

## 国际贸易 法律月刊

### 内容

#### 文章

印度反补贴法 ..... 2

#### 贸易救济新闻

对中国采取的贸易救济措施 ..... 5

中国采取的贸易救济行动 ..... 11

世贸组织新闻 ..... 11

判决理由 ..... 12

December  
2015

## Article

### Countervailing duty laws in India

#### 印度的反补贴法

By **Radhika Sharma**

India has finally opened its account by concluding its first Countervailing Duty (“CVD”) investigation with the issuance of the final findings<sup>1</sup> in the CVD investigation concerning “Castings for Wind Operated Electricity Generators” from China PR. However, this has brought to light the fact that certain provisions of the Indian law relating to imposition of Countervailing Duty, are not in conformity with the Agreement on Subsidy and Countervailing Measures (“ASCM”)

#### Understanding subsidies

Subsidy is defined as the benefits that come from outside a business or firm<sup>2</sup>. Subsidies are usually granted by the Government in order to promote economic, social and political policy.<sup>3</sup> Such subsidies have varying impact on the domestic industry of the importing country. So, in order to keep the domestic producers at par with the foreign producers, who have benefitted from a subsidy provided by their respective government, countervailing duty (CVD) investigations are carried out for imposing a duty to countervail the subsidies bestowed upon the imported products. In any such CVD investigation, the primary task is to examine whether the alleged subsidies are

counteravailable in terms of the provisions of the ASCM.

#### Non-actionable subsidies under ASCM

Article VI of GATT 1947 regulates the imposition of Anti-dumping Duties and Countervailing Duties. Part-V of the ASCM provides the provisions governing the investigation of countervailable subsidies and the levy of countervailing duty. At the time of coming into force of the ASCM, it recognised three types of subsidies, viz., Prohibited (Part –II), Actionable (Part –III) and Non-actionable (Part- IV).

Prohibited subsidies include export subsidies and subsidies for import substitution (i.e. use of domestic over imported goods). Actionable subsidies included subsidies that would cause or threaten material injury to the domestic industry of other member, or nullify or impair benefits accruing directly or indirectly to other members, or cause serious prejudice to other members<sup>4</sup>. Non-actionable subsidies are not countervailable. In terms of Article 8 of the ASCM, non-actionable subsidies included subsidies that were not specific under Article 2 of the ASCM and also subsidies for research

<sup>1</sup> Final findings No. 17/6/2013-DGAD, dated 27th November 2015

<sup>2</sup> The World Trade Organization, by Mitsupatsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, Chapter- 12.

<sup>3</sup> Be Sodersten and Geoffrey Reed, In International Economic 299 (3rd Edition)

<sup>4</sup> Article 5 of ASCM

and development, subsidies for assistance to dis-advantageous region and subsidies for new environmental requirements.<sup>5</sup>

When the ASCM agreement was signed, Article 8 of the said Agreement, dealing with non-actionable subsidies, was applied provisionally for five year period in terms of Article 31 of the ASCM. Article 31 provided that not later than 180 days before the end of the said five year period, the Committee shall review the operation of those provisions, with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period. However, the provisions of Article 8 were not extended as no consensus was reached between the members<sup>6</sup> for extension or modification of the said provision. Thus, the category of non-actionable subsidies ceased to exist as of 31 December 1999, as per ASCM Article 31<sup>7</sup>.

### **Non-actionable subsidies under Indian law**

Indian law relating to imposition of CVD is contained in Section 9 of the Customs Tariff Act 1975 (the “Act”) and the Customs Tariff (Identification, Assessment, and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (the “CVD Rules”). Section 9, sub-clause (3) of the Act, provides that the Central Government shall not levy countervailing duty unless it is determined that the subsidies

are – (a) export oriented, or (b) contingent upon use of domestic goods over imported ones or (c) conferred on limited number of persons engaged in manufacturing, producing and exporting the article. Further, clause (c) of sub-section (3) of Section 9 dealing with the determination of specificity of subsidies in question, provides that duty shall not be imposed if, the subsidy is falling under Section 9(3)(c) if it is for (a) research activities conducted by or on behalf of persons engaged in the manufacture, production or exporting; or (b) assistance to disadvantaged regions within the territory of the exporting country; or (c) assistance to promote adaptation of existing facilities to environmental requirements. Thus, the concept of non-actionable subsidies is fully incorporated in the Indian laws.

