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Article 文章

Time period for completing anti-dumping reviews - An issue in flux

讨论完成反倾销复审的时限

By **Lakshmi Neelakantan**

The provisions relating to anti-dumping measures under the Customs Tariff Act 1975 (“Act”) and the Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (“AD rules”) provide for different time periods for different stages of proceedings. This article seeks to analyze whether the time period for completing a mid-term or sunset review can be extended beyond the statutory time period of 12 months, and whether such extension is in consonance with the Act and AD Rules.

Legal Framework of Time Period for Investigations and Reviews

Rule 17(1) of the AD Rules provides a period of one year to the Designated Authority to conclude the original anti-dumping investigation. The proviso to Rule 17(1) empowers the Central Government to extend further the period of one year by six months to conclude the investigation in the event that “special circumstances” exist. Rule 18 of AD Rules provides for the levy of duty based upon the recommendation issued by the Designated Authority.

Mid-term reviews are dealt with under Rule 23(1A) of AD Rules. Rule 23(1A) states that the Designated Authority shall review the need for continued imposition of anti-dumping duty and upon completing such review, the Designated Authority shall recommend to the Central Government for its withdrawal, where

it comes to a conclusion that the injury to the domestic industry is *not likely to continue or recur if the anti-dumping duty is removed or varied and is therefore no longer warranted*.

The scope of a sunset review is somewhat different and is dealt with under Section 9A(5) of the Act read with Rule 23(1B) of AD Rules. Section 9A (5) of the Act states that anti-dumping duty shall cease to have effect on the expiry of five years from the date of imposition of such duty, unless it is revoked earlier. The first proviso to Section 9A(5) of the Act affirms that if the Central Government is of the opinion that cessation of the duty is likely to lead to continuation or recurrence of dumping and injury, then such duty may be extended for a further period of five years.

Rule 23(1B) of the AD Rules provides that anti-dumping duty, once imposed, shall be effective for a period not exceeding five years, *unless the Designated Authority comes to a conclusion on a review initiated before that period that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry*. Therefore, in a sunset review, the question that arises for consideration is *whether the expiry of the anti-dumping duty in existence is likely to lead to continuation or recurrence of dumping and injury to the domestic industry*. On the other hand, in a mid-term review, the question that arises for consideration is *whether the injury to*

the domestic industry is not likely to continue or recur if the anti-dumping duty is removed or varied and is therefore no longer warranted.

It is important to note that the second proviso to Section 9A(5) of the Act provides that the Central Government may extend the levy of the anti-dumping duty for a period of one year, if the sunset review is not concluded before the expiry of five years from the date of imposition of the duty. With regard to both mid-term and sunset reviews which are conducted pursuant to Rule 23 of the AD Rules, Rule 23(2) is negatively worded and provides that such reviews shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

Analysis

It may be recalled that Rule 17(1) of AD Rules read with the first proviso to Rule 17(1) provides that the Designated Authority shall, within one year from the date of initiation of an investigation submit its findings to the Central Government, unless the Central Government in its discretion extends further this period of one year by six months. Rule 23(2), which lays down timelines for reviews, provides that reviews shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

Interestingly, Rule 23(3) borrows certain other provisions from AD Rules, such as Rules 6, 17, 19, 20 including Rule 17 which is applicable *mutatis mutandis* in case of a review. Therefore, a preliminary question that arises is whether the discretionary extension of the time

period by six months which is *provided* in the proviso to Rule 17(1), becomes applicable to the twelve month time period for conducting reviews laid down in Rule 23(2), due to the *mutatis mutandis* reference in Rule 23(3). A reading of Rule 23(3) suggests that the time period for concluding an investigation under Rule 17(1) may not be applicable to the time period for concluding a review in Rule 23(2).

One possible reason in support of this interpretation is that the expression *mutatis mutandis* means “*all necessary changes having been made; with the necessary changes*”.¹ Therefore, the rule of *mutatis mutandis* may be more in the nature of a rule of ‘adaptation’ as opposed to a simple rule of ‘adoption’. Hence, Rule 17 is required to be borrowed for the purpose of Rule 23 with necessary changes but in as much as the specific timeline for the review as provided by Rule 23(2), Rule 17 may not be applicable.

