

国际贸易 法律月刊

内容

文章

对比分析反倾销调查中的听证 2

贸易救济新闻

对中国采取的贸易救济行动 5

中国采取的贸易救济行动 8

世贸组织新闻 9

判决理由 10

December
2014

Article 文章

Hearing in anti-dumping investigation – A comparative analysis

对比分析反倾销调查中的听证

By **T.D. Satish**

One of the most sacrosanct principles of natural justice – the legal maxim of *audi alteram partem*, requires that no person shall be condemned or punished unless such person is heard. Oral hearing or one to one meetings with adverse parties forms an important part of this principle, which also finds its way in anti-dumping investigations conducted by member countries of WTO. The Supreme Court of India in *Automotive Tyre Manufacturers Assn. v. Designated Authority*¹ has noted the relevance of holding an oral hearing by observing that “...*Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanor of the witnesses etc. and also clear up his doubts during the course of the arguments.*”

However, the provision relating to conduct of oral hearing has been couched in different countries in different manner regulating, through specific provision, the right of parties to an opportunity of making their submissions during such hearing/meetings. Broadly, hearings conducted by different countries cover two aspects:

- a) Personal hearing with the investigating authorities; and
- b) Hearing/meetings with adverse parties and making written submissions subsequently.

This article seeks to compare the anti-dumping law enacted by few of the Member countries, namely, European Community (“EC”), Republic of South Africa and Pakistan in respect of conducting oral hearing and conclude by comparing the law in these countries with the law adopted by India, to try and understand where India stands in comparison to other Member countries.

European Community

Article 6 of Council Regulation² provides for manner in which anti-dumping investigations are to be conducted by EC. Article 6.5 imposes two pre-conditions for grant of hearing by EC. These are (i) making a written request by an interested party, likely to be affected by the result of the proceeding and (ii) such written request should contain particular reasons why an interested party should be heard. Thus, grant of hearing by EC is not automatic and not generic in nature but puts an onus on the interested parties to justify grant of hearing. The hearing contemplated under Article 6.5 is a personal hearing between EC and the party requesting for such a hearing.

In addition to the hearing under Article 6.5, EC law under Article 6.6 also provides for an opportunity to interested parties to meet parties with adverse interests, so that opposing interests may be presented and rebutted. For

¹ 2011 (263) E.L.T. 481 (S.C.)

² Council Regulation (EC) No 1225/2009 of 30th November 2009 on protection against dumped imports from countries not members of the European Community

such a meeting, interested parties need not state reasons for requesting such meeting. It is also made clear that not attending such meeting shall not adversely affect such absent parties and that any oral submission made during the meeting shall be taken into account when it is subsequently confirmed in writing. Article 6.6 also provides an opportunity to interested parties to offer their rebuttals to the submissions of the other party – a provision not provided in other countries.

Republic of South Africa

Similar to EC law, the Anti-Dumping Regulations in terms of Notice 3197 of 2003 issued by South Africa also envisage two types of hearing/meetings – oral hearing and an adverse party meeting/hearing. The South African law also requires a written reasoned request from an interested party and subsequent submissions in written form akin to EC. However South African law differs from EC law inasmuch as the South African law provides that such a request for hearing can be made by an interested party during (i) preliminary investigation phase (ii) final investigation phase or (iii) both [Regulation 5.1]. This peculiar provision is not found in laws of other selected countries. The omission to provide for time line for requesting a hearing increases the probability of requesting multiple number of hearings in such other countries,

whether in preliminary phase or final phase or even at the fag-end of the investigation phase. The Commission may restrict the duration of such hearing and the South African law also requires the party making the request for hearing to provide a detailed agenda and information to be discussed at the oral hearing. [Regulations 5.4 and 5.5]

The process of conducting adverse party meeting is quite similar to the process of conducting an oral hearing, with slight difference being that in case of former, it is the Commission, which decides the final agenda of the meeting. In case of both oral hearing and adverse party meetings, the Commission will not consider any request more than 60 days and no hearing/meeting will be held more than 90 days, after the publication of preliminary findings [Regulation 5.2].

Pakistan

Similar to EC and South Africa, Pakistan's anti-dumping law³ also requires a request by an interested party for conduct of hearing and requires putting the oral submissions into writing subsequent to hearing [Rule 14]. Similar to South African Regulations, Pakistan's law provides for a time line for holding such meeting or hearing⁴.

