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Article 文章

RTI Act & disclosure of information in Anti-dumping investigations

反倾销调查中的获得信息权与信息披露

By **T D Satish**

Access to information is a cornerstone in any administrative or quasi-judicial proceeding and non-availability of the relied upon documents to the affected parties have been condemned for long by the highest Court of this country.

Designated Authority is a quasi-judicial authority, which conducts anti-dumping investigations in India, based on evidences gathered by it during the course of the investigation. Being a quasi-judicial authority, it is obligated to follow the principles of natural justice, which inter-alia, includes making available the relied upon information. Not making the same available to affected parties may render the order passed by it as void, being in violation of the principles of natural justice.

In an antidumping investigation, the disclosure of information by the Designated Authority is regulated to a large extent by Rule 6(7) as well as Rule 7 of the AD Rules. Rule 6(7) provides that the Designated Authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation. This rule, however, seems restrictive in the sense that it relates only to such evidence, which are provided by interested parties, who are participating in the investigation. Thus, an interested party may find it difficult to get information obtained by the Designated

Authority from a third party, though there is nothing confidential about the same. Rule 7(1) on the other hand allows Designated Authority to treat certain information provided by the parties as confidential subject to fulfillment of conditions prescribed. Rule 7(2) further provides that Designated Authority may ask the party submitting confidential information to submit non-confidential summary and if such information is not amenable to summarization, then a statement of reasons for claiming confidentiality may be filed.

Hon'ble Supreme Court has held in the case of *Reliance Industries vs the Designated Authority* that Designated Authority does not have the right to claim confidentiality on its own volition and unless the party claims confidentiality. It has also been made clear by the Hon'ble Supreme Court that where confidentiality has been claimed, party has to provide a non-confidential summary or a statement of reason for claiming confidentiality, as the case may be, since not making the relevant material available handicaps other side in filing an effective appeal.

Though Hon'ble Supreme Court has had a chance to interpret Rule 7, the debate still goes on in anti-dumping investigations as to who can seek information from the Designated Authority and whether Designated Authority can refuse to share such information which has been

obtained from a third party. If the information provided by or obtained from the third party contains no confidential information, whether the Designated Authority would be compelled to make available such information to the interested parties is a question for which there can be only one answer. The answer is yes and the authority shall share such information to facilitate transparency in the investigation and to protect the rights of interested parties who may be adversely affected by the use of such information. Whether the law mandates the same positive answer needs to be considered in the light of the various provisions. The information in question may contain both business sensitive information as well as non-sensitive information, which can easily be shared. Whether in such cases, Designated Authority may provide such information in a redacted form (i.e. authority will prepare and make available a non-confidential version that gives the gist of the information obtained confidentially) is a question. AD Rules to not have a direct answer.

So, should a party interested in such information be at the mercy of the Designated Authority's discretionary power and remain confined to the boundary walls of AD Rules?

One need not venture too far to find an answer. The Right to Information Act 2005 (Hereinafter "RTI Act") may perhaps answer a few of the problems indicated above if the same is pressed into service by any party seeking information from the Designated Authority.

At the outset, a question may arise that since a specific law and provision has been enacted in the form of AD Rules to regulate anti-dumping investigations, whether RTI Act will still be applicable?

We may find an answer in Section 22 of the RTI Act, which provides that the provisions of this Act shall have overriding effect over any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act. Thus, where a party has applied for information under the RTI Act and if such information is available for disclosure and is required to be provided by a public authority, then in such a case, Rule 7 or any other provision of AD Rules may not protect the Designated Authority. One needs to keep in mind that both the laws provide a mechanism for obtaining information and hence, a party's request will be governed by that law, under which such party has sought information.

Assuming an application is filed before the Designated Authority under Section 6 of the RTI Act, let us apply the provisions of RTI Act and see if the above lingering questions arising out of anti-dumping proceedings can be answered independently by the RTI Act.

Whether anyone can seek information from Designated Authority or only the interested parties are allowed to seek information?

