

「美洲貿易及投資法」討論版草案簡介

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摘要

今 (2023) 年 1 月 11 日，美國參議員卡西迪及眾議員沙拉薩聯名提出「美洲貿易及投資法」之討論版草案，以探求在國會提出該法案之可能性。相比過往美國在推動美洲區域整合之努力，該討論版草案藉由訂定資格標準及備忘錄洽簽程序，篩選得加入「美洲夥伴關係」之中南美洲國家。此外，其擬提供「美洲夥伴關係」國家基礎設施投資、公司貸款補助及人道主義援助等誘因，盼吸引合適的民主國家加入。若本討論版草案最終通過，將強化中南美洲政府與美國之間的聯繫、反制中國在該地區的影響力，此將可能連帶影響地緣政治，進而重塑全球企業之供應鏈佈局。只是目前行政部門對草案為達目的而採取擴大《美國—墨西哥—加拿大協定》之做法似仍有保留，未來發展有待進一步觀察。

(取材資料：Manuel A. Orillac et al., *The Americas Trade and Investment Act Discussion Draft*, SHEARMAN & STERLING (Mar. 9, 2023), <https://www.shearman.com/en/perspectives/2023/03/the-americas-trade-and-investment-act-discussion-draft>.)

今 (2023) 年 1 月 11 日，美國路易斯安那州共和黨參議員卡西迪及佛羅里達州共和黨眾議員沙拉薩，聯名發布關於「美洲貿易及投資法」之討論版草案¹，因其大幅地擴大《美國—墨西哥—加拿大協定 (USMCA)》之會員資格至中南美洲國家²，以創建「美洲夥伴關係 (Americas Partnership)」，而使其所反映之目標值得關注³。

¹ Cassidy, Salazar Release Draft Legislation to Counter China, Build Stronger Western Hemisphere, BILL CASSIDY, M.D. (Jan. 11, 2023) [hereinafter Press Release], <https://www.cassidy.senate.gov/newsroom/press-releases/cassidy-salazar-release-draft-legislation-to-counter-china-build-stronger-western-hemisphere>.

² *Id.*; Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada, Nov. 30, 2018 [hereinafter USMCA], <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

³ See Press Release, *supra* note 1. 過往亦有類似整合全美洲成為單一經貿圈的規劃，如「美洲自由貿易區 (Free Trade Area of the Americas)」及「美洲玻利瓦爾聯盟 (Bolivarian Alliance for the People of Our America)」，但皆以失敗告終。Free Trade Area of the Americas (FTAA) Committee of Government Representatives on the Participation of Civil Society, U.S. DEP'T OF STATE (Nov. 9, 2000), https://19972001.state.gov/issues/economic/ftaa/0599_ftaa_exec.html?fbclid=IwAR3BlyxVe9btBAy5

討論版草案雖尚未進入立法程序，然一旦通過，最終可能會大幅地改變西半球的貿易關係⁴。一方面，其為中南美洲地區政府提供機會，擴大該地區政府與美國之間的關係，並反制中國在該地區的影響力⁵；另一方面，該地區企業亦可藉此重新思考其供應鏈，以因應地緣政治的變動⁶。

此外，該討論版草案亦顯示，在支持美國企業於國內外的發展方面，國會有意賦予美國商務部更多的職責，使得原本商務部在支持美國企業的角色更加吃重⁷。未來無論是拉美國家與美國的外交關係，或是跨國企業在規劃與公部門的關係上，皆無法忽略商務部的角色⁸。

加入「美洲夥伴關係」的國家可以尋求加入 USMCA，這將有助於成員之間的互惠貿易，並促進該地區的經濟成長⁹。「美洲夥伴關係」的成員國將獲得基礎設施方面的投資、其國內企業將獲得補助與貸款，以及如人道主義援助、文化及教育事務計劃等方面的支持¹⁰。

依據討論版草案的規定，欲加入「美洲夥伴關係」之國家，必須符合以下資格標準，並與美國商務部完成諒解備忘錄之簽署¹¹。

X-RZC-0tx7Xa0-10xDTXbsBj3rwWpL1AS8nZs69cDNM; *What is the ALBA?*, ALBA INFO (Mar. 20, 2019), <https://albainfo.org/what-is-the-alba/> (last visited June 12, 2023).

