

# amicus

印度新德里 Lakshmikumaran & Sridharan  
律师事务所电子版新闻简报

2014年4月-第35期

## 国际贸易 法律月刊

### 内容

#### 文章

技术壁垒 - 贸易保护主义新浪潮 ..... 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 ..... 10

世贸组织新闻 ..... 10

新闻精华 ..... 11

判决理由 ..... 12

April  
2014

## Article 文章

### Technical barriers to trade – A new wave of protectionism

#### 技术壁垒-贸易保护主义新浪潮

By **Lakshmi Neelakantan**

#### *Increasing use of TBT measures in international trade*

After the conclusion of the Uruguay Round negotiations and the resultant tariff reduction and liberalization that were significant, role of import tariffs as barriers to trade have gradually diminished. Probably, as a consequence, the role of non-tariff barriers has increased. Regulations unrelated to tariff, but which nevertheless act as a barrier to trade, are measures which may be referred to as non-tariff barriers (NTBs). The term “non-tariff barrier” is not defined in WTO law but is understood to include all government imposed and sponsored actions or omissions that act as prohibitions or restrictions on trade, other than ordinary customs duties and other duties and charges on imports and exports.<sup>1</sup>

This article seeks to analyze a specific type of NTB known as Technical Barriers to Trade (“TBT”) dealt with under the WTO Agreement on Technical Barriers to Trade (“TBT Agreement”). In recent years, there has been a veritable proliferation in the usage of technical regulations, standards and conformity assessment procedures, which can be said to constitute the “new wave” of non-tariff measures and which pose difficulties to the liberalization of multilateral trade.<sup>2</sup>

Various countries have introduced measures which could be susceptible to a challenge under

the TBT Agreement as well as GATT 1994. Some such measures and their features in brief, are listed in the following paragraphs.

#### European Union - Chemicals

The EU’s REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) regulation imposes registration, testing, and data requirements on a significant number of chemicals. REACH also provides for certain chemicals to be subject to authorization requirements which may allow them to be placed in the EU market only for specific uses.

India, in particular, has highlighted the following concerns with respect to REACH at the WTO Committee on Technical Barriers to Trade: (i) the opaque and arbitrary functioning of the Substance Information Exchange Fora (SIEF), including the prohibitive costs associated with them; (ii) definitions of a micro, small and medium size enterprise (SMEs); (iii) the cost associated with hiring an Only Representative (OR); and (iv) the request for merchant importers to directly undertake registration.

#### Indonesia – Horticultural Products

Indonesia’s Ministry of Trade (MOT) Regulation 16/2013 and Ministry of Agriculture (MOA) Regulation 47/2013 impose certain requirements

<sup>1</sup> Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization*, CUP Third Edition, p. 480 (2013) (hereinafter referred to as “Van den Bossche and Zdouc”).

<sup>2</sup> In fact, the focus of the World Trade Report 2012 was a closer look at non-tariff measures in the 21st century. The report can be accessed here: [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/world\\_trade\\_report12\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report12_e.pdf) (last visited 28th March, 2014).

on the importation of horticultural products into Indonesia involving the requirement to obtain an import recommendation, undergo a pre-shipment technical survey and abide by specific packaging and labeling requirements.

### **Korea - Chemicals**

The Korean Act on the Registration and Evaluation of Chemicals (REACH), passed in April 2013 is expected to enter into force on January 1, 2015. The requirements include submission of an annual report containing details of existing and new chemicals manufactured and sold, registration requirements for existing chemicals more than 1 ton of which has been imported into Korea, risk assessment for chemicals more than 10 tons of which are imported into Korea, an evaluation procedure etc.

### **European Union – Medicinal Products**

EU's Community Code relating to medicinal products for human use seeks to unify all provisions relating to the placing on the market, production, labelling, classification, distribution and advertising of medicinal products for human use. The regulation states that no medicinal product, with certain exceptions, may be placed on the market of a Member State unless an authorisation has been issued by the competent authorities of that Member State or the European Medicines Agency. It also mandates the submission of certain documents containing numerous details relating to the product.

