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Article 文章

Remand power of CESTAT in anti-dumping cases

论反倾销案件中印度关税、货物税和服务税上诉法庭的案件发回权

By **Bhargav Mansatta**

The issue of remand arises when the finding of the authority is under appellate review. If the appellate authority finds that the decision of the original authority which passed the order was wrong, it may modify, annul or remit the matter back to such authority for *de novo* consideration. Applicable appeal provisions in a statute provide the primary reference point for determining the powers of the Appellate Tribunal to pass the orders, on disposing the appeal, including remand.

With regard to anti-dumping, Section 9C of the Customs Tariff Act, 1975 provides for appeal or the judicial review of the orders issued by the designated authority. Section 9C (3) provides as below:

- (3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

The aforesaid provision does not expressly provide the power to remand the matter back to the designated authority. Section 9C was enacted in the year 1995. The appeal provision in Section 35C in the Central Excise Act, 1944, for comparison, is reproduced below:

Section 35C. Orders of Appellate Tribunal. — (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order

appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

The aforesaid provision expressly provided the power to the Tribunal to refer the case back to the authority. Similarly, Section 129B of the Customs Act, 1962 provides expressly the power to the Appellate Tribunal to remand the matter back to the authority.

Section 129B. Orders of Appellate Tribunal. – (1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

When the legislature intended to confer the power of remand, it has stated so explicitly in the provision. Thus, it seems that the departure in the case of Section 9C is conscious.

But in the case of *Union of India v. Umesh Dhaimode*¹, the Supreme Court analysed Section 128(2) of the Customs Act, 1962, as it then stood which did not include power to remand. It observed that authority with powers to “pass such order as it deemed fit confirming,

¹ 1998 (98) E.L.T. 584 (S.C.)

modifying or annulling the decision” appealed against includes the power to remand as well.

The issue was not contended before the Supreme Court as no one appeared on behalf of the respondent and the Court decided the issue *ex parte*. Also, one may note that anti-dumping investigations are time bound. Under Rule 17 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on Dumped Articles and for Determination of Injury) Rules, 1995 (AD Rules), anti-dumping investigation cannot extend beyond 18 months period. This requirement is enforced pursuant to the binding obligations under WTO Anti-dumping agreement. Article 5.10 of the Anti-dumping Agreement provides that investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation. Arguably, the designated authority would become *functus officio* once the decision is issued and the time for investigation has expired. Unless the findings of the designated authority are issued well in advance and on appeal the order of the CESTAT is issued within 18 months from the date of initiation of investigation, remand order, in effect, in all likelihood would amount to an implied extension of the time limit applicable for original investigation.

In the case of *Haldor Topsoe A/S v. Designated Authority, Ministry Of Commerce*², CESTAT,

Delhi analysed the power of the CESTAT while disposing the appeal under Section 9C (3) of the Customs Tariff Act. Based on primarily the considerations noted herein, the Tribunal observed,

Apart from the three types of orders mentioned in this clause, namely, confirming, modifying or annulling the order of the appellate authority, no other power that is conferred on this Tribunal under Section 129B is mentioned there. This restricted appellate power conferred on this Tribunal supports the argument that this Tribunal is not to remand the matter to the Designated Authority for fresh adjudication or decision. On account of the nature of the dispute involved and on account of the fact that an early decision on the issues is called for, the legislature in its wisdom took away the power of remand. Questions relating to the international trade have to be decided as expeditiously as possible and it is not to hang on before the Designated Authority and the appellate Tribunal for unduly long periods. Taking into consideration these aspects of the matter, we are inclined to take the view that in anti-dumping matters, this Tribunal is not to remand the issue to the Designated Authority for *de novo* consideration and decision. Accordingly, we now proceed to consider the merits of the case.

The decision of the Tribunal was reversed by the Supreme Court in appeal based on issues other than power to remand. The observations made by the CESTAT on remand as quoted

² 2000 (116) E.L.T. 377 (Tribunal)

above were not specifically reversed. However, on several occasions, CESTAT has remanded the matter back to authority.

For example, in *H & R Johnson (India) Ltd. v. Designated Authority*³, CESTAT held that the Tribunal having such wide judicial powers to make the appellate orders of the nature contemplated by Section 9C(3) would have, for the effective exercise of its appellate power of judicial review, the necessary power to remand the matter to the designated authority for its reconsideration. In *Alkali Manufacturers Association of India v. Designated Authority*⁴, CESTAT remanded the matter back for a fresh determination of non-injurious price and injury margin. However, in these cases the issue of the scope of Section 9C was not contended by the responding parties.

