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Article 文章

Investment protection - Investing in confidence

投资保护-秘密投资

By **R. Subhashree**

The divergence between a nation's domestic laws and the provisions in international treaties is not something new. It is noticed that at the time of entering into investment promotion agreements, the priority is to accord favourable treatment to the foreign investor following standard texts/mechanisms like ISDS. However, when a State does not adopt proper consultative process with all stakeholders, including sections of population likely to be affected, it runs the risk of making the investment climate less favourable with delays and disputes. A broad-based approach is likely to yield better results under BITs, FIPAs, etc.

Hupacasath approaches the national courts

Hupacasath First Nation (HFN) a 300 member strong community in Vancouver Island, Canada is challenging the Canadian government over the Canada-China Foreign Investment Promotion and Protection Agreement (FIPA), particularly the investor protection clauses like Investor State Dispute Settlement Mechanism (ISDS) which will enable foreign investors to proceed against the Canadian government for failure to protect / loss in value of investments. HFN argued that it was entitled to protect its aboriginal and treaty rights guaranteed under the Canadian Constitution and, in finalizing the treaty without consulting it, Canada had failed in its duty. The Canada-China FIPA was finalised over a year ago but has not yet been ratified.

HFN lost the case in the lower court and will seek to convince the Federal Court of Appeals that the FIPA is likely to affect its rights and had triggered the 'duty to consult'.

Treaty versus domestic law, people's rights

While the case of HFN relates to aboriginal rights which are unique to it, the same argument of a treaty affecting rights guaranteed under the Constitution can arise in other jurisdictions. Would such a challenge be possible in India? There are no precedents but the fact that treaties do alter the rights to his disadvantage may spur a citizen or group of them to seek remedy through national courts.

In *Golan v. Holder*, No. 10-545, US Supreme Court, 18-1-2012, the appellants challenged the constitutionality of the amendments to IP laws which created copyright protection for materials which were in public domain in the US though the copyright term had not expired in foreign jurisdictions. The amendments were brought about to ensure compliance with Berne Convention. In his dissenting opinion, Judge Breyer observed that the '*convention cannot provide the statute with a constitutionally sufficient justification that is otherwise lacking*'.

The Indian Constitution guarantees equality to all persons – even to non-citizens. However, take the case of two investors – an Indian national and foreign investor, both of whom are awarded contracts for hydro power projects

which are later stopped due to environmental concerns. ISDS in a treaty gives the foreign investor a right to sue the government of the day for expropriation, loss in value of investment, failure to provide fair and equitable treatment and not meeting legitimate expectations of the investor. But, the Indian investor cannot seek any quick remedy like arbitration or bypass the domestic courts. Experience has shown that the mere threat of ISDS would suffice to dissuade governments from taking such steps. In any case, even if the government were to take the same, it would still be liable to pay compensation along with costs.

Test of non-speculative, appreciable threat

In the HFN decision, the lower court applied the test of whether there was an appreciable and non-speculative threat to HFN's rights and concluded that there was no threat. The court based its decision on changes made to the NAFTA agreement which restricted protection to investors, on which the FIPA is modeled and statistics which stated that USA with larger investments in Canada than China had brought very few claims and that currently there was no Chinese investment in HFN. However, the issue is not whether HFN is already harmed or is likely to be harmed in near future. The point HFN tried to make was that Canada by binding itself to protect investments would be reluctant to support HFN in any measure which would be seen as not investor friendly. The experience of developed countries like Germany and less developed countries like Argentina and Ecuador has been that even grounds like recession,

internal strife or environment concerns are not good reasons to avoid compensating investors for legitimate expectations not being met.

As per the Vienna Convention on the Law of Treaties (VCLT), a party cannot invoke provisions of its internal law as a justification to not perform its obligations under a treaty. Judged from this angle, the potential threat envisaged by HFN that Canada may be reluctant to protect rights of HFN in case of a conflict between it and an investor is not speculative.

