

国际贸易 法律月刊

内容

文章

关于评估反倾销调查申请的问题 –
危地马拉水泥案的分析 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 9

世贸组织新闻 10

新闻精华 10

判决理由 11

September
2013

Article 文章

Issues in evaluating an application seeking initiation of an antidumping investigation - Analysis of Guatemala Cement case

关于评估反倾销调查申请的问题-危地马拉水泥案的分析

By **T.D. Satish**

The starting point of any anti-dumping investigation is an application made by or on behalf of a domestic industry to the investigating authority¹, containing information and evidences alleging dumping causing injury to such domestic industry. This application becomes one of the most essential documents on which initiation and subsequent anti-dumping investigation are based. However, at the stage of pre-initiation itself, questions like those below may arise:

- a) What is the kind of information which should be presented by the domestic industry?
- b) What information can be considered as 'reasonably available'?
- c) What should be the quality of such application?
- d) What should be the level of examination on the part of the investigating authority?

The DSB Panel in *Guatemala Cement case*² answered the above questions by shedding light on Articles 5.2 and 5.3 of WTO:Anti-Dumping Agreement (ADA). The dispute revolved around anti-dumping duty imposed by Guatemala on imports from Mexico. Mexico argued that the entire initiation of investigation was vitiated by the fact that the application filed by Guatemalan domestic industry was inadequate and insufficient to justify

initiation of investigation.

In the facts of the case, the Guatemalan domestic industry filed the application by providing 2 invoices of 1 bag of cement each as evidence with respect to normal value and 2 invoices of 7035 and 4221 bags of cements respectively as evidence for export price, to prove existence of dumping. As regards evidence of normal value, Mexico contended that the invoices did not specify the product, the amount, the source, representativeness of the evidence with respect to the total quantity produced in Mexico, etc. Mexico also contended that there were many factors, viz., differences in quantity, product description, prices in export market and domestic market and levels of trade which severely affected price comparability between the normal value and export price evidences respectively. It also said that the application contained no evidence with respect to threat of injury to the domestic industry due to dumped goods from Mexico since apart from 2 export invoices no other evidence was given with respect to factors set forth in Article 3.7 ADA. For these two twin issues, Mexico alleged that the application filed by the Guatemalan domestic industry lacked sufficient evidence with respect to (i) dumping; (ii) threat of injury and; (iii) causal link. Thus, in Mexico's view the application did not

¹ Exception being suo-moto initiations under Article 5.6 WTO:Anti-Dumping Agreement

² Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement From Mexico – DS 156

meet the standards of Article 5.2 of WTO: ADA. Mexico further argued that even if Guatemalan domestic industry makes such bare application, it was incumbent upon Guatemala to consider the accuracy, adequacy and sufficiency of evidence presented while deciding to initiate the investigation, which Mexico alleged was not done and hence Article 5.3 of ADA was violated.

The panel in this case came out with a determination, which became the standard for pre-initiation stage of an investigation. It started its analysis by demarcating the role of the applicants and the investigating authorities at the pre-initiation stage. As regards applicant's role in filing the application, relying upon a report in an earlier dispute³ on the same issue, it held that Article 5.2 puts a requirement on the applicant to necessarily provide evidences, as is reasonably available, with respect to (i) dumping; (ii) injury to the domestic industry and; (iii) causal link between the two and that such evidence and information, should enable the investigating authority to reject the application on its face value, where the authority considers that such application does not contain information as is reasonably available to the applicant. The standard of information to be presented by the applicant set by the panel was not that of a simple assertion and unsubstantiated by relevant evidence, but of a higher standard. As regards the contents of evidence to be presented, the panel, set the standard by requiring applicants to file application with information, which are substantiated by some amount of evidence, as

is reasonably available with the applicants.

As regards Article 5.3, Mexico argued that Guatemala failed to examine the "accuracy and adequacy" of the evidence provided in the application was sufficient to justify initiation of an investigation. Guatemala argued that investigating authority must examine the accuracy and adequacy of the evidence to justify the initiation but such investigating authority is not required to carry out any investigation or confirm or verify the claims contained in the application. In arguing so, Guatemala relied upon the decision in *Softwood Lumber* to assert that a panel should consider whether a reasonable, unprejudiced person could have found... that sufficient evidence existed to justify initiation and also that the level of "sufficient" evidence to justify initiation is significantly lower than the level of evidence required for preliminary or final determination.