As far as a sunset review is concerned, the following reasons support the interpretation of Rules 23(1B) and (2) that the time period for completing the same cannot be extended beyond 12 months:

- i. *First*, the extension of the period of anti-dumping duty during the pendency of sunset review is for a period of “one year” under the second proviso to Section 9A(5) of the Act. It is relevant to note that if a duty is not extended before expiry, then it amounts to reviving a dead duty which is not in consonance with Section 9A(5) of the Act and Rule 23(1B) of AD Rules. Bearing in mind this fact, the

¹ Black’s Law Dictionary (9th ed. 2009)

purpose of a sunset review (*determining the likelihood of continuation or recurrence of dumping and injury*) would be better served if the review was completed well in advance of the date of expiry of the duty. Furthermore, the Central Government may take some time to take a decision on the recommendation of the Designated Authority. In order to ensure that the Ministry of Finance gets sufficient time to consider the recommendation of the Designated Authority so that duty can be levied if need be, before the expiry of the existing duty, the sunset review may have been completed well in time. Probably, Designated Authority may complete the sunset review before expiry of 9 months from the date of completion of five year period leaving three months to the Ministry of Finance for taking a final decision. In any case, if the Designated Authority takes 12 months to complete the investigation, it will leave no time for the Finance Ministry to consider the recommendations and impose the duty before expiry of 12 months. That being the case, the question of extending the period for completing the review beyond 12 months does not arise.

- ii. *Second*, it can also be seen from the wording of the above provisions that the time periods laid down in Rules 17(1) and 23(2) of AD Rules are mandatory in nature. Any relaxation in the time period will disturb the legitimate expectations of interested parties and prejudice their economic interests.
- iii. *Third*, in case sufficient evidence exists for non-continuation of anti-dumping duty in a sunset review, the Designated Authority makes the appropriate recommendation in time and the duty may be withdrawn accordingly at the

earliest. In case the time period for concluding the investigation is allowed to be extended, the collection of anti-dumping duty may be carried out without due justification.

As far as a mid-term review is concerned, it is essential to note that its primary objective of ascertaining the change in circumstances, which necessitates the modification of removal of duty, may not be served if the time period is extended and it is not possible to correctly ascertain the change in circumstances after the lapse of an inordinately long time period.

Conclusion

It can be seen that the practice of the Designated Authority and Ministry of Finance with respect to extension of time period for reviews is required to be corrected. This issue is extremely critical both from the standpoint of the exporter as well as the domestic industry. When the time period for completing a review is extended, it prejudices the exporter to the extent that it distorts market conditions. Equally, such extension of time period deprives the domestic industry of protection for a period of six months when the review is being conducted by the Designated Authority and an additional three months for the Ministry of Finance to take a final decision about the continuation of duty.

Perhaps, it will be appropriate for the Designated Authority to issue a public notice clarifying the timelines applicable for completing a sunset review as well as a midterm review.

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Trade Remedy News 贸易救济新闻

Trade remedy actions by China

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
Optical Fiber Preform 光纤预制棒	Japan and US 日本和美国	Extend the investigation for five month 调查期限延长5个月	MOFCOM Announcement No.8 of 2015, dated 06-03-2015 2015年3月6日, 商务部公告2015 年第8号

Trade remedy actions 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
Aluminium extrusions 铝型材	Australia 澳大利亚	Anti-circumvention inquiry – Duty rates altered in respect of specific exporter 反规避调查-对特定出口商改变税率	Anti-dumping Notice No. 2015/17, dated 19-2-2015 2015年2月19日, 反倾销公告第2015/17号
Aluminium road wheels 铝制车轮	Australia 澳大利亚	Termination of accelerated review of ADD and CVD measures 终止反倾销和反补贴快速复审	Anti-dumping Notice No. 2015/21, dated 3-3-2015 2015年3月3日, 反倾销公告第2015/31号
Barium Carbonate 碳酸钡	USA 美国	ADD order to continue 继续征收反倾销税	80 FR 8286 [A-570-880], dated 17-2-2015 2015年2月17日, 80 FR 8286 [A-570-880]
Caustic Soda 氢氧化钠	India 印度	ADD sunset review – Time for completing review extended till 18-6-2015 反倾销日落复审-完成复审时限延长至 2015年6月18日	F.No. 15/23/2013-DGAD, dated 27-2-2015 2015年2月27日, 第15/23/2013-DGAD号公告
Crystalline Silicon Photovoltaic Cells 晶体硅光伏电池	USA 美国	ADD and CVD sunset reviews initiated 发起反倾销和反补贴日落复审	80 FR 6041, dated 4-2-2015 2015年2月4日, 80 FR 6041
Crystalline silicon photovoltaic modules or panels 晶体硅光伏面板	Australia 澳大利亚	Extension of time granted to issue Statement of Essential Facts 延迟发布重要事实公告	Anti-dumping Notice No. 2015/28, dated 5-3-2015 2015年3月5日, 反倾销公告第2015/28号