While Section 3 provides that all citizens have the right to information, Section 6 provides that a person, desirous of obtaining

information may make a request in writing in the prescribed mode and manner. Thus, if application is made in terms of RTI Act, then it is immaterial whether the party is an interested party to the investigation or has notified its interest to the Designated Authority. Further, though Section 3 uses the word “citizen”, Section 6 provides that “a person” may make a request. Interpretation of both the provisions seems to suggest that Section 6 is wider in its ambit than Section 3. Thus, a bare reading suggests that though an Indian party can claim to have a right to information, an exporter based out of India, may also file an application under Section 6 but not seek information as a right.

Whether despite being a public authority, Designated Authority can keep relied upon information as confidential?

Designated Authority constitutes a public authority in terms of Section 2(h) and thus a person is entitled to seek information from Designated Authority. However, there may be two impediments – Section 8 and Section 11.

Among other things, Section 8(1)(d) provides that there is no obligation to disclose, *inter-alia*, information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

Section 11 relates to third party information.

The section covers information that relates to or has been supplied by a third party and has been treated as confidential by that third party. In such cases, Section 11 requires that such third party should be given notice and time period to respond. Any submission made by such third parties shall be kept in view while taking a decision about disclosure of the information in question.

It is interesting to note that while Section 8(1)(d) does give a wide scope to public authority to treat information such as commercial confidence, trade secrets or intellectual property, there are two conditions which need to be taken care of by the public authority-

- 1) Would the disclosure harm the competitive position of a third party? and;
- 2) The decision to treat information as confidential or not has to be taken by ‘competent authority’.

‘Competent Authority’ has been defined under Section 2(e) to mean – (a) speaker in case of Lok Sabha or Legislative Assembly in case of State or Union Territory and Chairman in case of Rajya Sabha or Legislative Council in case of States; (b) Chief Justice of India in case of Supreme Court; (c) Chief Justice of High Court in case of High Court, (d) the President or the Governor, as the case may be, in case of other authorities established or constituted by or under the Constitution and (e) administrator appointed under Article 239 of the Constitution, i.e., in regards to Union Territories.

Applying the above definition, it remains to be seen as to who will be the ‘competent authority’ where public authority is Designated Authority and it will be interesting to see how this provision gets applied.

Resultantly, unless public authority is able to show that disclosure would harm the competitive position of a third party concerned, the information would have to be disclosed. Even if the disclosure would harm the competitive position of the third party, but if larger public interest warrants disclosure of information, the same may be disclosed. The competent authority has to be satisfied as to the harm to the competitive position and/or the larger public interest while taking a decision regarding disclosure of information.

As regards Section 11, it relates to third party information and it is that third party alone, which can oppose the disclosure of information. Public Authority cannot decide the issue on its own.

Thus, it seems that where an application is made by any person, Designated Authority will have to disclose the information, if Section 8 and Section 11 are not attracted. Such a person need not be an interested party to the investigation conducted by Designated Authority.

Can the confidential information be severed into two parts – redaction of confidential information and disclosure of rest of the information?

Section 10(1) gives a direct answer regarding

severability of information. Section 10 reads as follows:

“10(1). Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.”

This section provides that where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in the Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure and can reasonably be severed from any part that contains exempt information.

Thus, Section 10(1) seems to a very useful provision insofar as those information are concerned, which contain both confidential and non-confidential information.

It is also relevant to note that RTI Act has specifically obligated the public authority to provide reasons for its administrative or quasi-judicial decisions to the affected persons in terms of Section 4(1)(c) of the Act.

To conclude, with RTI Act coming into picture, a quasi-judicial authority may find it increasingly difficult to withhold publicly available information from the parties. As the

preamble of RTI Act says, the purpose of the Act is to set out a practical regime of right to information to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

In short, apart from in-built provisions under AD Rules and the principles of natural

justice coming to play, RTI Act seems to be an additional tool in the hands of the affected parties to ensure transparency and accountability in the functioning of Designated Authority.