Duty to consult

Duty to consult flows from common law and from judicial interpretation by the Supreme Court of Canada that the Crown must act honorably in relation to rights guaranteed to aboriginal people. The words in the constitution only 'recognize and affirm' the rights of the First Nations. The duty of the state to consult and accommodate as far as possible the views/claims of the people likely to be affected by some action has been reiterated in a number of cases by Canadian courts. Notable among them is, *Haida Nation v. British Columbia (Minister of Forests)* [2004 SCC 73] on allowing a corporation to harvest timber from lands belonging to Haida. The court held that there was a duty to consult the people whose rights might be adversely affected. The threshold for triggering a duty to consult is low and it is enough if there is an act or a measure that is contemplated by the Crown which might affect existing or potential rights of the indigenous people.

Giving an opportunity to be informed and consent

The argument of common law duty to consult is very attractive one. It is emphasized

particularly in international agreements. For instance, as per the recently accepted Trade Facilitation Agreement (TFA) at WTO session in Bali, members are required to provide an opportunity to traders (not confined to nationals) and ‘other interested parties’ to comment on proposed amendment or introduction of laws.

Peru in 2011 enacted legislation mandating prior consultation of indigenous people before development projects are finalized. It is significant that this legislation came in the aftermath of protests and killing of indigenous tribes who were protesting against certain decrees which had been issued to conform to the Peru–USA FTA. Like HFN, the tribes inhabiting the Amazon forest asserted their rights under the Peruvian constitution and claimed that awarding projects to (foreign) corporations to develop the region violated their rights.

As per Article 18 of the VCLT, a state cannot act so as to defeat the purpose of the treaty prior to its coming into force. Hence once finalized, there is little room for a re-assessment. Ratification is generally a formality. In certain cases, a treaty may come into force solely under Executive Authority bypassing the parliament - like Anti-counterfeiting Trade Agreement (ACTA) in the USA. There was no discussion or debate in the Congress, much less public consultation, before it was signed.

It is impracticable to expect a unanimous voice from all stakeholders before a treaty is finalized but it is important that there is dialogue and exchange of information with stakeholders before the treaty is finalized. This may guarantee that the time and efforts invested in such investment protection treaties bear the desired results.

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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-Tetrafluoro-ethane 四氟乙烷	USA 美国	Affirmative preliminary determination of critical circumstances amended 修改紧急情况的肯定性临时裁决	79 FR 37287 [A-570-998], dated 1-7-2014 2014年7月1日, 79 FR 37287 [A-570-998]
1-Hydroxyethylidene-1,1-Diphosphonic (HEDP) Acid 羟基乙叉二磷酸	USA 美国	ADD orders revoked 取消反倾销命令	79 FR 31301 [A-570-934], dated 2-6-2014 2014年6月2日, 79 FR 31301 [A-570-934]