Apart from the express prohibition contained in Section 9(3)(c) of the Act, an indirect reference may also be found in the CVD Rules. Rule 4(i) enjoins a duty on the designated authority to determine the nature and amount of subsidy. Rule 11 provides that the Authority, need not ascertain as to the nature of subsidies if they are related to (a) Research activities conducted by or on behalf of persons engaged in the manufacture, production or exporting; or (b) Assistance to disadvantaged regions within the territory of the exporting country; or (c) assistance to promote adaptation of existing facilities to environmental requirements.

<sup>5</sup> Article 8

<sup>6</sup> [www.wto.org](http://www.wto.org)

<sup>7</sup> WTO Trade Remedies, by RiidigerWolfrum, Peter Tobias Stoll and Michael Loebele, Volume-4, 2008.

Without examining whether the subsidies are specific within the meaning of Article 2 of ASCM, no CVD can be levied in respect thereof. Accordingly, by excluding the three types of subsidies from the scope of the specificity analysis, the Indian laws effectively provide a window for excluding non-actionable subsidies from the levy of CVD.

Section 9(3)(c) of the Customs Tariff Act, 1975 and the relevant CVD Rules mentioned above were enacted with effect from 1-1-1995, by Section 2, of the Customs Tariff (Amendment) Act, 1994 (12 of 1994), the said provision have not however been amended in keeping with the existing provisions on non-actionable subsidies under the ASCM. Despite the fact that the WTO law no longer recognises non-actionable subsidies, the Indian law continues to recognise them under Section 9(3) of the Customs Tariff Act 1975. This provision is more beneficial to other Members of the WTO and therefore, none of them have raised any objections.

### **Status of non-actionable subsidies in USA and EU**

The USA has already amended its provisions in compliance with the SCM Agreement<sup>8</sup>. The said law for U.S. expired on July 1, 2000, under Section 282(2)(c) of URAA, provides that sub-paragraph B, C, D and E of Section 771 of the Tariff Act 1930<sup>9</sup>, which established the non-countervailable status of “non-

actionable subsidy” under U.S. law expires 66 months after the date of entry into force of the WTO unless extended by Congress.

Similarly, the EU has also amended its provisions for non-actionable subsidy vide document No. Com (2002) 468 final, dated 19.08.2002, amending EU Council Regulation (EC) No 2026/97 of 6 October 1997<sup>10</sup>. In its preamble, EC stated the rationale for making the amendment in the following words:

*“Article 4 of Regulation (EC) No 2026/97 provides that certain subsidies for environment, research and regional development are non-countervailable. Furthermore, Article 10 (5) and (6) of that Regulation state that investigations can be initiated to determine whether subsidies have such non-countervailable status or must not be initiated if they relate to certain non-countervailable subsidies. The corresponding provisions in the WTO Agreement on Subsidies and Countervailing Measures were due to expire on 31 December 1999 unless the Members of the WTO decided otherwise. No such decision has been taken and therefore the relevant provisions do not apply anymore. Accordingly, it is necessary to assess whether the provisions on non-countervailable subsidies in Regulation (EC) No 2026/97 should be maintained. **In this respect, major trading partners of the Community no longer apply these provisions in their countervailing investigations. In view of this, and in order***

<sup>8</sup> Overview and compilations of U.S. Trade statutes Part I and II, 2010 Edition, 111th Congress 2nd Session

<sup>9</sup> U.S. Code § 1677 (5B)-(G)

<sup>10</sup> By Regulation (EC) No 2026/97 of 6 October 1997, the Council adopted common rules for protection against subsidised imports from countries which are not members of the European Communities.

