



Gide Loyrette Nouel

IMnI's 3rd China Ore & Alloy Conference **国际锰业协会中国研讨会**

29 March 2007, Guilin
2007年3月29日, 桂林

EU's Anti-dumping Practice towards China
Song Li-Wei, Gide Loyrette Nouel, Shanghai

欧盟针对中国的反倾销做法
宋立伟, 法国基德律师事务所上海代表处



欧盟反倾销调查概述

Overview of the EU's Anti-Dumping Investigation



反倾销与采取反倾销措施

Anti-Dumping and Anti-Dumping Measures

倾销是一种低价竞争的不公平贸易做法。反倾销、反补贴和保障措施被视为是贸易防御措施（也称为贸易救济措施）。反倾销是通过采取反倾销措施（如对进口产品征收附加税），抵御倾销产品对国内市场造成损害。

Dumping is an unfair trade practice involving low price competition. Anti-dumping, anti-subsidy and safeguard are deemed as “Trade Defense Instruments” (TDI) as well as trade remedy measures. Anti-dumping is realized by anti-dumping (“AD”) measures such as the imposition of additional anti-dumping duties in order to prevent damage to domestic industries.



中国是遭遇国外反倾销最多的国家

China is the Country Mostly Targeted by AD Investigation

中国是被国外提起反倾销调查最多的国家。对中国提起反倾销调查的主要国家（或地区）为美国、欧盟等，近几年来，一些发展中国家如印度、土耳其、墨西哥、阿根廷等也纷纷对中国出口产品提起反倾销调查。

China is the country mostly targeted by AD investigation. The countries/regions which use more TDI against China are the US, EU, etc. In recent years, more developing countries like India, Turkey, Mexico, Argentine, etc. also become active in AD investigation against Chinese exports.



欧盟采取反倾销措施的四个基本条件

Four Basic Conditions for EU to Take AD Measures

按照欧盟的现行法规，采取一项反倾销措施需要满足四项基本条件：1. 存在倾销；2. 产业受到损害；3. 倾销与损害之间存在因果关系；4. 采取反倾销措施符合欧共同体利益。

Pursuant to the current EU regulations, four basic conditions must be met for the adoption of an AD measure: 1. Existence of dumping; 2. Injury to the industry; 3. Causality between the dumping and injury; 4. Adoption of the AD measure is in line with Community interests.



欧盟反倾销调查对中国的特别做法

Special Practice in EU's AD Investigation Against China

最主要的特别之处在于视中国为非市场经济国家，这意味着在计算倾销幅度时，中国企业不能像其他市场经济国家的企业那样，通过比较本企业的正常价值和出口价格确定是否存在倾销，而是采用一参照国的正常价值，除非企业获得市场经济地位。

What is special mainly lies in the fact that China is deemed as a country of Non Market Economy Status (NMEs), which means that Dumping Margin (DM) of a Chinese enterprise (unless granted the Market Economy Status (MES)) shall be calculated by adoption of the Normal Value (NV) of an analogue country, rather than by comparing of the enterprise's own NV and its Export Price (EP) to determine whether dumping exists which is a usual practice to enterprises of other countries with MES.



采取反倾销措施需要经过欧盟多数成员国的赞成

Adoption of an AD Measure is Subject to Approval of the Majority of EU Member States

尽管有时一种被调查的产品只涉及某几个欧盟成员国的产业，但是根据欧盟法规，只有欧盟所有成员国中的多数以上同意，方可采取一项反倾销措施，弃权或不表态被视为赞成采取反倾销措施。最终反倾销措施一般实施五年。

Although an investigated product sometimes relates to an industry which is undertaken in a few EU member states, an AD measure can be adopted only upon approval by the majority of all EU member states pursuant to EU regulations. Abstention is deemed to be approval. Generally, the final AD measure will be implemented for five years.

