

貿易救濟制度之新挑戰與美國之修法回應

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摘要

近期，美國商務部為了強化貿易救濟措施之執行，針對反傾銷稅及平衡稅規則進行重要的修法，該修正草案已於 2024 年 4 月 24 日生效，係美國商務部為處理目前法規執行上之漏洞而擴大工具箱之舉。本次重要的修正包括了政府不作為概念之提出、特殊市場狀況要件之明確化及處理跨國補貼之問題等。本次修法不但呈現出美國貿易法為反映全球貿易現況所為之努力，亦提供其國內產業得以對抗不公平貿易之有力工具。政府不作為之概念係將外國政府怠於執行勞動、環境、智財等保護重要權利之法規之情況視為對企業賦予利益之行為，由於此一不作為會降低企業之生產成本進而對國際貿易造成不公平，因此美國在此次修法中特將此概念納入衡量。其次，為釐清反傾銷法中之特殊市場狀況要件之適用，本次修法對其有更詳細之規範，其中亦包含將前述之政府不作為所造成之成本扭曲現象納入替代價格及比較基準的衡量因素中。而透過限制規定之刪除，美國移開了對跨國補貼課徵平衡稅之絆腳石，針對對外投資政策所造成之不公平競爭及以往無法課徵平衡稅之跨國補貼，提供了一項利器。本文擬先就美國商務部此次修法之內容及影響加以說明，並試析其在 WTO 協定下之合致性。

關鍵字：美國反傾銷稅及平衡稅規則之修法、政府不作為、特殊市場狀況、跨國補貼、社會傾銷

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Abstract

The recent amendments to the U.S. anti-dumping (AD) and countervailing duty (CVD) regulations introduced by the Department of Commerce (USDOC) include several significant changes aimed at enhancing trade law enforcement. These amendments, effective April 24, 2024, are designed to expand the Commerce Department's toolkit and address loopholes in current trade enforcement practices. Key changes include foreign government inaction, particular market situation (PMS), transnational subsidies, etc.. These amendments reflect a broader effort to adapt U.S. trade laws to current global trade realities and to provide U.S. industries with better tools to combat unfair trade practices. "Foreign government inaction" refer to the implicit benefits that foreign producers gain when their governments fail to enforce regulations that are standard in other countries, such as labor rights, environmental protections, and intellectual property laws. This inaction can result in significantly lower production costs for these foreign producers, giving them an unfair advantage in international trade. Through the addition provisions to the PMS, the DOC's new rules enable it to disregard benchmark or surrogate data from countries with weak regulatory enforcement if it's shown that this inaction leads to significant cost distortions. This approach aims to mitigate the unfair trade advantage gained through regulatory inaction and ensure that U.S. producers are not disadvantaged by competing against goods produced under less stringent regulatory environments. By removing the limitation, the USDOC can now countervail transnational subsidies—subsidies provided by a government to a recipient in another country. This change targets the unfair competition out of the outbound investment policies, addressing previously uncountervailable subsidies that have become more prevalent in modern trade practices. This article will first brief the amendments and then analyze the impact they will have on imports and their consistency with the WTO Agreements.

Keywords: Strengthening the Enforcement of Trade Remedies, government inaction, particular market situation, transnational subsidy, social dumping