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Crystalline Silicon Photovoltaic Products 晶体硅光伏产品	USA 美国	Final affirmative CVD determination amended 修改最终肯定性反补贴裁决	80 FR 8592 [C-570-011], dated 18-2-2015 2015年2月18日, 80 FR 8592 [C-570-011]
Deep drawn stainless steel sinks 不锈钢拉制水槽	Australia 澳大利亚	Termination of part of investigation 取消部分反倾销调查	Anti-dumping Notice No. 2015/16, dated 19-2-2015 2015年2月19日, 反倾销公告第2015/16号
Electrical insulators 电子绝缘子	India 印度	Definitive ADD recommended 建议征收最终反倾销税	F.No. 14/11/2013-DGAD, dated 4-3-2015 2015年3月4日, 第14/11/2013-DGAD号公告
Ferrovandium 铁钒	USA 美国	ADD Order to continue 继续征收反倾销税	80 FR 8607 [A-570-873], dated 18-2-2015 2015年2月18日, 80 FR 8607 [A-570-873]
Graphite Electrodes of all diameters 所有直径的石墨电极	India 印度	Definitive ADD imposed 征收最终反倾销税	4/2015-Cus. (ADD), dated 13-2-2015 2015年2月13日, 4/2015-Cus. (ADD)
Hand Trucks and parts thereof 手推车及其部件	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 6041 [A-570-891], dated 4-2-2015 and 80 FR 11164, dated 2-3-2015 2015年2月4日, 80 FR 6041 [A-570-891]和2015年3月2日 80 FR 11164
Hand Trucks and parts thereof 手推车及其部件	USA 美国	ADD – Initiation of changed circumstances review 反倾销-发起情势变更复审	80 FR 11396 [A-570-891], dated 3-3-2015 2015年3月3日, 80 FR 11396 [A-570-891]
Hollow Structural Sections 焊缝管	Australia 澳大利亚	Extension of time granted to issue Statement of Essential Facts 延期发布重要事实公告	Anti-dumping Notice No. 2015/30, dated 4-3-2015 2015年3月4日, 反倾销公告第2015/30
Honey 蜂蜜	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 6041 [A-570-863], dated 4-2-2015 2015年2月4日, 80 FR 6041 [A-570-863]

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Hot Rolled Plate Steel 热轧钢板	Australia 澳大利亚	Findings of an exemption inquiry 发布免税调查终裁	Anti-dumping Notice Nos. 2015/25-27, all dated 6-3-2015 2015年3月6日， 反倾销公告第2015/25-27
Lawn Groomers and certain parts thereof 后拖式草地维护设备及其若干零件	USA 美国	ADD order to continue 继续征收反倾销税	80 FR 6049 [A-570-939], dated 4-2-2015 2015年2月4日， 80 FR 6049 [A-570-939]
Morpholine 吗啉	India 印度	ADD Mid-term review – ADD continuation recommended 反倾销期中复审-继续建议反倾销税	Final Findings No. 15/5/2013- DGAD, dated 19-2-2015 2015年2月19日，第15/5/2013- DGAD号公告
Multilayered Wood Flooring 复合木地板	USA 美国	ADD and CVD sunset reviews initiated 发起反倾销和反补贴日落复审	80 FR 6041 [A-570-970][C-570- 971], dated 4-2-2015 2015年2月4日，80 FR 6041 [A-570-970][C-570-971]
Photovoltaic modules and laminates 晶硅光伏组件和层 压件产品	Canada 加拿大	Preliminary determination of dumping and subsidizing 初步裁定存在倾销和补贴	CBSA Notice dated 5-3-2015 2015年3月5日，加拿大边境服务署
Plain Medium Density Fibre 普通中密度纤维板	India 印度	ADD sunset review - Time period for completion of sunset review extended till 17-8-2015 反倾销日落复审-完成调查时限延 长至2015年8月17日	Office Memorandum No.354/39/2009-TRU (Pt.-I), dated 17-2-2015 2015年2月17日， 第354/39/2009-TRU号
Polyethylene Terephthalate Film, Sheet, and Strip 聚对苯二甲酸乙二 酯膜、片和条	USA 美国	ADD Order to continue 继续征收反倾销税	80 FR 6689 [A-520-803], dated 6-2-2015 2015年2月6日， 80 FR 6689 [A-520-803]
Polyvinyl Chloride Flat Electric Cables 聚氯乙烯扁平电缆	Australia 澳大利亚	Extension of time granted to issue Statement of Essential Facts 延期发布重要事实公告	Anti-dumping Notice No. 2015/24, dated 24-2-2015 2015年2月24日， 反倾销公告第2015/24号
Preserved Mushrooms 罐装蘑菇	USA 美国	ADD sunset review initiated 发起反倾销日落复审	80 FR 11164 [A-570-851], dated 2-3-2015 2015年3月2日， 80 FR 11164 [A-570-851]