欧盟的调查程序

EU's Investigation Procedure

立案 → 审查问卷（市场经济地位问卷和反倾销调查问卷） → 实地核查 → 决定是否给予市场经济地位 → 采取临时反倾销措施 → 采取最终反倾销措施

Initiation → Questionnaires for examination (MES Claim Form and AD Questionnaire) → On spot verification → Decision on granting or rejection of MES → Adoption of provisional AD measures → Adoption of final AD measure



欧盟反倾销实践

EU's Anti-Dumping Practice

应诉主体是出口生产商

Export Manufacturers shall be the Cooperating Subjects

在反倾销调查中，出口生产商是应诉主体，出口生产商的含义是指有直接出口（自营出口）或间接出口（如通过外贸公司、香港等出口）的生产商，政府不能作为应诉主体参加应诉，相关的行业协会可以作为利益关系方参加应诉。行业协会可以作为利益关系方对反倾销调查提出评述意见，通常情况下对出口国产品是否对欧盟产业造成损害提出意见。此方面的应诉结果可能对整个行业有影响。

The cooperating subject in AD investigations shall be the exporting producers, this refers to producers with direct exports (self-operated exports) or indirect exports (such as exports via a trader or Hong Kong). Governments shall not act as cooperating subjects while relevant industry associations may participate in the cooperation as an interested party. The industry association may comment on the AD investigation as an interested party, usually in respect of whether the product concerned has injured the EU industry. Cooperating with the investigation in this way may have an impact on the whole industry.



外贸企业一般配合其供货商（即生产商）应诉，应诉还是以生产商为主。如果生产商获得了一单独税率，该外贸企业是否也可以享受该税率难有定论。

Generally, foreign trade enterprises cooperate with their suppliers (i.e. producers) in responding to an investigation, but the producers play a more important role in the cooperation. If a producer is granted an individual duty, it remains unclear whether the foreign trade enterprise will enjoy the same duty rate.



替代国

Analogue Country

如果出口商能提供出足够的理由证明立案时选择的替代国不适当，更换替代国的可能性还是存在的。

If the exporter is able to demonstrate that the analogue country selected at the case initiation is inappropriate, it is possible to replace such analogue country.

应诉企业提交的资料

Documents to be Submitted by a Cooperating Enterprise

调查机关要求企业提供大量的详实的资料，从内容上，包括公司的组织结构（股东构成，各生产、管理部门的设置等），生产（生产工艺、流程、能力等），财务（财务会计制度、成本核算等），销售（内销、销往欧盟国家及非欧盟国家），产品（被调查产品及非调查产品），等等；从时间上，重点是最近三年的资料，但有时也要求提供公司从创立初期开始的全部原始资料。

The investigating authority will ask the enterprise to provide many detailed documents concerning the organization structure (shareholder composition, establishment of various production and management departments, etc.), production (production technique, process, capability, etc.), finance (financial and accounting systems, cost accounting, etc.), sales (domestic sales and sales to EU countries and non-EU countries), product (product concerned and non product concerned), etc. Generally the documents required are those for the latest three years. However, sometimes the enterprise is required to provide all original documents from its inception.



对应诉企业进行实地核查

On-Spot Verification against a Cooperating Enterprise

核查的重点是应诉企业所提供材料真实、准确、完整。核查是反倾销应诉中至关重要的步骤之一，核查的结果在很大程度上决定了应诉企业的待遇。

The focus of the verification is the authenticity, and integrity of the documents provided by the cooperating enterprise. This verification is a critical step in the AD cooperation and the result of the cooperation will determine the treatment of the cooperating enterprise to a great extent.



中国企业在反倾销调查中的作用

Role of Chinese Enterprises in AD Investigation



在反倾销调查立案之前的准备

Preparation before Initiation of an AD Investigation Case

在提起反倾销调查之前，会有很多要立案的谣传，中国企业一方面应该加强与欧盟客户的沟通，密切跟踪案件的动态，另一方面，应该及早做好应诉前的准备，最重要的应在专业人士的指导下，对本企业的状况先行评估，以及早了解本企业是否具备应诉成功的条件。

As many rumours concerning the initiation of a case may arise before the filing of an AD investigation, the Chinese enterprise should communicate with its EU clients to keep a close eye on the case and prepare for the AD cooperation as early as possible. Most importantly, it should conduct pre-appraisal of its status under the guidance of professionals and understand whether it would be able to undertake a successful cooperation as soon as possible.



应诉的两个主要方面：倾销和损害

Two Main Aspects of the Response: Dumping and Injury

反倾销应诉可归纳为倾销和损害两方面。倾销方面的应诉的目的是取得单独的低的倾销税率，如果取得，税率只适用于该应诉企业；损害应诉的目的主要是证明欧盟的产业未受到损害，或即使受到损害也并非由中国产品所引起的。在应诉实践中，损害方面的应诉还包括对同类产品、替代国、欧盟进口商及用户的利益等内容的分析及评估。

The cooperation in the AD investigation may be broken down into two aspects, namely dumping and injury. The objective of dumping cooperation is to obtain an individual low AD duty. If granted, such duty only applies to the cooperating enterprise. The objective of injury cooperation is mainly to prove that the EU industry has not been injured or its injury is not attributable to the Chinese product. In practice, injury cooperation also includes analysis and assessment of like products, the analogue country, the interests of EU importers and users, etc..



