

amicus

印度新德里 Lakshmikumaran & Sridharan
律师事务所电子版新闻简报

2015年9月-第52期

国际贸易 法律月刊

内容

文章

增强执行的效力-美国重新修订
贸易救济法律 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措施 11

世贸组织新闻 11

判决理由 12

September
2015

Article 文章

Enhancing effectiveness of enforcement – Retreading trade remedy law

增强执行的效力-美国重新修订贸易救济法律

By **Manoj Gupta & Subhashree R**

As a top merchandise trader, just behind China¹, the USA is a huge import destination and a frequent user of the Anti-dumping instrument, USA is not new to innovations in AD laws and has already been through the Bryd Amendment which sought to distribute the revenue from AD levies among petitioners alone and was termed as not compatible with the WTO agreement. Recently USA's trade remedy laws have been relaxed in favour of its domestic industry with significant changes both in anti-dumping and countervailing measures. Substantial changes have been made in this regard in the Tariff Act of 1930 by the American Trade Enforcement Effectiveness Act which was part of the larger Trade Preferences Extension Act of 2015. The Act was made into law after the same was signed by the US President on 29th of June. Let us analyse some of the major changes.

Material injury – Effect of profits of domestic industry

Section 771(7) of the Tariff Act [19 USC 1677(7)] relating to analysis of 'material injury', has been amended to provide for consideration of not only 'profits' but specifically 'gross profits', 'operating profits' and 'net profits', when the International Trade Commission (ITC, Commission) evaluates the impact of dumped goods on the domestic industry. Further, while determining 'material injury', the ITC would have to specifically consider

'ability to service debt' and 'return on assets', and see whether the imports cause injury to the domestic industry. It is noteworthy that even the un-amended provisions made it mandatory for the Commission to evaluate all relevant economic factors which have a bearing on the state of the industry in the USA, including but not limited to what was stated.

Article 3.4 of the WTO's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement, ADA) also states that the list, as specified there, is not exhaustive and that various factors have to be considered for the purpose of determination of material injury. It may be noted that the preposition that in a particular case, the examination of relevant economic factors other than those listed in Article 3.4 could also be required, was further reiterated in DSB's panel/Appellate Body report in *Mexico – Corn Syrup, US – Hot rolled Steel*, and *Korea – Certain paper*. Therefore, 'gross profits', 'operating profits', 'net profits', ability to service debt', and 'return on assets', could be considered even before this amendment to conclude 'material injury' or absence of the same.

Further, another amendment has been made in the provisions which prohibit the Commission from finding absence of material injury, merely because the domestic industry is profitable or because the performance

¹ International Trade Statistics 2014, https://www.wto.org/english/res_e/statis_e/its2014_e/its2014_e.pdf

of that industry has recently improved. It is already known that just on the basis of profits the ITC cannot conclude absence of material injury, and that other factors have also to be considered [refer, WTO's report in *EC – Bed linen, US – Hot rolled Steel*, etc.]. This specific prohibition further highlights the same, and addresses the apprehension of the domestic industry that Commission may find absence of material injury just because the domestic industry is showing profits.

Adverse facts available – No need to corroborate data

Section 776 of the Tariff Act (19 USC 1677e) has been amended to state that the administrative authority and the Commission shall not be required to corroborate any dumping margin or countervailing duty applied in a separate segment of the same proceeding, when the administering authority relies on secondary information, in case of uncooperative exporter. Further, specific provisions have been made to provide for more discretion to the authorities in determination of subsidy rates and dumping margins. The authority may now use a countervailing subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country or in absence of same, use a countervailing subsidy rate for a subsidy program from a proceeding that the authority considers reasonable to use. In case of anti-dumping proceeding, the authorities have been given discretion to use any dumping margin from any segment of the proceeding under the applicable anti-dumping order.