But Pakistan's law seems to be much more interactive than others inasmuch as Rule 14 specifically provides for accommodating the

³ Notification S.R.O. 203(I)/2001, dated 31st March 2001

⁴ Rule 14(1) - Requesting hearing not later than 30 days after publication of preliminary determination; Conduct of such hearing not later than 60 days prior to the date of proposed final determination.

convenience of interested parties [Rule 14(3)] and ensuring that all parties participating get adequate opportunity to present their views [Rule 14(5)]. Pakistan's law also scores high on account of a rule requiring the authorities to maintain a record of the hearing and place the non-confidential version of the record of the hearing in the public file [Rule 14(6)]. Pakistan's law also provides that where there is no request for any hearing, an interested party may within 45 days before the date of proposed final determination, submit its written submissions.

Unlike EU and South Africa, though there is no separate law in respect of oral hearing and adverse party meeting here however, Rule 14(7) does allow interested parties to make oral submissions to the Commission during meetings with officials of Commission.

Comparison with Indian law

In comparison to anti-dumping laws of EC, South Africa and Pakistan, the wording of Indian Anti-Dumping law⁵ relating to conduct of oral hearings is obscure and devoid of detailed procedure. The only provision which allows an interested party to make oral submission is Rule 6(6) of Anti-Dumping Rules, which provides that an interested party can present the information orally and also puts a condition that such oral submission will be considered only when it is put in writing.

Just like Pakistan, there is no distinction between personal oral hearing and adverse party meeting. But compared to laws of EC, South Africa and Pakistan, Indian anti-dumping law on hearing does not provide/clarify the following:

- (i) Whether a request for hearing has to be made or not.
- (ii) When a hearing will take place, i.e., whether it will be conducted before or after preliminary determination.
- (iii) There is no provision to maintain minutes of hearing, unlike Pakistan.
- (iv) There is no provision for providing opportunities to all the parties to offer their rebuttal, unlike EC.
- (v) There is no provision to request oral hearing at preliminary stage.

But, despite the lack of procedural clarity about the conduct of oral hearings, India scores over EC, South Africa and Pakistan by requiring a compulsory hearing, whether or not it is requested by any interested party. The principle of nature justice in the form of *Audi Alteram Partem* is too holy a concept to be messed with, as failure of grant of hearing may lead to setting aside of entire investigation!

[The author is a Senior Associate, Lakshmikumaran & Sridharan, New Delhi]

⁵ Section 9A of Customs Tariff Act, 1975 read with Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ["Anti-Dumping Rules"]