The panel, relying on *Softwood Lumber*, came to the conclusion that it is *the sufficiency of the evidence, and not its adequacy and accuracy per-se, which forms the legal standard to determine whether to initiate the investigation or not.*⁴ Thus, Article 5.3 is a requirement imposed on the investigating authority that upon acceptance of an application, which contains evidence on dumping injury and causal link as is reasonably available to the applicant, the investigating authority has to further undertake an examination of the evidence and information contained in the application. *The decision to initiate is made by reference to the objective of sufficiency of*

³ DS 60 Guatemala Cement Panel Report

⁴ Para 8.31 DS156 Guatemala Cement

*the evidence in the application, and not by reference to whether the evidence and information provided in the application is all that is reasonably available to the applicant.*⁵

The panel examined whether the evidence presented in the application with respect to normal value, export price and the threat of material injury, was sufficient to justify initiation of investigation. As regards dumping, it examined Article 5.3 read with Article 2, which talks about dumping. But it pointed out that reference to Article 2 was made just for guidance and not to make a determination on Article 2 itself. Upon perusing the records and applying Article 2, it held that given the evidence, an unbiased and objective investigating authority could not have concluded that there was sufficient evidence of dumping to justify the initiation of an anti-dumping investigation. It observed that an investigating authority was not expected to perform complex adjustments and calculations at the stage of initiation. However, where it is obvious that there are substantial questions of comparability between the export price and normal value the investigating authority should at least acknowledge that differences in the prices generate questions with regards to their comparability, and either give some consideration as to the impact of those differences on the sufficiency of the evidence of dumping or seek such further information as might be necessary. Since neither of the above was done by Guatemala, the panel considered that there was insufficient evidence with respect to dumping. Similarly, for examining the sufficiency of evidence for threat of injury, it referred to Article 3 for guidance and held

that Guatemala did not examine the sufficiency of evidence with respect to threat of material injury.

An investigating authority, according to the panel, should not be content with the information provided in the application but rather try gathering evidence on its own in order to fill the evidentiary gap to meet the standard under Article 5.3. However, where such act is not undertaken on its own by an investigating authority to bridge the gap and bring the information in the application in conformity with Article 5.3, it cannot be said that the 'reasonably available' standard under Article 5.2 will not permit initiation of investigation as the evidence as is reasonably available to the applicant would not be objectively judged.

To conclude, as far as Articles 5.2 and 5.3 of ADA are concerned, the panel in Guatemala clearly defined the role of an applicant in making an application and the role of an investigating authority in examining the application so filed. Further, the information so contained must be backed with evidences as may be reasonably available with the applicant but such information should not be totally based on mere assertions. It must be ensured that the application is not accepted by an investigating authority at its face value and at least some examination is conducted to examine the adequacy and accuracy of not only the information in the application, but more importantly the evidences presented.

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

⁵ Para 7.50 in DS 60 Guatemala Cement

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 通知文号及日期
Aluminum Extrusions 铝型材	USA 美国	Initiation of changed circumstances reviews for Anti-dumping and Countervailing duty 发起反倾销和反补贴情势变更复审	US ITA 78 FR 51143, dated 20-8-2013 2013年8月20日, 美国国际贸易委员会78 FR 51143
Bicycle and frame 自行车及车架	Canada 加拿大	ADD mid-term review initiated 发起反倾销期中复审	Dated 8-8-2013 2013年8月8日, 加拿大国际贸易法庭发布公告
Carbon steel welded tube 碳钢焊接钢管	Canada 加拿大	Affirmative definitive determination of ADD and countervailing duty in sunset review 肯定性反倾销和反补贴日落复审终裁	Dated 19-8-2013 2013年8月19日, 加拿大国际贸易法庭发布公告
Cased Pencils 盒装铅笔	USA 美国	ADD Administrative Review, rescinded 反倾销行政复审	US ITA 78 FR 54452, dated 4-9-2013 2013年9月4日, 美国国际贸易委员会78 FR 54452
Ceramic tableware 瓷质餐具	Customs Union of Russia, Belorussia and Kazakhstan 欧亚经济委员会	Definitive determination of safeguard measure 保障措施终裁	Dated 2-8-2013 2013年8月2日
Ceramic tableware 瓷质餐具	Brazil 巴西	Preliminary ADD imposed 征收临时反倾销税	Dated 19-8-2013 2013年8月19日
Circular welded carbon-quality steel pipe 环状焊缝碳素钢管	USA 美国	Sunset review of ADD and countervailing duty expedited 快速反倾销和反补贴日落复审	US ITC News Release 13-085, dated 6-9-2013 2013年9月6日, 美国国际贸易委员会发布新闻
Citric Acid and Certain Citrate Salts 柠檬酸和柠檬酸盐	USA 美国	Partial rescission of countervailing duty administrative review 部分取消反补贴行政复审	US ITA 78 FR 54625, dated 5-9-2013 2013年9月5日, 美国国际贸易委员会78 FR 54625
Copper tube 铜管	Canada 加拿大	Preliminary determination on alleged injurious dumping and subsidization 初裁损害性倾销和补贴	Dumping case number: AD/1401 and Subsidy case number: CV/137, dated 20-8-2013 2013年8月20日, 倾销案件号AD/1401和补贴案件号CV/137