It is further elaborated that the US authorities are not required to determine or make any adjustment to a countervailing subsidy rate or weighted average dumping margin based on any assumptions about the information the interested party would have provided if they had complied with the request for information. The authorities are further under no obligation to demonstrate that the countervailing subsidy rate or the dumping margin used reflects the alleged commercial reality of the interested party.

It may be noted that US Court of International Trade has been always of the view that corroboration of the data is required when secondary information is used by the department [refer, Slip Opinion dated 15-10-2012 by the US Court, in the case of *Essar Steel Ltd.*]. Further, recently the DSB's Appellate Body, in a dispute between USA and India (DS36), has also held that Article 12.7 of the SCM Agreement places an obligation of conduct on investigating authorities to provide reasoning and evaluation to justify the selection of a given 'fact', on par with the standard applicable under Article 6.8 read with Annex-II of the ADA. The Appellate Body specifically found that "*Article 12.7 requires an investigating authority to use facts available that **reasonably** replace the missing necessary information with a view to arriving at an **accurate determination**, and that this also includes an evaluation of available evidence*" [emphasis ours].

While both the ADA and SCM provide that 'investigation, preliminary and final determinations, affirmative or negative, may

be made on the basis of the facts available' if the interested member or parties refuses to provide information, leaving the matter entirely to the discretion of the ITC may not be what is envisaged by the WTO agreements. It is often said that imposition of AD is more a subjective exercise though efforts are taken to make it as objective (fair) as possible relying on data and providing an opportunity to the foreign exporters to establish that there is no dumping etc. The amendments seem to make the exercise more subjective.

Other notable changes

In respect of computation of cost of production in the exporting country, Section 771(15) of the Tariff Act (19 USC 1677(15)) and Section 773(e) (19 USC 1677b(e)) have been amended to specifically provide that if a particular market situation exists such that cost of material, fabrication or processing do not reflect the cost of production accurately, the authority may use another calculation methodology. There is no clear definition as to what is a 'particular market situation'.

Discretion has also been given to the authorities to disregard certain price or cost values, in case of computation of normal value of exports from a non-market economy. The authority can now disregard price or cost without further investigation if it has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to those price/costs or if the same were subject to anti-dumping order.

Lastly, Article 6.10.2 of the ADA places an obligation on the authorities to determine individual margin of dumping for any exporter or producer not initially selected, except where the number of exporters or producers is so large that individual examination would be 'unduly burdensome' to the authorities. This process of selection, also known as 'sampling' is prevalent in various jurisdictions, particularly in EU, though it is used only sparingly in India. Now, specific provisions have been made for the purpose of determination of 'unduly burdensome'. The authorities in this regard may consider complexity of the issues, any prior experience, total number of investigations, and such other factors relating to timely completion of each such investigation/review as the authority considers appropriate.

Therefore, what we see is another discretion given to the authorities in respect of the trade remedy measures.

Conclusion

While the measures may not be immediately subject to challenges in the WTO, they have not been welcomed alike by all sections even in the US. For instance a former chairman of the ITC² has voiced concern over the increased litigations which the amendments may bring about. It remains to be seen whether other member countries will allow the same level of discretion for their agencies.

[The authors are Manager and Principal Associate respectively, Lakshmikumaran & Sridharan, New Delhi]

² <http://www.cato.org/publications/commentary/leveling-playing-field-us-manufacturers>