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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行动

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Air-conditioner 空调机	Argentina 阿根廷	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 24-2-2016 2016年2月24日, 商务部新闻
Aluminium exclusion 铝挤压材	Trinidad and Tobago 特立尼达和 多巴哥	Affirmative preliminary determination 肯定性反倾销初裁	MOFCOM news, dated 23-2-2016 2016年2月23日, 商务部新闻
Amorphous Silica Fabric 非晶硅织物	USA 美国	Initiation of Countervailing Duty Investigation 发起反补贴调查	81 FR 8909[C-570-039], dated 23-2-2016 2016年2月23日, 81 FR 8909[C-570-039]
Amorphous Silica Fabric 非晶硅织物	USA 美国	Initiation of Less-Than-Fair-Value Investigation 发起低于正常价值调查	81 FR 8913[A-570-038], dated 23-2-2016 2016年2月23日, 81 FR 8913[A-570-038]
Annular permanent magnet 环形永久磁铁	Brazil 巴西	Affirmative final determination after sunset review 肯定性反倾销日落复审终裁	MOFCOM news, dated 2-3-2016 2016年3月2日, 商务部新闻
Aspartame 阿斯巴甜	EU 欧盟	Provisional ADD imposed 征收临时反倾销税	Commission Implementing Regulation (EU) 2016/262, dated 25-2-2016 2016年2月25日, 欧盟执行委员会公告2016/262

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Ball-point pen 圆珠笔	Brazil 巴西	Affirmative final determination after sunset review 肯定性反倾销日落复审终裁	MOFCOM news, dated 24-2-2016 2016年2月24日, 商务部新闻
Barium Carbonate 碳酸钡	India 印度	ADD recommended to be continued 建议继续征收反倾销税	F.No. 15/27/2014 – DGAD, dated 23-2-2016 2016年2月23日, 第15/27/2014 – DGAD号公告
Biaxial Integral Geogrid Products 双轴土工格栅	USA 美国	ADD - Initiation of Less-Than-Fair-Value Investigation 发起低于正常价值调查	81 FR 7755[A-570-036], dated 16-2-2016 2016年2月16日, 81 FR 7755[A-570-036]
Biaxial Integral Geogrid Products 双轴土工格栅	USA 美国	CVD – Initiation of investigation 发起反补贴调查	81 FR 7745[C-570-037], dated 16-2-2016 2016年2月16日, 81 FR 7745[C-570-037]
Calcium Hyphchorite 次氯酸钙	USA 美国	CVD – new shipper review initiated 反补贴-发起新出口复审	MOFCOM news, dated 7-3-2016 2016年3月7日, 商务部新闻
Carbon and alloy steel line pipe 碳和合金钢管	Canada 加拿大	Final determinations of dumping and subsidy 最终裁决倾销和补贴	CBSA Notice dated 24-2-2016 2016年2月24日, 加拿大边境服 务署公告
Carbon Steel Butt-Weld Pipe Fittings 碳钢焊接接口	USA 美国	ADD sunset review initiated 发起反倾销日落复审	81 FR 10578 [A-570-814], dated 1-3-2016 2016年3月1日, 81 FR 10578 [A-570-814]
Castings for wind operated electricity generators/Windmills 风力发电机组/风 车铸件	India 印度	ADD investigation initiated and date for submission of questionnaire, extended 发起反倾销调查并且答卷日期 延期	F.No. 14/28/2013 – DGAD, dated 1-2-2016 and 4-3-2016 2016年2月1日和2016年3月 4日, 第14/28/2013 – DGAD 号公告
Clear Float Glass 浮法玻璃	Australia 澳大利亚	ADD - Initiation of Continuation Inquiry 反倾销-发起期终复审调查	Anti-dumping Notice No. 2016/19, dated 22-2-2016 2016年2月22日, 反倾销公告第2016/19号
Coated whiten board / folded box 涂布白底漂白板/折 叠箱板	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 14-2-2016 2016年2月14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
Coil steel rod 线圈棒	Australia 澳大利亚	ADD – amended preliminary determination 反倾销-修改初裁	MOFCOM news, dated 16-2-2016 2016年2月16日, 商务部新闻
Coil steel rod 线圈棒	Australia 澳大利亚	CVD investigation initiated 发起反补贴调查	MOFCOM news, dated 18-2-2016 2016年2月18日, 商务部新闻
Cold Rolled Flat Products of Stainless Steel 不锈钢冷轧平板产品	India 印度	Anti-circumvention investigation initiated 发起反规避调查	F. No. 14/1/2014 – DGAD, dated 19-2-2016 2016年2月19日, 第14/1/2014 – DGAD号
Cold-rolled flat steel products 冷轧平板	EU 欧盟	Provisional ADD imposed 征收临时反倾销税	Commission Implementing Regulation (EU) 2016/181, dated 10-2-2016 2016年2月10日, 欧盟委员会执行公告第 2016/181号
Cold-Rolled Steel Flat Products 冷轧平板	USA 美国	Affirmative Preliminary Determination of Sales at Less Than Fair Value, and of Critical Circumstances 肯定性临时裁决低于正常价值销售以 及存在紧急情形	81 FR 11751[A-570-029], dated 7-3-2016 2016年3月7日, 81 FR 11751[A-570-029]
Concrete reinforcement 混凝土钢筋	Canada 加拿大	ADD and CVD re-investigation 反倾销和反补贴再调查	MOFCOM news, dated 16-2-2016 2016年2月16日, 商务部新闻
Copper pipe fittings 铜管件	Canada 加拿大	Final determination of ADD and CVD re-investigation 反倾销和反补贴再调查终裁	MOFCOM news, dated 16-2-2016 2016年2月16日, 商务部新闻
Coumarin 香豆素	India 印度	ADD recommended to be continued 建议继续征收反倾销税	F. No. 15/26/2014 – DGAD, dated 2-3-2016 2016年3月2日, 第15/26/2014 – DGAD号公告

