美國「1930 年關稅法」第 337 條調查與私人契約管轄條款之衝突──評 Zync v. BMW 案

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摘要

美國「1930 年關稅法」第 337 條授權美國國際貿易委員會（ITC）調查進口貿易中之不公平行為，並得於邊境排除系爭產品。今（2026）年，Zync 向 ITC 控訴 BMW 不當取得營業秘密，ITC 行政法官近期以雙方契約明文約定慕尼黑為專屬管轄地為由終止調查，惟 ITC 委員會其後決定全面複審。本案爭點不在於 ITC 是否具有調查權，而在於私人契約管轄條款是否影響 ITC 行使裁量權終止調查及其調查範圍。此一問題之答案，端視 ITC 委員會如何在執行法定任務與尊重私法自治之間取得平衡。

美國「1930 年關稅法（Tariff Act of 1930）」（下同）第 337 條授權美國國際貿易委員會（United States International Trade Commission, ITC）調查進口貿易中之不公平行為，並得排除涉案產品進口[1]。另一方面，跨國商務契約常約定以特定外國法院為專屬管轄法院，此類條款能否阻止一方向 ITC 提起控訴，過去鮮有先例。近期 Zync Inc.（下稱 Zync）控訴德國車廠 Bayerische Motoren Werke AG（下稱 BMW AG）及其美國子公司 BMW of North America, LLC（下稱 BMW NA）之第 337 條調查案即涉及此一問題。

以下首先說明案件背景，接著介紹第 337 條調查之申請要件、調查程序及救濟效果，再從三方立場分析本案爭點，最後提出結論。

壹、案件背景

Zync 為位於舊金山之車載資訊娛樂技術公司，曾與 BMW NA 就車載資訊娛樂系統（In-vehicle Infotainment System）技術簽訂先導計畫協議[2]。該協議受 Zync 與 BMW AG 先前簽訂之保密協議拘束，保密協議明文涵蓋營業秘密在內之一切機密資訊，並約定「專屬管轄地為慕尼黑，但強行法（Mandatory Law）要求其他管轄地者，不在此限[3]」（下稱系爭管轄條款）。合作破局後，Zync 於去（2025）年在加州州法院對 BMW NA 提起營業秘密訴訟，主張 BMW 利用合

[1] Tariff Act of 1930 § 337, 19 U.S.C. § 1337(d)(1) (“[I]t shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States . . . .”).
[2] Bayerische Motoren Werke AG v. Zync Inc., No. 3:26-cv-05274-CRB, slip op. at 1 (N.D. Cal. June 22, 2026) (order granting preliminary injunction).
[3] *Id.* at 1, 3.

作期間取得之機密資訊開發其系統，惟遭州法院依系爭管轄條款駁回，對此 Zync 已提起上訴[4]。

與此同時，Zync 於今年 2 月另向 ITC 提起第 337 條控訴，主張 BMW AG 及 BMW NA（下合稱 BMW）進口之車載資訊娛樂系統涉及不當取得營業秘密及侵害預期經濟利益，請求核發有限排除令（Limited Exclusion Order）及禁制令（Cease and Desist Order），ITC 於 3 月立案[5]。本案預定目標日（Target Date）為明（2027）年 11 月 1 日[6]。BMW 則提出動議，請求依系爭管轄條款終止調查，ITC 行政法官（Administrative Law Judge）於 7 月 28 日作成初步裁決（Initial Determination），認為是否向 ITC 提起控訴係控訴方自行選擇，第 337 條並非強行法，遂終止全部調查[7]。經 Zync 請求複審，ITC 委員會於 9 月 23 日決定全面複審，並要求當事人就第 337 條之立法目的與公共利益等五項問題提出意見[8]。截至目前，各方意見已提出完畢，尚待委員會作成決定[9]。

面對 Zync 的控訴，BMW 另向加州北區聯邦地方法院（下稱地院）聲請反訴訟禁制令（Anti-suit Injunction），地院於今年 6 月核發初步禁制令，命 Zync 向 ITC 提出動議，請求暫停調查[10]；Zync 不服提起上訴並聲請緊急救濟，惟遭第九巡迴上訴法院駁回[11]。由此可見，各法院均傾向尊重雙方之管轄約定，ITC 委員會之決定遂成為本案關鍵。