⁴ Manuel A. Orillac et al., *The Americas Trade and Investment Act Discussion Draft*, SHEARMAN & STERLING (Mar. 9, 2023), <https://www.shearman.com/en/perspectives/2023/03/the-americas-trade-and-investment-act-discussion-draft> (“While the bill has not yet begun the legislative process necessary for it to become law, if passed, it could significantly alter trade in the Western Hemisphere....”).

⁵ *Discussion Draft of “Americas Act”*, §201(b)(2)(B), BILL CASSIDY, M.D. [hereinafter Discussion Draft], <https://www.cassidy.senate.gov/download/americas-act-discussion-draft> (last visited June 12, 2023) (“[T]o take actions to reduce the influence of the People’s Republic of China in the country....”).

⁶ Orillac et al., *supra* note 4 (“[F]or companies in the region to rethink their supply chains in light of ongoing geopolitical shifts.”).

⁷ Discussion Draft, *supra* note 5, §203(a)(1) (“...There shall be in the International Trade Administration of the Department of Commerce a Deputy Under Secretary responsible for administration of the responsibilities of the Department of Commerce under this title.”).

⁸ Orillac et al., *supra* note 4 (“...United States Department of Commerce in supporting U.S. businesses at home and abroad, which would increase its relevance to Latin American governments and multinational businesses as they plan their U.S. diplomatic and government relations strategies, respectively.”).

⁹ *Id.* (“Countries that join the Americas Partnership would be able to seek admission to the USMCA, which supports mutually beneficial trade among its members and fosters economic growth in the region.”); Press Release, *supra* note 1 (“The Americas Act discussion draft would...Create a pathway to US-Mexico-Canada Agreement (USMCA) membership.”).

¹⁰ Discussion Draft, *supra* note 5, §§201(f)(C), 211(a)(1), 201(f)(2)(F), 242(a) (“(C) A plan for infrastructure investment in the country by the Americas Investment Corporation under section 232...(1)...The Secretary may provide loans to covered entities...(F) A plan for people-to-people activities carried out under subtitle D...(a)...The Bureau of Global Public Affairs and the Bureau of Educational and Cultural Affairs of the Department of State may provide Americas Act partner countries with additional cultural affairs programming.”).

¹¹ *Id.* §§201(a), 201(c)(1) (“(a)... The Under Secretary of Commerce for International Trade (in this subtitle referred to as the “Under Secretary”) shall seek to enter into memoranda of understanding with countries that are eligible under subsection (c) to enter into partnerships with the United States (to be known as “Americas Act partnerships”) pursuant to which such countries will receive benefits

一、積極資格

一般而言，擬加入「美洲夥伴關係」的國家須符合以下資格：該國必須位於西半球¹²，且被自由之家 (Freedom House) 年度「世界自由報告」評為「自由」或「部分自由」¹³，並遵守美洲國家組織 (Organization of American States) 的《美洲民主憲章》之條款¹⁴，且承諾展開加入 USMCA 所需之談判及審查程序¹⁵。此外，該國政府必須致力於：(一) 實施代議制民主及法治原則¹⁶；(二) 打擊人口販運、非法毒品及恐怖主義¹⁷；(三) 尊重人權¹⁸。

即使不符合上述資格要件，若該國計畫以 5 年的時間逐步滿足上述要件，則商務部次長仍可先行與該國簽訂效期為 5 年的暫時性諒解備忘錄¹⁹。

二、消極資格

此外，在某些特定情況下，縱使符合上述資格要求，仍有可能無法加入「美洲夥伴關係」。例如，若該國為古巴政府醫療專業人員計劃的受益國²⁰，或為玻利瓦爾聯盟的成員或觀察員²¹。

under this title...(1) ELIGIBILITY REQUIREMENTS.—Subject to paragraphs (2) and (3), a country is eligible to enter into a memorandum of understanding for an Americas Act partnership if....”)