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Ring binder mechanisms 活页夹	EU 欧盟	ADD expiry review initiated 发起反倾销日落复审	2015/C 67/09, dated 25-2-2015 2015年2月25日, 2015/C 67/09
Silicon metal 金属硅	Australia 澳大利亚	Preliminary affirmative determination and imposition of Securities 初步肯定性裁决并征收保证金	Anti-dumping Notice No. 2015/22, dated 23-2-2015 2015年2月23日, 反倾销公告第2015/22号
Sodium Citrate 柠檬酸钠	India 印度	Definitive ADD recommended 建议征收最终反倾销税	F.No.14/23/2013-DGAD, dated 27-2-2015 2015年2月27日, 第14/23/2013-DGAD号公告
Sodium hydrogen carbonate (sodium bicarbonate) 碳酸氢钠	Australia 澳大利亚	ADD measures revoked 取消反倾销措施	Anti-dumping Notice No. 2015/14, dated 9-2-2015 2015年2月9日, 反倾销公告第2015/14号
Sodium Nitrate 硝酸钠	India 印度	Definitive ADD imposed 征收最终反倾销税	3/2015-Cus. (ADD), dated 10-2-2015 2015年2月10日, 3/2015-Cus. (ADD)
Tyre Curing Presses (except Six Day Light Curing Press for curing bi-cycle tyres) 轮胎硫化机	India 印度	ADD extended till 7-1-2016 反倾销税延长至2016年1月7日	6/2015-Cus. (ADD), dated 3-3-2015 2015年3月3日, 6/2015-Cus. (ADD)
Uncoated Paper 无涂层纸	USA 美国	CVD investigation initiated 发起反补贴调查	80 FR 8598 [C-570-023], dated 18-2-2015 2015年2月18日, 80 FR 8598 [C-570-023]
Uncoated Paper 无涂层纸	USA 美国	ADD - Initiation of Less-Than-Fair- Value Investigations 反倾销-发起低于正常价值调查	80 FR 8608 [A-570-022], dated 18-2-2015 2015年2月18日, 80 FR 8608 [A-570-022]
Wooden Bedroom Furniture 木制卧室家具	USA 美国	Preliminary Results of changed circumstances review, and intent to revoke anti-dumping duty order in part 情势变更复审初步裁决, 并可能 部分取消反倾销税	80 FR 6690 [A-570-890], dated 6-2-2015 2015年2月6日, 80 FR 6690 [A-570-890]