Trade Remedy News 贸易救济新闻

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
1,1,1,2 Tetrafluoroethane 1,1,1,2-四氟乙烷	USA 美国	ADD and CVD - Final negative determination 反倾销和反补贴-否定性最终裁决	MOFCOM News dated 13-11-2014 2014年11月13日, 商务部新闻
53-Foot Domestic Dry Containers 53英尺内陆干货集 装箱	USA 美国	ADD - Preliminary determination of sales at less than fair value 反倾销-初步裁决低于正常价值销售	79 FR 70501 [A-570-014], dated 26-11-2014 2014年11月26日, 79 FR 70501 [A-570-014]
Aluminium extrusions 铝型材	Australia 澳大利亚	ADD and CVD - Final result of quick review 反倾销和反补贴-快速复审终裁	MOFCOM News dated 1-12-2014 2014年12月1日, 商务部新闻
Aluminium Wheel 铝制车轮	Australia 澳大利亚	ADD and CVD - Final result of quick review 反倾销和反补贴-快速复审终裁	MOFCOM News dated 18-11-2014 2014年11月18日, 商务部新闻
Boltless Steel Shelving units prepackaged for sale 无螺栓钢制货架	USA 美国	CVD investigation - Postponement of preliminary determination 反补贴调查-延期发布临时裁决	79 FR 65376 [C-570-019], dated 4-11-2014 2014年11月4日, 79 FR 65376 [C-570-019]
Carbon and Alloy Steel Wire Rod 碳钢合金盘条	USA 美国	Affirmative countervailing duty determination 肯定性反补贴终裁	79 FR 68858 [C-570-013], dated 19-11-2014 2014年11月19日, 79 FR 68858 [C-570-013]
Carbon and Alloy Steel Wire Rod 碳钢合金盘条	USA 美国	ADD - Final determination of sales at less than fair value 反倾销-最终裁决低于正常价值销售	79 FR 68860 [A-570-012], dated 19-11-2014 2014年11月19日, 79 FR 68860 [A-570-012]
Ceramic tableware and kitchenware 陶瓷餐具和厨房餐 具	EU 欧盟	Name change notification issued 发布更名公告	MOFCOM News dated 25-11-2014 2014年11月25日, 商务部新闻
Ceramic tile 瓷砖	EU 欧盟	Name change notification issued 发布更名公告	MOFCOM News dated 25-11-2014 2014年11月25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
Chlorinated Isocyanurates 三氯异氰尿酸	USA 美国	CVD Order issued 发布反补贴税征税令	79 FR 67424 [C-570-991], dated 13-11-2014 2014年11月13日, 79 FR 67424 [C-570-991]
Concrete steel nail 混凝土钢钉	Mexico 墨西哥	ADD sunset review investigation initiated 发起反倾销日落复审调查	MOFCOM News dated 2-12-2014 2014年12月2日, 商务部新闻
Composite floor 复合木地板	USA 美国	ADD – Final determination of new shipper review 反倾销-新出口商复审终裁	MOFCOM News dated 10-11-2014 2014年11月10日, 商务部新闻
Diclofenac Sodium 双氯芬酸钠	India 印度	Anti-dumping duty re-imposed for five years 继续征收5年的反倾销税	44/2014-Cus. (ADD), dated 21-11-2014 2014年11月21日, 44/2014-Cus. (ADD)
Digital Versatile Discs – Recordable DVD可刻录光盘	India 印度	ADD re-imposed for five years (only on DVD-R and not on DVD-RW) 继续征收5年的反倾销税(仅对可写入DVD而不包括可重写DVD)	45/2014-Cus. (ADD), dated 21-11-2014 2014年11月21日, 45/2014-Cus. (ADD)
Electrolytic manganese dioxide 电解二氧化锰	USA 美国	ADD – Affirmative industry injury final determination in sunset review 反倾销-肯定性日落复审产业损害终裁	MOFCOM News dated 3-12-2014 2014年12月3日, 商务部新闻
Graphite Electrodes of all diameters 石墨电极	India 印度	ADD recommended to be imposed 建议征收反倾销税	F.No.14/2/2013-DGAD, dated 19-11-2014 2014年11月19日, F.No.14/2/2013-DGAD
Graphite Electrodes of all diameters 石墨电极	Mexico 墨西哥	ADD anti-circumvention investigation initiated 发起反规避调查	MOFCOM News dated 5-12-2014 2014年12月5日, 商务部新闻
Kitchen Appliance Shelving and Racks 厨房用金属架 (筐)	USA 美国	ADD sunset review – Affirmative results 反倾销日落复审-肯定性结果	79 FR 67423 [A-570-941], 13-11-2014 2014年11月13日, 79 FR 67423 [A-570-941]
Melamine 三聚氰胺	EU 欧盟	Name change notification issued 发布更名公告	MOFCOM News dated 25-11-2014 2014年11月25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
Melamine 三聚氰胺	USA 美国	ADD and CVD investigation initiated 发起反倾销和反补贴调查	MOFCOM News dated 4-12-2014 2014年12月4日，商务部新闻
Monosodium Glutamate 谷氨酸钠	USA 美国	ADD - Final determination of sales at less than fair value, amended 反倾销-修改最终裁决低于正常价值销售	79 FR 70505 [A-560-826], dated 26-11-2014 2014年11月26日， 79 FR 70505 [A-560-826]
Non-Oriented Electrical Steel 无取向电工钢	USA 美国	ADD Order issued 发布反倾销裁决	79 FR 71741 [A-570-996], dated 3-12-2014 2014年12月3日， 79 FR 71741 [A-570-996]
Non-Oriented Electrical Steel 无取向电工钢	USA 美国	CVD Order issued 发布反补贴裁决	79 FR 71749 [C-570-997], dated 3-12-2014 2014年12月3日， 79 FR 71749 [C-570-997]
Oil Country Tubular Goods 石油管材	USA 美国	ADD and CVD – Sunset reviews initiated 反倾销和反补贴-发起日落复审	79 FR 71091 [A-570-943 and C-570-944], dated 1-12-2014 2014年12月1日，79 FR 71091 [A-570-943 和C-570-944]
Passenger Vehicle and Light Truck Tires 乘用车和轻型货车轮胎	USA 美国	CVD – Preliminary determination of countervailable subsidies 反补贴-初步裁定存在补贴	79 FR 71093 [C-570-017], dated 1-12-2014 2014年12月1日， 79 FR 71093 [C-570-017]
PET film PET薄膜	Brazil 巴西	ADD –preliminary duty imposed 反倾销-征收临时反倾销税	MOFCOM News dated 5-12-2014 2014年12月5日，商务部新闻
Photovoltaic modules and laminates 晶硅光伏组件和层压件产品	Canada 加拿大	ADD and CVD investigations initiated 发起反倾销和反补贴调查	CBSA Notice dated 5-12-2014 2014年12月5日，加拿大边境服务署公告
Polyvinyl Chloride Flat Electric Cables 聚氯乙烯扁平电缆	Australia 澳大利亚	ADD investigation initiated 发起反倾销调查	Anti-dumping Notice No. 2014/118, dated 6-11-2014 2014年11月6日， 反倾销公告第2014/118
Power transformers 变压器	Australia 澳大利亚	ADD – Termination of part of investigation 反倾销-终止部分调查	Anti-dumping Notice No. 2014/130, dated 1-12-2014 2014年12月1日， 反倾销公告第2014/130
Seamless Stainless Steel Tube 无缝不锈钢管	Ukraine 乌克兰	ADD imposed for 5 years 征收5年反倾销税	MOFCOM News dated 8-12-2014 2014年12月8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 Nitrite 亚硝酸钠	India 印度	ADD modified consequent to mid-term review 根据期中复审结果修改反倾销税	46/2014-Cus. (ADD), dated 8-12-2014 2014年12月8日, 46/2014-Cus. (ADD)
Steel and iron wire products 钢铁丝制品	Indonesia 印尼	Final result of safeguard mid-term review 保障措施期终复审终裁	MOFCOM News dated 1-12-2014 2014年12月1日, 商务部新闻
Tetrahydro furfuryl Alcohol 四氢化糠醇	USA 美国	ADD sunset review initiated 发起反倾销日落复审	79 FR 65186 [A-570-887], dated 3-11-2014 2014年11月3日, 79 FR 65186 [A-570-887]
Toluene Diisocyanate 甲苯二异氰酸酯	Japan 日本	ADD – Preliminary finding issued 反倾销-发布反倾销初裁	MOFCOM News dated 9-12-2014 2014年12月9日, 商务部新闻
Tow-Behind Lawn Groomers and parts 后拖式草地设备及零部件	USA 美国	ADD – Affirmative sunset review 反倾销-肯定性日落复审裁决	79 FR 65375 [A-570-939], dated 4-11-2014 2014年11月4日, 79 FR 65375 [A-570-939]
Transmission apparatus incorporating reception apparatus (cellular) portable telephone 移动电话	Turkey 土耳其	Safeguard investigation initiated 发起保障措施调查	WTO News dated 5-12-2014 [G/SG/N/6/TUR/19] 2014年12月5日, 世贸组织新闻, [G/SG/N/6/TUR/19]
Unwrought metal magnesium 未锻轧金属镁	Brazil 巴西	ADD investigation initiated 发起反倾销调查	MOFCOM News dated 9-12-2014 2014年12月9日, 商务部新闻