¹² *Id.* §201(c)(1)(A) (“[T]he country is located in the Western Hemisphere.”).

¹³ *Id.* §201(c)(1)(B) (“[T]he country is designated as “free” or “partly free” by the annual Freedom in the World report of Freedom House.”). 自由之家 (Freedom House) 年度發布的「全球自由度報告 (Freedom in the World)」評估世界各地政治權利及公民自由狀況，並依照評級結果將國家及地區劃分為「自由」、「部分自由」與「不自由」三個類別。*Freedom in the World Research Methodology*, FREEDOM HOUSE, <https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology> (last visited June 12, 2023).

¹⁴ Discussion Draft, *supra* note 5, §201(c)(1)(D) (“[T]he government of the country is in compliance with the terms of the Inter-American Democratic Charter of the Organization of American States.”); *Inter-American Democratic Charter*, OAS, http://www.oas.org/OASpage/eng/Documents/Democratic_Charter.htm.

¹⁵ Discussion Draft, *supra* note 5, §201(c)(1)(E) (“[T]he government of the country has committed to beginning necessary negotiations and deliberations to accede to the USMCA as described in section 214.”).

¹⁶ *Id.* §201(c)(C)(i) (“[A]biding by the principles of representative democracy and the rule of law.”).

¹⁷ *Id.* §201(c)(C)(ii) (“[T]he fight against trafficking in persons, illegal narcotics, and terrorism, as demonstrated by....”).

¹⁸ *Id.* §201(c)(C)(iii) (“[R]espect for human rights, as demonstrated by being a party to the International Covenant on Civil and Political Rights.”).

¹⁹ Discussion Draft, *supra* note 5, §201(c)(4) (“The Under Secretary may enter into a memorandum of understanding... the eligibility requirements under this subsection for a period of 5 years if the government of the country develops a plan to meet those requirements by the end of that 5-year period.”). 據美國商務部網站上的組織架構圖，除列有部長職務外 (deputy secretary)，亦有次長 (under secretary)、助理次長 (assistant undersecretary) 等職位之區別。*Leadership*, U.S. DEP’T OF COM., <https://www.commerce.gov/about/leadership> (last visited June 12, 2023).

²⁰ *Id.* §201(c)(3)(B) (“[I]s the beneficiary of the medical professional program of the Government of Cuba, which is a form of trafficking in persons.”).

²¹ *Id.* §201(c)(3)(B)(ii) (“[I]s a member or observer of the Venezuela-Cuba Bolivarian Alliance for the Peoples of Our America—People’s Trade Treaty.”). 有關美洲玻利瓦爾聯盟之會員名單，可參考：*ALBA TCP*, ALBA TCP, <https://www.albatcp.org/en/> (last visited June 12, 2023).

三、洽簽諒解備忘錄

符合積極資格、且不具消極資格之國家所需洽簽之諒解備忘錄將由商務部次長協調相關部會研商，以制訂出可茲參考之範本²²。該範本應包括擬加入夥伴關係之國家至少需承諾：

- (一) 採取減少中國在該國影響力之行動²³；
- (二) 避免購買或安裝曾有政府監視記錄的外國競爭對手所開發或生產之電信設備²⁴；
- (三) 避免向使用強迫勞動的國家採購原物料²⁵；
- (四) 制定國家基礎設施及投資計劃²⁶；以及
- (五) 致力打擊貪腐²⁷。

