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Article 文章

Consistency between Indian Domestic Law and WTO:ADA to be maintained

印度国内法与世贸组织法律的一致性：需要维护反倾销协议

By **Atul Gupta**

Article II of the GATT, 1994 provides that a Member country shall follow MFN principle. Article II.2 provides for exception to the MFN principles. One of such exception permits imposition of Anti-dumping Duty in terms of Article VI of the GATT, 1994. Article VI of GATT 1994 provides for imposition of Anti-dumping Duty on fulfilment of certain conditions. WTO Members also entered into an Agreement on implementation of Article VI of the GATT, 1994 (known as WTO:ADA) which in:

- (i) Article 1 provides that the provisions contained in the Agreement will govern the application of Article VI of GATT 1994 in so far as action is taken under Anti-dumping legislation or regulations;
- (ii) Article 18.1 reiterates that no specific action against dumping from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this agreement;
- (iii) Article 18.4 provides that each Member shall take all necessary steps, of general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as

they may apply for the Member in question.

Therefore, if any law, regulation or administrative action adversely affects interest of a producer or exporter of another Member, then such law, regulation or administrative action should be in conformity with the GATT, 1994 as well as WTO: ADA. However, a Member is at liberty to have more onerous law, regulation or administrative action for its subjects which does not adversely affect the interest of a producer or exporter of another Member. Such instances may be like:

- (a) a sunset review may be conducted within a period shorter than 5 years;
- (b) investigation shall be completed within a period shorter than one year, if it does not affect the time required by a producer or exporter to file response and make preparation for onsite verification;
- (c) mandating for acceptance of domestic sales price in the exporting country as normal value though such sales price is below the cost of production.

In the above background, the Supreme Court of India had an occasion to interpret the legal provisions relating to imposition of definitive anti-dumping duty retroactively.

Indian investigating authority takes almost

18 months time to complete most of the investigations, though the Indian law, in line with Article 5.10 of the WTO:ADA, stipulates that the investigations shall be concluded within a period of one year. It is however provided that only in “special circumstances” the period to conclude investigation may be extended by a further period of six months. The exception to extend the period by six months has been used as a rule by the Indian investigating authority without disclosing any special circumstance. Such extension of the time period of investigation has created a problem as to how to protect the Domestic Industry during the interregnum, i.e. “gap period” between the date when provisional duty expires after six months of its imposition and the date when the definitive duty is imposed.

In these circumstances, the Central Government tried to achieve the goal of protecting the Domestic Industry during such interregnum by imposing definitive anti-dumping duty from the date of imposition of provisional anti-dumping duty. The Customs authorities were recovering anti-dumping duty on imports which had entered into India during the interregnum because according to them anti-dumping duty was imposed with retrospective effect and there is no hiatus provided in the Indian legal provisions or in the notifications which imposed anti-dumping duty.

Certain importers raised the dispute about such illegal action of the customs authorities and

the matter reached the Supreme Court of India for interpretation and decision. The Apex Court after referring to various previous authorities, summarized the principles for interpretation of a domestic law where a corresponding international treaty or agreement exists:

- (1) Article 51(c) of the Constitution of India is a Directive Principle of State Policy which states that the State shall endeavour to foster respect for international law and treaty obligations. As a result, rules of international law which are not contrary to domestic law are followed by the courts in this country. This is a situation in which there is an international treaty to which India is not a signatory or general rules of international law are made applicable. It is in this situation that if there happens to be a conflict between domestic law and international law, domestic law will prevail.
- (2) In a situation where India is a signatory nation to an international treaty, and a statute is passed pursuant to the said treaty, it is a legitimate aid to the construction of the provisions of such statute that are vague or ambiguous to have recourse to the terms of the treaty to resolve such ambiguity in favour of a meaning that is consistent with the provisions of the treaty.
- (3) In a situation where India is a signatory

nation to an international treaty, and a statute is made in furtherance of such treaty, a purposive rather than a narrow literal construction of such statute is preferred.