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
53-Foot domestic dry containers 53英尺内陆干货集装箱	USA 美国	Preliminary determination in the countervailing duty investigation postponed 延期发布反补贴调查的临时裁决	79 FR 36290 [C-570-015], dated 26-6-2014 2014年6月26日, 79 FR 36290 [C-570-015]
Aluminium extrusions 铝型材	Australia 澳大利亚	Initiation of review of anti-dumping measures 发起反倾销期中复审调查	Anti-dumping Notice No. 2014/46, dated 12-6-2014 2014年6月12日, 反倾销公告第2014/46
Arc shaped magnet 环形磁铁	Brazil 巴西	ADD investigation initiated 发起反倾销调查	Dated 16-6-2014 2014年6月16日
Carbon and certain alloy steel wire rod 碳素及合金钢盘条	USA 美国	Preliminary determination of antidumping duty investigation postponed 延期发布反倾销调查临时裁决	79 FR 34491 [A-570-012], dated 17-6-2014 2014年6月17日, 79 FR 34491 [A-570-012]
Certain hollow structural sections 焊缝管	Australia 澳大利亚	Exemption from interim dumping and countervailing duties 反倾销和反补贴免税调查终裁	Anti-dumping Notice No. 2014/51, dated 17-6-2014 2014年6月17日, 反倾销公告第2014/51
Circular welded austenitic stainless pressure pipe 不锈钢焊接压力管	USA 美国	CVD sunset review – Affirmative result 反补贴日落复审-肯定性裁决	79 FR 32911 [C-570-931], dated 9-6-2014 2014年6月9日, 79 FR 32911 [C-570-931]
Circular welded austenitic stainless pressure pipe 不锈钢焊接压力管	USA 美国	ADD sunset review – Affirmative result 反倾销日落复审-肯定性裁决	79 FR 32913 [A-570-930], dated 9-6-2014 2014年6月9日, 79 FR 32913 [A-570-930]
Citric acid and sodium citrate 柠檬酸及柠檬酸盐	Columbia 哥伦比亚	ADD investigation initiated 发起反倾销调查	No.017 Resolution, dated 3-6-2014 2014年6月3日, 第017号决议
Coated paper and paper-board 涂布纸或纸板	Indonesia 印度尼西亚	Safeguard investigation initiated 发起保障措施调查	MOFCOM Press Release dated 25-6-2014 2014年6月25日, 商务部新闻
Cold-rolled steel plate and plated or coated plate 冷轧板以及镀层或涂层板	Morocco 摩洛哥	Safeguard investigation initiated 发起保障措施调查	Dated 11-6-2014 2014年6月11日

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 investigations initiated 发起反倾销和反补贴调查	Canada Border Services Agency Press Release dated 27-6-2014 2014年6月27日，加拿大服边境 服务署发布新闻
Copy paper 复印纸	Australia 澳大利亚	Extension of time granted to report to Parliamentary Secretary to Minister for Industry 延期向工业部国会事务秘书提 交报告	Anti-dumping Notice No. 2014/52, dated 27-6-2014 2014年6月27日， 反倾销公告第2014/52
Cotton yarn (other than sewing thread) 纱线 (缝纫线除外)	Indonesia 印度尼西亚	Affirmative safeguard final determination 做出肯定性保障措施终裁	Dated 3-6-2014 2014年6月3日
Crawler dozer (less than 250 HP) 履带式推土机 (功 率不超过250马力)	Eurasian Economic Commission 欧亚经济委 员会	ADD investigation initiated 发起反倾销调查	Dated 2-7-2014 2014年7月2日
Crystalline silicon photovoltaic prod- ucts 晶体硅光伏产品	USA 美国	CVD - Preliminary determination of countervailable subsidies 反补贴-初步裁决存在补贴	79 FR 33174 [C-570-011], dated 10-6-2014 2014年6月10日， 79 FR 33174 [C-570-011]
Diketopyrrolo Pyrrole Pigment Red 254(DPP Red 254) 吡咯并吡咯二酮红 254	India 印度	AD investigation initiated 发起反倾销调查	No.14/8/2014-DGAD, dated 20-6-2014 2014年6月20日， 第14/8/2014-DGAD号公告
Electrical insulators 电子绝缘子	India 印度	Provisional ADD recommended 建议征收临时反倾销税	No. 14/11/2013-DGAD, dated 1-7-2014 2014年7月1日， 第14/11/2013-DGAD号公告
Front axle beam and steering knuckle 中重型商用车的前 桥梁和转向关节	India 印度	ADD - Sunset review initiated 反倾销-发起日落复审调查	No. 15/11/2014-DGAD, dated 13-6-2014 2014年6月13日，第 15/11/2014-DGAD号公告
Glass for refrigerating equipment 冷冻设备用玻璃	Brazil 巴西	Imposed ADD duty 征收反倾销税	Dated 4-7-2014 2014年7月4日