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Crystalline silicon photovoltaic modules 晶体硅光伏电池	USA 美国	ADD new shipper review initiated 发起反倾销新出口商复审	MOFCOM news, dated 15-2-2016 2016年2月15日, 商务部新闻
Crystalline silicon photovoltaic modules 晶体硅光伏电池	USA 美国	Final determination of ADD circumstance change review 反倾销情势变更复审终裁	MOFCOM news, dated 26-2-2016 2016年2月26日, 商务部新闻
Crystalline silicon photovoltaic modules and key components 光伏组件和关键部件	EU 欧盟	ADD and CVD extended to goods from Malaysia and Taiwan 对来自马来西亚和台湾的产品进行反倾销和反补贴调查	Commission Implementing Regulation (EU) 2016/184 and 185, dated 11-2-2016 2016年2月11日, 欧盟执行委员会公告2016/184和185
Cut-to-Length Carbon Steel Plate 定尺碳素钢板	USA 美国	ADD - Initiation of Circumvention Inquiry 反倾销-发起反规避调查	81 FR 8173[A-570-849], dated 18-2-2016 2016年2月18日, 81 FR 8173[A-570-849]
Deep drawn stainless steel sinks 不锈钢拉制深水槽	Australia 澳大利亚	ADD - Termination of accelerated review 反倾销-终止快速复审	Anti-dumping Notice No. 2016/5, dated 25-2-2016 2016年2月25日, 反倾销公告第2016/5号
Diamond saw blade 金刚石锯片	USA 美国	Preliminary determination of ADD circumstance change review 反倾销情势变更复审初裁	MOFCOM news, dated 7-3-2016 2016年3月7日, 商务部新闻
Diclofenac Sodium 双氯芬酸钠	India 印度	Anti-circumvention investigation initiated 发起反规避调查	F.No. 14/22/2014 – DGAD, dated 17-2-2016 2016年2月17日, 第14/22/2014 – DGAD号
Drawn Stainless Steel Sinks 不锈钢拉制水槽	USA 美国	Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review 发起和作出反倾销情势变迁复审初裁	81 FR 7504[A-570-983], dated 12-2-2016 2016年2月12日, 81 FR 7504[A-570-983]
Floor-Standing, Metal-Top Ironing Tables and Parts 落地式金属台面烫衣板及部件	USA 美国	ADD continued 继续反倾销税	81 FR 12070[A-570-888], dated 8-3-2016 2016年3月8日, 81 FR 12070[A-570-888]