- (4) The interpretation of such a statute should be construed on broad principles of general acceptance rather than earlier domestic precedents, being intended to carry out treaty obligations, and not to be inconsistent with them.
- (5) In a situation in which India is a signatory nation to an international treaty, and a statute is made to enforce a treaty obligation, and if there be any difference between the language of such statute and a corresponding provision of the treaty, the statutory language should be construed in the same sense as that of the treaty. This is for the reason that in such cases what is sought to be achieved by the international treaty is a uniform international code of law which is to be applied by the courts of all the signatory nations in a manner that leads to the same result in all the signatory nations.

After referring to various provisions of the WTO:ADA and the Indian legal provisions, the Supreme Court also came to a conclusion that *the delicate balancing act between protection of domestic industry and the hardship caused*

in the course of international trade has been tilted in favour of the latter. It was held that the Central Government does not have any power to impose anti-dumping duty with retrospective effect except in the case of Section 9A(3) of the Customs Tariff Act, 1975 which is in line of Article 10.4 of the WTO:ADA. Finally, it was held that the definitive anti-dumping duty can be collected only for the period for which provisional anti-dumping duty was imposed and the Central Government cannot collect anti-dumping duty on the imports entered into India during the interregnum.

This is a leading judgment which enumerates the principles for interpretation of Indian domestic law in terms of an international treaty. It also clarifies that absence of a provision of the WTO:ADA in Indian law does not mean that the authorities are not obliged to follow the same. The authorities in India are bound by the provisions contained in the WTO:ADA unless India has enacted a legal provision which is more onerous to its subjects and at the same time which is not adverse to the interest of a producer/exporter of another Member country. The judgment may also prompt the Indian Investigating Authority to complete the investigations 'normally' within a period of one year so that the domestic industry may be continued to be protected in a manner which is legal and also consistent with India's international obligations.

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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措施

| Product 产品 | Country 国家 | Measures 措施 | Notification No. and date 通知号及日期 |
|--|--------------------|---|--|
| 4,4Diamino Stilbene2, 2 Disulphonic Acid” (DASDA) 4,4'-二氨基二苯乙 烯-2,2'-二磺酸 | India 印度 | ADD Mid-term Review initiated 发起期中复审 | F. No. 15/18/2015-DGAD, dated 1-10-2015 2015年10月1日 , 15/18/2015-DGAD |
| Albendazole 阿苯达唑 | India 印度 | Time for completion of ADD investigation extended 完成反倾销调查时间延长 | F. No. 14/31/2013-DGAD, dated 18-9-2015 2015年9月18日 , 14/31/2013-DGAD |
| Automobile glass 汽车玻璃 | Brazil 巴西 | ADD investigation terminated 终止反倾销调查 | MOFCOM News, dated 15-9-2015 2015年9月15日 , 商务部新闻 |
| Bicycle tyre 自行车轮胎 | Argentina 阿根廷 | ADD final duty was levied 征收最终反倾销税 | MOFCOM News, dated 22-9-2015 2015年9月22日 , 商务部新闻 |
| Carbon Black used in rubber applications 橡胶用碳黑 | India 印度 | ADD sunset review recommends continuation of duty 反倾销日落复审建议继续征收反 倾销税 | F. No.15/8/2014-DGAD, dated 1-10-2015 2015年10月1日 , 15/8/2014-DGAD |
| Coated paper or board 涂布纸或纸板 | Indonesia 印度尼西亚 | 3-year safeguard duty levied 征收3年保障措施税 | MOFCOM News, dated 23-9-2015 2015年9月23日 , 商务部新闻 |
| Coated Paper Suitable for High-Quality Print Graphics Using Sheet- Fed Presses 高品质图案印刷用 平张铜版纸 | USA 美国 | ADD and CVD sunset review initiated 发起反倾销和反补贴日落复审 | 80 FR 59133 [A-570-958, C-570-959], dated 1-10-2015 2015年10月1日 , 80 FR 59133 [A-570-958, C-570-959] |
| Cold-Rolled Steel Flat Products 冷轧平板 | USA 美国 | CVD investigation – Preliminary determination postponed 反补贴调查-延期初步裁决 | 80 FR 60881 [C-570-030], dated 8-10-2015 2015年10月8日 , 80 FR 60881 [C-570-030] |