Assuming that the CESTAT has the power to remand matter, another important question arises is whether the power to remand is available in all cases. This is critical as in certain situations the illegality in the order issued by the Designated Authority may not be curable. CESTAT may not have the power to remand in such cases.

Leaving aside the issue of power of remand in general, is it possible that despite having an inherent power to remand, Tribunal in certain fact situation may not have the power to remand?

In a situation where the final finding is vitiated on account of non-observance of the principle of natural justice, the order is required to be set aside. In the case of *Automotive Tyre Manufacturers Assn. v. Designated Authority*⁵, final findings issued by the designated authority was set aside. Designated authority who passed the order did not grant any opportunity of hearing to the parties. Consequently, the Supreme Court held that such an order was vitiated for non-observance of principles of natural justice and was set aside.

In the case of *Gullapalli Nageswara Rao & Ors. v. Andhra Pradesh State Road Transport Corporation & Anr.*⁶ State Government did not make the enquiry consistent with the principles of natural justice in approving the scheme and the order approving the scheme was quashed by the Supreme Court. The Court did not specifically observe that illegality of such kind cannot be remedied by the authority upon remand, but it did not remand the matter so as to remedy the illegality in the decision.

Thus, there appears to be no clarity on the issue of remand power of the CESTAT under 9C of the Customs Tariff Act, 1975.

While it may be possible to remedy the incorrectness in the decision pertaining to substantive issues such as assessment of normal value, grant of adjustments in

³ 2005 (185) E.L.T. 125 (Tri. - Del.)

⁴ 2006 (194) E.L.T. 161 (Tri. - Del.)

⁵ 2011 (263) E.L.T. 481 (S.C.)

⁶ AIR 1958 SC 308

the dumping margin calculation, injury determination etc, it may not be possible to remedy or cure the findings which is vitiated and has thereby become *non-est* for the reason of non-observance of the principle of natural justice.

However, in the case of *Huawei Tech. Co. Ltd. v. Designated Authority*⁷, the issue relating to the scope of Section 9C and the CESTAT's power to remand was challenged especially in a situation where the impugned order is vitiated for non-observance of principle of nature justice. CESTAT expressly ruled that it has power to remand the matter back to the designated authority even in cases where the order suffers from such illegality. It was observed in relation to Section 9C as below:

A similar provision earlier contained in the Customs Act, 1962 in respect of the powers of the Commissioner (Appeals) was interpreted by the Supreme Court in the case of *Union of India v. Umesh Dhaimode* - 1998 (98) E.L.T. 584 (S.C.) holding that the appellate authority has the power of remand. Both provisions being *pari materia*, ratio of *Umesh Dhaimode* (supra) will be applicable for interpreting Section 9C(3) of the CTA. Hence the power of remand of the Tribunal in respect of anti-dumping cases cannot be questioned.

(ix) Rule 41 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 specifically provides that the Tribunal may make such orders or give such directions as may be necessary or expedient to give effect in relation to its orders or to prevent abuse of its process or to secure the ends of justice. The words "secure the ends of justice" are wide enough to clothe the Tribunal with powers to pass order of remand as it may deem fit in the facts and circumstances of the case. In addition to this, the power of Appellate Tribunal to confirm, modify or annul the decision or order appealed against also takes in its fold to pass such orders as are necessary in order to aid the main relief sought for in the appeal following the ratio laid down in the case of *Collector of Customs, Madras v. Madras Electro Castings P. Ltd.* - 1994 (71) E.L.T. 646 (Mad.).

The CESTAT thereafter remanded the matter back to the authority and directed the authority to grant a post-decisional hearing.

The appeal against the aforesaid order of the tribunal has been admitted but it is still pending before the Supreme Court.

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⁷ 2011 (273) E.L.T. 293 (Tri. - Del.)