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Graphite Electrodes 石墨电极	India 印度	Extension of time period up to 19-11-2014 for completing AD investigation 完成反倾销调查期延长至2014年11月19日	No.14/02/2013-DGAD, dated 12-6-2014 2014年6月12日, 第 14/02/2013-DGAD号公告
Homopolymer of vinyl chloride monomer (suspension grade) 悬浮级聚氯乙烯	India 印度	ADD re-imposed pursuant to sunset review 日落复审继续征收反倾销税	27/2014-Cus (ADD), dated 13-6-2014 2014年6月13日, 海关公告第 27/2014-Cus (ADD)号
Hot-rolled steel plate, patterned coil and pickled oil coil 热轧卷材、格子花纹卷材和酸洗涂油卷材	Malaysia 马来西亚	ADD investigation initiated 发起反倾销调查	Dated 18-6-2014 2014年6月18日
Light-walled rectangular pipe and tube 薄壁矩形钢管	USA 美国	ADD and CVD Orders to continue 继续反倾销和反补贴命令	79 FR 35522 [A-580-859], dated 23-6-2014 2014年6月23日, 79 FR 35522 [A-580-859]
Malleable pipe fittings 可锻铸铁管附件	USA 美国	ADD quick sunset review initiated 发起反倾销快速日落复审调查	Dated 6-6-2014 2014年6月6日
Manicure sets 修甲钳	Brazil 巴西	ADD investigation initiated 发起反倾销调查	Dated 16-6-2014 2014年6月16日
Monosodium Glutamate 谷氨酸钠	USA 美国	Preliminary determination of less-than-fair-value investigation amended 修改低于正常价值的初步裁决	79 FR 33907 [A-570-992], dated 13-6-2014 2014年6月13日, 79 FR 33907 [A-570-992]
Multilayered Wood Flooring 复合木地板	USA 美国	ADD new shipper review – Preliminary negative determination 反倾销新出口商复审-初步次裁决不存在倾销	79 FR 33723 [A-570-970], dated 12-6-2014 2014年6月12日, 79 FR 33723 [A-570-970]
Non-adjustable hand-operated spanners and wrenches 固定的手动扳手及扳钳	Argentina 阿根廷	ADD investigation initiated 发起反倾销调查	Dated 4-6-2014 2014年6月4日
Non-self priming centrifugal pump 非自吸式离心电泵	Argentina 阿根廷	Affirmative industry injury preliminary determination 做出肯定性产业损害初裁	Dated 19-6-2014 2014年6月19日

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Oil Country Tubular Goods 石油管材	Canada 加拿大	ADD and CVD – Expiry review initiated 发起反倾销和反补贴期终复审	Expiry Review No. RR-2014-003, dated 30-6-2014 2014年6月30日，期终复审第RR-2014-003
PET film PET薄膜	Brazil 巴西	ADD investigation initiated 发起反倾销调查	MOFCOM Press Release dated 30-6-2014 2014年6月30日，商务部新闻
Plastic processing or injection moulding machines, also known as injection presses 塑料加工机械	India 印度	POI and PUC details in sunset review initiation notification dated 9-May-2014 amended 修改日落复审发起公告的调查期和涉案产品范围	No.15/2/2014-DGAD, dated 23-6-2014 2014年6月23日，第15/2/2014-DGAD号公告
Plastic processing or injection moulding machines, also known as injection presses 塑料加工机械	India 印度	ADD extended up to 11th May 2015 pending outcome of sunset review 反倾销税延期至2015年5月11日	No.28/2014-Customs (ADD), dated 19-6-2014 2014年6月19日，海关公告第28/2014-Customs (ADD)
Polyethylene Terephthalate 聚对苯二甲酸乙二醇酯	Malaysia 马来西亚	ADD investigation initiated 发起反倾销调查	Dated 17-6-2014 2014年6月17日
Polyethylene Terephthalate Film, Sheet and Strip PET薄膜、片和条	USA 美国	Rescission of antidumping duty new shipper review 取消反倾销新出口商复审	79 FR 33174 [A-570-924], dated 10-6-2014 2014年6月10日，79 FR 33174 [A-570-924]
Polyvinyl Alcohol 聚乙烯醇	USA 美国	ADD sunset review initiated 发起反倾销日落复审调查	Dated 6-6-2014 2014年6月6日
Potassium Carbonate 碳酸钾	India 印度	ADD sunset review initiated 发起反倾销日落复审调查	No.15/12/2014-DGAD, dated 9-6-2014 2014年6月9日，第15/12/2014-DGAD号公告
Presensitised positive offset aluminium plates PS版	India 印度	ADD re-imposed after sunset review 日落复审再次征收反倾销税	25/2014-Cus (ADD), dated 9-6-2014 2014年6月9日，海关公告第25/2014-Cus (ADD)