| Product 产品 | Country 国家 | Measures 措施 | Notification No. and date 通知号及日期 |
|---|-------------------|---|--|
| Color-coated sheet 彩涂板 | Malaysia 马来西亚 | ADD preliminary duty was levied 征收临时反倾销税 | MOFCOM News, dated 28-9-2015 2015年9月28日, 商务部新闻 |
| Copper pipe fittings 铜管件 | Canada 加拿大 | Initiated ADD and CVD re-investigation 发起反倾销和反补贴再调查 | MOFCOM News, dated 22-9-2015 2015年9月22日, 商务部新闻 |
| Crepe Paper Products 皱纹纸 | USA 美国 | AD Order continued after sunset review 日落复审后继续反倾销征税令 | 80 FR 57149 [A-570-895], dated 22-9-2015 2015年9月22日, 80 FR 57149 [A-570-895] |
| Crystalline Silicon Photovoltaic Cells 晶体硅太阳能 电池 | USA 美国 | ADD new shipper review rescinded 取消反倾销新出口商复审 | 80 FR 55090 [A-570-979], dated 14-9-2015 2015年9月14日, 80 FR 55090 [A-570-979] |
| Crystalline silicon photovoltaic modules or panels 晶体硅太阳能电池 或面板 | Australia 澳大利亚 | ADD investigation terminated noticing negligible injury 由于发现微不足道的损害而终止 反倾销调查 | Anti-dumping Notice No. 2015/118, dated 6-10-2015 2015年10月6日, 反倾销公告第2015/118号 |
| Diamond Sawblades and Parts thereof 钻石锯条及部件 | USA 美国 | AD Order continued after sunset review 日落复审后继续反倾销征税令 | 80 FR 56441 [A-570-900], 18-9-2015 2015年9月18日, 80 FR 56441 [A-570-900] |
| Fiber blanket 化纤毯 | Egypt 埃及 | ADD final duty was levied 征收最终反倾销税 | MOFCOM News, dated 10-9-2015 2015年9月10日, 商务部新闻 |
| Float Glass 浮法玻璃 | India 印度 | Definitive anti-dumping duty continued (after sunset review) (日落复审后) 继续征收最终反倾销税 | 47/2015-Cus. (ADD), dated 8-9-2015 2015年9月8日, 47/2015-Cus. (ADD) |
| Front Axle Beam and Steering Knuckles 前桥和转向节 | India 印度 | ADD sunset review recommends continuation of duty 反倾销日落复审建议继续征收反 倾销税 | F No.15/11/2014-DGAD, dated 11-9-2015 2015年9月11日, 15/11/2014-DGAD |

