簡介歐盟「反經濟脅迫規則草案」及其於 WTO 下之合致性

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摘要

歐盟執委會於去（2021）年 12 月發布「反經濟脅迫規則草案」，以期保護歐盟及其成員國免因第三國之經濟脅迫，而被迫採取、終止或調整特定政策。然而，當前尚無法定論，歐盟將以嚴格或寬鬆標準認定經濟脅迫。且為因應第三國之脅迫行為而採取的反制措施，是否合乎世界貿易組織之會員義務與規範亦仍待進一步釐清。執委會發布的影響評估報告則指出，世界貿易組織僅處理違反其規範之行為，為反制脅迫行為而施行的貿易報復，並不為世界貿易組織所管轄。反經濟脅迫規則與 WTO 間之合致性仍存有討論空間，故此草案之發展仍待進一步觀察。

（取材資料：Freya Baetens & Marco Bronckers, *The EU's Anti-Coercion Instrument: A Big Stick for Big Targets*, EJIL: TALK! (Jan. 19, 2022), https://www.ejiltalk.org/the-eus-anti-coercion-instrument-a-big-stick-for-big-targets/.）

去（2021）年 12 月，歐盟執委會發布「反經濟脅迫規則草案（Proposal for a Regulation of The European Parliament and of The Council on the Protection of the Union and Its Member States from Economic Coercion by Third Countries）」[1]，旨在防止第三國以施壓歐盟或其成員國採取特定政策為目的，威脅實施將影響歐盟或其成員國之貿易或投資的措施[2]。此份草案可能為歐盟今年上半年議事期間之焦點議題，因歐盟在立陶宛受中國以貿易手段報復後，已向世界貿易組織（World Trade Organization, WTO）請求諮商[3]；且擔任上半年歐盟理事會（Council of the

[1] *Proposal for a Regulation of The European Parliament and of The Council on the Protection of the Union and Its Member States from Economic Coercion by Third Countries*, COM (2021) 775 final (Dec. 8, 2021) [hereinafter Proposal for the Protection from Economic Coercion].

[2] *Id*., Explanatory Memorandum at 1 ("Economic coercion refers to a situation where a third country is seeking to pressure the Union or a Member State into making a particular policy choice by applying, or threatening to apply, measures affecting trade or investment against the Union or a Member State.").

[3] Request for Consultations by the European Union, *China - Measures Concerning Trade in Goods and Services*, WTO Doc. WT/DS610/1, G/L/1426, G/TFA/D4/1, G/SPS/GEN/1988, S/L/435 (Jan. 31, 2022).

European Union）輪值主席國的法國已表示將於今年積極推進此草案之立法進程，更凸顯草案之重要性[4]。惟當前歐盟各成員國間對此草案之意見仍分歧不一[5]，且此作法是否合乎歐盟於 WTO 下之義務亦仍有疑慮，故本草案及其發展進程值得關注。

本文先簡述國際法以及此份草案對於「經濟脅迫（Economic Coercion）」之定義，並討論歐盟認定經濟脅迫之標準。再進一步分析欲以此份草案取得正當性之反制措施，是否合於 WTO 之義務與規範，最後作一結論。

壹、「經濟脅迫」之定義

依據聯合國《關於各國依聯合國憲章建立友好關係及合作之國際法原則宣言（Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations）》，國家不應使用經濟或政治手段脅迫他國，使該國在行使主權權利時從屬於脅迫國[6]。此份宣言指出，以經濟手段脅迫他國為國際上所不容許之情事，故歐盟欲訂立相關規則，避免歐盟及其成員國受經濟脅迫。

執委會則於草案第 2.1 條定義，「經濟脅迫」係指當第三國以干涉歐盟或其成員國採取、終止、或調整特定政策為目的，威脅將實施影響歐盟或其成員國之貿易或投資的措施[7]。而依據草案第 2.2 條，欲判斷第 2.1 條所定義之經濟脅迫是否存在，歐盟仍應檢視：該行為之嚴重程度（severity）、實施頻率（frequency）及為期時間長短（duration）、第三國是否基於國際所認可的正當事由採取此行動、實施相關措施前是否曾試圖透過國際合作或調解解決其所關切之事由、以及

[4] FRENCH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION, PROGRAMME FOR THE FRENCH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION 22 (2022), https://presidence-francaise.consilium.europa.eu/media/qh4cg0qq/en_programme-pfue-v1-2.pdf.

[5] PAULETTE VANDER SCHUEREN et al., LEGAL UPDATE EUROPEAN COMMISSION UNVEILS ITS ANTI-COERCION INSTRUMENT PROPOSAL 5 (2021), https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2021/12/european-commission-unveils-its-anticoercion-instrument-proposal.pdf ("Nonetheless...some member states—including Sweden and the Czech Republic...have already voiced their concerns regarding the implementation of an anti-coercion instrument.").