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Prestressed concrete steel rail tie wire 预应力钢轨用钢丝	USA 美国	ADD orders issued 发布征收反倾销税令	79 FR 35727 [A-570-990], dated 24-6-2014 2014年6月24日, 79 FR 35727 [A-570-990]
Purified Terephthalic Acid 精对苯二甲酸	India 印度	Provisional ADD recommended 建议征收临时反倾销税	No. 14/7/2013-DGAD, dated 19-6-2014 2014年6月19日, 第14/7/2013-DGAD号公告
Refractory ceramic filter 耐火陶瓷过滤器	Brazil 巴西	Imposed ADD duty 征收反倾销税	Dated 4-7-2014 2014年7月4日
RG coaxial-cable RG型同轴电缆	Mexico 墨西哥	ADD interim review – affirmative preliminary determination 反倾销期中复审-肯定性临时裁决	Dated 5-6-2014 2014年6月5日
Small diameter graphite electrodes 炉用小口径石墨电极	USA 美国	AD order to continue 继续反倾销征税命令	79 FR 35523 [A-570-929], dated 23-6-2014 2014年6月23日, 79 FR 35523 [A-570-929]
Stainless steel cold-rolled flat products 冷轧不锈钢板	EU 欧盟	ADD investigation initiated 发起反倾销调查	MOFCOM press released dated 30-6-2014 2014年6月30日, 商务部新闻
Steel threaded rod 钢制螺杆	USA 美国	ADD sunset review – Affirmative determination 反倾销日落复审-肯定性裁决	79 FR 36288 [A-570-932], dated 26-6-2014 2014年6月26日, 79 FR 36288 [A-570-932]
Steel stranded rope 钢绞股绳	Columbia 哥伦比亚	ADD investigation initiated 发起反倾销调查	No.111 Resolution, dated 9-6-2014 2014年6月9日, 第111号决议
Tow-behind lawn groomers and parts thereof 后拖式草地维护设备及其若干零	USA 美国	ADD and CVD sunset review initiated 发起反倾销和反补贴日落复审调查	79 FR 37292 [A-570-939 and C-570-940], dated 1-7-2014 2014年7月1日, 79 FR 37292 [A-570-939 和 C-570-940]
Trichloroisocyanuric acid 三氯异氰尿酸	EU 欧盟	ADD new shipper review initiated 发起反倾销新出口商复审调查	Dated 1-7-2014 2014年7月1日