**to maintain the balance of rights and obligations under the WTO Agreement on Subsidies and Countervailing Measures, it is considered appropriate to repeal the provisions of Regulation (EC) No 2026/97 relating to non-countervailable subsidies.”**

The reasons stated by EC are equally applicable to India. The continuation of non-actionable subsidies in India’s statute books causes harm to the Indian domestic producers.

They will not be able to get countervailing duties imposed to remedy the injurious effect of such subsidies. Further, the balance of rights and obligations undertaken by India under the ASCM also become skewed. There is a strong case for amending the law, especially Section 9(3) and the corresponding provision under the CVD Rules, to be in line with India’s WTO obligations under the ASCM.

**[The author is an 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措施

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Aluminum Extrusions 铝型材	USA 美国	Final Affirmative Countervailing Duty Determination amended pursuant to Court decision 根据法院裁决修改最终肯定性补贴税裁决	80 FR 69640[C-570-968], dated 10-11-2015 2015年11月10日 , 80 FR 69640[C-570-968]
Aluminum Road Wheel 铝制车轮	Australia 澳大利亚	ADD and CVD accelerate review initiated 发起反倾销和反补贴快速复审	MOFCOM news, dated 10-12-2015 2015年12月10日 , 商务部新闻
Bulldozer 推土机	Eurasian Economic Commission 欧亚经济委员会	Affirmative ADD final finding 肯定性反倾销最终裁决	MOFCOM news, dated 18-11-2015 2015年11月18日 , 商务部新闻
Carbazole Violet Pigment 咔唑紫颜料	USA 美国	Antidumping Duty Order continued after sunset review 日落复审后继续反倾销税令	80 FR 71773 [A-570-892], dated 17-11-2015 2015年11月17日 , 80 FR 71773 [A-570-892]
Carbon black used in rubber applications 橡胶用碳黑	India 印度	Definitive anti-dumping duty continued after sunset review 日落复审后继续最终反倾销税	54/2015-Cus. (ADD), dated 18-11-2015 2015年11月18日 , 54/2015-Cus. (ADD)



Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Castings for Wind Operated Electricity Generators 风力发电机组铸件	India 印度	Definitive countervailing duty recommended 建议最终反补贴税	F No. 17/6/2013-DGAD, dated 27-11-2015 2015年11月27日, F No. 17/6/2013-DGAD
Cold-Rolled Steel Flat Products 冷轧钢板产品	USA 美国	Preliminary determinations of anti-dumping duty investigations, postponed 延期发布反倾销临时裁决	80 FR 74764 [A-570-029], dated 30-11-2015 2015年11月30日, 80 FR 74764 [A-570-029]
Concrete steel nail 混凝土钢钉	Mexico 墨西哥	Definitive anti-dumping duty continued after sunset review 日落复审后继续最终反倾销税	MOFCOM news, dated 17-11-2015 2015年11月17日, 商务部新闻
Crystalline silicon photovoltaic modules and key components 光伏产品	EU 欧盟	Initiation of ADD and CVD sunset review 发起反倾销和反补贴日落复审	2015/C 405/08, dated 5-12-2015 and 2015/C 405/09, dated 4-12-2015 2015年12月5日 2015/C 405/08和 2015年12月4日, 2015/C 405/09
Crystalline silicon photovoltaic modules and key components 光伏产品	EU 欧盟	Initiation of a partial interim review of the anti-dumping and countervailing measures 发布反倾销和反补贴部分期中复审	2015/C 405/10, dated 5-12-2015 2015年12月5日, 2015/C 405/10
Crystalline silicon photovoltaic modules and key components 光伏产品	EU 欧盟	Terminated two producers' price undertaking 取消两家生产商价格承诺	MOFCOM news, dated 13-11-2015 2015年11月13日, 商务部新闻
Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip 热轧碳和合金钢板	Canada 加拿大	Initiation of sunset review 发起日落复审	CBSA Release dated 8-12-2015 2015年12月8日, 加拿大边境服务署发布
Flat-rolled steel plate 平轧钢板	Brazil 巴西	Initiated anti-circumvention interim review 进行反规避复审调查	MOFCOM news, dated 11-11-2015 2015年11月11日, 商务部新闻
Glazed aluminum zinc plate 镀铝锌板	Australia 澳大利亚	Terminated ADD on certain products 终止某些产品的反倾销税	MOFCOM news, dated 30-11-2015 2015年11月30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
Gliclazide 格列齐特	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	59/2015-Cus (ADD), dated 8-12-2015 2015年12月8日, 59/2015-Cus (ADD)
Grinding Balls 研磨球	Australia 澳大利亚	Initiation of an investigation intodumping and subsidization 发起反倾销和反补贴调查	ADN 2015/132, dated 17-11-2015 2015年11月17日, ADN 2015/132
High tenacity yarn of polyesters 聚酯高强力纱	EU 欧盟	Initiation of ADD sunset review 发起反倾销日落复审	2015/C 397/05, dated 28-11-2015 2015年11月28日, 2015/C 397/05
Hot-rolled steel plate 热轧板	India 印度	Safeguard investigation imitated 发起保障措施调查	MOFCOM news, dated 9-12-2015 2015年12月9日, 商务部新闻
Hydrofluorocarbon BlendsandComponents Thereof 氢氟混合物和组成 成分	USA 美国	Postponement of preliminary determination of Anti-dumping duty investigation 延期发布反倾销临时裁决	80 FR 70755[A-570-028], dated 16-11-2015 2015年11月16日, 80 FR 70755[A-570-028]
Hydrogen peroxide 过氧化氢	Pakistan 巴基斯坦	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 10-12-2015 2015年12月10日, 商务部新闻
IronMechanicalTransfer Drive Components 机械传输组件	USA 美国	CVD investigation initiated 发起反补贴调查	80 FR 73722[C-570-031], dated 25-11-2015 2015年11月25日, 80 FR 73722[C-570-031]
IronMechanicalTransfer Drive Components 机械传输组件	USA 美国	ADD - Initiation of Less-than-Fair-Value investigations	80 FR 73716 [A-570-032], dated 25-11-2015 2015年11月25日, 80 FR 73716 [A-570-032]
Linear Alkyl Benzene 直链烷基苯	India 印度	ADD investigation initiated 发起反倾销调查	No. 14/20/2015-DGAD, dated 7-12-2015 2015年12月7日, No. 14/20/2015-DGAD