| Product 产品 | Country 国家 | Measures 措施 | Notification No. and date 通知号及日期 |
|--|--------------------|---|--|
| Graphite Electrode 炉用碳棒 | Brazil 巴西 | ADD Anti-circumvention investigation initiated 发起反倾销反规避调查 | MOFCOM News, dated 14-9-2015 2015年9月14日 , 商务部新闻 |
| Hexamine 乌洛托品 | India 印度 | Definitive ADD recommended 建议征收最终反倾销税 | F No. 14/16/2013-DGAD, dated 21-9-2015 2015年9月21日 , 14/16/2013-DGAD |
| Hollow Structural Sections 焊缝管 | Australia 澳大利亚 | ADD – Time for issue of investigation report for review of measures in respect of specified entity, extended 反倾销-就发布某些企业的复审调查的报告时间延长 | Anti-dumping Notice No. 2015/114, dated 11-9-2015 2015年9月11日 , 反倾销公告第2015/114号 |
| Hot Rolled Flat Products of steel in Coils 热轧卷板 | India 印度 | Provisional Safeguard duty imposed 征收临时保障措施税 | 2/2015-Cus. (SG), dated 14-9-2015 2015年9月14日 |
| Iron construction castings 铁制建筑铸件 | USA 美国 | ADD sunset review initiated 发起反倾销日落复审 | 80 FR 59133 [A-570-502], dated 1-10-2015 2015年10月1日 , 80 FR 59133 [A-570-502] |
| Jean cloth 牛仔布 | Argentina 阿根廷 | ADD sunset review initiated 发起反倾销日落复审调查 | MOFCOM News, dated 25-9-2015 2015年9月25日 , 商务部新闻 |
| Low-carbon Steel Wire Rod 低碳盘条 | Thailand 泰国 | ADD preliminary duty was levied 征收临时反倾销税 | MOFCOM News, dated 18-9-2015 2015年9月18日 , 商务部新闻 |
| Narrow woven fabric 窄幅机织物 | India 印度 | ADD sunset review initiated 发起反倾销日落复审 | F No. 15/14/2015/DGAD, dated 1-10-2015 2015年10月1日 , 15/14/2015/DGAD |
| Oil Tube 成品油管和套管 | Indonesia 印度尼西亚 | Issued Safeguard Mid-term Review final finding 发布保障措施期中复审终裁 | MOFCOM News, dated 10-9-2015 2015年9月10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 |
|--|----------------|---|--|
| Open mesh fabrics of glass fibres 玻璃纤维网格织物 | EU 欧盟 | ADD extended to imports consigned from India as well 对自印度转口的产品也征收反倾销税 | Commission Implementing Regulation (EU) 2015/1507, dated 9-9-2015 2015年9月9日, 欧盟委员会执行公告第2015/1507号 |
| PET film PET薄膜 | Korea RP 韩国 | ADD to be extended for another 3 years 延长征收反倾销税3年 | MOFCOM News, dated 25-9-2015 2015年9月25日, 商务部新闻 |
| Polyester yarn 聚酯纱线 | India 印度 | ADD sunset review recommends continuation of duty 反倾销日落复审建议继续征收反倾销税 | F No. 15/03/2014-DGAD, dated 22-9-2015 2015年9月22日, 15/03/2014-DGAD |
| Potassium Phosphate Salts 钾磷酸盐和钠磷酸盐 | USA 美国 | ADD and CVD - Affirmative sunset review by US DoC 反倾销和反补贴-美国商务部肯定性日落复审终裁 | 80 FR 60121 [C-570-963] and 80 FR 60122 [A-570-962], both dated 5-10-2015 2015年10月5日, 80 FR 60121 [C-570-963]和80 FR 60122 [A-570-962] |
| Preserved Mushrooms 罐装蘑菇 | USA 美国 | ADD New shipper review initiated 发起反倾销新出口商复审 | 80 FR 60883 [A-570-851], dated 8-10-2015 2015年10月8日, 80 FR 60883 [A-570-851] |
| Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe 无缝碳钢和合金钢标准的管线管 and 高压管 | USA 美国 | ADD and CVD sunset review initiated 发起反倾销和反补贴日落复审 | 80 FR 59133 [A-570-956, C-570-957], dated 1-10-2015 2015年10月1日, 80 FR 59133 [A-570-956, C-570-957] |
| Seamless Refined Copper Pipe and Tube 无缝精炼铜管 | USA 美国 | ADD sunset review initiated 发起反倾销日落复审 | 80 FR 59133 [A-570-964], dated 1-10-2015 2015年10月1日, 80 FR 59133 [A-570-964] |
| Seamless Steel Tube 无缝钢管 | Brazil 巴西 | ADD investigation initiated 发起反倾销调查 | MOFCOM News, dated 15-9-2015 2015年9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 |
|--|--------------------|---|---|
| Soap 香皂 | Pakistan 巴基斯坦 | Initiated safeguard investigation 发起保障措施调查 | MOFCOM News, dated 11-9-2015 2015年9月11日, 商务部新闻 |
| Stainless Steel Tube 不锈钢管 | Thailand 泰国 | ADD investigation initiated 发起反倾销调查 | MOFCOM News, dated 25-9-2015 2015年9月25日, 商务部新闻 |
| Steel Grating 钢格板 | USA 美国 | ADD and CVD - Affirmative sunset review by US DoC 反倾销和反补贴-美国商务部肯定 性日落复审终裁 | 80 FR 60119 [A-570-947] and 80 FR 60120 [C-570-948], both dated 5-10-2015 2015年10月5日, 80 FR 60119 [A-570-947]和FR 60120 [C-570-948] |
| Tissue Paper Products 餐巾纸 | USA 美国 | ADD - Affirmative sunset review by US DoC 反倾销-美国商务部肯定性日落复 审终裁 | 80 FR 59734 [A-570-894], dated 2-10-2015 2015年10月2日, 80 FR 59734 [A-570-894] |
| Trichloronitromethane 三氯硝基甲烷 | US 美国 | AD Order continued after sunset review 日落复审后继续反倾销征税令 | MOFCOM News, dated 23-9-2015 2015年9月23日, 商务部新闻 |
| Tyre for Agricultural machine 农机轮胎 | Brazil 巴西 | ADD investigation terminated 终止反倾销调查 | MOFCOM News, dated 25-9-2015 2015年9月25日, 商务部新闻 |
| Wheelbarrow 独轮车 | South Africa 南非 | ADD investigation initiated 发起反倾销调查 | MOFCOM News, dated 14-9-2015 2015年9月14日, 商务部新闻 |
| Wooden Bedroom Furniture 木制卧室家具 | USA 美国 | AD Order in respect of certain jewelry armoires with at least one front door, revoked 对某些有至少一个前门的珠宝橱 柜取消反倾销税令 | 80 FR 57150 [A-570-890], dated 22-9-2015 2015年9月22日, 80 FR 57150 [A-570-890] |