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
A4 and A3 size copy paper A4和A3格式复印纸	Australia 澳大利亚	Not to initiate ADD and CVD investigations against China 不对中国发起反倾销和反补贴调查	MOFCOM news, dated 3-2-2015 2015年2月3日, 商务部新闻
Acetone 丙酮	India 印度	Anti-dumping duty recommended to be imposed 建议征收反倾销税	Final Findings No. 14/16/2012-DGAD, dated 22-1-2015 2015年1月22日, 第14/16/2012-DGAD案最终裁决
Aluminium Road Wheels 铝制车轮	Australia 澳大利亚	ADD - Initiation of accelerated review 反倾销-发起快速复审	Anti-dumping Notice No. 2015/06, dated 20-1-2015 2015年1月20日, 反倾销公告第2015/06号
Boltless Steel Shelving Units pre-packaged for sale 无螺栓钢制货架	USA 美国	Preliminary determination of anti-dumping duty investigation postponed 反倾销调查延期发布临时裁决	80 FR 2682 [A-570-018], dated 20-1-2015 2015年1月20日, 80 FR 2682 [A-570-018]
Boltless Steel Shelving Units pre-packaged for sale 无螺栓钢制货架	USA 美国	Preliminary determination of countervailable subsidies 初步裁定存在补贴	80 FR 5089 [C-570-019], dated 30-1-2015 2015年1月30日, 80 FR 5089 [C-570-019]
Calcium Hypochlorite 次氯酸钙	USA 美国	Countervailing duty and anti-dumping duty orders issued 发布反补贴和反倾销征税令	80 FR 5082 [C-570-009] and 80 FR 5085 [A-570-008], both dated 30-1-2015 2015年1月30日, 80 FR 5082 [C-570-009]和80 FR 5085 [A-570-008]
Ceramic electronic insulator 陶瓷绝缘子	Argentina 阿根廷	Preliminary ADD duty implemented 征收临时反倾销税	MOFCOM news, dated 27-1-2015 2015年1月27日, 商务部新闻
Citric acid 柠檬酸	EU 欧盟	Definitive anti-dumping duty imposed after expiry review 期终复审后继续征收最终反倾销税	Commission Implementing Regulation (EU) 2015/82, dated 21-1-2015 2015年1月21日, 欧盟委员会执行公告2015/82

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Concrete Reinforcing Bar 混凝土钢筋	Canada 加拿大	ADD and CVD – Determination of threat of injury 反倾销和反补贴-确定存在损害威胁	Canadian International Trade Tribunal Press Release dated 9-1-2015 2015年1月9日，加拿大国际贸易法院发布新闻
Concrete Reinforcing Bar 混凝土钢筋	Malaysia 马来西亚	ADD preliminary finding issued and terminated investigation 发布反倾销临时裁决并终止调查	MOFCOM news, dated 5-2-2015 2015年2月5日，商务部新闻
Copper tube 铜管	Canada 加拿大	Re-investigation of normal values, export prices and amount of subsidy, concluded 做出正常价值、出口价格和补贴的再调查裁决	CBSA Notice dated 30-1-2015 2015年1月30日，加拿大边境服务署公告
Crystalline Silicon Photovoltaic Products 晶体硅光伏产品	US 美国	ITC issued ADD and CVD industry injury affirmative final finding 美国国际贸易委员会发布反倾销和反补贴产业损害肯定性终裁	MOFCOM news, dated 22-1-2015 2015年1月22日，商务部新闻
Cut-to Length Steel Plate 定尺碳素钢板	US 美国	Affirmative final finding of ADD sunset review 发布肯定性反倾销日落复审最终裁决	MOFCOM news, dated 6-2-2015 2015年2月6日，商务部新闻
Denim 斜纹窄幅混纺棉布	Peru 秘鲁	Terminated ADD measures 取消反倾销措施	MOFCOM news, dated 29-1-2015 2015年1月29日，商务部新闻
Drawn Stainless Steel Sinks 不锈钢拉制水槽	US 美国	Final finding of new shipper review and terminated the investigation 发布反倾销新出口商复审终裁，取消新出口商复审	MOFCOM news, dated 28-1-2015 2015年1月28日，商务部新闻
Electrodes of graphite 炉用碳棒	Brazil 巴西	Issued final finding of ADD sunset review and to continue imposing duty 发布反倾销日落复审终裁并继续征收反倾销税	MOFCOM news, dated 5-2-2015 2015年2月5日，商务部新闻
Ferrovandium 铁矾合金	US 美国	ITC issued affirmative final finding of ADD sunset review 美国国际贸易委员会发布肯定性反倾销日落复审终裁	MOFCOM news, dated 13-1-2015 2015年1月13日，商务部新闻
Flexible Slabstock Polyol 聚醚多元醇	India 印度	Safeguard investigation terminated 终止保障措施调查	GSRD 22011/4/2014, dated 13-1-2015 2015年1月13日，GSRD 22011/4/2014