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
Aluminium Extrusions 铝型材	Australia 澳大利亚	Review of ADD on goods exported by Press Metal International Ltd., initiated 发起对广东省佛山市澳美铝业有限公司的反倾销复审	Anti-dumping Notice No. 2015/99, dated 13-8-2015 2015年8月13日, 反倾销公告第2015/99号
Aluminium Extrusions 铝型材	Australia 澳大利亚	Affirmative ADD Mid-term Review Final Determination 肯定性反倾销期中复审终裁	MOFCOM news, dated 20-8-2015 2015年8月20日, 商务部新闻
Boltless Steel Shelving Units Prepackaged for Sale 无螺栓钢制搁架产品	USA 美国	Final Determination of Sales at Less Than Fair Value 最终裁决低于正常价值销售	80 FR 51779 [A-570-018], dated 26-8-2015 2015年8月26日, 80 FR 51779 [A-570-018]
Boltless Steel Shelving Units Prepackaged for Sale 无螺栓钢制搁架产品	USA 美国	Final Affirmative Countervailing Duty Determination 最终肯定性反补贴裁决	80 FR 51775 [C-570-019], dated 26-8-2015 2015年8月26日, 80 FR 51775 [C-570-019]
Calcium Hypochlorite 次氯酸钙	USA 美国	Initiation of Antidumping Duty New Shipper Review 发起反倾销新出口商复审	80 FR 51774 [A-570-008], dated 26-8-2015 2015年8月26日, 80 FR 51774 [A-570-008]
Candle 蜡烛及同类产品	EU 欧盟	ADD terminated 取消反倾销措施	MOFCOM news dated 10-8-2015 2015年8月10日, 商务部新闻
Carbon and alloy steel line pipe 碳和合金钢管	Canada 加拿大	ADD and CVD – Preliminary injury inquiry initiated 反倾销和反补贴-做出临时损害裁决	Canada International Trade Tribunal News Release dated 31-8-2015 2015年8月31日, 加拿大国际贸易法庭发布新闻
Caustic Soda 氢氧化钠	India 印度	Definitive anti-dumping duty continued after sunset review 日落复审继续征收反倾销税	Notification No. 42/2015-Cus. (ADD), dated 18-8-2015 2015年8月18日, 第42/2015-Cus. (ADD)号公告

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Ceramic foam filters 泡沫陶瓷过滤器	EU 欧盟	ADD investigation initiated 发起反倾销调查	2015/C266/07 dated 26-8-2015 2015年8月26日 , 2015/C266/07
Chlorinated Isocyanu- rates 氯化异氰尿酸	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 52743 [A-570-898], dated 1-9-2015 2015年9月1日 , 80 FR 52743 [A-570-898]
Cold-rolled coil 冷轧卷	Malaysia 马来西亚	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 31-8-2015 2015年8月31日 , 商务部新闻
Cold-rolled stainless steel 冷轧不锈钢	Turkey 土耳其	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 28-8-2015 2015年8月28日 , 商务部新闻
Cold-rolled stainless steel plate 冷轧不锈钢板	EU 欧盟	Affirmative ADD final finding 肯定性反倾销最终裁决	Commission Implementing Regulation (EU) 2015/1429 dated 26-8-2015 2015年8月 26日 , 欧盟委员会执行公告 2015/1429
Cold-rolled steel plate 冷轧钢板	US 美国	ADD and CVD investigations initiated 发起反倾销和反补贴调查	MOFCOM news dated 20-8-2015 2015年8月20日 , 商务部新闻
Cold-rolled steel plate 冷轧钢板	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 14-8-2015 2015年8月14日 , 商务部新闻
Continuous casting material 连铸坯材	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 17-8-2015 2015年8月17日 , 商务部新闻
Diketopyrrolo Pyrrole Pigment Red 254 (DPP Red 254) 吡咯并吡咯二酮红 254	India 印度	Definitive anti-dumping duty imposed 实施最终反倾销税	Notification No. 41/2015-Cus. (ADD), dated 17-8-2015 2015年8月17日 , 第41/2015-Cus. (ADD)号公告
Flax or Linen Fabric having flax content of more than 50% 亚麻织物	India 印度	Definitive anti-dumping duty continued after sunset review 日落复审继续征收反倾销税	Notification No. 39/2015-Cus. (ADD), dated 12-8-2015 2015年8月12日 , 第39/2015-Cus. (ADD)号公告
Flexible Slabstock Polyol 聚醚多元醇	India 印度	Anti-dumping duty discontinued 终止反倾销税	Notification No. 44/2015-Cus. (ADD), dated 18-8-2015 2015年8月18日 , 第44/2015- Cus. (ADD)号公告

