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Article 文章

Causal Link Analysis: An Examination

评价因果关系分析

By Prianka Mohan

The Indian anti-dumping authorities in recent findings in sunset review investigations concerning imports of Acetone¹ and Phenol² recommended the discontinuation of the duty as, among other things, factors other than dumped imports from the subject country were found to be responsible for the injury caused to the domestic industry. The Designated Authority's (DGAD) finding not recommending the continuation of the duty is particularly interesting for the reason that one of the reasons for the termination of the review proceedings was based on the fact that the causal link in the particular investigation was absent. The Indian authorities have very rarely terminated an investigation based on the absence of a causal link perhaps purely for the reason that undertaking a non-attribution analysis is not always direct and easy.

The article explores the difficulties in undertaking a causal link analysis, particularly in light of the lack of guidance in the legal provisions. Further, it examines whether such an examination should also be taken at a time of a sunset review, which on a plain reading of the relevant legal provisions is not required.

The three pillars for imposition of anti-dumping duties

An anti-dumping duty is imposed on a product which is found to be dumped and

such imports are causing injury to the domestic industry in the importing country that produces the like product. In simpler terms, the essentials for an anti-dumping duty to be imposed is (a) presence of dumping; (b) material injury to the domestic industry in the importing country that is producing the like product; and (c) a causal link between the dumped imports and injury to the domestic industry. There is considerable amount of guidance in the legal provisions regarding the determination of dumping and injury however the determination of a causal relationship between the dumped imports and injury to the domestic industry has been left open-ended to a certain extent. As a result, member countries have been given the discretion on devising methodologies to undertake a causal link analysis.

Article 3.5 of the AD Agreement

Article 3.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement") governs the undertaking of a causal link analysis and a similar provision is provided in Annexure II(v) of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ("Indian AD Rules"). It provides, in relevant part, as under:

¹ Final findings in the Sunset Review anti-dumping investigation concerning imports of Acetone originating in or exported from Japan and Thailand dated 1 July, 2016.

² Final findings in the Sunset Review anti-dumping investigation concerning imports of Phenol originating in or exported from Japan and Thailand dated 1 July, 2016.



The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

The obligation on the authorities, as per the above provision, is to examine whether any other known factors might be responsible for the injury being caused to the domestic industry and an indicative list of factors has been set out in the last sentence. The WTO Appellate Body in *US – Hot rolled Steel*³ noted that the obligation under Article 3.5 of the AD Agreement requires the authority to undertake a two-step approach – first, to examine all “known factors”, other than the dumped

imports which are causing injury to the domestic industry; and second, the authority must ensure that the injury being caused by the other identified factors is not attributed to the dumped imports. The difficulty in this two-step approach arises in separating and distinguishing the injurious effects of the other known causal factors from the injurious effects of the dumped imports.

Although segregation and differentiation of the injurious effects of other known factors is theoretically possible, undertaking such an examination practically is not always possible. The Appellate Body in the above dispute accepted that the process of undertaking such an examination is not easy but underscored the fact that the obligation under Article 3.5 of the AD Agreement is mandatory to be undertaken. The AD Agreement is silent on the methodology to be followed for this non-attribution analysis. Therefore, as long as there is an indication that the authority has undertaken such an examination, the obligation under Article 3.5 of the AD Agreement will be satisfied.

Notably, there is a little more guidance in the conduct of safeguards investigation for the manner in which this non-attribution analysis is to be conducted. The Panel and Appellate Body in *Argentina – Footwear (EC)*⁴ held that in the context of a causation analysis, there should be a relationship between the

³ Appellate Body, *United States – Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R [24 July 2001] (“US – Hot Rolled Steel”)

⁴ Panel Report, *Argentina – Safeguard Measures on Imports of Footwear*, WT/DS121/R [25 June 1999]; Appellate Body, *Argentina – Safeguard Measures on Imports of Footwear*, WT/DS121/AB/R [14 December 1999]



movements in the imports and the movements in the injury parameters. In other words, the increase in imports should coincide with the decline in the relevant injury parameters. Although the nature of the analysis in a safeguards investigation would differ from an anti-dumping investigation, but guidance on the manner in which such an analysis may be undertaken could be taken from the examination in safeguards investigations.

In most investigations, the authority has restricted its examination to only the factors provided in Annexure II(v) of the Indian AD Rules or Article 3.5 of the AD Agreement. It is only in very few cases that claims of lack of a causal link have resulted in termination of the examination. The two investigations mentioned above therefore could be considered as a rarity.