貳、第 337 條調查簡介

為理解本案爭議，以下依序說明第 337 條調查之申請要件、調查程序及救濟效果[12]。

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[4] *Id.* at 1–2, 8.
[5] Certain In-Vehicle Infotainment Systems, Components Thereof, and Products Containing the Same; Institution of Investigation, 91 Fed. Reg. 15,631 (Mar. 30, 2026).
[6] Certain In-Vehicle Infotainment Systems, Components Thereof, and Products Containing the Same, Inv. No. 337-TA-1493, Notice of Commission Determination Not to Review an Initial Determination Setting a 19-Month Target Date, at 2 (U.S. Int'l Trade Comm'n May 15, 2026).
[7] Certain In-Vehicle Infotainment Sys., Components Thereof, & Prods. Containing the Same, Inv. No. 337-TA-1493, Order No. 16, at 6–8 (U.S. Int'l Trade Comm'n July 28, 2026) (initial determination granting respondents' motion to terminate the investigation) (public version).
[8] Certain In-Vehicle Infotainment Systems, Components Thereof, and Products Containing the Same, Inv. No. 337-TA-1493, Notice of Commission Determination to Review an Initial Determination Terminating the Investigation Based on a Forum Selection Clause; Request for Written Submissions on the Issues Under Review, at 2 (U.S. Int'l Trade Comm'n Sep. 23, 2026), https://www.usitc.gov/secretary/fed_reg_notices/337/337_1493_notice09232026sgl_0.pdf [hereinafter Commission Notice].
[9] *Id.* at 4.
[10] Bayerische Motoren Werke AG v. Zync Inc., No. 3:26-cv-05274-CRB, slip op. at 8 (N.D. Cal. June 22, 2026) (order granting preliminary injunction).
[11] Lionel M. Lavenue et al., *Ninth Circuit Denies Zync's Emergency Motion to Stay; BMW's Preliminary Injunction Remains in Full Effect as Zync Moves to Stay ITC Proceedings*, FINNEGAN (July 24, 2026), https://www.finnegan.com/en/firm/news/ninth-circuit-denies-zyncs-emergency-motion-to-stay-bmws-preliminary-injunction-remains-in-full-effect-itc-stay-expected-to-continue.html.
[12] 有關第 337 條調查之相關實務介紹，可參考：王安邦等，淺談我國企業近十年涉入美國之專利侵權訴訟（上）：案件趨勢與樣態分析，智慧財產權月刊，331 期，頁 6-25，2026 年；王安邦等，淺談我國企業近十年涉入美國之專利侵權訴訟（下）：ITC 337 調查之專利爭訟實務觀察，智慧財產權月刊，331 期，頁 26-49，2026 年。

一、申請要件

控訴方須證明不公平行為涉及產品之進口或進口後之銷售[13]。不公平行為可分為侵害專利、商標等法定智慧財產權者、以及不當取得營業秘密等其他不公平行為[14]。前者須證明美國存在相關之國內產業，包括實施該權利之技術要件，以及對廠房設備、勞動力、資本或研發、授權等活動具相當投資之經濟要件[15]；後者如本案，尚須證明該行為有摧毀或實質損害美國產業、阻礙產業建立，或限制、壟斷美國貿易之威脅或效果[16]。

二、調查程序

ITC 原則上應於控訴提出後 30 日內決定是否立案[17]。立案後，由行政法官主持調查，ITC 之不公平進口調查室（Office of Unfair Import Investigations）亦指派調查律師以當事人身分參與[18]；行政法官經證據調查及聽證後作成初步裁決，委員會得決定不予複審，或複審後予以維持、修正或撤銷，並作成最終裁決（Final Determination）[19]。ITC 應於立案後 45 日內訂定預定目標日，並於「最早可行時間」完成調查[20]。調查進行中，ITC 得基於同意令或私人間之協議（包括交付仲裁之協議），終止全部或一部之調查，而無須作成最終裁決[21]。

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[13] Tariff Act of 1930 § 337, 19 U.S.C. § 1337(a)(1)(B) ("The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that—(i) infringe a valid and enforceable United States patent . . . .").