India has highlighted the following concerns at the WTO Committee on Technical Barriers to Trade: (i) non-notification to the WTO; (ii) the need for review of the Common Technical Document (CTD), which was not considered

appropriate for multi-component traditional medicinal formulations; (iii) expansion of the definition of herbal medicinal products; and (iv) the need for references to national pharmacopeia for all compliances on specification.

### **Technical barriers to trade as a category of NTBs**

The WTO rules on technical barriers in trade go beyond obligations contained in GATT 1994 to specific commitments contained in the TBT Agreement. The scope of application of the TBT Agreement is confined to (i) technical regulations; (ii) standards and (iii) conformity assessment procedures. In Annex 1.1, a technical regulation is defined as a “document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

### **Meaning of a “Technical Regulation”**

The Appellate Body discussed, in *DS135 European Communities – Measures Affecting Asbestos and Products Containing Asbestos* (“EC- Asbestos”) and subsequently in *DS231 European Communities – Trade Description of Sardines* (“EC- Sardines”), the requirements of a technical regulation. It was held that to satisfy the definition of a “technical regulation”, a measure must fulfill three requirements:

- The measure must apply to an identifiable product or group of products;
- The measure must lay down product characteristics;

- Compliance with the product characteristics laid down in the measure must be mandatory.

With regard to the first requirement, it is essential that the measure applies to an “identifiable” product or group of products. If no specific product is identified in a measure, then enforcement of such measure becomes an impossible task.<sup>3</sup>

In *EC- Sardines*, the measure at issue related to conditions for the sale of preserved sardines, specifically a requirement that *only* the *Sardina pilchardus* Walbaum species will be sold under the label of ‘preserved sardines’ to the exclusion of other species of sardines such as the *Sardinops sagax*. The Appellate Body observed that while a measure may not expressly identify a particular product, it could still be applicable to identifiable products.

Apart from the above, other technical regulations which applied to an “identifiable product” related to the prohibition of asbestos (*EC-Asbestos*), a ban on clove and other flavoured cigarettes (*US – Clove Cigarettes*), conditions relating to “dolphin-safe” tuna products (*US – Tuna*), Country of Origin Labelling requirements applicable to beef, pork and livestock (*US-COOL*), and more recently, rules concerning the placing of seal products on the market (*EC- Seal Products*). The *EC- Seal Products* Panel Report is currently pending before the WTO Appellate Body.

A technical regulation must also lay down “product characteristics” relating to the product

identified. Either a positive or a negative approach to this is acceptable, as held by the Appellate Body in *EC- Asbestos*.<sup>4</sup> Additionally, product characteristics laid down may include “any objectively definable “features”, “qualities”, “attributes”, or other “distinguishing mark” of a product.” The final requirement for a document to satisfy the definition of a “technical regulation” – that compliance with such product characteristics must be mandatory – is the key conceptual distinction between technical regulations and standards: *technical regulations are mandatory while standards are not*.

### **Issues under the TBT Agreement**

The TBT Agreement covers technical regulations, standards and conformity assessment procedures *relating to* (i) products including agricultural and industrial products; (ii) processes and production methods (PPMs). However, there is considerable debate about whether non-product-related processes and production methods (NPR-PPMs) (for instance, the usage of child labour in the manufacture of a good) may also be included within the measures covered by the TBT Agreement.

There is support for as well as resistance against inclusion of NPR-PPMs within the scope of the TBT Agreement - while the definition(s) of technical regulation and standard mention “product characteristics or related processes and production methods”, the last sentence of both definitions state that the measures are concerned with “terminology, symbols, packaging, marking

<sup>3</sup> Appellate Body Report, *EC-Asbestos*, para 70.

<sup>4</sup> *Id.*, para 69.

or labelling requirements as they apply to a product, process or production method”. For instance, in *US-Tuna II (Mexico)* and *US-COOL*, the measures at issue were labelling requirements relating to NPR-PPMs. Though, interestingly enough, it was not contended by the respondent in both disputes (US) that the measures did not fall within the scope of the TBT Agreement.<sup>5</sup>

### Conclusion

Thus, non-tariff measures, including technical regulations, are increasingly being used by

countries as an effective tool of protectionism. At this juncture, the steps to be taken must include comprehensive mapping of all non-tariff barriers on a sector-wise basis and analysis of the effects of those measures on various stakeholders including importers, exporters and the various governments. Subsequently, such measures can also be tested for conformity with the relevant WTO covered agreements.

