

## 學者建議美國推動新的產業補貼規範

蔡佩璇 編譯

### 摘要

美國外交關係協會於今 (2023) 年 9 月初出版了名為「重新思考補貼的國際規則」之報告。執筆的兩位學者建議美國參考農業協定，發展新產業補貼規範、利用賞罰並重的方式提高補貼透明度，且以更有效的方式懲罰違反補貼規範之行為。

(取材資料：Hannah Monicken, *Analysts: U.S. Should Push for Transparency, New Caps on Industrial Subsidies*, INSIDE U.S. TRADE, Vol. 41, No. 37, Sept. 15, 2023.)

旨在解決諸如氣候變遷與地緣競爭等全球性重大議題之產業補貼，近年來正逐漸興起。有學者主張美國該帶頭推動新的處理補貼方式，專注補貼透明度之改善、罰則之強化，並發展新規範，為投資於「全球共同利益 (global common good)」之補貼設定上限<sup>1</sup>。

上述主張出自美國最有影響力之外交政策智庫：外交關係協會，於今 (2023) 年 9 月所出版的第 96 號特別報告，執筆者為前上訴機構成員、目前為喬治城大學教授希爾曼 (Jennifer Hillman) 以及協會之研究員馬納克 (Inu Manak)<sup>2</sup>。二人認為，當國家在如何處理補貼問題方面，正處於「典範移轉」之此刻，是時候往上述方向推進<sup>3</sup>。

### 建議一、仿效農業協定之補貼分類

該報告建議新的產業補貼規範借鏡 WTO 農業協定<sup>4</sup>，將補貼分為三類型<sup>5</sup>—

<sup>1</sup> JENNIFER A. HILLMAN & INU MANAK, RETHINKING INTERNATIONAL RULES ON SUBSIDIES 23-28 (Council on Foreign Relations: Special Report No. 96, Sept. 2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at vi.

<sup>4</sup> *Id.* at v, 24.

<sup>5</sup> WTO INFORMATION AND EXTERNAL RELATIONS DIVISION, UNDERSTANDING THE WTO 28-29 (2015), [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.pdf](https://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf) (explaining the reference of amber box, green box, and blue box, which represents difference types of agricultural subsidies); Agreement on Agriculture arts. 6.1, 6.5, Annex 2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 415, 416, 425 (art. 6.1: “The domestic support reduction commitments of each Member ... shall apply to all of its domestic support measures in favour of agricultural producers with the exception ... set out in this Article and in Annex 2 to this Agreement.”; art. 6.5 (a): “Direct payments under production-limiting programmes shall not be subject to the commitment to reduce domestic support”; Annex 2, para. 1: “Domestic support

分別是「琥珀色匣 (amber boxes)」補貼：指會扭曲貿易，並受限於以產值之百分比表示的微量上限；「綠匣 (green boxes)」支持：指幾乎不會擾亂貿易而無上限；以及「藍匣 (blue boxes)」計畫：指可能扭曲貿易，但同時有限制生產之要求。

針對產業補貼，兩位學者建議各國<sup>6</sup>：對於任何扭曲貿易（或琥珀色匣）的產業補貼，以談判設定總額支出的上限，並在特定部門設定可能的「部門別支出上限」；綠匣補貼則縮小定義範圍，僅限與「研究與發展、檢查與符合性、以及災害因應」等目標有關者；而藍匣補貼「因為對全球共同利益的貢獻超過其貿易扭曲效果，將不被計入總額支出上限」。

## 建議二、賞罰並重以促進透明化

在透明化方面，該報告鼓吹建立賞罰並重的方法<sup>7</sup>：對於已正確通知 WTO 的綠匣與藍匣補貼，可在一定期間（例如一年）內免於被控訴；但未及時通知者則該受到懲罰。兩位學者同時呼籲有更好的指導方針，以利各國政府確知到底何種補貼該通知 WTO<sup>8</sup>。

當不是很確定在產業補貼上所花費之金額時，各國是無從相互協調以避免浪費；即使彼此可能有合作的機會，也會因為根本不清楚其他會員之作為，而無從著手。職是之故，在該報告之線上直播發表會中，馬納克研究員表示，首要工作就是改善補貼之透明度，而這項工作在 WTO 的技術層級即可做到，並不需要大規模的政治協定<sup>9</sup>。

## 建議三、以「受益者返還補貼金額」作為違反之懲罰

該報告還反覆呼籲提高違反補貼規則時之懲罰。具體而言，即要求接受違規補貼的受益廠商「返還所有補貼金額」<sup>10</sup>。

儘管上述想法大幅偏離目前 WTO 爭端解決體系的設計，因其體系旨在維護未來之貿易機會，而非為了補償過去的損害<sup>11</sup>；不過誠如本報告所指出，溯及既

---

measures for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade-distorting effects or effects on production.”).

<sup>6</sup> HILLMAN & MANAK, *supra* note 2, at 24.