[6] G.A. Res. 2625 (XXV), at 123 (Oct. 24, 1970) ("[N]o State may use...economic political...measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights....").

[7] Proposal for the Protection from Economic Coercion, *supra* note 1, art. 2.1 ("This Regulation applies where a third country: interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State; by applying or threatening to apply measures affecting trade or investment.").

所採用之手段侵犯歐盟或成員國主權的程度等[8]。若判斷屬於經濟脅迫，歐盟及其成員國得進一步以貿易或投資限制反制[9]。

貳、歐盟之認定標準寬嚴與利益考量

草案除臚列欲判斷經濟脅迫行為是否存在時應考量的諸多條件，亦明確表示，唯有保護歐盟及其成員國之利益所必要時，方能適用此規則草案，且反經濟脅迫措施僅能作為最後手段（last resort）[10]。此些條文似乎顯示歐盟傾向採取嚴格標準判定經濟脅迫行為，且只就重大的經濟脅迫行為祭出反制措施。

歐盟的「超普遍化優惠關稅措施（Generalized System of Preferences Plus, GSP+）」可能是其採取較嚴格之標準認定經濟脅迫的考量之一。GSP+係以第三國是否採行歐盟所支持的政策為條件（包含環境、勞工或人權保護等領域），決定是否給予貿易援助[11]。而當此類附帶條件的貿易援助被撤銷時，常為受惠國所強烈批評。因其可能認為歐盟以貿易援助此種影響貿易或投資之政策，要求受惠國持續採行特定措施，屬於經濟脅迫行為。

一旦反經濟脅迫規則草案被通過，被撤銷援助之受惠國可能傾向援引歐盟自身規範，以指控歐盟的施壓行為構成經濟脅迫。儘管受惠國未必有能力採取反制措施，但其基於反經濟脅迫規則對歐盟做出的經濟脅迫指控，將使他國對歐盟產生負面印象。因此，歐盟出於自身利益考量，似可能將經濟脅迫行為之認定標準提升至相對高的水準。

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[8] *Id*. art. 2.2 (“In determining whether the conditions set out in paragraph 1 are met, the following shall be taken into account: (a) the intensity, severity, frequency, duration, breadth and magnitude of the third country’s measure and the pressure arising from it…(c) the extent to which the third-country measure encroaches upon an area of the Union’s or Member States’ sovereignty; (d) whether the third country is acting based on a legitimate concern that is internationally recognised; (e) whether and in what manner the third country, before the imposition of its measures, has made serious attempts, in good faith, to settle the matter by way of international coordination or adjudication....”).

[9] *Annexes to the Proposal for a Regulation of the European Parliament and of the Council on the Protection of the Union and Its Member States from Economic Coercion by Third Countries*, at 1, COM (2021) 775 final (Dec. 8, 2021) [hereinafter Annexes to the Proposal] (“Measures which may be adopted...are: the suspension of any tariff concessions...the imposition of measures affecting foreign direct investment....”).

[10] Proposal for the Protection from Economic Coercion, *supra* note 1, art. 1, recital 15 (art. 1 “This Regulation...permitting the Union, in the last resort, to counteract such actions.”; recital 15 “The Union should only impose countermeasures... where action is necessary to protect the interests and rights....”).

[11] Regulation (EU) No 978/2012 of the European Parliament and of the Council, of 25 October 2012 Applying a Scheme of Generalised Tariff Preferences and Repealing Council Regulation (EC) No 732/2008, art. 9, 2012 O.J. (L 303) 1, 7 (“A GSP beneficiary country may benefit from the tariff preferences provided under the special incentive arrangement for sustainable development and good governance referred to in point (b) of Article 1(2) if....”).

然而，執委會於影響評估（Impact Assessment）中舉出的經濟脅迫行為示例，卻與前述所顯示的嚴格認定立場有所矛盾。該例為印尼於 2019 年拒絕核發進口許可證（import license）予來自歐盟的烈酒與葡萄酒，以回應歐盟針對用於運輸業燃料的棕櫚油所祭出的管制措施[12]。有論者批評，歐盟被拒絕核發進口許可證的產品僅佔其出口量一小部分，且此政策施行期間僅約莫一年，應未達到經濟脅迫的高門檻。由此可見，執委會對於經濟脅迫認定之從寬或從嚴仍存在不確定性。