**[The author is an Associate, International Trade Team, Lakshmikumaran & Sridharan, New Delhi]**

## 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
Aluminium extrusions 铝型材	Australia 澳大利亚	AD - Exemption inquiry initiated 反倾销-发起免税调查	Anti-dumping Notice No. 2014/21, dated 14-3-2014 2014年3月14日, 反倾销通知第2014/21
Aluminium extrusions 铝型材	Canada 加拿大	ADD and CVD to continue as consequence of affirmative sunset review 肯定性日落复审后继续征收反倾销税和反补贴税	Dated 17-3-2014 2014年3月17日
Aluminium extrusions 铝型材	USA 美国	Modified CVD final determination as per USCIT finding 根据美国国际贸易法院裁决修改反补贴终裁	Dated 7-3-2014 2014年3月7日
Bus and truck radial tyre 卡车和大客车轮胎	Egypt 埃及	ADD to continue as consequence of affirmative sunset review 肯定性日落复审后继续征收反倾销税	Dated 4-3-2014 2014年3月4日
Carbon steel fasteners 碳钢紧固件	Canada 加拿大	Re-investigation concluded 作出再调查终裁	CBSA Notice dated 14-3-2014 2014年3月14日, 加拿大边境贸易服务署公告
Carbon and Certain Alloy Steel Wire Rod 碳钢合金盘条	USA 美国	ADD and CVD – affirmative industry injury preliminary determination 作出双反肯定性产业损害初裁	Dated 14-3-2014 2014年3月14日



Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Ceftriaxone Sodium Sterile 头孢三嗪钠	India 印度	ADD investigation - Time period for completion extended till 21-5-2014 反倾销调查-完成调查期限延至2014年5月21日	15/12/2012-DGAD, dated 10-3-2014 2014年3月10日, 15/12/2012-DGAD
Ceramic tableware 瓷质餐具	Ukraine 乌克兰	Safeguard duty recommended for three years 建议征收三年保障措施税	Dated 24-3-2014 2014年3月24日
Ceramic tiles 瓷砖	Korea RP 韩国	ADD sunset review initiated 发起反倾销日落复审	Dated 28-2-2014 2014年2月28日
Circular welded carbon quality steel line pipe 环形碳素管线管	USA 美国	CVD - Affirmative finding in sunset review 反补贴肯定性日落复审终裁	[C-570-936], 79 FR 15313, dated 19-3-2014 2014年3月19日, [C-570-936], 79 FR 15313
Cold-rolled stainless steel 冷轧不锈钢	Taiwan 台湾	ADD- affirmative final determination 肯定性反倾销终裁	Dated 5-3-2014 2014年3月5日
Crystalline silicon photovoltaic products 光伏电池	USA 美国	CVD - Preliminary determination in countervailing duty investigation postponed 延期发布反补贴初裁	[C-570-011], 79 FR 13617, dated 11-3-2014 2014年3月11日, [C-570-011], 79 FR 13617
Deep drawn stainless steel sinks 不锈钢拉制深水槽	Australia 澳大利亚	Dumping and subsidisation investigation initiated 发起双反调查	Anti-dumping Notice No. 2014/20, dated 18-3-2014 2014年3月18日, 反倾销公告第2014/20
Electrolytic plate 电镀版	Columbia 哥伦比亚	ADD - Sfirmative final determination 肯定性反倾销终裁	Dated 5-3-2014 2014年3月5日
Ferrovandium 铁钒合金	USA 美国	ADD - Affirmative result of sunset review 反倾销肯定性日落复审终裁	[A-570-873], 79 FR 14216, dated 13-3-2014 2014年3月13日, [A-570-873], 79 FR 14216,
Flax Fabrics 亚麻织物	India 印度	ADD sunset review initiated 发起反倾销日落复审调查	15/30/2013-DGAD, dated 10-3-2014 2014年3月10日, 15/30/2013-DGAD
Footwear with uppers of leather 皮鞋	EU 欧盟	Proposal for re-imposing definitive ADD on goods produced by specific entities, rejected 拒绝对某些鞋企再次征收反倾销税的提议	2014/149/EU, dated 18-3-2014 2014年3月18日, 2014/149/EU