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Frozen Warmwater-Shrimp 冷冻暖水虾	USA 美国	ADD sunset review initiated 发起反倾销日落复审	81 FR 10578 [A-570-893], dated 1-3-2016 2016年3月1日 , 81 FR 10578 [A-570-893]
Galvanized steel pipe 镀锌钢管	Viet Nam 越南	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 10-3-2016 2016年3月10日 , 商务部新闻
Glass mirror 玻璃镜	Brazil 巴西	Affirmative final determination 肯定性反倾销终裁	MOFCOM news, dated 24-2-2016 2016年2月24日 , 商务部新闻
Glass tableware 桌上用玻璃器具	Brazil 巴西	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 1-3-2016 2016年3月1日 , 商务部新闻
Grinding balls 研磨球	Australia 澳大利月	Timeto issue Statement of Essential Facts, extended 延期发布重要事实披露	Anti-dumping Notice No. 2016/25, dated 7-3-2016 2016年3月7日 , 反倾销公告第2016/25号
Heavy plate of non- alloy or other alloy steel 非合金或其他合金 钢质厚板	EU 欧盟	ADD investigation initiated 发起反倾销调查	EU 2016/C 58/09, dated 13-2-2016 2016年2月13日 , EU 2016/C 58/09
Hollow structural sections 空心焊缝管	Australia 澳大利亚	Initiation of exemption inquiries 发起免税调查	Anti-dumping Notice No. 2016/16, dated 19-2-2016 2016年2月19日 , 反倾销公告第2016/16号
Honey 蜂蜜	USA 美国	ADD new shipper review initiated 发起反倾销新出口商复审	MOFCOM news, dated 15-2-2016 2016年2月15日 , 商务部新闻
Hot-rolled flat products of iron, non-alloy or other alloy steel 热轧平板产品	EU 欧盟	ADD investigation initiated 发起反倾销调查	EU 2016/C 58/08, dated 13-2-2016 2016年2月13日 , EU 2016/C 58/08