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Float Glass 浮法玻璃	India 印度	Anti-dumping duty imposed for another 5 years 再次征收5年的反倾销税	Notification No. 47/2015-Cus. (ADD), dated 08-09-2015 2015年9月8日, 第47/2015-Cus. (ADD)号公告
Floor-Standing, Metal-Top Ironing Tables and certain parts thereof 熨衣架及其零部件	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 53281 [A-570-888], dated 3-9-2015 2015年9月3日, 80 FR 53281 [A-570-888]
Graphite electrode 石墨电极	Mexico 墨西哥	ADD anti-circumvention investigation – affirmative final finding 反倾销反规避调查-肯定性最终裁决	MOFCOM news dated 8-9-2015 2015年9月8日, 商务部新闻
Hand Trucks and certain parts thereof 手推车及其部件	USA 美国	ADD continued after sunset review 日落复审后继续反倾销税	80 FR 50266 [A-570-891], dated 19-8-2015 2015年9月19日, 80 FR 50266 [A-570-891]
Hollow Structural Sections 焊缝管	Australia 澳大利亚	ADD anti-circumvention investigation - Time granted to issue Statement of Essential Facts, extended 反倾销反规避调查-延期发布重要事实披露	Anti-dumping Notice No. 2015/104, dated 24-8-2015 2015年8月24日, 反倾销公告第2015/104号
Hot-dipped Zinc-coated steel plate 热浸镀锌板卷	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 14-8-2015 2015年8月14日, 商务部新闻
Hot Rolled Plate Steel 热轧平板	Australia 澳大利亚	Exemption granted from interim dumping duties, dumping duties, interim CVD and CVD 免除临时反倾销税、反倾销税、临时反补贴税和反补贴税	Anti-dumping Notice No. 2015/108, dated 31-8-2015 2015年8月31日, 反倾销公告第2015/108号
Hot Rolled Plate Steel 热轧平板	India 印度	Safeguard investigation initiated 发起保障措施调查	MOFCOM news dated 9-9-2015 2015年9月9日, 商务部新闻
Hydraulic jack 瓶型液压千斤顶	Mexico 墨西哥	2nd Sunset review investigation initiated 发起第二次日落复审调查	MOFCOM news dated 8-9-2015 2015年9月8日, 商务部新闻
Oil gas seamless tube 油气井无缝钢管	Eurasian Economic Commission 欧亚经济委员会	Imposing ADD duty 征收反倾销税	MOFCOM news dated 28-8-2015 2015年8月28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
Pencil in box 盒装铅笔	US 美国	ADD new shipper review initiated 发起反倾销新出口商复审	MOFCOM news dated 10-8-2015 2015年8月10日 , 商务部新闻
Plain Medium Density Fibre Board 中密度纤维板	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. 15/28/2013-DGAD, dated 17-8-2015 2015年8月17日 , 第15/28/2013-DGAD号公告
Plastic Processing Machines 塑料加工机械	India 印度	Time period to complete ADD sunset review extended till 8-11-2015 完成反倾销日落复审时间延长至 2015年11月8日	F.No. 354/53/2009-TRU (Pt-I), dated 18-8-2015 2015年8月18日 , 第354/53/2009-TRU (Pt-I)号公告
Polyethylene Terephthalate Resin 聚对苯二甲酸乙二 醇酯树脂	USA 美国	Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Deter- mination 最终反倾销税与临时裁决一致	80 FR 48810 [C-570-025], dated 14-8-2015 2015年8月14日 , 80 FR 48810 [C-570-025]
Polypropylene film 聚丙烯薄膜	Pakistan 巴基斯坦	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news dated 19-8-2015 2015年8月19日 , 商务部新闻
Potassium Carbonate 碳酸钾	India 印度	Anti-dumping duty revoked 取消反倾销税	Notification No. 40/2015-Cus. (ADD), dated 12-8-2015 2015年8月12日 , 第40/2015-Cus. (ADD)号公告
Potassium Permanganate 高锰酸钾	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 52743 [A-570-001], dated 1-9-2015 2015年9月1日 , 80 FR 52743 [A-570-001]
Preserved Mushrooms 罐装蘑菇	USA 美国	ADD sunset review – Affirmative finding 反倾销日落复审-肯定性裁决	80 FR 53104 [A-570-851], dated 2-9-2015 2015年9月2日 , 80 FR 53104 [A-570-851]
Preserved Mushrooms 罐装蘑菇	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. 2015/106, dated 24-8-2015 2015年8月24日 , 反倾销公告第2015/106号
Prestressed Concrete Steel Wire Strand 预应力混凝土结构 用钢绞线	USA 美国	CVD sunset review – Affirmative finding 反补贴日落复审-肯定性裁决	80 FR 53497 [C-570-946], dated 4-9-2015 2015年9月4日 , 80 FR 53497 [C-570-946]