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Magnesia Carbon Bricks 镁碳砖	USA 美国	Affirmative CVD sunset review 肯定性反补贴日落复审裁决	80 FR 75971[C-570-955], dated 7-12-2015 2015年12月7日, 80 FR 75971[C-570-955]
Magnesia Carbon Bricks 镁碳砖	USA 美国	Affirmative ADD sunset review 肯定性反倾销日落复审裁决	80 FR 76447 [A-570-954], dated 9-12-2015 2015年12月9日, 80 FR 76447 [A-570-954]
Melamine 密胺	India 印度	Continuation of ADD recommended in sunset review 日落复审建议继续征收反倾销税	F. No. 15/17/2014-DGAD, dated 5-12-2015 2015年12月5日, F. No. 15/17/2014-DGAD
Melamine Tableware and Kitchenware 密胺餐具	India 印度	Definitive anti-dumping duty imposed 征收最终反倾销税	55/2015-Cus. (ADD), dated 4-12-2015 2015年12月4日, 55/2015-Cus. (ADD)
Methylene Chloride 二氯甲烷	India 印度	Preliminary anti-dumping duty imposed 征收临时反倾销税	58/2015-Cus (ADD), dated 8-12-2015 2015年12月8日, 58/2015-Cus (ADD)
Mulberry raw silk (not thrown) of grade 3A 3A级及以下桑蚕丝 (未加捻)	India 印度	Definitive anti-dumping duty recommended 建议征收最终反倾销税	F. No. 14/17/2014-DGAD, dated 4-12-2015 2015年12月4日, F. No. 14/17/2014-DGAD
Narrow Woven Ribbons With Woven Selvedge 带织边窄幅织带	USA 美国	Affirmative CVD sunset review 肯定性反补贴日落复审裁决	80 FR 75967[C-570-953], dated 7-12-2015 2015年12月7日, 80 FR 75967[C-570-953]
Narrow Woven Ribbons With Woven Selvedge 带织边窄幅织带	USA 美国	Affirmative ADD sunset review 肯定性反倾销日落复审裁决	80 FR 76266[A-570-952], dated 8-12-2015 2015年12月8日, 80 FR 76266[A-570-952]
Offset ink 胶印油墨	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 9-12-2015 2015年12月9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
Petroleum Wax Candles 石蜡蜡烛	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 75064 [A-570-504], dated 1-12-2015 2015年12月1日, 80 FR 75064 [A-570-504]
Phthalic anhydride 邻苯二甲酸	Pakistan 巴基斯坦	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 10-12-2015 2015年12月10日, 商务部新闻
Pipe fittings 管配件	Argentina 阿根廷	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 1-12-2015 2015年12月1日, 商务部新闻
Plastic processing or injection moulding machines 塑料加工机械	India 印度	Definitive anti-dumping duty continued after sunset review 日落复审后继续最终反倾销税	57/2015-Cus. (ADD), dated 4-12-2015 2015年12月4日, 57/2015-Cus. (ADD)
Polyester staple fiber 涤纶短纤维	Pakistan 巴基斯坦	Affirmative ADD preliminary determination 肯定性反倾销终裁	MOFCOM news, dated 9-12-2015 2015年12月9日, 商务部新闻
Offset ink 胶印油墨	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 9-12-2015 2015年12月9日, 商务部新闻
Polyethylene terephthalate 聚对苯二甲酸乙 二醇	EU 欧盟	Initiation of ADD sunset review 发起反倾销日落复审	2015/C 376/09, dated 13-11-2015 2015年11月13日, 2015/C 376/09
Polyethylene terephthalate 聚对苯二甲酸乙 二醇	Egypt 埃及	Terminated ADD and CVD investigations 终止反倾销和反补贴调查	MOFCOM news, dated 20-11-2015 2015年11月20日, 商务部新闻
Preserved Mushrooms 蘑菇罐头	Australia 澳大利亚	Anti-dumping measures revoked 取消反倾销措施	ADN 2015/134, dated 26-11-2015 2015年11月26日, ADN 2015/134
Purified Terephthalic Acid 精对苯二甲酸	India 印度	Provisional anti-dumping duty recommended 建议临时反倾销税	F. No. 14/8/2015-DGAD, dated 12-11-2015 2015年11月12日, F. No. 14/8/2015-DGAD