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 |
|---|--|---|--|
| Disodium 5'-Inosinate Disodium 5'-Guanylate Disodium 5'-Ribonucleotide 核苷酸类食品添加剂 | Indonesia and Thailand 印度尼西亚和泰国 | ADD measures terminated 终止反倾销措施 | MOFCOM Announcement No. 38 of 2015, dated 23-9-2015 2015年9月23日，商务部公告2015年第38号 |
| PVC 聚氯乙烯 | US, Korea, Japan, Russia and Taiwan 美国、韩国、日本、俄罗斯和台湾 | Affirmative ADD sunset review final finding 肯定性反倾销日落复审终裁 | MOFCOM Announcement No. 36 of 2015, dated 8-10-2015 2015年10月8日，商务部公告2015年第36号 |
| White Broiler 白羽肉鸡产品 | US 美国 | ADD Mid-term review initiated 发起反倾销期中复审调查 | MOFCOM Announcement No. 32 of 2015, dated 8-10-2015 2015年10月8日，商务部公告2015年第32号 |

WTO News 世贸组织新闻

中国台北就印度对USB闪存的反倾销税案提交争端解决

2015年9月24日，台湾、澎湖、金门和马祖特殊关税区（中国台北）通知世贸组织秘书处，请求与印度就印度对来自中国的USB闪存实施反倾销税进行磋商。中国台北认为印度1995年海关关税（对倾销商品确定、评估和征收反倾销税及确定损害）条例附件2(iii)与条例第9（2）条“本身”违反了世贸组织反倾销协议第3.3条，因为其并没有要求对来自一国以上的进口产品是否产生累计评估影响进行评价，与此同时在此次反倾销调查中，“进口产品之间”是存在相互竞争关系的。

同时台湾也认为，印度在发起调查、拒绝问卷回复、适用可获得的事实、确定涉案产品、计算正常价值和倾销幅度、确定损害以及与发起调查有关的措施违反了反倾销协议和关税和贸易总协定的诸多条款。

马来西亚和印度对热轧卷板发起保障措施调查

上个月马来西亚和印度发起了对非合金和其他合金钢热轧卷板的保障措施调查。2015年9月11日，马来西亚发起了对铁或非合金热轧未涂布、未电镀或未涂覆

的平板产品以及其他未经除热轧外加工的合金钢卷板，宽度600毫米以上，厚度在1.20毫米至22.00毫米之间的。2015年9月7日，印度对宽度在600毫米及以上的非合金和其他合金热轧板卷发起了保障措施调查。值得注意的是，印度在2015年9月14日发布财政部公告征收临时保障措施税。