应诉还是不应诉，这是个问题！

To Cooperate or not, that's the question!

企业选择应诉，多数是期望取得单独税率，排除竞争对手，而选择不应诉，主要从费用以及不确定应诉结果方面考虑。另外一部分企业选择集体参加损害应诉，期待调查以不采取反倾销措施结束。

Enterprises generally choose to cooperate, on the expectation that they will be granted an individual duty so as to get rid of competitors. Those enterprises that choose not to cooperate do so mainly on the basis of costs and fear of unpredictable results. Some other enterprises choose to collectively cooperate on the injury aspect expecting the investigation to be terminated without adoption of AD measures.



一项反倾销调查的不同结果

Different Results of an AD Investigation

任何反倾销调查都将采取或不采取反倾销措施结束。在采取反倾销措施（即征收反倾销税）情况下，出口企业将面临几种不同结果：对于应诉企业来讲，取得单独税率（前提是取得市场经济待遇或个别待遇），或获得价格承诺（一般以取得 MET 或 IT 为前提，且必须与欧盟进行协商），或按统一税率（最高）被征税（没有取得任何待遇）。对于未单独应诉的企业来讲，被征收最高反倾销税。

Any AD investigation may be terminated with or without adoption of AD measures. In the case of adoption of AD measures (i.e. imposing AD duty), the exporters may face several different outcomes: a cooperating enterprise may be granted a separate duty (provided that MES or IT is granted), or a price undertaking (generally on the condition of the granting of MET or IT and based on negotiation with EU), or a single , higher duty may be imposed (as no preferential treatment is granted), and the highest AD duty will be imposed on an enterprise not cooperating individually.



如何与欧盟客户合作，向欧盟成员国进行相关的游说

How to Cooperate with EU Clients and Lobbying the EU Member States on Relevant Issues

前面提到，采取一项反倾销措施需要欧盟多数成员的赞成。因此，对相关欧盟成员国政府的游说工作在某种程度上会影响反倾销调查的结果。根据产品的不同，产业分配的不同，游说可以通过欧盟用户或进口商进行。实践中，进口商或用户有时通过行业协会进行相关的游说工作。

As mentioned above, the adoption of an AD measure is subject to the approval of the majority of EU members. Therefore, lobbying governments of the relevant EU member states may affect the AD investigation results to some extent. Lobbying may be conducted through EU users or importers depending on the different products and industry distribution. In practice, importers or users sometimes lobby on relevant issues through industry associations.



成功应诉反倾销的关键（如有的话）

Key to Success in AD Cooperation (If Any)

反倾销应诉，更确切地讲是配合调查（英文是 **cooperation**），全面配合是应诉成功的前提，全面配合的前提应该是企业完全了解反倾销，并做好了充分的准备。从这个意义上讲，成功应诉反倾销的关键在于企业平时练好内功。

In AD cooperation, or precisely cooperation with an investigation, full cooperation is the pre-condition for a successful cooperation. Full cooperation shall be based on the fact that the enterprise fully understands AD and has made adequate preparation. In this sense, the key to success in an AD cooperation is the level of preparation of the enterprise.



结束语

Conclusion

在最近几起反倾销案件中（如铸铁井盖案，化纤布案，皮鞋案等），出现了一些新的做法，另外，欧盟最近也在反思如何使用作为贸易救济措施之一的反倾销措施（如去年底公布的绿皮书），这些是否意味着未来运用反倾销手段和反倾销调查时不确定性的增加。

Some new practices have arisen in recent AD cases (e.g. casting case, certain finished polyester filament apparel fabrics case, leather shoes case, etc). In addition, the EU is considering how to use the AD measure as one of the trade remedy measures (e.g. the green paper issued in the end of last year). Does this mean the increase of uncertainty in future application of AD measures and AD investigation?





Gide Loyrette Nouel

Song Li-Wei, Gide Loyrette Nouel, Shanghai

Email: song@gide.com

宋立伟, 法国基德律师事务所上海代表处

电子邮件: song@gide.com