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Freshwater Crawfish Tail Meat 淡水小龙虾尾肉	USA 美国	AD – Affirmative sunset review 反倾销肯定性日落复审终裁	[A-570-848], 79 FR 13278, dated 10-3-2014 2014年3月10日 , [A-570-848], 79 FR 13278
Frozen warm water shrimp 冷冻暖水虾	USA 美国	Modified CVD final determination as per USCIT finding 根据美国国际贸易法院裁决修改 反补贴终裁	Dated 7-3-2014 2014年3月7日
Fully drawn or fully oriented yarn/Flat yarn of polyester and other yarns 全拉伸丝	India 印度	ADD sunset review initiated 发起反倾销日落复审	15/03/2014-DGAD, dated 24-3-2014 2014年3月24日 , 15/03/2014-DGAD
Galvanized sheet 镀锌板	Guatemala 危地马拉	ADD investigation initiated 发起反倾销调查	Dated 17-3-2014 2014年3月17日
Glass cup 玻璃杯	Argentina 阿根廷	ADD investigation - Time period for completion extended 反倾销调查-完成调查期限延期	Dated 12-3-2014 2014年3月12日
Grain-oriented electrical steel 取向电工钢	USA 美国	CVD - Preliminary determination of countervailable subsidies 作出反补贴初裁	[C-570-995], 79 FR 13617, dated 11-3-2014 2014年3月11日 , [C-570-995], 79 FR 13617
Hot rolled plate steel 热轧钢板	Australia 澳大利亚	AD - Exemption inquiry initiated 发起反倾销免税调查	Anti-dumping Notice No. 2014/19, dated 12-3-2014 2014年3月12日 , 反倾销公告第2014/19
Hot-rolled flat products of stainless steel 304 series 304系列不锈钢热轧平板	India 印度	ADD investigation initiated 发起反倾销调查	14/30/2013- DGAD, dated 11-3-2014 2014年3月11日 , 14/30/2013- DGAD
Laminated woven sacks 复合编织袋	USA 美国	ADD and CVD to continue as conse- quence of affirmative sunset review 肯定性日落复审后继续征收反倾销 和反补贴税	[A-570-916], 79 FR 16770, dat- ed 26-3-2014 and [C-570-917], 79 FR 17134, dated 27-3-2014 2014年3月26日 , [A-570-916], 79 FR 16770和2014年3月27日 [C-570-917], 79 FR 17134

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Mattress innerspring units 床垫用弹簧组件	Canada 加拿大	Sunset review not to be initiated – Measure to expire on 23-11-2014 不发起日落复审-措施至2014年11月23日到期	Canadian International Trade Tribunal Press Release dated 12-3-2014 2014年3月12日，加拿大国际贸易法院发布公告
Meta Phenylene Diamine (MPDA) 间苯二胺	India 印度	Definitive ADD imposed for 5 years 征收为期5年的最终反倾销税	11/2014-Cus. (ADD), dated 11-3-2014 2014年3月11日， 11/2014-Cus. (ADD)
Monosodium Glutamate 谷氨酸钠	USA 美国	CVD - Preliminary affirmative determination of critical circumstances and Countervailable subsidies 反补贴-情势变更和存在补贴的肯定性初裁	[C-570-993], 79 FR 13615, dated 11-3-2014 2014年3月11日， [C-570-993], 79 FR 13615
Non-oriented electrical steel 无取向电工钢	USA 美国	CVD - Preliminary affirmative countervailing determination 肯定性反补贴初裁 ADD – Preliminary determination postponed 反倾销初裁延期	[C-570-997], 79 FR 16293, dated 25-3-2014 2014年3月25日， [C-570-997], 79 FR 16293 [A-570-996], 79 FR 13987, dated 12-3-2014 2014年3月12日， [A-570-996], 79 FR 13987
Persulfates 过硫酸盐	USA 美国	ADD to continue as consequence of affirmative sunset review 肯定性日落复审裁决继续征收反倾销税	[A-570-847], 79 FR 17506, dated 28-3-2014 2014年3月28日， [A-570-847], 79 FR 17506
Plain medium density fibre board of thickness 6 mm and above 中密度纤维板	India 印度	ADD extended up to 26-2-2015 pending sunset review determination 反倾销税延期至2015年2月26日	12/2014-Cus. (ADD), dated 12-3-2014 2014年3月12日， 12/2014-Cus. (ADD)
Polyethylene retail carrier bags (unfinished) 聚乙烯零售包装袋	USA 美国	ADD - Affirmative final determination of circumvention 反倾销-肯定性反规避终裁	[A-570-886], 79 FR 16292, dated 25-3-2014 2014年3月25日， [A-570-886], 79 FR 16292
Power transformers 变压器	Australia 澳大利亚	AD - Time granted to issue the statement of essential facts extended 延期发布反倾销案重要事实	Anti-dumping Notice No. 2014/23, dated 18-3-2014 2014年3月18日， 反倾销公告第2014/23



Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Preserved mushrooms 蘑菇罐头	USA 美国	ADD new shipper review initiated 发起反倾销新出口商复审	[A-570-851], 79 FR 17505, dated 28-3-2014 2014年3月28日, [A-570-851], 79 FR 17505
PS Plates (Presensi- tised positive offset aluminium plates) PS版	India 印度	ADD recommended pursuant to sunset review 日落复审建议征收反倾销税	15/11/2012- DGAD, dated 10-3-2014 2014年3月10日, 15/11/2012- DGAD
PVC Suspension Resin 悬浮级聚乙烯树脂	India 印度	ADD sunset review - Time period for completion extended till 4-4-2014 反倾销日落复审-完成调查期延长至 2014年4月4日	21/29/2011- DGAD, dated 21-3-2014 2014年3月21日, 21/29/2011- DGAD
Red Phosphorous, excluding red phos- phorous used in elec- tronic applications 红磷, 不包括在电 子应用中使用红磷	India 印度	Definitive ADD imposed for 5 years 征收为期5年的最终反倾销税	13/2014-Cus. (ADD), dated 19-3-2014 2014年3月19日, 13/2014-Cus. (ADD)
Sodium Nitrate 硝酸钠	India 印度	Provisional ADD imposed for six months 征收6个月的临时反倾销税	14/2014-Cus. (ADD), dated 19-3-2014 2014年3月19日, 14/2014-Cus. (ADD)
Stainless steel washing tank 不锈钢洗涤槽	Mexico 墨西哥	ADD investigation initiated 发起反倾销调查	Dated 14-3-2014 2014年3月14日
Steel wire garment hangers 钢丝衣架	USA 美国	ADD to continue subsequent to affirmative findings in sunset review 肯定性日落复审继续征收反倾销税	[A-570-918], 79 FR 13613, dated 11-3-2014 2014年3月11日, [A-570-918], 79 FR 13613
Tiller 耕作机	Turkey 土耳其	ADD investigation initiated 发起反倾销调查	Dated 26-3-2014 2014年3月26日
Tubes, pipes and hollow profiles, seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) 无缝管和空心异型材	India 印度	Safeguard duty recommended for two and half years 建议征收2年半的保障措施的税	D-22011/17/2012, dated 11-3-2014 2014年3月11日, D-22011/17/2012

Product 产品	Country 国家	Measures 措施	Notification No. and date 通知号及日期
Uncovered innerspring units 非封闭内置弹簧部件	USA 美国	Affirmative result in sunset review 肯定性日落复审终裁	[A-570-928], 79 FR 13277, dated 10-3-2014 2014年3月10日, [A-570-928], 79 FR 13277
Welded tube 焊缝管	Australia 澳大利亚	AD - Exemption inquiry initiated 反倾销 - 发起免税调查	Dated 3-3-2014 2014年3月3日
Wireless communication equipment 无线通信设备	EU 欧盟	Initiation terminated 撤销发起	Dated 27-3-2014 2014年3月27日