Recent investigations in India

In reference to the investigations on Acetone and Phenol review proceedings noted above, the domestic industry in both the investigations was the same. In particular, in both investigations, one of the domestic producers had suffered significant product losses while the performance of the other domestic producer did not exhibit any significant deterioration and in fact was performing at full capacity and earning positive profit margins. On an examination of the reasons behind this discrepancy, it was found that the reason for its losses was

directly linked to its working capital losses and management issues and therefore it was found that its negative performance could not be linked to imports from the subject countries. On the basis of the same, the authority did not find any causal link between the allegedly dumped imports and the injury being suffered by the domestic industry as a whole.

Notably, a similar situation arose in a safeguards investigation conducted by the Indian authorities last year. In the safeguards investigation concerning imports of cold rolled flat products of stainless steel of 400 series⁵ the authority held that based on an evaluation of the overall position of the domestic industry, it was noted that the factors such as abnormally high depreciation and finance charges were responsible for the losses being suffered by the domestic industry. Therefore, the investigation was terminated based on the fact that the causation analysis in the particular investigation was absent.

Is a causal link examination necessary at the time of a sunset review investigation?

Another issue that arises in regard to the above two anti-dumping findings is whether the authority was obligated to undertake a causal link analysis in a sunset review investigation. In particular, Article 11.3 of the AD Agreement deals with the conduct of sunset reviews and requires the authority to determine whether “the expiry of the duty would be likely to lead to continuance or recurrence of dumping

⁵ Final findings in the safeguards investigation concerning imports of Cold Rolled Flat Products of Stainless Steel of 400 series dated 23 March 2015



and injury". On a reading of the provisions therefore, it is clear that a causal link analysis is not mandated at the time of a review.

The Appellate Body in *US – Anti-dumping Measures on Oil Country Tubular Goods*⁶ examined the anti-dumping mechanism as set forth under Article VI of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the AD Agreement and concluded that authorities are not required to undertake a causal link analysis "anew" in an expiry review investigation. In particular, the Appellate Body held that re-establishing the link is not required as a legal obligation in a sunset review.

In India however, a causal link analysis is undertaken in all sunset reviews in the similar manner that the examination is undertaken in the original investigation. In this respect, the practice by the Indian authorities is an additional factor examined. The Indian authorities undertake a causal link analysis although such an analysis is not required under the investigation. This causal link analysis would in no way be considered WTO-inconsistent as it is merely an extra criteria that needs to be satisfied for the continuation of the duty. While the AD Agreement envisages only the examination of continuation and recurrence of injury and dumping in a sunset review, the Indian authorities in practice examines not only the presence of dumping and injury but also a causal link between the

two. Nonetheless, the fact that the above investigations were terminated on account of the break in the causal link in the investigation at the time of a sunset review could be used as a basis for investigations in the future.

Conclusion

In most jurisdictions, termination of an investigation based on the failure to establish a causal link is very rare. A reason for the same could be the difficulty of undertaking such an analysis and further the lack of guidance in the AD agreement.

In regard to India's practice of undertaking a causal link analysis even in sunset review proceedings, the same is merely an additional step to be satisfied in the investigation. In the above investigation, the result of undertaking a causal link in the review stage would have given the same results had the facts surrounding the other domestic producer remained the same as compared to the original investigation. However, as there was a change in the facts and circumstances, the examination of these factors led to a different conclusion. Therefore, it can be concluded that a causal link analysis undertaken at the time of the sunset review investigation does not prejudice the rights of parties in any manner and is merely an additional factor examined.

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⁶ Appellate Body Report, *United States –Anti-dumping Measures on Oil Country Tubular Goods*, WT/DS282/AB/R [2 November 2005]