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Galvanized steel plate 镀锌板	Guatemala 危地马拉	ADD preliminary finding issued but not to impose preliminary measures 发布反倾销初裁但不采取临时反倾销措施	MOFCOM news, dated 2-2-2015 2015年2月2日, 商务部新闻
H section and I section H型钢和I型钢	Indonesia 印度尼西亚	Safeguard duty recommended 建议征收保障措施税	MOFCOM news, dated 6-2-2015 2015年2月6日, 商务部新闻
Hollow Structural Sections 焊缝管	Australia 澳大利亚	Time granted to issue Statement of Essential Facts extended 延迟发布重要事实披露	Anti-dumping Notice No. 2015/07, dated 16-1-2015 2015年1月16日, 反倾销公告第2015/07号
Hot-rolled steel 热轧卷	Turkey 土耳其	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 2-2-2015 2015年2月2日, 商务部新闻
Lightweight Thermal Paper 低克重热敏纸	USA 美国	Anti-dumping and countervailing duty orders to continue 继续反倾销和反补贴征税令	80 FR 5083 [A-570-920, C-570-921], dated 30-1-2015 2015年1月30日, 80 FR 5083 [A-570-920, C-570-921]
Low-carbon wire rod 低碳盘条	Thailand 泰国	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 22-1-2015 2015年1月22日, 商务部新闻
Melamine 三聚氰胺	USA 美国	Preliminary determinations of countervailing duty investigations postponed 延期发布反补贴临时裁决	80 FR 3219 [C-570-021], dated 22-1-2015 2015年1月22日, 80 FR 3219 [C-570-021]
Methyl Acetoacetate 乙酰乙酸甲酯	India 印度	Anti-dumping investigation initiated 发起反倾销调查	F.No.14/7/2014-DGAD, dated 7-1-2015 2015年1月7日, 14/7/2014-DGAD号公告
Monosodium glutamate 谷氨酸钠	USA 美国	ADD final finding amended 再次修改反倾销终裁结果	MOFCOM news, dated 8-1-2015 2015年1月8日, 商务部新闻
Monosodium glutamate 谷氨酸钠	EU 欧盟	Definitive anti-dumping duty imposed after expiry review 期终复审后继续实施最终反倾销税	Commission Implementing Regulation (EU) 2015/83, dated 21-1-2015 2015年1月21日, 欧盟委员会执行公告第2015/83号
Multilayered Wood Flooring 复合木地板	US 美国	Preliminary finding of new shipper review 发布新出口商复审初裁	MOFCOM news, dated 13-1-2015 2015年1月13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
Non-alloy hot-rolled steel plate 非合金钢热轧平板	Thailand 泰国	Safeguard investigation to impose safeguard measure 发布保障措施终裁并实施保障措施	MOFCOM news, dated 16-1-2015 2015年1月16日, 商务部新闻
Non-wired glass sheet 非夹丝玻璃板	Columbia 哥伦比亚	ADD investigation initiated 发起反倾销调查	MOFCOM news, dated 27-1-2015 2015年1月27日, 商务部新闻
Passenger Vehicle and Light Truck Tires 乘用车和轻型货车轮胎	USA 美国	ADD - Preliminary determination of sales at less than fair value; Preliminary affirmative determination of critical circumstances; and postponement of final determination 反倾销-初步裁定低于正常价值销售; 初步裁定存在紧急情况; 并且延期发布最终裁决	80 FR 4250 [A-570-016], dated 27-1-2015 2015年1月27日, 80 FR 4250 [A-570-016]
Photovoltaic Modules and Laminates 晶硅光伏组件和层压件产品	Canada 加拿大	ADD and CVD - Determination of reasonable indication of injury - 反倾销和反补贴-裁定有合理迹象显示存在损害	Canadian International Trade Tribunal Press Release dated 3-2-2015 2015年2月3日, 加拿大国际贸易法院发布新闻
Polyvinyl Chloride Flat Electric Cables 聚氯乙烯电缆	Australia 澳大利亚	ADD - Preliminary affirmative determination and imposition of securities 反倾销-初步肯定性裁决并且征收保证金	Anti-dumping Notice No. 2015/09, dated 19-1-2015 2015年1月19日, 反倾销公告第2015/09
Pounded rice 碾碎大米	Costa Rica 哥斯达黎加	Final finding of safeguard investigation to impose safeguard measure 发布保障措施终裁并实施保障措施	MOFCOM news, dated 27-1-2015 2015年1月27日, 商务部新闻
Preserved mushroom 蘑菇罐头	US 美国	Affirmative preliminary determination of new shipper review 发布肯定性反倾销新出口商复审初裁	MOFCOM news, dated 23-1-2015 2015年1月23日, 商务部新闻
RG coaxial cable RG同轴电缆	Mexico 墨西哥	ADD final finding issued and duty imposed 发布反倾销终裁并征收反倾销税	MOFCOM news, dated 9-1-2015 2015年1月9日, 商务部新闻
Sodium Di-Chromate 重铬酸钠	India 印度	Safeguard investigation terminated 终止保障措施调查	F.No. D-22011/5/2014, dated 15-1-2015 2015年1月15日, 第D-22011/5/2014号公告