[14] *Id.* § 1337(a)(1)(A) ("Unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), (D), and (E) into the United States . . . ."); U.S. INT'L TRADE COMM'N, PUB. NO. 4105, SECTION 337 INVESTIGATIONS: ANSWERS TO FREQUENTLY ASKED QUESTIONS 1 (2009), https://www.usitc.gov/intellectual_property/documents/337_faqs.pdf.

[15] Tariff Act of 1930 § 337, 19 U.S.C. § 1337(a)(3) ("[A]n industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned—(A) significant investment in plant and equipment; (B) significant employment of labor or capital; or (C) substantial investment in its exploitation, including engineering, research and development, or licensing."); CHRISTOPHER T. ZIRPOLI, CONG. RSCH. SERV., IF12295, AN INTRODUCTION TO SECTION 337 INTELLECTUAL PROPERTY LITIGATION AT THE U.S. INTERNATIONAL TRADE COMMISSION 1–2 (2024), https://www.congress.gov/crs-product/IF12295.

[16] Tariff Act of 1930 § 337, 19 U.S.C. § 1337(a)(1)(A) (". . . the threat or effect of which is—(i) to destroy or substantially injure an industry in the United States; (ii) to prevent the establishment of such an industry; or (iii) to restrain or monopolize trade and commerce in the United States.").

[17] ITC, *supra* note 14, at 16.

[18] *Id.* at 2.

[19] *Id.* at 3.

[20] Tariff Act of 1930 § 337, 19 U.S.C. § 1337(b)(1) ("The Commission shall conclude any such investigation and make its determination under this section at the earliest practicable time after the date of publication of notice of such investigation. To promote expeditious adjudication, the Commission shall, within 45 days after an investigation is initiated, establish a target date for its final determination.").

[21] *Id.* § 1337(c) ("[T]he Commission may, by issuing a consent order or on the basis of an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration, terminate any such investigation, in whole or in part, without making such a determination.").

三、救濟效果

ITC 認定違法後，得核發有限排除令，排除特定被控方之系爭產品進口[22]；或於防止規避、難以辨認產品來源等情形，核發不問來源之普遍排除令，均由海關於邊境執行[23]。ITC 亦得核發禁制令，命被控方停止其在美國境內之不公平行為，違反者處民事罰鍰[24]。惟核發前，ITC 須考量公共衛生與福利、美國經濟之競爭條件、美國同類產品之生產及美國消費者等公共利益[25]；總統並有 60 日之審閱期，得基於政策理由否決[26]，審閱期間被控方得提供保證金繼續進口[27]。與一般民事訴訟不同的是，第 337 條之救濟僅能向後阻止產品進口及銷售，若控訴方欲就過去之損害求償，仍須另向法院起訴[28]。

參、系爭管轄條款對 ITC 調查之影響

本案中，雙方對於私人協議無法剝奪 ITC 之調查權並無爭執，BMW 亦承認系爭管轄條款無法阻止委員會調查，真正之爭議在於委員會是否應行使裁量終止調查[29]，此又可分為二個層次：其一，ITC 是否應依系爭管轄條款終止調查；其二，若 ITC 續行調查，保密協議是否限縮其調查範圍。以下分別分析各方可能之立場：

一、ITC 是否應依系爭管轄條款終止調查

（一）BMW 之立場

第 337 條第（c）項明文容許 ITC 基於私人協議終止調查，可見 ITC 並非專屬管轄機關，第 337 條亦非系爭管轄條款所稱之強行法，且聯邦法院得平行審理並提供類似救濟[30]。BMW 並可主張 Zync 係在州法院敗訴後方轉向 ITC，意在

[22] *Id.* § 1337(d)(1) (“If the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States . . .”).
[23] *Id.* § 1337(d)(2)(A)–(B) (“. . . (A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.”); ITC, *supra* note 14, at 3.
[24] Tariff Act of 1930 § 337, 19 U.S.C. § 1337(f)(2) (“Any person who violates an order . . . shall forfeit and pay to the United States a civil penalty . . . .”).
[25] *Id.* § 1337(d)(1) (“. . . unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.”).
[26] *Id.* § 1337(j)(2) (“If, before the close of the 60-day period . . . the President, for policy reasons, disapproves such determination . . . .”).
[27] ITC, *supra* note 14, at 25.
[28] *Id.* at 24.
[29] *BMW Trade-Secret Case Pits USITC Mandate Against Private Contracts*, MINTZ (Oct. 8, 2026), https://www.mintz.com/insights-center/news-press/bmw-trade-secret-case-pits-usitc-mandate-against-private-contracts.
[30] Bayerische Motoren Werke AG v. Zync Inc., No. 3:26-cv-05274-CRB, slip op. at 4 (N.D. Cal. June 22, 2026) (order granting preliminary injunction).