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Tyre - passenger vehicle and light truck tyres 轮胎-乘用车和轻型卡车轮胎	USA 美国	Time for determining the adequacy of the antidumping and countervailing duty petitions extended 延期确定反倾销和反补贴申请书的充分性	79 FR 35725 [A-570-016, C-570-017], dated 24-6-2014 2014年6月24日, 79 FR 35725 [A-570-016, C-570-017]
Vitamin-C 维他命C	India 印度	ADD sunset review initiated 发起反倾销日落复审调查	No.15/10/2014-DGAD, dated 11-6-2014 2014年6月11日, 第15/10/2014-DGAD号公告
Wheel Barrows 独轮手推车	South Africa 南非	AD investigation initiated 发起反倾销调查	MOFCOM Press Release dated 30-6-2014 2014年6月30日, 商务部新闻
800 watts of household blenders 不超过800瓦的家用搅拌机	Brazil 巴西	Anti-dumping investigations terminated 终止反倾销调查	MOFCOM Press Release dated 26-6-2014 2014年6月26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
Hemodialysis equipment 血液透析机	EU and Japan 欧盟和日本	ADD investigation initiated 发起反倾销调查	MOFCOM Announcement No.42 of 2014, dated 16-6-2014 2014年6月16日, 商务部公告2014年第42号
Cyclic dimethyl siloxane 二甲基环体硅氧烷	South Korea and Thailand 韩国和泰国	ADD measures terminated 反倾销措施终止	MOFCOM Announcement No.36 of 2014, dated 4-6-2014 2014年6月4日, 商务部公告2014年第36号

WTO News 世贸组织新闻

台湾对加拿大的反倾销措施提出争端解决

台湾、澎湖、金门及马祖个别关税领域通报WTO秘书处, 请求与加拿大就加拿大对原产自台湾的碳钢焊接管实施临时反倾销措施和最终反倾销措施进行磋商。根据2014年6

月25日并于2014年6月30日发布的通讯, 加拿大未能立即终止对那些倾销幅度被认为是微不足道的出口商的调查, 并且在损害分析时没能将这些出口商的进口量排除在倾销进口量之外, 因此违反了反倾销协定第3.1, 3.2,

3.4, 3.5和3.7条。加拿大的措施也被认为违反了反倾销协定第6.8, 6.10和18条以及关税和贸易总协定第6条。

欧盟与印度尼西亚在世贸组织争论不休

印度尼西亚，在世贸组织中可能是仅次于中国的最活跃的亚洲国家，其再一次在世贸组织争端解决机构的诸多争端中成为中心。2014年6月13日，欧盟寻求与印度尼西亚就涉及后者的丁香烟争端案件（DS406）的执行情况进行磋商，在该案中，欧盟是第三方。上个月10号，印度尼西亚寻求与欧盟就欧盟对来自印度尼西亚的生物柴油的某些反倾销措施进行磋商。

而在（DS481）执行问题中，欧盟认为虽然欧盟已经在原始专家组以及上诉程序中行使了其第三方权利，但是印度尼西亚拒绝其作为第三方参加美国-丁香烟争端案件的执行/仲裁专家组程序，违反了争端解决规则与程序的谅解协议第21.5, 22.2, 23.1和23.2(a)条。该争端也引起了另一个值得关注的问题，即在没有完成执行程序的情况下根据DSU协议第22.2条请求制裁的合法性。在印度尼西亚发起的争端案件（DS480），印度尼西亚认为欧盟对来自印度尼西亚的生物柴油适用的反倾销法规违反了反倾销协定的诸多条款。这些欧盟的法规也被阿根廷在另一个争端案件（DS473）中提出质

疑【参阅国际贸易法律月刊-2014年1月期】，该案中印度尼西亚是第三方。

法罗群岛撤销对欧盟的争端解决

2014年6月11日，欧盟做出决定撤销对法罗群岛鲑鱼和鲭鱼的进口制裁，法罗群岛宣布其撤销对欧盟的争端解决程序的医院。法罗群岛澄清它已经暂时停止对欧盟的双重行动，即根据联合国海洋法公约进行仲裁以及在世贸组织进行磋商的请求【参阅国际贸易法律月刊-2013年12月以及2014年3月的案件动态】。