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
PVC Flex Films PVC胶膜	India 印度	Anti-dumping duty extended till 29-7-2016 反倾销税延长至2016年7月29日	Notification No. 43/2015-Cus. (ADD), dated 18-8-2015 2015年8月18日, 第43/2015- Cus. (ADD)号公告
Rod in Coils 线圈棒	Australia 澳大利亚	ADD investigation initiated 发起反倾销调查	Anti-dumping Notice No. 2015/95, dated 12-8-2015 2015年8月12日, 反倾销公告第2015/95号
Silicon metal 金属硅	EU 欧盟	ADD partial interim review initiated 发起反倾销期中复审	2015/C287/06, dated 1-9-2015 2015年9月1日, 第2015/C287/06号
Sodium cyclamate 甜蜜素	EU 欧盟	ADD investigation initiated 发起反倾销调查	2015/C 264/04 dated 12-8-2015 2015年8月12日, 2015/C 264/04
Solar Glass 太阳能玻璃	EU 欧盟	ADD anti-absorb investigation – revised ADD duties 反倾销反吸收调查-修改反倾销税	MOFCOM news dated 17-8-2015 2015年8月17日, 商务部新闻
Solar panels 晶体硅光伏组件及 关键零部件	EU 欧盟	Revoked an exporter's price undertaking 取消一出口商的价格承诺	MOFCOM news dated 20-8-2015 2015年8月20日, 商务部新闻
Solar panels 晶体硅光伏组件及 关键零部件	EU 欧盟	ADD and CVD – change one exporter name 反倾销和反补贴-出口商更名	MOFCOM news dated 1-9-2015 2015年9月1日, 商务部新闻
Steel Grating 钢格板	Canada 加拿大	ADD and CVD – Expiry review initiated 反倾销和反补贴-发起期终复审	Canada International Trade Tribunal News Release dated 12-8-2015 2015年8月12日, 加拿大国际贸易法庭发布新闻
Tapered Roller Bear- ings and Parts 圆锥滚子轴承	USA 美国	Initiation of Antidumping Duty Changed Circumstances Review 发起反倾销情势变更复审	80 FR 48493 [A-570-601], dated 13-8-2015 2015年8月13日, 80 FR 48493 [A-570-601]
Trichloronitromethane 三氯硝基甲烷	US 美国	Affirmative ADD sunset review final finding 肯定性反倾销日落复审终裁	MOFCOM news dated 10-8-2015 2015年8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
Tyre for passenger car and light truck 乘用车和轻型货车轮胎	US 美国	ADD & CVD result revised 修改反倾销和反补贴结果	MOFCOM news dated 13-8-2015 2015年8月13日, 商务部新闻
Uncoated Paper 未涂布纸	USA 美国	Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination 临时裁决低于正常价值销售并且延期发布最终裁决	80 FR 51768 [A-570-022], dated 26-8-2015 2015年8月26日, 80 FR 51768 [A-570-022]
Viscose Staple Fibre excluding Bamboo Fibre 粘胶短纤维	India 印度	Anti-dumping duty extended till 25-7-2016 反倾销税延长至2016年7月25日	Notification No. 37/2015-Cus. (ADD), dated 6-8-2015 2015年8月6日, 第37/2015-Cus. (ADD)号公告
Vitamin C 维生素C	India 印度	Definitive anti-dumping duty continued after sunset review 日落复审继续征收最终反倾销税	Notification No. 38/2015-Cus. (ADD), dated 6-8-2015 2015年8月6日, 第38/2015-Cus. (ADD)号公告
Wire rod 盘条	Mexico 墨西哥	ADD investigation initiated 发起反倾销调查	MOFCOM news dated 8-9-2015 2015年9月8日, 商务部新闻
Wooden Bedroom Furniture 木制卧室家具	USA 美国	Preliminary Results of changed Circumstances Review, and Intent to revoke ADD Order in Part 情势变更初步裁决并且打算部分取消反倾销税	80 FR 48075 [A-570-890], dated 11-8-2015 2015年8月11日, 80 FR 48075 [A-570-890]
Woven Electric Blankets 编织电热毯	USA 美国	ADD Order revoked in absence of response from domestic industry 因缺少国内产业回应取消反倾销税	80 FR 49987 [A-570-951], dated 18-8-2015 2015年8月18日, 80 FR 49987 [A-570-951]
Xanthan Gum 黄原胶	USA 美国	ADD new shipper review initiated 发起反倾销新出口商复审	80 FR 52031 [A-570-985], dated 27-8-2015 2015年8月27日, 80 FR 52031 [A-570-985]
Zinc Coated (Galvanised) Steel 镀锌板	Australia 澳大利亚	ADD anti-circumvention investigation - Time granted to issue Statement of Essential Facts, extended 反倾销反规避调查-延期发布重要事实披露	Anti-dumping Notice No. 2015/105, dated 24-8-2015 2015年8月24日, 反倾销公告第2015/105号