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
kitchen appliance shelving and racks 厨房用金属架(筐)	USA 美国	ADD and CVD sunset review - affirmative industry injury determination 做出双反日落复审产业损害裁决	MOFCOM news, dated 9-2-2015 2015年2月9日, 商务部新闻
Wooden pencil 木制铅笔	Brazil 巴西	Terminated ADD measures 取消反倾销措施	MOFCOM news, dated 9-2-2015 2015年2月9日, 商务部新闻
Three-phase transformer 三相变压器	Argentina 阿根廷	Suspended antidumping measures for six months 中止反倾销措施6个月	MOFCOM news, dated 11-2-2015 2015年2月11日, 商务部新闻
Coolant pump or water pump 冷却剂泵或水泵	Argentina 阿根廷	Initiated ADD investigation 发起反倾销调查	MOFCOM news, dated 11-2-2015 2015年2月11日, 商务部新闻
Electric ironing machine 电动熨烫机	Argentina 阿根廷	Preliminary affirmation industry injury determination 初步肯定性裁决对产业造成实质损害	MOFCOM news, dated 11-2-2015 2015年2月11日, 商务部新闻
Water heater 热水器	Uruguay 乌拉圭	Initiated ADD sunset review 发起反倾销日落复审	MOFCOM news, dated 12-2-2015 2015年2月12日, 商务部新闻
Hot-rolled coil, checked coil and pickling oil coil 热轧卷材、格子花纹卷材和酸洗涂油卷材	Malaysia 马来西亚	Final affirmative ADD determination 最终肯定性反倾销裁决	MOFCOM news, dated 13-2-2015 2015年2月13日, 商务部新闻
Single coated paper-board 单面涂层纸板	Pakistan 巴基斯坦	Terminated ADD measures 取消反倾销措施	MOFCOM news, dated 13-2-2015 2015年2月13日, 商务部新闻
Coated plate and coil 涂层板卷	Thailand 泰国	Adjusted ADD rate 调整反倾销税率	MOFCOM news, dated 15-2-2015 2015年2月15日, 商务部新闻
Reinforced steel cable 强化钢铁绳缆	Mexico 墨西哥	Initiated ADD investigation 发起反倾销调查	MOFCOM news, dated 28-2-2015 2015年2月28日, 商务部新闻
Ammonium sulfate 硫酸铵	Mexico 墨西哥	Preliminary affirmative determination and imposed ADD preliminary duty 肯定性初裁并征收临时反倾销税	MOFCOM news, dated 28-2-2015 2015年2月28日, 商务部新闻
Plastic Sprayer 塑料喷雾器	Mexico 墨西哥	ADD Order to continue 继续征收反倾销税	MOFCOM news, dated 28-2-2015 2015年2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
Tennis ball 网球	Argentina 阿根廷	Final affirmative ADD determination 最终肯定性反倾销裁决	MOFCOM news, dated 28-2-2015 2015年2月28日, 商务部新闻
Galvanized plate and prepainted galvanized plate 镀锌板卷和彩涂镀锌板卷	Philippines 菲律宾	Terminated safeguard investigation 终止保障措施调查	MOFCOM news, dated 1-3-2015 2015年3月1日, 商务部新闻
Stainless tableware 不锈钢餐具	Brazil 巴西	Initiated review on the scope of PUC 启动对产品范围的评估	MOFCOM news, dated 1-3-2015 2015年3月1日, 商务部新闻
TDI 甲苯二异氰酸酯	Japan 日本	Extended ADD investigation for four months 延长反倾销调查4个月	MOFCOM news, dated 6-3-2015 2015年3月6日, 商务部新闻
Shoes 鞋类	Brazil 巴西	Initiated ADD sunset review 启动反倾销日落复审	MOFCOM news, dated 6-3-2015 2015年3月6日, 商务部新闻
Bus 客车	Ukraine 乌克兰	Terminated safeguard measures 取消保障措施	MOFCOM news, dated 9-3-2015 2015年3月9日, 商务部新闻

WTO News 世贸组织新闻

世贸组织发布了中国高性能无缝钢管反骑鸟案的专家组报告

2015年2月13日, 世贸组织专家组公布了由日本和欧盟提出的有关中国对高性能无缝钢管实施反倾销税案 (DS454和DS460) 的专家组报告。专家组特别做出了如下认定:

i) 专家组支持了根据反倾销协议第3.1,3.2,3.4和3.5条提出的许多主张, 但拒绝了根据第3.2条提出的商务部必需和未能评估涉案进口所造成的削价是否已经对国内产业的价格造成实际下行压力影响的主张。申诉方提出商务部对涉案进口的价格影响考虑不符合反倾销协议的第3.1和3.2条; 在评估倾销进口产品对国内产业造成的影

响方面不符合反倾销协议第3.1和3.4条; 并且调查机关在倾销进口产品与国内产业受到实质损害之间存在因果联系的认定方面不符合反倾销协议第3.1和3.5条。

ii) 专家组拒绝了根据第6.8条和附件2.1提出的主张, 专家组认为没有事实依据能够得出中国的调查机关未能向未知出口商/生产商尽到通知义务的结论, 因为他们已经将出口商问卷公布在其网站上了。然而, 专家组支持了对于由于中国允许某些报告的整篇内容保持机密而没有一个申请人如此做

的合适的“正当理由”，因而中国违反反倾销法第6.5条的主张。

- iii) 同样地，对于实施超过4个月的临时反倾销措施而没有满足反倾销法第7.4条规定的主张，专家组也认为中国的做法违反了该条规定。
- iv) 专家组支持了欧盟就第2.2.2条提出的有关销售及管理费用的主张、就第2.4条提出的公平比较的主张以及根据第6.7条提出的程序性方面的主张和根据附件1.7提出的对某些行政费用进行了双重计算的主张。