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Iron Construction Castings 铸铁件	USA 美国	ADD – Affirmative sunset review 反倾销-肯定性日落复审裁决	81 FR 7083 [A-570-502], dated 10-2-2016 2016年2月10日 , 81 FR 7083 [A-570-502]
Iron Mechanical Transfer Drive Components 机械传输组件	USA 美国	ADD preliminary determination postponed 延期发布反倾销临时裁决	81 FR 12687 [A-570-032], dated 10-3-2016 2016年3月10日 , 81 FR 12687 [A-570-032]
Iron or steel fasteners 钢铁紧固件	EU 欧盟	ADD as extended to goods from Malaysia, repealed 取消反倾销措施	Commission Implementing Regulation (EU) 2016/278, dated 26-2-2016 2016年2月26日 , 欧盟委员会执行公告第2016/278号
Magnesia Carbon Bricks 镁碳砖	USA 美国	ADD and CVD Orders to continue 继续反倾销和反补贴征税令	81 FR 7502 [A-570-954, C-570-955], dated 12-2-2016 2016年2月12日 , 81 FR 7502 [A-570-954, C-570-955]
Methyl Acetoacetate 乙酰乙酸甲酯	India 印度	ADD investigation extended till 6-4-2016 反倾销调查延期至2016年4月6日	F.No.14/07/2014 – DGAD, dated 2-3-2016 2016年3月2日 , 第14/07/2014 – DGAD号
New Pneumatic Off-the-Road Tires 新充气非公路用轮胎	USA 美国	Initiation of Countervailing Duty Investigations 发起反补贴调查	81 FR 7067 [C-570-035], dated 10-2-2016 2016年2月10日 , 81 FR 7067 [C-570-035]
New Pneumatic Off-the-Road Tires 新充气非公路用轮胎	USA 美国	Initiation of Less-Than-Fair-Value- Investigations 发起低于正常价值调查	81 FR 7073 [A-570-034], dated 10-2-2016 2016年2月10日 , 81 FR 7073 [A-570-034]
Polyester filament yarn 涤纶长丝纱线	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 3-3-2016 2016年3月3日 , 商务部新闻
Polyester staple fiber 涤纶短纤维	Pakistan 巴基斯坦	Affirmative final determination 肯定性反倾销终裁	MOFCOM news, dated 15-2-2016 2016年2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
Polyethylene Glycol Terephthalate Resin 聚对苯二甲酸乙二 醇酯树脂	USA 美国	Affirmative ADD and CVD final determination 肯定性反倾销和反补贴终裁	MOFCOM news, dated 8-3-2016 2016年3月8日 , 商务部新闻
Reinforce steel rope 强化钢铁绳缆	Mexico 墨西哥	Affirmative final determination 肯定性反倾销终裁	MOFCOM news, dated 2-3-2016 2016年3月2日 , 商务部新闻
Rimless glasses 无框镜	Brazil 巴西	Affirmative final determination 肯定性反倾销终裁	MOFCOM news, dated 29-2-2016 2016年2月29日 , 商务部新闻
SDH Transmission Equipment 数字同步交换机	India 印度	Anti-dumping duty recommended to be continued 建议继续征收反倾销税	F. No. 15/20/2014 – DGAD, dated 5-2-2016 2016年2月5日 , 第 15/20/2014 – DGAD号
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe 无缝碳钢和合金钢 标准管、管线管和 压力管	USA 美国	CVD and ADD – Affirmative sunset review 反补贴和反倾销-肯定性日落复审 裁决	81 FR 5985[C-570-957], dated 4-2-2016 and 81 FR 7305[A-570-956], dated 11-2-2016 2016年2月11日 , 81 FR 5985[C-570-957], dated 4-2-2016和81 FR 7305 [A-570-956]
Seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel) 无缝管	EU 欧盟	ADD investigation initiated 发起反倾销调查	EU 2016/C 58/10, dated 13-2-2016 2016年2月13日 , EU 2016/C 58/10
Seamless steel tube 无缝钢管	Mexico 墨西哥	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 24-2-2016 2016年2月24日 , 商务部新闻
Shoes 鞋类	Brazil 巴西	Affirmative final determination after sunset review 肯定性反倾销日落复审终裁	MOFCOM news, dated 3-3-2016 2016年3月3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
Sodium gluconate 葡萄糖酸钠	EU 欧盟	ADD partial interim review initiated 发起反倾销部分期中复审	EU 2016/C 64/05, dated 19-2-2016 2016年2月19日, EU 2016/C 64/05
Stainless Steel Sheet and Strip 不锈钢板材和带材	USA 美国	ADD - Initiation of Less Than Fair Value Investigation 反倾销-发起低于正常价值调查	81 FR 12711[A-570-042], dated 10-3-2016 2016年3月10日, 81 FR 12711[A-570-042]
Stainless steel sinks 不锈钢水槽	Canada 加拿大	Initiation of re-investigation 发起再调查	CBSA Notice dated 1-3-2016 2016年3月1日, 加拿大边境服务署公告
Steel product 钢铁产品	Taiwan 台湾	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 23-2-2016 2016年2月23日, 商务部新闻
Steel Reinforcing Bar 钢筋	Australia 澳大利亚	Securities revised 修改保证金	Anti-dumping Notice No. 2016/10, dated 8-2-2016 2016年2月8日, 反倾销公告第2016/10号
Synthetic fibre carpet 合成纤维毯	Brazil 巴西	Affirmative final determination after sunset review 肯定性反倾销日落复审终裁	MOFCOM news, dated 24-2-2016 2016年2月24日, 商务部新闻
Tapered rolled bearing 圆锥滚子轴承	USA 美国	Final determination of ADD new shipper review 反倾销新出口商复审终裁	MOFCOM news, dated 18-2-2016 2016年2月18日, 商务部新闻
Tartaric acid 酒石酸	EU 欧盟	ADD terminated 终止反倾销税	Commission Implementing Regulation (EU) 2016/184 and 176, dated 9-2-2016 2016年2月9日, 欧盟委员会执 行公告第2016/184和176号
Truck and Bus Tires 卡车及公共汽车 轮胎	USA 美国	CVD and ADD investigations initiated 发起反倾销和反补贴调查	81 FR 9428[C-570-041] and 81 FR 9434[A-570-040], dated 25-2-2016 2016年2月25日, 81 FR 9428[C- 570-041]和81 FR 9434[A-570-040],