## 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	USA and Japan 美国和日本	ADD investigation initiated 发起反倾销调查	MOFCOM Announcement No.17 of 2014, dated 19-3-2014 2014年3月19日, 商务部2014 年第17号公告
Wine 葡萄酒	EU 欧盟	ADD and CVD investigations terminated 终止反倾销和反补贴调查	MOFCOM Announcement No.19 of 2014, dated 24-3-2014 2014年3月24日, 商务部2014 年第19号公告

## WTO News 世贸组织新闻

### 中国的稀土出口限制不符合世贸组织规则

2014年3月26日, WTO就中国关于稀土、钨和钼的出口限制措施案 ( DS431、DS432、DS433 ) 发布专家组报告。中国实施了三种出口限制措施: 征收出口关税、实施出口配额以及对出口企业设置贸易权限, 并且主张这些限制是符合《1994年关税和贸易总协定》第20

条的规定。然而, 争端解决机构专家组认为中国的这些措施违反了其WTO项下的义务。这些措施受到美国、欧盟和日本的质疑。

专家组认为, 对这些产品实施出口关税违反了加入世贸组织议定书第11.3段的义务, 并且中国无法证明出口关税措施符合《1994年关税与贸易总协定》第20 ( b ) 条规定的“为保

护人类、动物或植物的生命或健康所必须的措施”。专家组还认为中国未能证明所采取的措施符合第20条的内容。同样的，中国的出口配额措施被认为违反了第11.1条，而对出口企业设置贸易权限违反了中国工作组报告第83(a), 83(b), 83(d), 84(a)和84(b)段构成的中国加入议定书第1.2段的。然而，专家组注意到欧盟未能确立对某些矿石的出口配合申请程序中的优先出口标准违反了中国工作组报告第84(b)段的义务。

### 美国对中国的某些产品实施反倾销税和反补贴税措施被认为不符合WTO规则

2014年3月27日，WTO就中国诉美国对中国进口的部分产品的反补贴和反倾销措施案(DS449)发布专家组报告。该争议设计美国两项措施：(1) 2012年3月13日颁布的美国公法(PL) 112-99第一节(GPX立法)以及(2)美国未对其2006~2012年间对华产品启动的25起反倾销反补贴合并调查中出现的“双重救济”问题展开调查，涉及中国被视为非市场经济国家的产品的进口。专家组认为美国的做法符合1994年关税与贸易总协定第10.1、10.2和10.3(a)条有关公布和执行贸易规则的义务。就中国主张的有关“双重救济”问题，专家组认为美国并未就是否在反倾销反补贴合并调查中出现了“双重救济”展开调查，

因此违反了补贴与反补贴协定第19.3、10和32.1条的义务。

### 三个专家组成立解决争端

2014年3月26日，世贸组织争端解决机构同意成立三个专家组以解决乌克兰对乘用车的保障措施案、美国有关反倾销程序的某些计算方法案以及澳大利亚对烟草制品素包装要求案。印度在所有上述三个争端(DS468, DS471, DS467)中均保留其第三方权利。

DS468关于乌克兰对乘用车实施保障措施并且日本、欧盟和俄罗斯认为这些做法违反了保障措施协定和1994年关税和贸易总协定的诸多条款。DS471案件是关于美国对涉及中国产品的反倾销调查的计算方法的争议。中国认为，这些措施违反了反倾销协定和关税和贸易总协定的诸多条款。【请参阅国际贸易法律月刊-2014年2月期的文章对该案的分析。】上个月成立的第三个专家组是有关澳大利亚对烟草制品的素包装条款的争议(DS467)。在该争议中，印度尼西亚认为这些规定违反了与贸易有关的知识产权协定、技术性贸易壁垒和关税和贸易总协定的各项义务。这不是第一次对澳大利亚的措施向WTO提出争端解决。之前的DS434, DS435, DS441和DS458已经处于争端解决的各个不同阶段。但是专家组程序尚未启动。