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Purified Terephthalic Acid 精对苯二甲酸	India 印度	Preliminary anti-dumping duty imposed 征收临时反倾销税	60/2015-Cus (ADD), dated 10-12-2015 2015年12月10日 , 60/2015-Cus (ADD)
Radial tyres for trucks 载重汽车轮胎	Eurasian Economic Commission 欧亚经济委员会	Imposed ADD duty 征收反倾销税	MOFCOM news, dated 25-11-2015 2015年11月25日 , 商务部新闻
Seamless steel tube 无缝钢管	EU 欧盟	Affirmative final finding after sunset review 日落复审肯定性终裁	MOFCOM news, dated 9-12-2015 2015年12月9日 , 商务部新闻
Steel bar 钢筋	Australia 澳大利亚	Product scope was amended 修改产品范围	MOFCOM news, dated 1-12-2015 2015年12月1日 , 商务部新闻
Steel wire 钢丝绳和钢缆	EU 欧盟	Initiated anti-circumvention interim review 进行反规避期中复审调查	MOFCOM news, dated 27-11-2015 2015年11月27日 , 商务部新闻
Steel Grating 钢格板	USA 美国	Antidumping Duty Order and Countervailing Duty Order continued after sunset review 日落复审反倾销税和反补贴税	80 FR 69940[A-570-947; C-570-948], dated 12-11-2015 2015年11月12日 , 80 FR 69940[A-570-947; C-570-948]
Steel grating 钢格板	Canada 加拿大	Determination that expiry will result in continuation or resumption of dumping and subsidizing 裁决取消将导致倾销和补贴继续或再次发生	CBSA Release dated 10-12-2015 2015年12月10日 , 加拿大边境服务署发布
Steel Rod in Coils 线圈棒	Australia 澳大利亚	Preliminary determination of dumping 倾销临时裁决	ADN 2015/142, dated 27-11-2015 2015年11月27日 , ADN 2015/142
Threaded tube or pipe cast fittings, of malleable cast iron 可锻铸铁螺纹管和接头	EU 欧盟	Initiation of a partial interim review of ADD measures 发起反倾销部分期中复审	2015/C 392/10, dated 25-11-2015 2015年11月25日 , 2015/C 392/10

## Trade remedy actions 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
Ethanol amine 乙醇胺	Japan, USA, Malaysia and Taiwan 日本、美国、马来西亚和台湾地区	Terminated ADD measures 终止ADD措施	MOFCOM Announcement No. 46 of 2015, dated 12-11-2015 2015年11月12日，商务部2015年第46号公告
Iron-based Amorphous Alloy Ribbon (Strip) 铁基非晶合金带材	Japan and USA 日本和美国	ADD investigation initiated 发起反倾销调查	MOFCOM Announcement No. 61 of 2015, dated 20-11-2015 2015年11月20日，商务部2015年第61号公告
Methyl methacrylate 甲基丙烯酸甲酯	Singapore, Thailand and Japan 新加坡、泰国和日本	Definitive ADD imposed 征收最终反倾销税	MOFCOM Announcement No. 60 of 2015, dated 2-12-2015 2015年12月2日，商务部2015年第60号公告

## WTO News 世贸组织新闻

### 世贸组织就哥伦比亚对纺织品服装案发布专家组报告

2015年11月27日，世贸组织对巴拿马提出的“哥伦比亚—与纺织品、服装和鞋类进口有关的措施”案发布了专家组报告(WT/DS/461)。专家组认为，按照第61、62、63和64章进口产品的分类，哥伦比亚超出了其在GATT 1994第2.1(a)条和(b)条第一句话中所做的减让承诺，对这些产品在一般关税的基础上征收复合关税，因此不符合1994年关税与贸易总协定第II:1(b)条的第一句话。专家组还进一步认为上述关税不符合1994年关税与贸易总协定第II:1(a)条，因为这样的做法削弱了哥伦比亚设想的减让承诺的优惠。这些措

施也被认为并不是符合哥伦比亚反洗钱法保护公共道德或安全所必须的。专家组进一步指出，这些措施适用于合法以及非法贸易，专家组没有发现1994年关税与贸易总协定的第II条是否适用于“非法贸易”。

### 美国原产地标签案-发布仲裁裁决

世贸组织仲裁员确定加拿大因美国原产地标签措施而受到的年度利益丧失或减损水平积累为10547290000加元。同样，对于墨西哥的利益减损水平为227758000美元的范围。2015年12月7日发布的报告还允许加拿大和墨西哥向争端解决机构请求授权在上述范围内暂停1994年关税和贸易总协定商品中的关税减让和相关义务。DS384与DS386争端案的过程很有

趣，该案于2008年12月寻求磋商，2011年11月发布了第一次专家组报告，认为美国的措施不符合其在世贸组织的义务也违反了技术性贸易壁垒协议第2.1条。在2012年发布了上诉机构的报告后，仲裁员确定执行争端解决机构建议的合理时间。执行专家组成立于2013年9月。目前就报复程度进行的仲裁开始于今年5月后上诉机构执行程序报告发布后。