<sup>7</sup> *Id.* at 26-27.

<sup>8</sup> *Id.* at 26.

<sup>9</sup> Council on Foreign Relations, *A Meeting on Council Special Report: Rethinking International Rules on Subsidies*, YOUTUBE, at 19:26~19:46 (Sept. 7, 2023), <https://www.youtube.com/watch?v=VUcH-L5tEK0>.

<sup>10</sup> HILLMAN & MANAK, *supra* note 2, at 28.

<sup>11</sup> *Id.*; WTO LEGAL AFFAIRS DIVISION AND APPELLATE BODY, *A HAND BOOK ON THE WTO DISPUTE SETTLEMENT SYSTEM* 82 (Cambridge University Press, 2004) (“The level of suspension of obligations authorized by the DSB ... is prospective rather than retroactive; it covers only the time-period after the DSB has granted authorization, not the whole period during which the measure in question was applied or the entire period of the dispute.”).

往的救濟也非毫無先例<sup>12</sup>。

至少有一案件之爭端解決小組認為，要執行《補貼暨平衡措施協定》中所要求的禁止性補貼（如該案的出口補貼即屬之）應立即撤回的規定，唯一方法就是恢復至補貼授予前的狀態，這意味所有授予之財務補助皆必須返還<sup>13</sup>。

## 結語

固然誠如馬納克研究員在報告發表會上所言，補貼的成長常觸發新的補貼規範之發展<sup>14</sup>，而現在或許正是這樣的時機。只是報告中之建議，有些在過去已有 WTO 會員明顯反對的記錄，譬如對怠於通知會員之懲罰<sup>15</sup>；另外，以返還補貼全額以提高懲罰部分，雖然的確有先例，但該裁決受到許多 WTO 會員的強烈批評<sup>16</sup>，且該案的裁決結果並未被後來的任何小組所採納<sup>17</sup>。換言之，以該方式提高懲罰是否可行不無疑問。

無論如何，在主要大國競相用環保、地緣政治抗衡之名，實施產業補貼之此刻，本報告之建議或可收拋磚引玉之效果，讓美國更積極思考如何發揮領頭羊的角色，與有志一同的國家共同發展新規範，以避免補貼導致之不公平競爭，進一步地扭曲現已十分脆弱的國際貿易。

---

<sup>12</sup> HILLMAN & MANAK, *supra* note 2, at 28.

<sup>13</sup> *Id.*; Agreement on Subsidies and Countervailing Measures art. 4.7, Apr. 15, 1994, Marrakesh Agreement Establishing World Trade Organization, Annex 1A, 1869 U.N.T.S. 17; Panel Report, *Australia — Subsidies Provided to Producers and Exporters of Automotive Leather (Recourse to Article 21.5 of the DSU by the United States)*, paras. 6.39, 6.45, WTO Doc. WT/DS126/RW (adopted Feb. 11, 2000) (para. 6.39: “Based on the ordinary meaning of the term [‘]withdraw the subsidy[’], read in context, and in light of its object and purpose, and in order to give it effective meaning, we conclude that the recommendation to [‘]withdraw the subsidy[’] provided for in Article 4.7 of the SCM Agreement is not limited to prospective action only but may encompass repayment of the prohibited subsidy”; para. 6.45: “Having concluded that Article 4.7 of the SCM Agreement encompasses repayment, we can find no basis for concluding that anything less than full repayment would suffice to satisfy the requirement to [‘]withdraw the subsidy[’] in a case where repayment is necessary.”).

<sup>14</sup> *A Meeting on Council Special Report: Rethinking International Rules on Subsidies*, *supra* note 9, at 1:00:57.

<sup>15</sup> 此部分討論參見施文真，隱藏版的皇冠之珠：WTO 透明化機制之功能與改革願景，收於：楊光華編，第二十屆國際經貿法學發展學術研討會論文集，頁 181（2020 年）。

<sup>16</sup> 例如澳洲強烈批評爭端解決小組這部分的裁決，而加拿大、巴西、日本、歐盟與馬來西亞亦對此表達同樣的顧慮。Dispute Settlement Body, *Minutes of Meeting of 11 February 2000*, at 5-8, WTO Doc. WT/DSB/M/75 (Mar. 7, 2000) (“The representative of Australia said that...[A]n effective remedy was one where the measure was brought into conformity. The Panel recognized that its version of ‘withdraw the subsidy’ had gone much much further than the requirements for compliance with any other area of the WTO.”).

<sup>17</sup> Hyo-young Lee, “Remedying” the Remedy System for Prohibited Subsidies in the WTO: Reconsidering Its Retrospective Aspect, 10(2) ASIAN J. WTO & INT’L HEALTH L. & POL’Y 423, 438 (2015) (“Panel in Australia — Leather (Article 21.5) that withdrawal of a prohibited subsidy encompasses retrospective remedies in the form of full repayment was met by strong criticism by many WTO Members, and the findings of this case were not adopted by any of the later panels.”).