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日期
Corn 玉米	Chile 智利	Safeguard investigation terminated 终止保障措施调查	Dated 31-7-2013 2013年7月31日
Crystalline silicon photovoltaic modules and key components 太阳能电池板及其组件	EU 欧盟	Regulation imposing provisional anti-dumping duty amended 修改临时反倾销税规定	Commission Regulation (EU) No. 748/2013, dated 2-8-2013 2013年8月2日, 欧盟委员会公告第748/2013
Diamond sawblades and parts 菱形锯片	USA 美国	Final results of ADD changed circumstances review 反倾销情势变更终裁	US ITA 78 FR 48414, dated 8-8-2013 2013年8月8日, 美国国际贸易委员会78 FR 48414
Digital Versatile Discs-Recordable (DVD-R and DVD RW) DVD可刻录光盘	India 印度	ADD extended up to 22-7-2014 consequent to sunset review 日落复审延长反倾销税至2014年7月22日	Notification No.19/2013-Cus. (ADD), dated 29-8-2013 2013年8月29日, 第19/2013-Cus. (ADD)通知
Drawn Textured Yarn 弹力丝	Indonesia 印度尼西亚	Initiation of ADD investigation 发起反倾销调查	Announcement 754 / KADI / VIII / 2013, dated 2-8-2013 2013年8月2日, 754 / KADI / VIII / 2013公告
Drill Pipe 钻管	USA 美国	Administrative review of the countervailing duty (CVD) completed 反补贴行政复审结束	US ITA 78 FR 47275, dated 5-8-2013 2013年8月5日, 美国国际贸易委员会78 FR 47275
Frozen Warmwater Shrimp 冷冻暖水虾	USA 美国	Countervailable subsidization found by US DOC 美国商务部裁定存在补贴	US DOC Press Release dated 13-8-2013 2013年8月13日, 美国商务部发布公告
Galvanized steel wire 镀锌钢丝	Canada 加拿大	No injury caused by dumping and subsidy 倾销和补贴未造成损害	Canadian ITC Notice Dated 20-8-2013 2013年8月20日, 加拿大国际贸易委员会发布公告
Glucose 葡萄糖	Indonesia 印度尼西亚	Safeguard measure terminated 取消保障措施税	Dated 31-7-2013 2013年7月31日
Hot Rolled Flat Products of Stainless Steel-304 grade 304级不锈钢热轧钢板	India 印度	Safeguard duty imposed for a period of 200 days, from 4-1-2013 to 22-7-2013 征收保障措施税自2013年1月4日至2013年7月22日	Notification No. 2/2013-Cus. (SG), dated 29-8-2013 2013年8月29日, 第2/2013-Cus. (SG)通知
Juicer under 900W 900瓦以下榨汁机	Mexico 墨西哥	Initiation of ADD investigation 发起反倾销调查	Dated 12-8-2013 2013年8月12日