美国提交了对中国的补贴争端案

2015年2月11日，美国通知世贸组织秘书处，请求与中国就某些被认为中国向某些工业部门的企业提供了禁止性出口补贴的争端进行磋商。这些工业部门包括纺织、农业、医药产品、轻工业、特殊化学工程、新材料和计算机硬件以及建筑材料。

美国认为中国指定了一些企业在一个特定的产业示范基地（外贸转型升级示范基地），然后向他们提供禁止性出口补贴，包括通

过公共服务平台提供折扣或免费服务或向企业提供现金赠款。此外，美国认为中国向中国制造商、生产商和农民提供了某些其他禁止性出口补贴。美国认为中国的做法违反了补贴与反补贴措施协议（SCM协议）第3.1(a)和3.2条，并且就此列举了中国政府的182项法律文书。

欧盟诉美国大型商用飞机争端案成立的专家组

2015年2月23日，世贸组织争端解决机构成立了一个专家组来研究欧盟投诉美国对大型商用飞机制造提供所谓的税收激励案（DS487）。印度与巴西、中国、日本、韩国和俄罗斯在该争议案中保留了他们的第三方权利。欧盟认为华盛顿州对与大型民用航空器的开发、制造和销售提供了有条件的税收激励，构成补贴和反补贴协定第1和2条中规定的专项性补贴。目前，在世贸组织争端解决机构有4个不同阶段的纠纷（DS347，DS353，DS317，DS316）存在于两个成员之间（美国和欧盟），都是关于制造飞机的激励和对方声称这些激励违反了世贸组织的相关规定。

Ratio Decidendi 判决理由

反倾销税-在日落复审中排除不可靠的和临时性的出口

印度海关、货物税和服务税上诉法庭（CESTAT）支持了调查机关为了确定再次发生倾销和损害的可能性时，排除了上诉人（印度尼西亚出口商）的出口的做法。上诉人仅在与日落复审有关的很短的时间内向印度出口了涉案产品，而在此之间或者甚至在相关期间以后没有发生任何出口。上诉法院注意到上诉人对此没有任何合理的理由，

因此法院认为这些出口是临时性的并且不可靠。上诉法院还注意到了调查机关在裁决中认为上诉人向其他国家的出口价格低于其他印度尼西亚的出口商。

另外，考虑到许多以往案例和世贸组织专家组在DS224案中的裁决，上诉法庭认为1975年海关关税法第9A(1)部分设定的标准，即反倾销税应当不超过倾销幅度将不适用于

根据第9A (5) 部分的继续征收反倾销税。法院认为如果发生了日落复审，那么关键问题将不是目前是否存在倾销，而是一旦取消反倾销税是否可能造成倾销和损害的再次发生。CESTAT的反倾销法庭也认为没有法律要求在日落复审中需要根据特定的上诉人而确定倾销幅度。[P.T.Asahimas Chemicals诉调查机关-2015年2月13日，新德里CESTAT最终裁决第50334/2015号]

反倾销税-证实特定出口商反倾销税率

值得注意，当基于反向推断的反倾销税是依据二手信息而确定的，那么美国商务部必须通过证明在复审期间这些信息对出口商存在一定的商业现实存的基础，从而支持所确定的税率。美国国际贸易法院已经将案件发回商务部重审，该案是关于确定特定出口商的反倾销税率。商务部依据海关数据的做法也被法院驳回，法院认为如果商务部想要

依靠这一数据以证实所确定的税率，那么商务部一定要对什么数据有代表性提供充分的解释，并且也需要提供实质证据以证明在相关期间的保证金额。

法院还认为进口商按照这一税率支付的现金保证金并不是用以说明出口商在此期间的商业现实的依据，因为在当时最终税率仍未知。同样的，商务部依据少量数据的做法也被法院驳回，法院认为如果商务部想要依据这一数据，那么商务部需要提供充分的解释以说明为什么小数量构成实质证据。最后在发回重审时，法院认为商务部未能使其满足它需要承担的证实责任，并且仅仅通过表达商务部没有办法掌握其他来源以支持其对反倾销税的评估，是无法得出海关数据是唯一与出口商有关的信息。[Since Hardware (Guangzhou) Co.Ltd.诉美国政府-S2015年2月18日，美国国际贸易委员会判决简报第15-15号]

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