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Uncoated Paper 未涂布纸	USA 美国	Countervailing Duty Order amended 修改反补贴征税令	81 FR 11187 [C-570-023], dated 3-3-2016 2016年3月3日, 81 FR 11187 [C-570-023]
Wall tile and ground tile 墙砖和地砖	Pakistan 巴基斯坦	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 22-2-2016 2016年2月22日, 商务部新闻
Wooden Bedroom Furniture 木制卧室家具	USA 美国	Affirmative ADD sunset review 肯定性反倾销日落复审	81 FR 12462[A-570-890], dated 9-3-2016 2016年3月9日, 81 FR 12462[A-570-890]

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
Caprolactam 己内酰胺	EU and USA 欧盟和美国	Agree successor to continue the duty 同意继承公司继续原有税率	MOFCOM Announcement No. 6 of 2016, dated 11-3-2016 2016年3月11日, 商务部公告第6号

WTO News 世贸组织新闻

印度对太阳能产品的国内成分要求违反了世贸组织相关法律

2016年2月24日，世贸组织发布了由美国提出的对印度在贾瓦哈拉尔·尼赫鲁国家太阳能计划中针对太阳能电池和太阳能电池组件，提出某些国内成分要求(DCR)的专家组报告。美国所提出的问题是与印度在国家太阳能计划的初始阶段实施的相关措施有关。专家组认为印度未能证明受质疑

的措施在1994年关税与贸易总协定第20(d)和(j)中是合理的。专家组也认为根据1994年关税与贸易总协定第3.4条，这些措施的确对进口产品实施了更少的优惠待遇，并且不符合与贸易有关的投资措施协议第2.1条，同时也不是1994年关税与贸易总协定第3.8(a)条中规定的因政府采购而不适用。值得注意的是，该案于2013年发起磋商请求，巴西、加拿大、中国、欧盟、日

本、韩国、马来西亚、挪威、俄罗斯、土耳其、厄瓜多尔、沙特阿拉伯和中国台北在该争端案中作为第三方。

与此同时，印度已经就美国非移民类的临时工作签证费用提出争端解决。费用去年增长迅速(几乎翻了一番)，因此受到来自印度IT公司的严厉批评，因为他们需要大量的印度国籍的人才在美国提供服务(DS503)。据报道，印度认为根据服务贸易总协定第3种模式，这样的做法造成了在美国的印度公司比美国本土公司在人才

提供相似服务方面获得了更低的待遇。

泰国发起对结构热轧H型合金钢的保障调查

2016年2月4日，泰国已经启动了热轧H型合金结构钢的保障调查。有关产品在泰国海关的海关分类关税代码为:7228.70.10000和7228.70.90000。根据泰国递交的G/SG/N/6/THA/5文件，涉案产品的进口量以绝对方式增加，2010年的10吨到2012年的2180吨，再到2013年的3376吨和2014年的35506吨。

Statutory Update 法律更新

对东盟的进口产品实施新的保障措施条例

印度财政部已经发布了一系列新的规则，即2016年东盟商品贸易协议(保障措施)规则，目的是对抗来自东南亚国家联

盟(东盟)成员国进口的增加。保障措施总局局长已得到授权调查在产品进出中国时增加进口量后，2016年3月4日发布的最新公告为37/2016-Cus.(N.T.)。

Ratio Decidendi 判决理由

反倾销/反补贴-产品范围-排除组装

关于根据销售合同进口与铝挤压制品相关的组合成完整护墙的产品是否在反倾销和反补贴的调查产品范围内这一问题，美国国际贸易法院(USCIT)撤销了商务部拒绝排除有关产品的决定。反倾销和反补贴令从产品范围中排除了包括铝挤压制品的“成品”和进口的未装配的成品装备的配件(部分商品组装)。除了将案件发回商务部(DOC)重审，法院还发现商务部依据在进口时所有部件是否完整的产品这一标准，未能排除半成品。商务部已经拒绝考虑有关半成品货物，认为幕墙

