

COLUMN:

RECENT DISCUSSIONS OVER ECONOMIC COERCION

1. DEVELOPMENTS OF THE DISCUSSIONS OVER ECONOMIC COERCION

In September 2022, “economic coercion” was taken up as a theme for the first time at the G7 Trade Ministers’ Meeting in Germany, and a joint statement was adopted in which serious concerns about trade-related economic coercion and exploration of coordinated responses were announced¹.

Joint Declaration of the G7 Trade Ministers (Excerpt)

We are seriously concerned by the use of trade-related economic coercion, which undermines economic security, free and fair trade in the multilateral trading system, global security and stability and aggravates international tension. In order to fight attempts at economic coercion, reaffirming the G7 Leaders’ commitment, we will enhance cooperation and explore coordinated approaches to address economic coercion both within and beyond the G7 in relevant fora to improve assessment, preparedness, deterrence, and response to such actions.

“Economic coercion” is not necessarily a new concept. Concern over the enforcement of trade measures or the threat of such enforcement to influence other countries’ policy decisions has been recognized previously as for example, weaponization of trade measures.

In recent years, discussion regarding “economic coercion” has intensified. For example, the “Basic Policy on Economic and Fiscal Management and Reform 2022” (Basic Policy 2022) approved by the Cabinet in June 2022 also calls for thorough implementation of measures for economic security, for the purpose of “ensuring the security of Japan and the Japanese people from an economic perspective,” and states that “the government will strengthen cooperation with allied and like-minded countries...on addressing economic coercion.”

At the Japan-EU Summit Meeting held in May 2022, the promotion of cooperation in the economic security field was discussed. In the Japan-US Summit Meeting held in the same month, Japan and the US agreed on specific cooperation measures between Japan and the US with regard to economic security. At the same Meeting, the two countries agreed to hold an Economic Policy Consultative Committee (the Economic “2 + 2”) to expand their cooperation in the economic field. The Economic “2 + 2” held in July of the same year emphasized the importance of economic security, including the economic security of like-minded countries, and the rule-based economic order of the international community, and discussed how like-minded countries could work together to address economic coercion.

Furthermore, at the G7 Trade Ministers’ Meeting held in April 2023 and the G7 Hiroshima Summit held in May of the same year, it was confirmed that G7 members will enhance collaboration in the responses to economic coercion and further promote cooperation with partners beyond the G7.

The intensification of the debate over economic coercion is occur on the background of notable measures deemed as economic coercive measures, and the integration of economic policy and security, leading to growing concerns regarding economic security. Before, there was a trend towards expanding global trade, increasing interdependence among countries and creating global supply chains. However, with the changes in the international situation, including the occurrence of COVID-19 pandemic and Russia’s invasion of Ukraine, vulnerabilities in the global supply chain and the risk of disruption (the risk of supply chain overdependence caused by dependence on trade with specific countries) became apparent. The importance of goods and technologies as key points (choke points) in the supply chain has

¹ Excerpt from G7 Trade Ministers’ Statement (preliminary translation)

(https://www.meti.go.jp/policy/trade_policy/G7G8/pdf/220914G7TradeMinistersStatementJP.pdf)

also been freshly recognized. From the viewpoint of strengthening economic security, it is now a major policy issue how to deter and respond to economic coercion that interferes with a legitimate policy decision of another, by using trade measures to disrupt supply chains or suppress key points in supply chains through trade measures.

2. COMPONENT OF ECONOMIC COERCION

There is no specific definition of economic coercion under international law. The EU anti-coercion instrument (“ACI;” for the bill see Part II, Chapter 15), for example, refers to “measures of economic coercion” as a measure (which may be countered under the ACI) by which a third country interferes with the the EU or its member states specific policy decision by applying or threatening to apply measures affecting trade or investment. The U.S. aid bill for countries affected by economic coercion (U.S. Aid Bill; submitted to US Senate in February 2023) defines economic coercion as “actions, practices, or threats undertaken by a foreign adversary to unreasonably restrain, obstruct...trade, foreign aid, investment...in an arbitrary, capricious, or non-transparent manner with the intention to cause economic harm to...influence sovereign political actions”.

Economic coercive measures can take various forms (raising tariffs, taking quarantine measures, refusing customs clearance, controlling exports of important goods, etc.) that have the effect of disrupting supply chains by restricting imports and exports. To determine whether a measure constitutes an economic coercive measure, it is considered necessary to conduct a factual analysis including the bilateral relationship behind the measure and the circumstances that may induce the measure. The evidence regarding such measures, including that of attribution, may be limited for informal measures.

As a response to economic coercive measures, it is important to preparation for potential economic coercive measures through supporting companies to enhance their supply chains and creating an international environment that makes it difficult to impose economic coercive measures in the first place. When an economic coercive measure is a trade measure, it is necessary to seek for the termination or withdrawal of the measure, such as by requesting to bring the measure in compliance with the WTO Agreement, and to consider political means to mitigate the impact and damage caused by such coercive measure. The EU’s ACI mentioned above is a bill to take countermeasures as a last resort against economic coercion against EU member states. In addition, the aforementioned US aid bill aims to enable the government to take measures to mitigate damage and other measures for third countries affected by such damage.

3. WTO AND ECONOMIC COERCIVE MEASURES

In many cases, it is questionable whether economic coercive measures are consistent with the WTO agreements. Cooperate with other members in the WTO to seek for compliance of such economic coercive measures is one way to address such measures. Japan is also enhancing cooperation with other members in the WTO by participating as the third country in WTO dispute settlement cases involving measures suspected of having coercive purposes². In the WTO, raising concerns about the consistency of measures with agreements and seeking for compliance with the rules will lead not only to the compliance of individual measures but also as deterrence on similar measures.

² China’s measures concerning Lithuanian trade in goods (DS610), China’s quarantine measures for Canadian canola (DS589), China’s AD/CVD on Barley and on Wine (DS598, DS602)

The intent of economic coercion to influence policymaking through the applying or threat of applying trade measures cannot itself be governed by the WTO agreements, but such measures may be contrary to international law (the principle of non-interference in internal affairs). The EU explains that countermeasures under the ACI are consistent with international law, which may be based on the understanding that such countermeasures are justified as being actions taken against violations of international law. The WTO consistency, such as whether it is permissible to take countermeasures without going through WTO dispute settlement procedures, may become an issue, and Japan is paying close attention to the international legal discussions regarding responsive measures to economic coercion.

In addition, as part of the cooperation between allies and like-minded countries, as a future discussion point, it is likely that discussions will be held on what actions could be taken if a third country, not their own, is subjected to economic coercive measures. It would be a challenge whether a common understanding among like-minded countries could be built on issues such as what measures can be taken within the constraints that the measures which may can be taken could differ due to the difference of domestic systems or on the countermeasure's consistency with rules, including those under the WTO agreements.