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) R-134a	USA 美国	ADD – Preliminary determination postponed 反倾销-延期发布初裁	81 FR 49624 [A-570-044], dated 28-7-2016 2016年7月28日， 81 FR 49624 [A-570-044]
1,1,1,2- Tetrafluoroethane (R-134a) R-134a	India 印度	Definitive anti-dumping duty continued after sunset review 日落复审后继续征收反倾销税	30/2016-Cus. (ADD), dated 11-7-2016 2016年7月11日， 30/2016-Cus. (ADD)
A4 Copy Paper A4复印纸	Australia 澳大利亚	Time granted to issue Statement of Essential Facts, extended 延期发布重要事实披露	Anti-dumping Notice No. 2016/72, dated 1-8-2016 2016年8月1日， 反倾销公告第2016/72号
Aluminum Extrusions 铝型材	Australia 澳大利亚	Affirmative ADD and CVD sunset review final determination 肯定性反倾销和反补贴日落复审终裁	MOFCOM news, dated 18-7-2016 2016年7月18日， 商务部新闻
Aluminum Extrusions 铝型材	USA 美国	ADD - Affirmative sunset review 反倾销-肯定性日落复审	81 FR 51855 [A-570-967], dated 5-8-2016 2016年8月5日， 81 FR 51855 [A-570-967]
Aluminum Extrusions 铝型材	USA 美国	CVD – Affirmative sunset review 反补贴-肯定性日落复审	81 FR 51858 [C-570-968], dated 5-8-2016 2016年8月5日， 81 FR 51858 [C-570-968]
Ammonium Sulfate 硫酸铵	USA 美国	CVD – Preliminary determination postponed 反补贴-延期发布初裁	81 FR 51187 [C-570-050], dated 3-8-2016 2016年8月3日， 81 FR 51187 [C-570-050]
Aspartame 阿斯巴甜	EU 欧盟	Definitive ADD imposed 征收最终反倾销税	Commission Implementing Regulation (EU) 2016/1247, dated 28-7-2016 2016年7月28日，欧盟委员会执行公告第2016/1247号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Bottle type hydraulic jack 瓶式液压千斤顶	Mexico 墨西哥	ADD duty terminated 取消反倾销税	MOFCOM news, dated 8-8-2016 2016年8月8日， 商务部新闻
Ceramic product 陶瓷产品	Columbia 哥伦比亚	Negative ADD final finding 否定性反倾销终裁	MOFCOM news, dated 18-7-2016 2016年7月18日， 商务部新闻
Certain Biaxial Integral Geogrid Products 某些双轴土工格栅	USA 美国	CVD preliminary determination modified 修改反补贴初裁	MOFCOM news, dated 25-7-2016 2016年7月25日， 商务部新闻
Coated steel product 涂镀钢铁产品	Mexico 墨西哥	Affirmative ADD preliminary finding 肯定性反倾销初裁	MOFCOM news, dated 1-8-2016 2016年8月1日， 商务部新闻
Clear Float Glass 浮法玻璃	Australia 澳大利亚	Time granted to report to Parliamentary Secretary, extended 延期向国会秘书报告	Anti-dumping Notice No. 2016/73, dated 26-7-2016 2016年7月26日， 反倾销公告第2016/73号
Cold-rolled flat products of steel 冷轧合金或非合金钢板卷	India 印度	Provisional ADD recommended 建议临时反倾销税	F.No. 14/12/2016-DGAD, dated 3-8-2016 2016年8月3日， 第14/12/2016-DGAD号
Cold-rolled flat steel products 冷轧钢板产品	EU 欧盟	Definitive ADD imposed 征收最终反倾销税	Commission Implementing Regulation (EU) 2016/1329, dated 29-7-2016 2016年7月29日， 欧盟委员会执行公告第2016/1329号
Cold-Rolled Steel Flat Products 冷轧钢板产品	USA 美国	CVD Order issued 发布反补贴公告	81 FR 45960 [C-570-030], dated 14-7-2016 2016年7月14日， 81 FR 45960 [C-570-030]



Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Cold-Rolled Steel Flat Products 冷轧钢板产品	USA 美国	ADD Orders issued 发布反补贴公告	81 FR 45955 [A-570-029], dated 14-7-2016 2016年7月14日， 81 FR 45955 [A-570-029]
Cold-rolled steel product 冷轧钢铁产品	South Africa 南非	Safeguard investigation initiated 发起保障措施调查	MOFCOM news, dated 8-8-2016 2016年8月8日， 商务部新闻
Copper pipe fittings 铜管件	Canada 加拿大	ADD – Affirmative expiry review 反倾销-肯定性日落复审裁决	Canada Border Service Agency decision dated 20-7-2016 2016年7月20日， 加拿大边境服务署裁决
Corrosion-Resistant Steel Products 耐腐蚀钢板	USA 美国	CVD Orders issued 发布反补贴裁决	81 FR 48387 [C-580-879], dated 25-7-2016 2016年7月25日， 81 FR 48387 [C-580-879]
Corrosion-Resistant Steel Products 耐腐蚀钢板	USA 美国	ADD Orders issued 发布反倾销裁决	81 FR 48390 [A-570-026], dated 25-7-2016 2016年7月25日， 81 FR 48390 [A-570-026]
Evaporators 汽车空调蒸发器、 冷凝器和汽车及拖 拉机散热器	Argentina 阿根廷	Affirmative ADD preliminary finding 肯定性反倾销初裁	MOFCOM news, dated 5-8-2016 2016年8月5日， 商务部新闻
Glass raw material 玻璃原料	Indonesia 印度尼西亚	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 11-8-2016 2016年8月11日， 商务部新闻
Glycine 甘氨酸	USA 美国	ADD sunset review initiated 发起反倾销日落复审	81 FR 50462 [A-570-836], dated 1-8-2016 2016年8月1日， 81 FR 50462 [A-570-836]
Hand pallet trucks and their essential parts 手摇平板车和重要部件	EU 欧盟	ADD extended to slightly modified hand pallet trucks 反倾销税征税范围包括经略微修改的手摇平板车	Commission Implementing Regulation (EU) 2016/1346, dated 8-8-2016 2016年8月8日，欧盟委员会执行公告第2016/1346号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
High carbon steel wire 高碳钢丝	Brazil 巴西	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 15-7-2016 2016年7月15日， 商务部新闻
High fatigue performance steel concrete reinforcement bars 高抗疲劳性能混凝土钢筋	EU 欧盟	Definitive ADD imposed 征收最终反倾销税	Commission Implementing Regulation (EU) 2016/1246, dated 28-7-2016 2016年7月28日， 欧盟委员会执行公告第 2016/1246号
Hot-rolled flat products of alloy or non-alloy steel 热轧合金或非合金钢板卷	India 印度	Provisional ADD imposed 征收临时反倾销税	44/2016-Cus. (ADD), dated 8-8-2016 2016年8月8日， 第44/2016-Cus. (ADD)号
Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm 宽度在600毫米的热轧合金或非合金钢板	India 印度	Safeguard duty – Minimum Import price notified, above which there would be no Safeguard duty on specified goods 保障措施税-公告最低进口价格，高于该最低进口价格则无保障措施税	2/2016-Cus. (SG), dated 5-8-2016 2016年8月5日， 2/2016-Cus. (SG)
Hot-rolled flat steel 热轧钢板	Brazil 巴西	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 22-7-2016 2016年7月22日， 商务部新闻
Hot-rolled steel 热轧钢产品	South Africa 南非	Affirmative safeguard preliminary determination 肯定性保障措施初裁	MOFCOM news, dated 28-7-2016 2016年7月28日， 商务部新闻
Large Residential Washers 家用大型洗衣机	USA 美国	ADD - Weighted-average dumping margins determined as 80.49% for other than 2 exporters 反倾销-对2家出口商确定平均倾销幅度为80.49%	81 FR 48741 [A-570-033], dated 26-7-2016 2016年7月26日， 81 FR 48741 [A-570-033]
Loudspeaker 扬声器	Brazil 巴西	ADD mid-term review initiated 发起反倾销期中复审	MOFCOM news, dated 15-7-2016 2016年7月15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
Magnesium Metal 金属镁	USA 美国	ADD continued after sunset review 日落复审继续反倾销税	81 FR 47351 [A-570-896], dated 21-7-2016 2016年7月21日， 81 FR 47351 [A-570-896]
Magnesium powder 镁粉	Brazil 巴西	Affirmative ADD sunset review final finding 肯定性反倾销日落复审终裁	MOFCOM news, dated 22-7-2016 2016年7月22日， 商务部新闻
Multilayered Wood Flooring 复合木地板	USA 美国	ADD – New shipper review rescinded 反倾销-取消新出口商复审	81 FR 46906 [A-570-970], dated 19-7-2016 2016年7月19日， 81 FR 46906 [A-570-970]
Opal Glassware 玻璃瓷餐具	India 印度	Sunset Review initiated and ADD extended till 8-8-2017 发起日落复审并且反倾销税延期 至2017年8月8日	F.No.15/4/2016-DGAD, dated 8-7-2016 and 38/2016-Cus. (ADD), dated 4-8-2016 2016年7月8日，15/4/2016-DGAD 及2016年8月4日， 38/2016-Cus. (ADD)
Open mesh fabrics of glass fibres 玻璃纤维网格织物	EU 欧盟	ADD expiry review initiated 发起反倾销期终复审	2016/C 288/03, dated 9-8-2016 2016年8月9日， 2016/C 288/03
Polyethylene Terephthalate 聚对苯二甲酸乙二 醇酯	South Africa 南非	Affirmative ADD final finding after sunset review 肯定性反倾销日落复审终裁	MOFCOM news, dated 11-8-2016 2016年8月11日， 商务部新闻
Polytetraflouroethylene or PTFE PTFE	India 印度	Sunset Review initiated and ADD extended till 23-8-2017 发起日落复审并且反倾销税延期 至2017年8月23日	F.No.15/11/2016-DGAD, dated 8-7-2016 and 36/2016- Cus. (ADD), dated 2-8-2016 2016年7月8日， 15/11/2016-DGAD及2016年8月 2日，36/2016-Cus. (ADD)
Polyurethane coating fabbric 聚氨酯涂层面料	Brazil 巴西	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 26-7-2016 2016年7月26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
PVC flex film PVC胶膜	India 印度	ADD continued after sunset review 日 落复审继续征收反倾销税	42/2016-Cus. (ADD), dated 8-8-2016 2016年8月8日 , 42/2016-Cus. (ADD)
Rubber Chemicals - MOR & MBTS 橡胶助剂-MOR和 MBTS	India 印度	Sunset Review initiated and ADD extended till 27-7-2017 and 19-10-2017 respectively 发起日 落复审，并且反倾销税 分别延期至2017年7月27日 和 2017年10月19日	F.No.15/05/2016-DGAD, dated 8-7-2016, 35/2016-Cus. (ADD), dated 26-7-2016 and 40/2016- Cus. (ADD), dated 8-8-2016 2016年7月8日 , 15/05/2016- DGAD, 2016年7月26 日 , 35/2016-Cus. (ADD), 2016 年8月8日 , 40/2016-Cus. (ADD)
Seamless tube 无缝钢管	Brazil 巴西	Affirmative ADD final finding 肯定性反倾销终裁	MOFCOM news, dated 22-7-2016 2016年7月22日 , 商务部新闻
Seamless tube 无缝钢管	Turkey 土耳其	Affirmative ADD final finding 肯定性反倾销终裁	MOFCOM news, dated 5-8-2016 2016年8月5日 , 商务部新闻
Sewing Machine Needles 缝纫针	India 印度	ADD extended till 21-6-2017 反倾销税延期至2017年6月21日	37/2016-Cus. (ADD), dated 4-8-2016 2016年8月4日 , 37/2016-Cus. (ADD)
Shoes 鞋类	Columbia 哥伦比亚	Negative ADD final finding 否定性反倾销终裁	MOFCOM news, dated 18-7-2016 2016年7月18日 , 商务部新闻
Sodium cyclamate 甜蜜素	EU 欧盟	ADD continued after sunset review 日 落复审继续征收反倾销税	Commission Implementing Regulation (EU) 2016/1160, dated 15-7-2016 2016年7月15日 , 欧盟委员会执行公告2016/1160号
Sodium Nitrite 亚硝酸钠	India 印度	ADD Sunset Review initiated and ADD extended till 16-8-2017 发起反倾销日 落复审并且反倾销 税延期至2017年8月16日	F.No. 15/6/2016-DGAD, dated 27-7-2016 and 39/2016-Cus. (ADD), dated 8-8-2016 2016年7月27日 , 15/6/2016-DGAD和 2016年8月8日 , 39/2016-Cus. (ADD)



Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Stainless Steel Sheet and Strip 不锈钢板和条	USA 美国	CVD – Preliminary affirmative determination of countervailing subsidy 反倾销-肯定性反补贴初裁	81 FR 46643 [C-570-043], dated 18-7-2016 2016年7月18日，81 FR 46643 [C-570-043]
Stainless steel tableware 不锈钢餐具	Peru 秘鲁	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 18-7-2016 2016年7月18日，商务部新闻
Steel Reinforcing Bar and Rod in Coils 钢筋	Australia 澳大利亚	Time granted to issue combined Statement of Essential Facts, extended 延期发布重要事实披露	Anti-dumping Notice No. 2016/70, dated 21-7-2016 2016年7月21日，反倾销公告第2016/70号
Steel wire rod 钢丝绳	Mexico 墨西哥	Affirmative ADD final finding 肯定性反倾销终裁	MOFCOM news, dated 29-7-2016 2016年7月29日，商务部新闻
Tapered roller bearings and parts thereof, finished and unfinished 圆锥滚子轴承及其零件	USA 美国	Affirmative change circumstance review 肯定性情势变更裁决	MOFCOM news, dated 19-7-2016 2016年7月19日，商务部新闻
Tapered roller bearings and parts thereof, finished and unfinished 圆锥滚子轴承及其零件	USA 美国	ADD new shipper review rescinded 取消反倾销新出口商复审	MOFCOM news, dated 20-7-2016 2016年7月20日，商务部新闻
Thermos 热水瓶	Brazil 巴西	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 22-7-2016 2016年7月22日，商务部新闻
Threaded tube or pipe cast fittings of malleable cast iron 可锻铸铁螺纹管或管铸铁连接件	EU 欧盟	ADD - Partial interim review terminated 反倾销-终止部分期中复审	Commission Implementing Regulation (EU) 2016/1176, dated 18-7-2016 2016年7月18日，欧盟委员会执行公告第2016/1176号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Viscose Staple Fibre excluding Bamboo Fibre 粘胶纤维	India 印度	ADD continued after sunset review 日落复审后继续反倾销税	43/2016-Cus. (ADD), dated 8-8-2016 2016年8月8日, 43/2016-Cus. (ADD)
Wire rod of alloy or non-alloy steel 合金或非合金盘条	India 印度	Time limit for submission of response extended till 19-8-2016 提交答卷期限延长至2016年8月19日	F.No. 14/17/2016-DGAD, dated 5-8-2016 2016年8月5日, 第14/17/2016-DGAD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
Grain Oriented Flat-rolled Electrical Steel 取向电工钢	Japan, Korea RP and EU 日本、韩国和欧盟	Affirmative ADD final finding 肯定性反倾销终裁	MOFCOM Announcement No. 33 of 2016, dated 23-7-2016 2016年7月23日，商务部公告 2016年第33号
Polycaprolactam 锦纶6切片	EU 欧盟	ADD mid-term review initiated 发起反倾销期中复审	MOFCOM Announcement No. 36 of 2016, dated 21-7-2016 2016年7月21日， 商务部公告2016年第36号
Pure Terephthalic Acid 精对苯二甲酸	Korea RP and Thailand 韩国和泰国	ADD continue after sunset review 日落复审后继续反倾销税	MOFCOM Announcement No. 37 of 2016, dated 10-8-2016 2016年8月10日，商务部公告 2016年第37号