### 执行专家组就美国与墨西哥的吞拿鱼案发布报告

另一个技术性贸易壁垒争端案(DS381)发源于2008年，争端解决机构的上诉机构于2015年11月20日向世贸组织成员发布了有关美国和墨西哥之间争端的执行程序报告。墨西哥曾声称美国根据原始程序的专家组和上诉机构报告建议所做的修改措

施(海豚-安全标签要求)仍然违反技术性贸易壁垒协议第2.1条、1994年关税与贸易总协定第I:1条和第三条。上诉机构推翻了专家组的认定，并认为合格标准给予墨西哥金枪鱼产品比从美国和源自其他任何国家的同类产品更少的优惠待遇。上诉机构认为修改后的措施改变了墨西哥金枪鱼产品在美国市场的竞争条件并造成损害。

### 阿富汗加入世贸组织一揽子协议欲被正式接受

2015年11月11日，世贸组织成员对由世贸组织成员国达成共识的阿富汗加入世贸组织进行谈判。自1995年以来，该决定是对第9个最不发达国家加入世贸组织铺平了道路。阿富汗的入世一揽子协议将被提交给部长并且在本月内罗毕的世贸组织会议中做出正式决定。

## Ratio Decidendi 判决理由

### 反倾销税-单独税率和规避的风险

欧盟常设法院(第七法庭)已取消2013年5月29日欧盟委员会第502/2013号关于修改执行第990/2011号决定的决定。2011年决定是关于对来自中国的自行车征收最终反倾销税。经过期中复审，该决定被2013年的决定修改，修改后决定否定了上诉人的单独税率资格，并且要求他们按照国家普遍的反倾销税率清关。对此法院认为，调查机关不能只凭“关联公司”的概念，根据一个假设性的风险规避而拒绝授予单独反倾销税。法院指出，风险规避是适用单独反倾销税率的非常基础的原则，因为，即使不考虑各个公司之间的任何联系，这些公司可能会自发通过一个渠道通过被授

予最低关税税率的公司出口。法院进一步认为，根据许多世贸组织报告，单独反倾销税的征收可能并不能有效打击倾销的风险本身不能证明对出口生产商使用普遍税率的正当性。

欧盟法院也注意到尽管上诉人-出口商在与另一集团(就调查机关所知，也与涉案产品有关)的合资公司中退股的证据是在很晚的时候，也就是在接受所争议的决定的40天前才与调查机关沟通，然而同样的情况是请过确认的，而不管调查是否进行到后期阶段。

早些时候，欧盟调查机关拒绝授予申请人单独税率，理由是申请人拒绝提供集团



必要的信息以及在复审调查期间的金山集团中各个公司生产和向欧盟出口涉案产品的数量与金额的必要信息。调查机关认为GP公司作为集团的子公司之一，其在复审调查期间积极参与涉案产品的生产和向欧盟出口，而该公司与另一集团的公司存

在关联关系，并且后者也从事涉案产品的生产和销售。然而法院认为，除了GP公司以外，金山集团中从事涉案产品生产的任何一家子公司均与申请人不存在关联。[捷安特(中国)有限公司诉欧盟委员会—2015年11月26日，T-425/13裁决]

#### NEW DELHI

5 Link Road,  
Jangpura Extension,  
Opp. Jangpura Metro Station,  
New Delhi 110014  
---  
B-6/10, Safdarjung Enclave  
New Delhi - 110 029  
Phone : +91-11-4129 9811  
E-mail : [lsdel@lakshmisri.com](mailto:lsdel@lakshmisri.com)

#### MUMBAI

2nd floor, B&C Wing,  
Cnergy IT Park,  
Appa Saheb Marathe Marg,  
(Near Century Bazar)Prabhadevi,  
Mumbai - 400025.  
Phone : +91-22-24392500  
E-mail : [lsbom@lakshmisri.com](mailto:lsbom@lakshmisri.com)