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Spiral bit 螺旋钻头	Argentina 阿根廷	Final finding of second sunset review issued and minimum FOB price imposed 发布第二次日落复审终裁并实施最低离岸价	MOFCOM news, dated 2-2-2015 2015年2月2日, 商务部新闻
Steel strand wire 钢绞股绳	Columbia 哥伦比亚	Preliminary duty extended for 2 months 延长征收2个月临时反倾销税	MOFCOM news, dated 22-1-2015 2015年1月22日, 商务部新闻
Steel Wheel 钢轮毂	Argentina 阿根廷	ADD investigation terminated 结束反倾销调查	MOFCOM news, dated 13-1-2015 2015年1月13日, 商务部新闻
Tow Behind Lawn Groomer 后拖式草地维护设备	US 美国	ITC issued affirmative final finding of ADD sunset review 美国国际贸易委员会发布肯定性反倾销日落复审终裁	MOFCOM news, dated 15-1-2015 2015年1月15日, 商务部新闻
Welded tubes and pipes of iron or non-alloy steel 铁或非合金钢焊缝管	EU 欧盟	Definitive anti-dumping duty imposed 征收最终反倾销税	Commission Implementing Regulation (EU) 2015/110, dated 26-1-2015 2015年1月26日, 欧盟委员会执行公告第2015/10号

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
Phenol 苯酚	Japan, Korea RP, US and Taiwan 日本、韩国、美国和台湾	Terminated the measures 终止反倾销措施	MOFCOM Announcement No. 5 of 2015, dated 30-1-2015 2015年1月30日, 商务部公告2015年第5号
Pyridine 吡啶	India 印度	ADD mid-term review initiated 发起反倾销期中复审调查	MOFCOM Announcement No. 6 of 2015, dated 5-2-2015 2015年2月5日, 商务部公告2015年第6号

WTO News 世贸组织新闻

禽流感有关的进口限制 – 印度对专家组报告提出上诉

印度已经于2015年1月26日向世贸组织

上诉机构发出上诉通知, 对印度-农产品案(DS430)的专家组报告提起上诉。该争端是有关印度通过其禽流感(AI)措施禁止该产品

的进口，影响了某些来自于向世界动物卫生组织(OIE)报告发现禽流感的国家的农产品进口。这些争议中的措施包括根据印度1898年牲畜进口法案和根据该法案由印度畜牧、乳制品和渔业部门发布的命令，特别是1663(E)法令。专家组认为印度的措施不符合卫生和植物检疫(SPS)协议第2.2、2.3、3.1、5.1、5.2、5.6、6.2、6.1,7条、附件B(2)和附件B(5)(a)、(B)和(d)。

上诉机构发布阿根廷进口措施案的上诉机构报告

世贸组织上诉机构于2015年1月15日发布了有关阿根廷进口措施(DS438,DS444和DS445)案的报告。该报告已于2015年1月26日被争端解决机构接受。该案中的起诉方是欧盟、美国和日本。该争端有关两项措施，即事前声明进口申报程序(Declaracion Jurada Anticipada de Importacion DJAI)，阿根廷政府要求自2012年2月起大部分进口到阿根廷的货物需要进行事前声明进口申报；以及阿根廷当局随后实施了多项贸易相关要求(TRRs)，作为进口到阿根廷的一项条件，以达到以下目的：(i)通过等值出口来抵消进口的价值；(2)限制进口，无论在数量或价值上；(3)在国内生产中达到一定程度的本地成分；(iv)在印度投资和(v)避免遣返利润。