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
Toluene Diisocyanate 甲苯二异氰酸酯	Japan, South Korea and USA 日本、韩国和美国	ADD terminated 终止反倾销措施	MOFCOM Announcement No. 73, 2014, dated 20-11-2014 2014年11月20日, 商务部公告 2014年第73号
Trichloromethane 三氯甲烷	EU, South Korea, USA and India 欧盟、韩国、美国和印度	ADD terminated 终止反倾销措施	MOFCOM Announcement No. 83, 2014, dated 28-11-2014 2014年11月28日, 商务部公告 2014年第83号

WTO News 世贸组织新闻

秘鲁对某些农产品的附加税案违反世贸组织规则

2014年11月27日，世贸组织争端解决机构发布了由危地马拉提起的关于“秘鲁-对某些农产品进口实施附加税”案件(DS457)的专家组报告。该争端针对由秘鲁对某些农产品的进口如奶制品、玉米、大米和糖实施附加税措施。专家组认定秘鲁通过价格范围体系(PRS)实施的这些附加税，实际上是根据(1)在最低价和最高价之间设定一个范围，以反映过去60个月的国际价格；(2)每两个星期公布一次参考价，反映每个相关产品的国际市场均价。如果涉案产品的参考价低于最低限价，则实施附加税。

专家组认为秘鲁的做法违反了其在农产品协议第4.2条中的义务，因为其所实施的措施是要求转化为普通关税。专家组认为价格范围体系产生的附加税是“对进口产品或与进口产品有关的其他关税或收费”，属于1994年关税和贸易总协定第2.1(b)条第二句话的规定之内。由于秘鲁在其减让计划中没有登记任何这类“其他关税或费用”，专家组认为秘鲁违反了1994年关税和贸易总协定第2.1(b)条第二句话中规定的义务。