規避管轄約定、拖延程序[31]。

（二）Zync 之立場

第 337 條賦予 ITC 調查權，屬系爭管轄條款但書所稱之強行法[32]；且 ITC「應」調查違法行為[33]，不應因私人約定而輕易終止調查。此外，外國法院無法核發排除令阻止產品輸入美國，終止調查將使 Zync 無從在美國獲得同等救濟。

（三）ITC 之立場

委員會要求當事人說明，依指定美國境外管轄地之條款終止調查，是否符合第 337 條保護美國產業之目的、以及是否將私人利益置於公共利益之上[34]，可見其關注之重點在於終止調查之後果，而非管轄權條款本身是否有效。有論者認為，新組成之委員會似認為其得不受私人契約管轄條款拘束而續行審理[35]。惟若完全不理會管轄約定，ITC 亦可能淪為一方在民事訴訟失利後向他方施壓之工具。因此，ITC 較可能之立場為：系爭管轄條款無法剝奪 ITC 之調查權，但得作為其行使裁量之考量因素之一。

二、若 ITC 續行調查，保密協議是否限縮其調查範圍

BMW 得主張，地院已認定 Zync 在 ITC 之主張全部源自保密協議所保護之機密資訊，且 Zync 亦曾承認兩案主張幾乎相同[36]，故全部主張均落入系爭管轄條款範圍。Zync 則可抗辯，其侵害預期經濟利益等部分主張並非以保密協議為基礎，ITC 至少應就此部分續行調查，惟其說服力恐屬有限。委員會之其餘問題則詢問 Zync 之主張有無不涉及系爭管轄條款之部分、雙方有無其他相關協議、以及有無法院命令限制當事人之回應[37]，顯示其已考慮部分續行之可能。至於保密義務本身，其僅拘束締約當事人，ITC 另有保護令制度保護機密商業資訊[38]，較大之問題反而在於委員會之決定可能與地院之禁制令發生衝突。

肆、結論

綜上所述，私人契約管轄條款雖難以剝奪 ITC 之調查權，但仍可能影響 ITC

[31] Lionel M. Lavenue et al., *Zync Fights Block of ITC Trade Secret Case Against BMW*, FINNEGAN (June 24, 2026), https://www.finnegan.com/en/firm/news/zync-fights-block-of-itc-trade-secret-case-against-bmw.html.
[32] *Bayerische Motoren Werke AG*, slip op. at 4.
[33] Tariff Act of 1930 § 337, 19 U.S.C. § 1337(b)(1) (“The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative.”).
[34] Commission Notice, *supra* note 8, at 2–3.
[35] Robert T. Vlasis III, *New ITC Commissioners Contemplate Expansion of Statutory Authority*, MINTZ (Sep. 23, 2026), https://www.mintz.com/insights-center/viewpoints/2231/2026-09-23-new-itc-commissioners-contemplate-expansion-statutory.
[36] *Bayerische Motoren Werke AG*, slip op. at 3–4.
[37] Commission Notice, *supra* note 8, at 3–4.
[38] 19 C.F.R. § 210.34(a)(7) (2026) (“That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way . . . .”).
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是否行使裁量權以終止調查及其調查範圍。若委員會最終決定續行調查，雙方原先協商之管轄安排將形同虛設，ITC 亦可能淪為私人規避管轄約定之工具，此恐非第 337 條之立法本意；反之，若委員會尊重管轄約定而終止調查，則又可能限縮 ITC 保護美國產業之法定任務。是以，私人契約管轄條款於第 337 條調查中究竟能發揮多大效力，端視委員會如何在二者之間取得平衡。

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