

美國與歐盟針對跨境補貼問題提出對策

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摘要

近年來非市場經濟國家對於工業之補貼行為，有時會透過提供財務補助予其位於海外之企業，規避世界貿易組織下的《補貼暨平衡措施協定》之規範。美國與歐盟之國內補貼規範與上述協定相仿，未明文規範跨境補貼，因此兩國各自於去（2021）年提出相關法案以填補此缺漏，雖然歐盟所提出之草案相較於美國較為全面，但有鑑於其嚴格之要求，其不太可能透過 WTO 體系在全球複製。其實此議題早在 2020 年美歐日三邊之貿易部長會議中即被提出，於最近一次的美國與歐盟貿易與技術委員會第十工作小組中亦有所討論，因此政府間網絡似乎是短期內各國共同處理跨境補貼問題最可行的途徑。鑑此，為了更有效地限制跨境補貼，各國還需努力，俾使更多國家加入談判桌。

（取材資料：Kaycee Ikonu & William Alan Reinsch, *Transatlantic Treatment of Transnational Subsidies*, CTR. FOR STRATEGIC AND INT'L STUD. (July 22, 2022), <https://www.csis.org/analysis/transatlantic-treatment-transnational-subsidies>。）

歐盟理事會與歐洲議會在今（2022）年 6 月 30 日達成一項暫時性政治協議，以建立跨境補貼規範的新架構¹。同時，在大西洋的另一端，類似的法案也在美國國會由俄亥俄州共和黨的波特曼參議員與民主黨的布朗參議員聯名提出，其旨在強化美國貿易救濟法律，並特別針對跨境補貼問題²。

簡而言之，跨境補貼係指由一國政府向位於外國之生產商提供補貼，再由該些生產商隨後向第三國出口之情形³。

¹ European Commission Press Release 643/22, Foreign Subsidies Distorting the Internal Market: Provisional Political Agreement between the Council and the European Parliament (June 30, 2022).

² Eliminating Global Market Distortions to Protect American Jobs Act of 2021, S. 1187, 117th Cong. (2021).

³ S. 1187, § 201 (“(H)...involving an allegation that a subsidy is provided by an authority (as defined in paragraph (5)(B)) within the territory of a country other than the country in which the subject merchandise is produced, a foreign manufacturer, producer, or exporter of an input used in the production of the merchandise.”); *Proposal for a Regulation of the European Parliament and of the Council on Foreign Subsidies Distorting the Internal Market*, art. 2, COM (2021) 223 final (May 5, 2021) [hereinafter *Proposal for Foreign Subsidies Regulation*] (“(1) For the purpose of this Regulation, a foreign subsidy shall be deemed to exist where a third country provides a financial contribution which confers a benefit to an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to an individual undertaking or industry or to several undertakings or industries.”).

美國與歐盟所提出之法案試圖救濟跨境補貼所造成的市場扭曲與不公平貿易行為⁴。此兩個草案與世界貿易組織 (World Trade Organization, WTO) 補貼規則相互間之關係為何，以及其對於未來如何在 WTO 多邊架構下處理此問題的指引性，皆需進一步探討。

壹、美國及歐盟現有國內法規並無跨境補貼之明文

美國之平衡稅法規範可見於 1930 年關稅法⁵，該法與《補貼暨平衡措施協定 (Agreement on Subsidies and Countervailing Measures)》(以下簡稱 SCM 協定) 第 1.1 條⁶，均規定補貼係根據政府或公共機構直接或間接地對出口至美國的產品之生產與製造提供財務補助⁷。與 SCM 協定相同，美國平衡稅法亦強調補貼必須是在該授予國境內發生⁸。

不過，美國平衡稅法並未明文對跨境補貼規範提供列舉式的指導原則⁹。同時，國會報告亦建議美國可仿效歐盟對跨境補貼提出新的規範¹⁰。

同樣地，歐盟平衡稅法亦係依照 SCM 協定。基於補貼必須是原產國或出口國政府之財務補助的概念，即意謂著企業必須是在補貼國家境內收到補貼，因此為跨境補貼創造了法律漏洞¹¹。

貳、各自修改補貼定義以便納入「跨境補貼」、惟救濟方式相異

前述美國與歐盟所提出之法案皆係透過給予「跨境補貼」明文定義之方法，處理跨境補貼問題，以補充 SCM 協定之不足。

在美國方面，消弭全球市場扭曲以保護美國就業法案 (EGMD) 第 201 條

⁴ S. 1187; *Proposal for Foreign Subsidies Regulation*, *supra* note 3.

⁵ Tariff Act of 1930, 19 U.S.C. §§ 1671 ff (2020).

⁶ Agreement on Subsidies and Countervailing Measures art. 1.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14 [hereinafter SCM Agreement] (“(a)(1) there is a financial contribution by a government or any public body within the territory of a Member...”).

⁷ 19 U.S.C. § 1671 (“(a) General rule If—(1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States...”); *Id.*

⁸ *Id.*; SCM Agreement, art. 1.1.

⁹ See Tariff Act of 1930.

¹⁰ CHRISTOPHER A. CASEY & LIANA WONG, CONG. RSCH. SERV., R46882, TRADE REMEDIES: COUNTERVAILING DUTIES 28-29 (2021).

¹¹ See Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on Protection against Subsidised Imports from Countries not Members of the European Union (Codification), 2016 O.J. (L 176) 55, 58-59 (“1. (a) there is a financial contribution by a government in the country of origin or export...”).