WTO News 世贸组织新闻

美国和欧盟就中国对某些原材料的出口限制提出争端解决

2016年7月19日，欧盟通知WTO秘书处，请求与中国就中国对锑、铬、钴、铜、石墨、铟、铅、氧化镁、滑石、钽和锡的出口关税和其他措施进行磋商

(DS509)。欧盟称中国的关税、配额等限制与中国的入世承诺及其他WTO规则不一致，包括1994年关税和贸易总协定第11.1条。

值得注意的是欧盟的请求与美国在7月13日提出的争端案(DS508)类似。美国



的请求中不包括中国对铬和钼的限制。根据欧盟和美国在世贸组织中分发的文件，中国对上述原材料实施了各种形式的数量限制及出口关税。据称，中国的措施似乎与中国入世议定书不一致，因为中国并没有消除适用于这些产品出口的所有税收或费用，并且中国的出口关税与入世议定书附件6的条款不一致。

美国请求对印度的农产品争端案的仲裁进行报复

2016年7月19日，WTO的争端解决机构注意到各成员对印度执行DS430上诉专家组根据WTO规则做出的仲裁裁决方面的问题陈述。该争端案涉及印度因禽流感而对美国的各种农产品进口实施禁令。

美国称印度在规定的合理期间内没有更改或删除相关的某些农产品进口措施（DS430）。因此，美国要求DSB授权中止2016年对印度减让或其他义务，总计约4亿5千万美元。而印度认为它已经按照DSB的裁决遵守了相关措施并且在2016年7月8日发出正式公告。印度认为美国的暂停优惠要求没有法律依据，并认为美国对此应采取的适当程序是向合规专家组提出意见。