美国对越南的暖水虾实施反倾销措施违反了反倾销协议

越南提出的关于美国对越南的暖水虾实施某些反倾销措施争端案(DS429)的专家组报告已于2014年11月17日由世贸组织争端解决机构发布。该措施涉及反倾销税以及美国在实施这些措施时的法律或实践。专家组认为美国的行为违反了诸多条款，包括但不限于反倾销协议第6.10, 9.2, 11.2和11.3条。

尽管越南提出的关于在行政复审中使用归零“本身”违反反倾销协议的主张被专家组驳回，但是专家组允许了其“适用”的主张，认为美国商务部运用了归零的做法对个别越南生产商/出口商在三次行政复审中计算倾销幅度。美国商务部的非市场经济国家适用单一税率的做法也被认为违反了世贸组织反倾销协议第6.10和9.2条。

巴西拒绝欧盟就关税措施提出的专家组请求

在2014年11月18日的争端解决机构会议上，巴西已经拒绝了欧盟请求成立专家组以解决巴西对汽车、信息技术和其他行业实施的关税措施争端问题。欧盟认为巴西在汽车、信息和通讯技术以及自动化行业实施诸多计划，从而对国内生产商授予关税优惠，如对销售货物免除、或减少应缴关税和费用。这些关税优惠对进口产品造成较高的税收负担，并且对来自巴西国内的产品形成激励，从而造成歧视。

巴基斯坦对欧盟就聚对苯二甲酸乙二醇酯征税反补贴税提出争端解决

巴基斯坦已经请求与欧盟就欧盟对来自巴基斯坦的PET进口实施反补贴措施以及其他与该案调查相关的方面进行磋商。根据2014年10月28日巴基斯坦提交并于2014年11月7日在世贸组织发布的通讯来看，欧盟被认为在认定巴基斯坦的税法和其他计划构成了视出口实绩的补贴方面违反了补贴与反补贴协议第1,3和19条以及1994年关税和贸易总协定第6条。有关的计划包括制造捆绑计划、出口导向型项目长期融资计划以及在制造捆绑计划中厂房和设备的进口。

美国对美国-某些原产地标签案的专家组报告提出上诉

2014年11月28日，美国对在今天10月发布的美国-某些原产地标签要求争端案 (DS384 , DS386) 专家组的执行报告提交上诉通

知。执行专家组认为美国所修改的措施仍然违反了技术贸易壁垒协议第2.1条以及1994年关税和贸易总协定第3.4条。【请参阅国际贸易法律月刊-2014年11月期发表的文章，该文章分析了涉及到的争议以及可能的结果。】

Ratio Decidendi 判决理由

反倾销-镀聚酯陶瓷马克杯包含在陶瓷餐具和厨房餐具中

欧洲法院拒绝了将镀聚酯陶瓷马克杯排出在对来自中国的陶瓷餐具和厨房餐具征收反倾销税的范围外的请求。法院认为为了确定素的镀聚酯陶瓷马克杯是否包含在涉案产品范围之内，重要的是评估这些马克笔的特征与陶瓷餐具和厨房餐具的特征，而不是仅仅确认陶瓷马克杯没有这样的涂层。法院认为，为了反倾销的目的，是否包括在涉案产品范围之内必须根据“涉案产品”的一般定义进行评估，而不是某一特定子类别。法院还注意到进口争议中的进口马克杯需要在欧盟做进一步处理，并且是出于作为礼物或纪念品的目的，但是同样的产品并没有在加工后被真正用于潜在的最终消费，也就是，这些

马克杯可能最终还是被用于与食物相关的用途。调查机关认为用途标准与界定“涉案产品”有关。

同样的，法院还拒绝了关于素的镀聚酯陶瓷马克杯与其他陶瓷餐具和厨房餐具存在物理、技术和化学上的区别的主张，认为申请人无法证明这些区别导致了消费者感知上的区别，因此与其他产品存在竞争关系。另外，对于独立的分销渠道以及强制考虑双重的可替代性的主张也被法院拒绝了。法院还拒绝了申请人提出的调查机关违反了欧盟基本法第2(10), 3(7)【实践中对宏观经济因素的不利影响】以及3(2)条的主张。【2014年11月18日，欧洲法院 (第三法庭) 对Photo USA Electronic Graphic Inc. 诉欧盟委员会案做出裁决，案件编号T394/13】

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。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。向Lakshmikumaran&Sridharan发出的任意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2014年12月9日。取消订阅邮件请发至newslettertrade@lakshmisri.com newslettertrade@lakshmisri.com

<http://cn.lakshmisri.com>

www.lakshmisri.com

<http://addb.lakshmisri.com>