#### CHENNAI

2, Wallace Garden,  
2nd Street  
Chennai - 600 006  
Phone : +91-44-2833 4700  
E-mail : [lsmds@lakshmisri.com](mailto:lsmds@lakshmisri.com)

#### BENGALURU

4th floor, World Trade Center  
Brigade Gateway Campus  
26/1, Dr. Rajkumar Road,  
Malleswaram West, Bangalore-560 055.  
Ph: +91(80) 49331800  
Fax: +91(80) 49331899  
E-mail : [lsblr@lakshmisri.com](mailto:lsblr@lakshmisri.com)

#### HYDERABAD

'Hastigiri', 5-9-163, Chapel Road  
Opp. Methodist Church, Nampally  
Hyderabad - 500 001  
Phone : +91-40-2323 4924  
E-mail : [lshyd@lakshmisri.com](mailto:lshyd@lakshmisri.com)

#### AHMEDABAD

B-334, SAKAR-VII,  
Nehru Bridge Corner, Ashram Road,  
Ahmedabad - 380 009  
Phone : +91-79-4001 4500  
E-mail : [lsahd@lakshmisri.com](mailto:lsahd@lakshmisri.com)

#### PUNE

607-609, Nucleus, 1 Church Road,  
Camp, Pune - 411 001. Maharashtra  
Phone : +91-20-6680 1900  
E-mail : [lpune@lakshmisri.com](mailto:lpune@lakshmisri.com)

#### KOLKATA

2nd Floor, Kanak Building  
41, Chowringhee Road, Kolkatta-700071  
Phone : +91-33-4005 5570  
E-mail : [lskolkata@lakshmisri.com](mailto:lskolkata@lakshmisri.com)

#### CHANDIGARH

1st Floor, SCO No. 59, Sector 26,  
Chandigarh - 160026  
Phone : +91-172-4921700  
E-mail : [lschd@lakshmisri.com](mailto:lschd@lakshmisri.com)

#### GURGAON

OS2 & OS3, 5th floor,  
Corporate Office Tower,  
AMBIENCE Island, Sector 25-A,  
Gurgaon- 122001  
Phone: +91- 0124 - 477 1300  
Email: [lsgurgaon@lakshmisri.com](mailto:lsgurgaon@lakshmisri.com)

#### EUROPE

Lakshmikumaran & Sridharan SARL  
35-37, Avenue Giuseppe Motta, 1202 Geneva  
Phone : +41-22-919-04-30  
Fax: +41-22-919-04-31  
E-mail : [lsgeneva@lakshmisri.com](mailto:lsgeneva@lakshmisri.com)

**免责声明：** 国际贸易法律月刊旨在提供信息，而不是为了提出建议或法律意见。我们提供信息的目的是为了建立律师-客户关系，也不是为了宣传或招揽业务。Lakshmikumaran&Sridharan律师事务所没有企图通过此新闻简报宣传其服务或招揽业务。Lakshmikumaran&Sridharan律师事务所和其律师对在本新闻简报中出现的任何错误或疏漏或者对基于该内容采取的任何行动不承担任何责任。本新闻简报的文章中所表达的观点系作者个人观点。主动向Lakshmikumaran&Sridharan发出的邮件或信息将不被采取保密措施并且不构成与Lakshmikumaran&Sridharan之间的律师-客户关系。本期所包含的新闻截至2015年12月10日。取消订阅邮件请发至[newslettertrade@lakshmisri.com](mailto:newslettertrade@lakshmisri.com)

[www.lakshmisri.com](http://www.lakshmisri.com)

[www.addb.lakshmisri.com](http://www.addb.lakshmisri.com)

[www.lakshmisri.cn](http://www.lakshmisri.cn)

[www.lakshmisri.ch](http://www.lakshmisri.ch)