即將跨境補貼定義為：「由生產、出口或銷售國以外之國家所授予者¹²。」

具體而言，該法案修改了 1930 年關稅法的規定，以包含「補貼不僅是公共機構之財務提供，亦可以是政府明示地，或以其他方式，允許另一國機關提供財務補助」之概念¹³。因此，此規定為補貼國與地主國間補貼權力之移轉列出判斷標準，俾商務部能夠對補貼生產之國家實施平衡稅。

正如法案之立法總說明所述，此規定將使美國商務部得以對境外補貼實施平衡稅¹⁴。舉例來說，中國之一帶一路計畫補貼嘉惠於中國境外營運之以中國為基礎、或由中國運作之公司¹⁵，而美國商務部即得對其課徵平衡稅。

同樣地，歐盟的外國補貼規則（FSR）第 2 條亦明文定義外國補貼（跨境補貼）為：「當第三國提供財務補助，授予在歐盟市場從事經濟活動之企業利益之情形¹⁶。」

然而，不同於 SCM 協定及上述 EGMD 規定，FSR 之救濟措施並非平衡稅，而是要求一些具體的行動，例如降低產能、市場佔有率或減少對該企業之投資，以及返還對外國的補貼¹⁷。

參、未來發展

上述美歐兩法案意謂各國對管制跨境補貼之態度愈來愈積極。FSR 雖是兩法案中較為全面者，但其不太可能透過 WTO 體系在全球複製。蓋其嚴格的要求對於其他國家來說可能是過重的負擔。

¹² S. 1187, § 201 (“...(H)...involving an allegation that a subsidy is provided by an authority (as defined in paragraph (5)(B)) within the territory of a country other than the country in which the subject merchandise is produced, a foreign manufacturer, producer, or exporter of an input used in the production of the merchandise.”).

¹³ *Id.* (“...by inserting after “financial contribution” the following: “or allows, explicitly or otherwise, another authority to provide a financial contribution....”).

¹⁴ S. 1187, Summary of the bill (“To amend the Tariff Act of 1930 to improve the administration of antidumping and countervailing duty laws, and for other purposes.”).

¹⁵ China Power Project, *How Will the Belt and Road Initiative Advance China's Interests*, CTR. FOR STRATEGIC AND INT'L STUD., <https://chinapower.csis.org/china-belt-and-road-initiative/> (last visited Oct. 11, 2022); Wade Shepard, *The Real Role of the AIIB in China's New Silk Road*, FORBES (July 15, 2017), <https://www.forbes.com/sites/wadeshepard/2017/07/15/the-real-role-of-the-aiib-in-chinas-new-silk-road/?sh=2c6515307472>.

¹⁶ *Proposal for Foreign Subsidies Regulation*, *supra* note 3, § 2 (“(1) For the purpose of this Regulation, a foreign subsidy shall be deemed to exist where a third country provides a financial contribution which confers a benefit to an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to an individual undertaking or industry or to several undertakings or industries.”).

¹⁷ *Id.* § 6 (“(3) Commitments or redressive measures may consist of the following: ...(b) reducing capacity or market presence; (c) refraining from certain investments; (h) repayment of the foreign subsidy, including an appropriate interest rate.”).

其實處理跨境補貼問題的多邊架構最早是在美歐日三邊之貿易部長會議中被提出討論。該三邊對談首次會議是於 2020 年舉行，當時之結論是應該擴大 SCM 協定中禁止性補貼的範圍，並在超級鉅額補貼的案件中倒轉舉證責任¹⁸。

儘管據說美歐日三方計畫在 WTO 第 12 屆部長會議的空檔時間進行進一步的討論，但目前三邊對話似乎是暫時停止的¹⁹。

此議題最近再度於美國與歐盟貿易與技術委員會 (U.S.-EU Trade and Technology Council, TTC) 第十工作小組的討論中浮上檯面²⁰。在最近一次的 TTC 部長會議中，第十工作小組在有關「特定的非市場經濟及貿易扭曲政策」方面之討論有所進展，美歐雙方並交流了可用來處理此類問題的相關政策工具。然而，具體的行動步驟尚未付諸實行，此方面之進展預計將在下一屆 TTC 部長會議得見²¹。

由上述可知，目前已有國家嘗試調和處理跨境補貼的方法，儘管該些方法大部分並不深入。再者，不論是美歐日三邊對話或是 TTC，皆展現了政府間之合作網絡似乎是短期內各國共同處理跨境補貼問題最可行的途徑。然而，這些網絡目前僅包含少數國家，因此，為了更有效地限制跨境補貼，各國仍需要努力，以讓更多的國家加入談判桌。

¹⁸ *Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union*, U.S. TRADE REPRESENTATIVE (Jan. 14, 2020), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/joint-statement-trilateral-meeting-trade-ministers-japan-united-states-and-european-union>.

¹⁹ Jenny Leonard et al., *US, EU, Japan to Renew Alliance against China Trade Practices*, BLOOMBERG (Nov. 17, 2021), <https://www.bloomberg.com/news/articles/2021-11-17/u-s-eu-japan-to-renew-alliance-against-china-trade-practices#xj4y7vzkg>.

²⁰ 美國與歐盟貿易與技術委員會係於 2021 年的美歐峰會上成立，其提供美歐雙方協調貿易與關鍵科技議題之平台；其中第十工作小組主要係在討論全球貿易之挑戰與改革。*Working Group 10 - Global Trade Challenges*, EUR. COMM'N, <https://futurium.ec.europa.eu/en/EU-US-TTC/wg10> (last visited Oct. 11, 2022).

²¹ European Commission Press Release IP/22/3034, *EU-US Trade and Technology Council: Strengthening Our Renewed Partnership in Turbulent Times* (May 22, 2022).