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日期
Light-walled rectangular pipe and tube 薄壁矩形钢管	USA 美国	Affirmative sunset review – Countervailing duty to continue 肯定性日落复审 – 继续征收反补贴税	US ITA 78 FR 48416, dated 8-8-2013 2013年8月8日, 美国国际贸易委员会 78 FR 48416,
Oil Country Tubular Goods 成品油管和套管	Indonesia 印度尼西亚	Definitive determination of safeguard measure 保障措施终裁	Dated 30-7-2013 2013年7月30日
Oil Country Tubular Goods 成品油管和套管	USA 美国	Countervailing duty administrative review – Findings of two companies having received countervailable subsidies 反补贴行政复审-裁定两家公司收到补贴	US ITA 78 FR 49475, dated 14-8-2013 2013年8月14日, 美国国际贸易委员会 78 FR 49475
Paracetamol 扑热息痛	India 印度	ADD continuation recommended in sunset review 日落复审建议继续征收反倾销税	F.No.14/1009/2012-DGAD, dated 26-8-2013 2013年8月26日, 第14/1009/2012-DGAD通知
Partially Oriented Yarn 定向聚酯纱线	Indonesia 印度尼西亚	Initiation of ADD investigation 发起反倾销调查	Announcement 753 / KADI / VIII / 2013, dated 2-8-2013 2013年8月2日, 第753 / KADI / VIII / 2013公告
PET 聚对苯二甲酸乙二醇酯	Argentina 阿根廷	Preliminary ADD imposed 征收临时反倾销税	Dated 23-8-2013 2013年8月23日
Plywood 胶合板	Korea 韩国	Levy of ADD for three years, recommended 建议征收三年反倾销税	Dated 22-8-2013 2013年8月22日, 韩国产业通商资源部
Resin or other organic substances bonded wood or ligneous fibre boards of thickness below 6mm 厚度6毫米以下树脂或其他有机物质粘合的木材或木质纤维板	India 印度	Definitive ADD imposed 征收最终反倾销税	Notification No.18/2013-Cus. (ADD), dated 8-8-2013 2013年8月8日 第18/2013-Cus. (ADD)公告
Rubber Chemicals - N-1, 3-dimethyl butyl-N'Phenylenediamine also known as PX-13 or 6-PPD 橡胶助剂6PPD	India 印度	Initiation of review investigation for continuation of safeguard duty 发起保障措施日落复审调查	F No. D-22011/ 1/2013, dated 29-8-2013 2013年8月29日, 第D-22011/ 1/2013通知

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日期
Slide fasteners fitted with chain scoops of base metal or plastic 塑料或金属齿拉链	Egypt 埃及	Anti-dumping sunset review investigation initiated 发起反倾销日落复审调查	Dated 4-9-2013 2013年9月4日
Stainless cold-rolled plate 不锈钢冷轧板材	Taiwan 台湾	Affirmative preliminary determination of dumping and material injury 初步裁定存在倾销和实质损害	Dated 14-8-2013 2013年8月14日, 台湾财政部关务署
Stainless steel tube and pipe butt-welding fittings 不锈钢管对焊件	EU 欧盟	Termination of AD proceedings 终止反倾销程序	2013/440/EU, dated 20-8-2013 2013年8月20日, 2013/440/EU
Steel angles, steel square profiles and plates, iron and steel bars and wire 角钢、方形钢材和板材, 钢铁棒材和线材	Columbia 哥伦比亚	Safeguard investigations initiated 发起保障措施调查	Dated 6-8-2013 2013年8月6日
Steel ropes and cables 钢丝绳和钢缆	EU 欧盟	Initiation of partial interim review of AD measures 发起期中复审调查	2013/C 246/05, dated 27-8-2013 2013年8月27日, 第2013/C 246/05
Steel wire 钢铁丝	Columbia 哥伦比亚	Preliminary determination to levy ADD 征收临时反倾销税	Resolution No. 0211, dated 20-8-2013 2013年8月20日, 第0211号决议
Tennis ball 网球	Argentina 阿根廷	Initiation of ADD investigation 发起反倾销调查	No.117 of 2013, dated 7-8-2013 2013年8月7日, 阿根廷经济和公共财政部2013年第117号决议
Tissue Paper Products 餐巾纸	USA 美国	Administrative review of ADD order in respect of three companies, resinded 三家公司反倾销行政复审	US ITA 78 FR 51142, dated 20-8-2013 2013年8月20日, 美国国际贸易委员会78 FR 51142
Trichloroisocyanuric acid 三氯异氰尿酸	EU 欧盟	Initiation of new exporter review in AD measures 发起反倾销新出口商复审调查	Commission Regulation (EU) No. 809/2013, dated 27-8-2013 2013年8月27日, 欧盟委员会规定第809/2013
Tyres for Trucks and Buses 汽车轮胎	Brazil 巴西	Definitive ADD imposed after sunset review 日落复审继续征收5年反倾销税	Dated 6-8-2013 2013年8月6日, 巴西贸易保护局