## News Nuggets 新闻精华

### 技术性贸易壁垒正在上升-世贸组织报告

1626项技术性规则以及合格评定程序的公告在2013年期间被递交到技术性贸易壁垒委员会，而在2012年期间，递交的公告数量为

1571。2014年3月7日，第19次技术性贸易壁垒协定的执行和运营年度审查发布。报告还注意到在2013年，产生了42项新的争议，

而31项之前提到的争议被讨论。这以为这虽然特殊的贸易问题总数在下降，而新的特殊贸易问题的数量与2012年相比却在上升。报告还指出越来越多的争议是有关“客户信息和标签”以及“质量要求”而不是之前的“防止欺诈行为”。亚洲、欧洲和北美洲地区所实施的措施是引起争议最多的地区。与其他成员国的措施相比，欧盟的措施被认为是讨论最为广泛的成员，印度在此排名第5。

### 投资保护条约中的“同意”

美国最高法院近期判决认为一项条约可以被视为一份普通的合同，并且仅仅由于在投资人-东道国争议中的一方当事人是一个州，并不需要重新审查仲裁管辖权。在另一个有关阿根廷和投资人（BG集团公司）的争议中，已经“同意”仲裁的主权国未能获得救济。美国是仲裁地并且仲裁员认为由于在国内法院寻求救济并且根据条约规定在寻求仲裁前需要等待18个月是“荒诞的”，因此他们拥有司法管辖权。随着经济危机的到来，对于判决由于阿根廷的新的经济措施受到损害的法院最终裁决和禁令的执行，阿根廷发布了一项命令中止180天。

大多数意见认为根据英国-阿根廷条约第

8条，向国内法院起诉并且等待是唯一的程序要求，并且阿根廷本身同意仲裁。因此，仲裁员可以决定司法管辖权以及其他争议。反对意见认为在个人投资者和国家之间不存在合同，而条约是以一个国家的立场向非特定的私人投资者提供仲裁的途径。另外，仅仅因为没有明确表达寻求国内救济是同意的一项条件，不能由此推测投资者可以直接寻求仲裁。

几乎所有的条约包含有关投资人-国家争端解决的投资人保护条款。欧盟最近在与美国谈判的跨大西洋贸易和投资合作关系协议中是否包括投资人-国家争端解决机制发起民意征询。有关同意条件的条款被包含在美国-韩国自由贸易协定中。而欧盟寻求控制在投资者-国家争端解决机制中仲裁员的行为。对条约的解读和仲裁裁决，特别是当一个州受到个人的起诉，已经成为一个有争议的问题。原先引入这些条款是为了提供一个修正的体系，以期公平和公正，但是存在国家法院可能不能公正地作出裁决或者可能缺乏经验的情况。值得关注的是在两个发达国家之间如欧盟和美国之间的投资人-国家争端解决机制条款。

## Ratio Decidendi 判决理由

### 在期中复审中扩大反倾销调查范围并不是可追溯的

艾哈迈达巴德海关、货物和服务税上诉法庭判决有关冷轧不锈钢板的期中复审后，海关通知第86/2011-Cus.中所描述的30毫米公差范围

不适用于宽度大于1250毫米的产品。调查机关已经特别将所述产品排除在征收反倾销税范围之外，因此即使在期中复审中，该范围应当被

遵守。法庭认为如果产品的物理测试显示平均宽度大于1250毫米（特别是1278/1279毫米），对于这些产品不应当征收反倾销税。

本案的上诉法庭还认为调查机关发布的勘误以及随后税务部门发出的公告只适用于在修改公告发布当天或之后提交的进口申报。进口原本不征收反倾销税商品的进口商不能因为

调查机关发布勘误而承担本不该承担的税，而且这一逻辑适用于完全的期中复审调查。上诉法庭依据在Mascot International和Arti C. Buta案中之前的判决撤销了税收部门征税、没收和罚金的命令。[2014年2月12日，Posco India Delhi Processing Centre 诉海关-艾哈迈达巴德 CESTAT裁决第A/10443-10447/2014]

---

**免责声明：** 息的目的不是为了建立律师-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4月1日。取消订阅邮件请发至 [newsletteritrade@lakshmisri.com](mailto:newsletteritrade@lakshmisri.com)

<http://cn.lakshmisri.com>

[www.lakshmisri.com](http://www.lakshmisri.com)

<http://addb.lakshmisri.com>