印度尼西亚、日本和中国台北请求成立四个专家组

上个月，也就是2015年9月28日，世贸组织争端解决机构在不同的争端案件中成立了4个专家组。其中两个争端案件是由日本提出的，另外两个分别由印度尼西亚和中国台北提出。在第一个日本对韩国(DS495)的争端案件中，日本认为韩国采取和保持的卫生和植物检疫(SPS)措施与

SPS协定的一些规定不一致。第二个争端案件是日本与巴西就巴西引进一系列使国内企业能够减少其支付某些国内税收和费用义务的措施(DS497)，因此对众多从日本进口到巴西的产品产生了严重的贸易限制影响。

在印度尼西亚的争端案(DS491)中，印度尼西亚称美国对来自印度尼西亚的某些涂布纸的倾销、补贴和损害威胁裁决与美国在1994年关贸总协定、反倾销协议以及补贴和反补贴措施(SCM)协议项下的义务不一致。上个月成立专家组的最后一个争端案件中，中国台北寻求裁决印度尼西亚对某些钢铁产品实施的保障措施(DS490)。印度在DS495和DS497争端案件的专家组程序中保留其第三方权利。

Ratio Decidendi 判决理由

在临时反倾销税期满后最终反倾销税征税前的期间内不应征收反倾销税

印度最高法院裁决在临时反倾销税期满后和实施最终反倾销税前的期间不应征收反倾销税。法院认为根据印度反倾销条例第13条以临时反倾销税并入最终反倾销税的做法只能适用于反倾销税没有到期前。对此，法院认为第20条的旁注只规定了开始实施反倾销税的日期，而第(2)(a)条只规定了征收最终反倾销税可以从实施临时反倾销税之日起计算，以使临时措施转化为最终措施。不采纳税收部门的上诉，法院进一步认为第9A章的第(2)和第(6)小姐都没有授权中央政府追溯征收反倾销税，而在过渡期间或中断期间征收的税应当属

于追溯征收反倾销税。

对此，印度法院也认为【印度的】反倾销条例是严格建立在保持与1994年世贸组织反倾销协议的框架下建立的。而海关关税法第9A章的语言与反倾销条例一起，应当是建立在与世贸组织反倾销协议相同的理解之上。法院注意到如果法律中有与执行条约义务不同的语言，印度作为国际条约的签署国，相应的条约规定，法律语言应当建立在与条约相同理解的程度上。[2015年9月23日裁决海关诉*G.M. Exports-2006 C.A. 第3889号*，*C.A. 第7814/2012*，*7894/2015*，*7895/2015*，*5119/2012*，*3082/2011*和*3086/2011*]

News Nuggets 新闻精华

厄瓜多尔可请求加拿大的子公司执行裁决

国际法，尤其是当它围绕主权国的投资和索赔成为一项有趣的研究。例如，阿根廷与其投资者的纠纷，债券持有人努力起诉阿根廷并且在美国法院胜诉。一个常提及的重点是投资者通常通过在条约国成立子公司能够从双边投资协定中获益，从而在起诉索赔案件中胜诉。然而上个月，加拿大最高法院站在了一个不同的角度。在雪佛龙公司诉Yaiguaje案件中的被告/原告，代表大约3万名厄瓜多尔村民向法院寻求执行由厄瓜多尔法院作出的裁决。之前的程序已经在厄瓜多尔进行并且在美国，法院拒绝执行该裁决。

加拿大最高法院认为，外国裁决创设义务

是普遍现行，并且每个司法管辖领域对由外国裁决所产生的义务拥有平等的利益，只要没有出现领土过度扩张。被告寻求对加拿大子公司执行裁决。而被告认为厄瓜多尔法院的裁决是针对母公司，并且至关重要的一点是执行法院与争端之间必须有一个真正的和实质性的联系。然而，法院认为源于被告住所地的管辖权(实体)，是不需要考虑是否存在一个真正的和实质性的连接。被告住所地管辖充分说明法院在业务运营的国家拥有管辖权。法院补充道，作为裁决的被告子公司-债务人并不一定遵循的是否拥有管辖权。在执行裁决所有主张时，包括程序是否公平等抗辩理由都将被审查。

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