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知文号及日期
Vulcanized rubber transfer belt 硫化橡胶传送带	Argentina 阿根廷	Preliminary determining to continue the investigation but not levy preliminary duty 继续进行反倾销调查但不采取临时反倾销措施	Resolution No. 128 of 2013, dated 14-8-2013 2013年8月14日， 2013年第128号决议
Vitamin -A Palmitate 维生素A棕榈酸酯	India 印度	ADD continuation recommended in sunset review 日落复审建议继续征收反倾销税	F.No.15/7/2011-DGAD, dated 21-8-2013 2013年8月21日， 第15/7/2011-DGAD通知
Wire rope 钢缆	Mexico 墨西哥	Initiation of AD investigation 发起反倾销调查	Dated 26-8-2013 2013年8月26日
Wind Towers 应用级风塔	Australia 澳大利亚	Initiation of AD investigation 发起反倾销调查	Anti-dumping Notice No. 2013/68, dated 28-8-2013 2013年8月28日 反倾销通知第2013/68
Zinc coated (Galvanised) steel and Aluminium zinc coated steel 镀锌板和镀锌铝板	Australia 澳大利亚	Duty imposed considering dumping and subsidy margins 考虑到倾销和补贴幅度征收反倾销和反补贴税	Anti-dumping Notice No. 2013/66, dated 5-8-2013 2013年8月5日，反倾销通知第2013/66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 通知文号及日期
Bisphenol A 双酚A	Japan, South Korea, Singapore and Taiwan 日本韩国新加坡和台湾	Expiry review of anti-dumping measures 反倾销期终复审	MOFCOM Announcement No. 55 of 2013, dated 3-9-2013 2013年9月3日， 商务部公告2013年第55号
Single-mode Optical Fibers 单模光纤	India 印度	Initiation of ADD investigation 发起反倾销调查	MOFCOM Announcement No.54 of 2013, dated 19-8-2013 2013年8月19日，商务部2013年第54号公告
Tertiary Butylhydroquinone 特丁基对苯二酚	India 印度	Initiation of ADD investigation 发起反倾销调查	MOFCOM Announcement No. 57 of 2013, dated 23-8-2013 2013年8月23日，商务部2013年第57号公告

WTO News 世贸组织新闻

专家组判决中国对来自美国的白羽肉鸡产品的措施不正确

中国对来自美国的某些白羽肉鸡产品征收反倾销税和反补贴税案 (DS427) 被认为违反了世贸组织反倾销协议以及补贴和反补贴协议的规定。根据争端解决机构专家组2013年8月2日发布的报告看, 专家组支持美国所有的主张包括商务部发起调查时, 对个别美国应诉企业在计算“其他所有”税率方面未能披露某些必要的事实; 在不利影响认定方面未能向利害关系方提供机会以陈述他们的观点; 并且没有对保密信息提供非机密的概述。

报告认为商务部没有解释如何计算补贴以确保它只对受到补贴的涉案产品进行征收, 以及中国对产品在加工费方面的分摊与他们的生产和销售并不相关的做法违反了反倾销协议第2.2.1.1条。然而, 专家组拒绝了美国有关违反反倾销协议第3.1和4.1条以及补贴和反补贴协议第15.1和16.1条的指控。专家组认为商务部没有义务在确定国内产业的过程中明确所有的国内生产商。

中国对来自欧盟的某些不锈钢管案成立专家组

世贸组织争端解决机构成立专家组以考虑欧盟指控中国在对来自欧盟的“高性能不锈钢无缝钢管征收反倾销税的做法违反了反倾销协议第1,2.2,2.4,2.4.2,3.1,3.2,3.4,3.5,6.4,6.5,6.5.1,6.7,6.8,6.9,7.4,12.2和12.2.2条,以及1994年关税和贸易总协定第6条。根据2013年8月30日争端解决机构的会议记录,该争议与DS454案件的争议一样,而DS454案件已经成立了专家组,因此争端

解决机构同意在此案中也使用同样的专家。印度与日本、韩国、土耳其和美国一起在案件中作为第三方参与该争端。对于欧盟磋商请求的新闻,请参阅L&S国际贸易法律月刊7月期。

美国和印度尼西亚在世贸组织中角力

美国和印度尼西亚之间的贸易关系进一步恶化,因为双方指责对方的措施影响了相互之间的国际贸易。美国已于2013年8月30日与印度尼西亚一起提交了修改后的磋商请求,以明确近期印度尼西亚对非自动进口许可和配额的要求的修改严重影响了园艺产品、动物和动物制品的贸易。印度尼西亚则希望争端解决机构在美国-影响丁香香烟生产和销售的措施案 (WTDS406) 中做出对印度尼西亚有利的判决后,能够寻求世贸组织争端解决机构的批准以暂停关税减让的申请和其他对美国所要承担的义务。