TRR措施包括以下几点内容：(a)作为批准进口的条件要求申报；(b)某些产品的进口要求各种许可；(c)在授予进口批准的系统性延迟或未能给予批准，或授予进口许可的同时进口商需要承诺遵守特定贸易限制的义务。

上诉机构特别认为：

- TRRs措施：阿根廷提出上诉，认为专家组在评估TRRs时将其作为单独一项措

施。上诉机构认为TRRs措施是单独一项措施，并支持了专家组认定TRRs措施的存在，因此，也支持专家组认定TRRs措施违反了1994年关税与贸易总协定第3.4和11.1条。

- DJAI程序：上诉机构认为专家组在解释第11.1条中没有错误，并且认为有关进口手续的第8条并不是成员国摆脱他们根据11.1条应承担义务的借口，从而禁止某些进口。上诉机构认为这些手续对进口存在限制影响，因此不符合第11.1条。

越南对暖水虾争端案专家组报告提出上诉

2015年1月6日，越南已经提交上诉通知，就美国-对某些从越南进口的虾类实施反倾销措施案(DS429)的专家组报告提起上诉。该争议涉及美国在两次行政复审和一次日落复审中对来自越南的某些冷冻暖水虾实施的反倾销措施，以及其他美国法律、法规、行政程序和惯例，包括归零。越南寻求上诉机构审查专家组是否错误地认定乌拉圭回合协议法案的129(c)(1)部分作为“本身”不违反1994年关贸总协定第六条协议的执行协议的第1、9.2、9.3、11.1和18.1条。而该法案以限制行政再决定的方式实施了争端解决机构的建议和规定。正如乌拉圭回合协议法案第129部分所规定的那样，执行世贸组织规则不利影响针对的是执行当天或以后进口的涉案产品。专家组认为就越南有关在行政复审中的归零做法“本身”违反世贸组织相关法规的主张，美国商务部已经充分考虑2012年4月前的事实，并在行政复审中修改了计算公式，专家组驳回了越南认为该认定违反了反倾销协定第9.3条和1994年关税和贸易总协定第6.2条的主张。

Circular 通知

反倾销税-发起日落复审后的征税延长

印度财政部已经澄清征收反倾销税的有效期限应当从征收临时反倾销税之日起算5年时间，除非反倾销和关税总局 (DGAD) 在5年期满之前发起复审。出于此目的，依据1975年海关关税法案9A(5)部分第二但书，财政部于2015年1月28日发布了第5/2015-Cus号令，并且修改了之前的第28/2011-Cus.号令。新法令是针对一个特定的公告(第

100/2005-Cus号公告)，即海关当局在DGAD还没有发起任何日落复审时仍旧征收反倾销税的情况，旧法令澄清了只有当征税延期公告在原始公告到期前发布，最终反倾销税才可以超出规定的时间征收的。修正后的旧法令的第3段也表示，如果在复审中最终裁决是在原征税公告到期后发布的，那么在这种情况下，征税公告将自公告发布之日起生效。

Ratio Decidendi 判决理由

反倾销税-对单独税率应诉者在后期进行完整调查

美国国际贸易法院驳回了美国商务部要对某一利害关系方 (申请获得单独税率) 进行一个完整的单独调查的决定，而该利害关系方并没有在第一次行政复审中获得单独税率。法院所处理的争议与第二次再决定和第三次的部分自愿再决定相关。注意到应诉人申请单独反倾销税率的资格必须与其经济实况合理相关，法院认为无法在每个案件中合理地要求必须发起完整的单独调查。法院也注意到在过去调查当局

拒绝发起此类调查，原因在于有限的行政资源。法院认为在如此晚的时间发起调查过于随意并且将导致结果经常反复，同时法院将部分问题发回给商务部重审。然而法院支持商务部的裁决，认为已经在第一次行政复审中计算了那些高于可忽略幅度单独税率以及被拒绝实施单独税率的企业税率。[常州豪德木业有限公司诉美国政府 – 2015年1月23日，美国国际贸易委员会判决简报第15-07]

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