钢产品的保障措施调查

钢材已在很长一段时期内成为世界关

注的焦点。上个月，越南还启动了对预涂镀锌钢板和带钢的保障措施调查，南非开始对某些冷轧钢材产品的进口进行类似调查。

根据2016年8月1日保障措施委员会的文件G/SG/N/6/ZAF/5，涉案产品是铁或非合金钢或其他合金钢平扎产品，但不包括所有宽度的不锈钢、冷轧（冷延）、不涂覆，镀层或涂层并经进一步冷轧（冷延）的产品。调查已于2016年7月29日发起，为确定严重伤害的目的，调查期为2012年1月1日至2015年12月31日。

此外，越南于2016年7月6日对涂镀锌钢板及钢带发起保障措施调查。涉案钢铁产品范围包括预涂铝锌合金镀层钢板及钢带、预涂镀锌钢板及钢带、预涂冷轧钢板及钢带、PPGL, PPGI和PPCR。

约旦对铝棒、铝条和型材发起保障措施调查

2016年7月24日，约旦发起了对进口铝棒，棒材和型材的保障措施调查，涉案产品覆盖约旦关税税则号7604项下的产品。调查机构分析了从2010到2015年调查期间铝棒材、棒材和型材的进口数据。

Statutory Update 法律更新

印度取消对众多铁和钢材产品最低进口价格的要求

根据世贸组织总干事2016年7月25日发布的相关贸易进展的年中报告，敦促世贸

组织成员抵制贸易保护主义，推动贸易复苏，印度取消了对众多铁和钢材产品最低进口价格（MIP）的限制。列明的强制性实施最低进口价格的产品已经从ITC(HS)分类



第72章中的173个产品减至66个产品。值得注意的是，173个产品在2016年2月5日至2016年8月4日期间被采取的进口限制。根据印度商务部对外贸易总干事于2016年

8月4日发布的新公告20/2015-20，允许对指定的66个产品实施2个月的最低进口价格限制。而根据印度对外贸易政策事前许可制度下的进口则免除相关要求。

Ratio Decidendi 判决理由

反倾销税-市场经济地位采纳的时限

欧盟法院认为，欧盟基本法第2(7) (c) 条规定的确定市场经济待遇（MET）的三个月的期限不构成欧盟当局的一个选则，而是一个要求。对此，法院指出，如果把在三个月期限确定市场经济待遇的要求视为是一个选择，则违背了相关法律，因为在相关法律中并没有如此规定，而该法律是在争议的裁决作出之日通过的。法院拒绝了调查机关认为它无法更早对出口商进行核查访问，因而导致延迟。

可以指出2012年12月15日修改的基本法规定市场经济的认定通常可以在7个月内作出，但在任何情况下不应迟于发起调查后的8个月内。考虑到修订条例的追溯效力，法院认为，程序规则一般都自生效之日起适用，因为不同于实质性规则，需要根据条款、目标或总体情况考虑在生效前的情形是否适用。法院认为从修改后的基本法来看，这样的溯及力的措辞并不明确。

然而，法院认为没有按照规定的期限完成市场经济的认定不能自动导致争议的裁决被取消，特别是申请人的答辩权利事实

上未受到不利影响，法院驳回了欧盟基本法第2(7)条的侵权主张。法院指出，申请人无法建立如果市场经济裁决在规定的时限内通过，程序可能有一个不同的结果，因此，申请人的辩护权实际上没有受到不遵守该时间限制的不利影响。*[Jinan Meide Casting Co. Ltd. 诉欧盟 – 2016年6月30日欧盟法院裁决，案件号T-424/13]*

反倾销-未向出口商提供正常价值计算是重大错误

欧盟法院取消2013年5月13日欧盟委员会执行公告第430/2013号，即对原产于中国和泰国的可锻铸铁螺纹管和铸铁配件的进口征收反倾销税。就印度尼西亚的程序而言，其适用于指定的出口国（上诉人）的程序也被终止，并且欧盟委员会承担成本。上诉人认为声称，欧盟机构在获得参照国生产商授权后拒绝出口商查看这些正常价值计算违反了欧盟基本法第20(2)和(4)条。

即使在参照国生产商已同意提供数据的情况下，欧盟调查机关拒绝披露，上诉人认为这样的做法违反了对包括被抽样企



业在内的其他中国出口生产商的非歧视原则。法院在这方面指出，欧盟调查机关主张根据基本法第19(5)条不能因为一个特定的利害关系方而放弃信息的保密性。

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