根据美国商务部发布的新闻看,美国对进口规则进行请求的修改,将促进协调新西兰类似的磋商请求。美国认为,印度尼西亚的措施影响了印度尼西亚的水果、蔬菜、花卉、干果和蔬菜、果汁、家畜、牛肉和其他动物产品的进口,并且违反了1994年关税和贸易总协定第3.4,10.1,10.3(a),11.1,13.2(a),13.2(c)和农业协议第4.2条,进口许可协议第1.3,3.2,3.3,3.5(a),3.5(b),3.5(c)和3.5(k)条,还有装运前检验协议第2.1和2.15条。在丁香香烟的争议中,美国根据2013年8月22日的沟通,反对中止减让,并且因此该事项已根据争端解决协议第22.6条提请仲裁。

News Nuggets 新闻精华

新兴市场和贸易限制措施

欧盟近期发布了关于“潜在的贸易限制措施”的报告涵盖欧盟的31个主要的贸易伙伴,包括G20国家。报告指出G20经济体继续使用大量的贸易限制性措施,欧盟也非常关注发展中或新兴经济所采取的这些措施。

南非、阿根廷、俄罗斯和印度尼西亚被认为通过实施关税和出口税的方式采取了最多数量的进口限制措施。乌克兰试图重新谈判以提高其在加入世贸组织中承诺过的许多边境进口关税。

在政府采购限制方面，印度紧随巴西和阿根廷之后。主要问题在于业务的本地化要求，对豪华轿车的关税增加以及矾土的出口税、偏好本地生产的电子产品，包括平板电脑、点阵打印机等，以及印度在对外贸易政策中实施的许多出口促进计划，都成为了贸易限制。报告还指出印度与中国和埃及一起是一个积极使用反倾销和保障措施的国家。

关于印度的积极信号是报告估计印度的国民生产总值2014年的增长率为6.3%，低于中国的7.7%，但高于巴西的2.3%，美国的2.7%和日本的1.2%。

关注食品贸易

印度的食品安全条例规定粮食以补贴后的价格供应市场是对世贸组织标准存在争议的一个问题。食品安全也将在不久的12月举行的世贸组织部长会议中成为焦点，因为发展中国家提议放宽综合支持量(AMS)标准。

发达国家，美国被认为是接近于批准中国公司在Smithfield Inc公司即全球最大的猪肉生产商进行主要投资。食品安全和经济安全再次被关注因为反对的声音认为控制力将被转移到一个外国企业并且食品安全标准将无法得到保证。然而，另外的观点是，在美国停止了中国企业在风电场出于安全因素停止中国投资后，美国将不希望拖延其他的投资权利。

Ratio Decidendi 判决理由

反倾销税的规避-在第三国“未完成”产品的处理

美国国际贸易法院判决“未完成小直径石墨电极”(SDGE)和“人造石墨棒”事实上是相同的東西。没有证据证明“未完成”在贸易中还有其他理解。案件是关于对来自一家英国公司的“未完成小直径石墨电极”进行反倾销的反规避调查，而该公司从中国采购未完成产品。美国商务部认为，在程序上反倾销税是对来自中国的进口征税，而涉案产品被认为是存在规避。美国商务已经主张在英国进行的组装程序只是细小或微不足道的部分。

该案的法院认为商务部在对原告的人造石墨棒(SDGE生产的投入)的主张是正确的。判决还认为有充足的理由认为人造石墨棒是生产石墨电极的投入材料，这些原材料被包括在之前的反倾销命令范围中，并且英国公司出口的产品是来自中国的產品。法院也支持商务部的判决认为在英国进行的加工价值仅代表了进口到美国的涉案产品价格的一小部分，因为整个操作明显地分割了生产程序，不过在英国只用了5分钟的生产过程而在中国却用了许多天的时间完成了实质性的生产过程。法院也同意商务部的决定在对非市场经济国家在反规避调查中为原料投入价格的确定使用参考价格。

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2013年9月5日。取消订阅邮件请发至 newsletter@lakshmisri.com

<http://cn.lakshmisri.com>

www.lakshmisri.com

<http://addd.lakshmisri.com>