在涉及中国和台湾地区不锈钢冷轧拼板产品征收反倾销税调查中将美国作为比台湾更合适的选择,作为对来自中国进口的参照国。法院也拒绝了申请人的辩解,申请人认为欧盟当局在评估事实和在法律上犯了明显的错误,认为从其市场的竞争力和市场规模来看,美国是一个比台湾地区更适合的国家。法院认为台湾产品的市场和价格在很大程度上是由一大群公司所控制的。法院还注意到进口没有对台湾市场施加足够的竞争压力,因为市场和价格仍然由一大群公司所控制。

同样,作为涉案产品的一个重要投入,镍在生产成本的差异和采购方面的差异主张也被驳回。法院认为这两种差异都没有影响在本案中选择合适的参照国。法院也驳回了申请人主张在建立正常价值的背景下,应

考虑在生产过程中的差异和原材料的使用的差异从而允许进行调整。法院同时注意到,调查当局不需要考虑因直接或间接造成正常市场驱动因素而进行调整,因为在相关期间中国并没有被认定为市场经济国家这一事实,而且上诉人并没有申请市场经济待遇。[Shanxi Taigang Stainless Steel Co. Ltd. v. European Commission – 2018 年 4 月 23 日裁决,案件号 T 675/15, CJEU]

## 产品的"使用"不是考虑其分类的唯一因素

美国联邦巡回上诉法院拒绝了税务部门将某些螺丝分类为自攻螺丝的上诉。法院拒绝在进行分类时将产品的使用视为唯一考虑因素。法院依据普遍和商业意义,并且支持美国国际贸易法院依据解释说明、词典释义和专家证词。有趣的是,CoA早就取消了考虑产品"使用"的问题。因此税务部门对木材螺丝分类的上诉被驳回了。[GRK Canada Ltd. v. United States - 2018年3月20日美国联邦巡回上诉法院裁决,案件号 2016-2623]



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