參、反經濟脅迫規則草案於 WTO 下之合致性

歐盟欲於此草案下實施的貿易限制措施，包含暫停減讓義務及增加貨品的進口或出口限制等[13]。雖然 WTO 目前尚無相關裁決，有論者認為當貿易限制措施已達違反 WTO 義務的程度時，即使系爭措施得由國際公法取得正當性，該正當事由亦可能無法被 WTO 法制承認[14]。亦有反論認為，若貿易限制措施係為對一項違反國際公法的行為實行反制，則系爭措施在 WTO 法同樣也可以排除其違法性[15]。根據執委會發布的反經濟脅迫規則草案，其目前似支持後者。執委會亦在其影響評估中極力表明，WTO 爭端解決程序僅能處理與 WTO 規範不合致的措施，而非處理涉及脅迫行為或意圖等其他違反一般國際法的行為[16]。

對於中國因立陶宛以「台灣」命名我國代表處而實施的貿易限制措施，法國政府亦表達了相近的立場，即 WTO 爭端解決機制僅能處理違反 WTO 規範之情事，而中國禁運措施中所含的脅迫本質則並非在 WTO 規範所涵蓋之範圍內[17]，且 WTO 爭端解決機制就反制外國經濟脅迫方面，具有其根本性的弱點[18]。而將

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[12] 影響評估係指針對預期會產生重大經濟、社會或環境衝擊的立法草案，進行影響評估所作成的報告，內容包括草案對企業與市場之影響、受影響對象與情形、以及諮詢利害關係人之結果等。該報告將連同執委會通過的草案公布，並一併交付歐洲議會及歐盟理事會。*Commission Staff Working Document Impact Assessment Report Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on the Protection of the Union and its Member States from Economic Coercion by Third Countries*, at 12, SWD (2021) 371 final (Dec. 8, 2021) [hereinafter Impact Assessment Report]; *Impact Assessments*, European Commission, https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en (last visited Apr. 25, 2022).

[13] Annexes to the Proposal, *supra* note 9, at 1 (“Measures which may be adopted...are: the suspension of any tariff concessions...the introduction or increase of restrictions on the importation or exportation of goods....”).

[14] Gabrielle Marceau & Julian Wyatt, *Dispute Settlement Regimes Intermingled: Regional Trade Agreements and the WTO*, 1(1) J. OF DISP. SETTLEMENT 67, 74 (2010).

[15] Marco Bronckers & Giovanni Gruni, *Retooling the Sustainability Standards in EU Free Trade Agreements*, 24(1) J. OF INT’L ECON. L. 25, 43 (2021).

[16] Impact Assessment Report, *supra* note 12, at 15.

[17] Jakob Hanke Vela & Suzanne Lynch, *Brussels Playbook: China Tests EU Unity — Russia ‘Dead End’— Defensive Union*, POLITICO (Jan. 14, 2021), https://www.politico.eu/newsletter/brussels-playbook/china-tests-eu-unity-russia-dead-end-defensive-union/.

[18] 此處所指稱之 WTO 爭端解決機制之弱點包含：在冗長的爭端解決程序中並無臨時救濟的機

反制外國脅迫的措施排除於 WTO 法制之外，亦符合其解決經貿爭端的功能日漸式微之情形[19]。世界似正轉向單邊經濟秩序，歐盟需做足準備以因應此挑戰[20]。就此而言，反經濟脅迫規則草案正符合其需求。

參、結論

反經濟脅迫規則草案對「經濟脅迫」之定義及構成要件設下較高門檻，故由第三國所實施與貿易或經濟報復有關之措施，未必落入經濟脅迫行為之定義。惟此草案是否合乎歐盟於 WTO 下之義務仍待進一步釐清，當前的兩派論點，一方主張所有貿易限制措施皆為 WTO 法制所涵蓋；而另有論者認為，以回應一違反國際法行為為目的所祭出之反制措施，系爭措施的違法性將為 WTO 法所排除。而執委會則認為 WTO 爭端解決程序對違反一般國際法原則之行為及其反制措施，並無管轄權。

基於歐盟理事會輪值主席法國對此草案的支持態度，草案有望於此議事期間被積極討論，甚至獲得歐盟理事會與歐洲議會同意；且可預見此草案影響範圍深遠，特別是在立陶宛因允許我國以台灣為名設立代表處而受中國貿易報復後，歐盟於 WTO 請求諮商。由此可見，經濟脅迫行為係歐盟正著手處理之議題，此草案的未來發展值得關注。

會，不切實際、昂貴又無法回復過往損失的救濟措施等。Debra P. Steger, Book Review, 105(1) The Am. J. of Int'l L. 186, 189 (2011).

19 Thomas J. Duesterberg, *The WTO's Fast Track to Irrelevance*, WALL STREET J. (Nov. 29, 2021), https://www.wsj.com/articles/world-trade-organization-fast-track-irrelevance-tpp-cptpp-china-ministerial-conference-omicron-11638201072?page=1.

20 Julien Chaisse & Georgios Dimitropoulos, *Special Economic Zones in International Economic Law: Towards Unilateral Economic Law*, 24(2) J. of Int'l Econ. L. 229, 253 (2021).