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
Broiler product 白羽肉鸡产品	US 美国	CVD expiry review initiated 发起反补贴期终复审调查	MOFCOM Announcement No. 25 of 2015, dated 28-8-2015 2015年8月28日， 商务部2015年第25号公告
Epichlorohydrin 环氧氯丙烷	Russia, Korea RP, Japan and US 俄罗斯、韩国、日本和美国	US producer changed name 美国生产商更名	MOFCOM Announcement No. 28 of 2015, dated 17-8-2015 2015年8月17日， 商务部2015年第28号公告
Optical fiber perform 光纤预制棒	Japan and US 日本和美国	Affirmative ADD final finding 肯定性反倾销最终裁决	MOFCOM Announcement No. 25 of 2015, dated 19-8-2015 2015年8月19日，商务部2015年第25号公告
PTA 精对苯二甲酸	Korea RP and Thai- land 韩国和泰国	ADD sunset review initiated 发起反倾销日落复审	MOFCOM Announcement No. 24 of 2015, dated 10-8-2015 2015年8月10日，商务部2015年第24号公告

WTO News 世贸组织新闻

世贸组织发布关于欧盟对来自中国紧固件实施反倾销措施的执行专家组报告

2015年8月7日，世贸组织发布了关于“欧盟-对来自中国的某些铁或钢紧固件的最终反倾销措施”案的执行专家组报告。中国质疑欧盟的复审程序和继续实施修订后的反倾销税。专家组就某些信息采取保密措施支持了中国的主张，并认为欧盟违反了反倾销协议第6.5条，专家组重申了调查机关必须客观评估保密主张的正当理由，而不能简单地基于当事人提出保密要求进行处理。至于当事人获得信息和保护其利