单位不是单独的产品，而是幕墙的一部分。然而法院拒绝了关于半成品是一个“成品的独特的附属组件”的主张。法院也认为，只有当他们满足铝挤压制品的定义时才包括在涉案产品范围内。【2016年2月9日，美国国际贸易法院，沈阳远大铝业工程有限公司诉美国-判决简报第16-11号】

不适用WTO反倾销协议的情况

欧盟法院裁决WTO反倾销协议不能被用于质疑基本法定义的合法性。法院依据较早的裁决认为尽管根据基本法的规

定WTO反倾销协议的语言应该“尽量”纳入欧盟立法，但是欧盟没有打算在基本法中照搬每个WTO的条款。欧盟法院也拒绝依据两个争端解决专家组报告，法院认为欧盟的审判权并没有赋予欧盟审查WTO规则下欧盟措施的合法性和有效性，以及授予欧盟执行裁决和争端解决机构的建议的合理期限，法院认为不遵守这些规则并没有期限。同时法院也认为，仅仅是期限到期这一事实并不意味着欧盟在争端解决机制下穷尽了找到一个解决它与其他各方争端的可能性。因此就WTO规则而言，有必要审查欧盟措施的合法性和有效性。法庭注意到争端

解决机构的报告之一【欧盟对某些中国鞋类的反倾销措施(WT/DS405/R)】没有就争议中的规则提出具体建议。法院也认为没有证据支持欧盟立法机构打算在鞋类争端案或在“欧洲共同体—对中国特定的铁或钢紧固件最终反倾销措施案(WT/DS397/R)的争端解决报告中就涉及到的争议条款假设一个特定的义务。受争议的裁决是第(EC)1472/2006号欧盟委员会裁决，决定对某些来自中国和越南的皮革鞋类征收最终反倾销税。[C & J Clark国际有限公司诉英国税务海关总署—2016年2月4日合并C-659/13和C-34/14裁决]

News Nuggets 新闻精华

印度加入自由贸易协定的经济调查

根据2016年2月26日发布的经济调查，印度应重新审查已生效的自由贸易协定，考虑它们对贸易的影响。根据各种研究，调查认为印度可能没有最有效的使用贸易协定以增加其出口，并且它还涉及到距离成本，对贸易造成巨大的壁垒。调查建议印度必须继续参与全面的自由贸易协定，同时加强应对能力符合WTO规则，如反倾销、反补贴和保障措施。对于区域贸易协定，如跨太平洋伙伴关系协议，调查认为虽然他们得到世贸组织成员的广泛支持，但是他们倾向于对非成员国造成歧视，并且印度如果不加入TTP，印度可能既失去出口又失去了作为投资目的地。印度的一些

问题，比如TPP为商品和服务贸易实施更高的标准；更严格的知识产权、劳工和环境保护标准；进口竞争；国有企业的地位；明确的政府采购承诺；除了对仿制药市场造成损害以外，为了遵守劳工标准而造成劳动力成本的上升。

欧盟和加拿大进入争端解决法庭

在欧盟与美国贸易谈判有提议建立一个法院加强投资者与国家争端解决机制(ISDS)后，在已经敲定的欧盟-加拿大全面经济和贸易协议(CETA)中出现了类似的安排。根据欧盟委员会2016年2月29日的新闻稿，欧盟已经决定在CETA中包括一个投资保护和投资争端解决的新方法。双方同意建立包括十五个成员的

常设法庭，该法庭将负责裁决违反投资保护协议中所设立标准的主张。法庭将有五名成员，分别来自欧盟和加拿大，以及五名成员来自其他国家。

这些成员擅长于国际公法方面。由三名成员组成的部门会听审特殊案件。同时也将设立上诉法庭审查已宣布的裁决。

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