不過，上述範本具有彈性，即商務部次長可考慮該國情況（包含政治、經濟、文化及地理等因素），適當地修改備忘錄之內容²⁸。

討論版草案最後規定一旦法案生效，商務部次長宜儘快與有興趣且符合資格的國家展開洽簽之談判²⁹。談判期間之長短雖未設有限制，可是完成簽署之諒解備忘錄將在商務部次長依規定程序向美國參議院財政委員會及眾議院歲入委員會呈報之 15 天後生效³⁰。

結語

若本討論版草案最終通過，將為希望加強或擴大其在美國業務，或增加美國銷售額之具前瞻性思維的企業或政府，帶來諸多利益。國會議員對此草案之支持，

²² Discussion Draft, *supra* note 5, §201 (b)(1) (“The Under Secretary shall lead an interagency process with all relevant agencies to develop a model memorandum of understanding for countries seeking to enter into an Americas Act partnership.”).

²³ *Id.* §201(b)(2)(B) (“[T]o take actions to reduce the influence of the People’s Republic of China in the country, with a timeline and verification indicators for such actions.”).

²⁴ *Id.* §201(b)(2)(C) (“[T]o avoid purchasing or installing telecommunications equipment developed or produced... which are foreign adversaries...and have a record of engaging in government surveillance.”).

²⁵ *Id.* §201(b)(2)(D) (“[T]o avoid purchasing raw materials from countries that use forced labor (as defined in section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)).”).

²⁶ *Id.* §201(b)(2)(F) (“[T]o develop a national infrastructure and investment plan.”).

²⁷ *Id.* §201(b)(2)(G) (“[T]o take measures to combat corruption.”).

²⁸ *Id.* §201(b)(3)(B) (“[M]odify the memorandum of understanding as appropriate, taking into consideration the circumstances of the country, including factors such as politics, economy, culture, and geography.”).

²⁹ *Id.* §201(c)(6)(A) (“[B]egin consultations with countries that are eligible to enter into a memorandum of understanding for an Americas Act partnership under this subsection.”).

³⁰ *Id.* §201(c)(2) (“A memorandum of understanding entered into under this section shall take effect on the date that is 15 days after the memorandum is submitted under paragraph (1).”).

則是在 5 月再下一城：美國科羅拉多州民主黨參議員班尼特認為本草案可以作為對抗中南美洲的中國勢力之有力工具，因此加入簽署³¹。

關於擴大 USMCA 之可能性，哥斯大黎加與厄瓜多已公開表示希望加入，哥斯大黎加甚至主張其勞工與環保標準與已簽訂 USMCA 之三國相當³²。然而，美國行政部門對此並未表態，當美國貿易代表戴琪被問到此問題時，其並未正面回應，而是表示固然 USMCA 的某些創新特色可能得以適用於西半球的其他國家，不過目前的政策重心若是在於確保美國經濟更具韌性、永續性及包容性，則應思考的是工具，包括 USMCA 已創造出來的新工具，以及如何將這些工具適用於美國於美洲區應重視之夥伴國³³。

由於此討論版草案仍處於非常前期的階段，未來發展尚難預測。由目前行政機關之反應似可看出即使立法與行政部門目前追求的經濟及戰略目標一致，但對於是否要利用擴大 USMCA 這樣的龐大工程以達成目標，行政部門似有保留。

³¹ *Bennet Signs onto Cassidy's Forthcoming "Americas Act"*, INSIDE U.S. TRADE, Vol. 41, No.19, May 12, 2023.

³² *Id.* ("The presidents of Costa Rica and Ecuador have both recently shown interest in USMCA... Costa Rican Trade Minister Manuel Tovar...said Costa Rica has labor and environmental standards comparable to those of the three USMCA members....").

³³ *Id.* ("So, if the focus right now is on ensuring that we have more resilience in our economies, more sustainability and more inclusiveness, let's look at the tools, including and especially the ones that are innovative in USMCA and let's figure out how we apply them to the partnerships that we should be focusing on in the region," she said.").