益的权利，专家组认为不允许中国生产商访问相关文件列表和产品特征信息，欧盟委员会违反了第6.2条。

专家组得出结论欧盟委员会违反了反倾销协议第2.4条，因为其未能向中国生产商提供在复审调查中用于确定正常价值的参照国生产商的产量特征信息。专家组也支持了中国的主张，即在响应发起公告的国内生产商的基础上确定国内产业，欧盟这样的损害确定是不符合反倾销协议第

3.1条规定的根据积极的证据进行客观的损害分析。

就印度尼西亚提起的对生物柴油实施反倾销措施案成立专家组

8月31日，争端解决机构成立了一个专家组，以评估印度尼西亚提出的欧盟对来自印度尼西亚的生物柴油实施反倾销措施案。在其磋商请求中，印度尼西亚认为欧盟反倾销法规定了调查机关可适用除原产国的生产以外的数据或信息调整或确定生产成本，这与反倾销协议第2.2条和1994年关贸总协定第6.1条不一致，同时印尼还质疑欧盟不调整价格差异以及欧盟没有考虑印度尼西亚作为一个发展中国家成员的情况而实施的反倾销措施。

更多的成员国批准贸易便利化协议

中国、中国台北、伯利兹、瑞士、尼日

尔和尼加拉瓜正式接受了新的贸易便利化协议(TFA)，这样批准的总国家数达到了16个。该协议将在三分之二的世贸组织成员国完成其国内批准程序后生效。根据2014年11月27日成员国通过的修正案，该协议将被作为贸易便利化协议插入《WTO协定》附件1A中。该协议包括加快货物以及在途货物的移动、放行和清关方面的条款。同时也阐明了海关和其他有关当局之间就贸易便利化的有效合作和海关合规问题，协议还规定了为欠发达国家提供技术援助和能力建设。

越南通报发起味精保障措施调查

9月1日，根据一家主要的味精生产商提交的包含有关味精进口增加、国内产量、市场份额、生产能力和利润急剧下滑证据的申请书，越南对味精的进口发起了调查。

Ratio Decidendi 判决理由

欧盟法院基于发起和审查反倾销措施的目的解释了“共同体产业”

上诉人要求取消欧盟委员会根据期中复审的裁决对集成电子紧凑型荧光灯的进口实施反倾销税的公告。上诉人认为由于支持继续支持征税的共同生产商已经低于50%的门槛，因此委员会不能以与原始调查一样的方式对待，评估对国内产业造成的损害以及继续征收反倾销税。常设法院认为尽管事实上国内产业不能满足基本法第5(4)条规定的50%的最低要求，但是欧盟机构有权继续复审程序。欧盟法院认为，要发起调查，共同体生产商生产的同类产品产量应当占到表达支持或反对起诉方的共同体产业总产量的50%以上，并且

至少有25%生产同类产品的共同体产业必须支持起诉方。但是支持起诉方或者请求发起复审的共同体生产商的比例下降并不一定导致调查的终止。

在区分“主要的”和“多数”之间的区别时，欧盟委员会认为法律规定了共同体产量的“主要部分”而不是“共同体生产的多数”，因此唯一的共同体生产商占到支持复审程序共同体产量的48%已经足够继续进行复审，因为这已经满足了25%的最低要求。

【2015年9月8日，*Philips Lighting Poland SA诉欧盟委员会*，欧盟法院裁决，案件号C511/13 P】

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

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

CHENNAI

2, Wallace Garden,
2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : 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

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : 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

PUNE

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

KOLKATA

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

CHANDIGARH

1st Floor, SCO No. 59, Sector 26,
Chandigarh - 160026
Phone : +91-172-4921700
E-mail : 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

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

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9月8日。取消订阅邮件请发至newslettertrade@lakshmisri.com

www.lakshmisri.com

www.addb.lakshmisri.com

www.lakshmisri.cn

www.lakshmisri.ch