健康食品和饮料在技术性贸易壁垒委员会的日程中占重要位置

在2014年6月18日至19日举行的技术性贸易壁垒委员会会议中提到的46个特殊贸易关注点中，大约三分之一的关注点与健康保护有关，包括健康食品和饮料，以及标签。通常处理技术标准和其他要求的委员会也越来越多地对规则的最佳实践达成一致。特别是对俄罗斯、泰国、欧盟、厄瓜多尔、印度尼西亚、印度、智利、秘鲁、埃及这些国家建议或引入的食物和饮料措施引起了广泛关注；而且表达关注的国家有乌克兰、加拿大、欧盟、墨西哥、新西兰、印度尼西亚、马来西亚、美国、韩国、日本、澳大利亚、阿根廷、瑞士、巴西、危地马拉、挪威和土耳其。

News Nuggets 新闻精华

在公共利益条款中建立

新西兰近期对新西兰反倾销和反补贴制度建议引入有限的公共利益测试邀请各方的评论。2011年克莱斯特彻奇发生地震后，当地进行了大规模的建设，因此新西兰对来自某些国家的建筑材料暂停征税。在此背景下，

有限的公共利益被认为非常重要。根据对民用住宅建设的研究结果，政府建议对经济适用房取消限制。这些措施包括除了公共利益条款外，对大量的特定建筑材料实施零关税。

关于这个问题的讨论文件表明在欧盟和加拿大已经存在类似的条文，并且在新西兰的反倾销法律中合并这些条文可能非常有用。而加拿大仅在“迫不得已的情况下”适用此法条，以减少或取消关税。欧盟的方法是关注那些直接受到关税影响的企业，并且就其本身可以消除关税。第04/2009欧洲国际政治经济研究中心的工作报告总结道欧盟的

利益测试在超越国内生产商利益方面不是非常有效。尽管如此，值得关注的是新西兰将如何回答反倾销仍然是一项贸易保护主义的工具或者是用于促进公平竞争，是否征收反倾销税仅仅有利于生产商或者应当也考虑“公共”的利益如消费者以及中间用户，以及从一系列的群众中获得何种程度的投入/统计是可行的，并且可以及时地完成调查。

Ratio Decidendi 判决理由

保障措施-保障措施总局的建议不能受到申请令的质疑

德里高等法院裁决认为在保障措施调查中保障措施总局根据1997年海关关税（认定和评估保障措施税）条例第11条做出的最终裁决，在性质上是一项建议，因此不能根据印度宪法第226条通过申请令的方式提出质疑。该案是关于对无缝钢管【保障措施总局称之为“铁、合金或非合金钢制(非铸铁和不锈钢制)无缝钢管和空心型材”】的进口。法院还认为裁决将不会排除申请人对中央政府根据第12条征收保障措施税提出质疑的权利。高等法院依据了最高法院在联合磷有限公司案件的裁决。【[国家工程工业有限公司诉印度联邦-2014-TIOL-977-HC-DEL-CUS](#)】

反倾销税-目标倾销价格-在这个价格背后的“动机”考虑

在商务部涉及目标倾销的案件裁决中，美国

国际贸易法院拒绝了国外出口商的观点，即在适用目标倾销救济之前，需要对出口商价格制定背后的“动机”进行考虑的隐含要求。出口商认为由于目标倾销“意味着一个有目的的行为”，调查当局必须考虑出口商是否意图进行目标倾销。然而，法院认为§ 1677f-1(d)(1)(B)并没有要求商务部在一定的期限内对为什么存在目标倾销模式进行调查。法院认为即使附随在乌拉圭回合协议法（SAA）后的行政行动声明没有这种要求的规定。这一新的要求将对调查当局实施不存在法律规定的责任。目标倾销是一种为了对在买家之间、地区之间或者不同时期的商品存在显著不同而确定可比较的出口价格（或构造出口价格）的模式，并且如果是认为存在目标倾销则允许调查机关在反倾销调查中适用另一种价格比较方式（平均对单笔交易）。

【2014年6月25日，[Borusan Mannesmann公司诉美国-美国国际贸易法院判决简报](#)】

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