

我國對美國之國防採購透明度和公平性研討

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關鍵詞：政府採購、國防物品、國家安全、雙邊國防採購協定、軍售案

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摘要

世界貿易組織之政府採購協定因國防採購係屬國家安全之理由，而排除規範，聯合國之示範公共採購法則規定除該法有特別規定外，機關於採購國防物品時應遵守採購透明化之要求。歐盟防衛局公布之參與該局之各成員國國防採購行為守則，提供若干關於國防採購之行為準則，包括各簽署成員國應公平且平等地對待投標廠商，而美國政府與其盟邦於冷戰時期所簽訂之雙邊國防採購協定，亦要求簽字國應確保國防採購之不歧視原則，故不歧視原則及採購程序透明化實已成為確保國防採購公平及競爭之基石。

有鑒於美國政府每年經由軍事售予程序出售我國所需之國防物品價格達數十億美元，軍事售予之相關規範對我國之利益至為重要。然軍事售予程序是否符合傳統的經濟理論及國際間政府國防採購之規範？我國可否參與美國政府與廠商間之談判？本文將檢視美國的法令藉以研究我國之權利及義務，以求保障我國利益。

Discussion on the Transparency and Fairness in Procurement of Defense Articles by the United States of America Government **Tang, Ko-kuang**

Abstract

WTO's Agreement on Government Procurement excludes the procurement of defense articles from the application for the reason of national security. However, the United Nations' Model Law on Public Procurement requires members meet the transparency requirements in defense procurement procedure with some exceptions specified in the Law. The Code of Conduct on Defense Procurement of the EU Member States Participating in the European Defense Agency issued by the European Defense Agency provides some key principles for procurement of defense articles including subscribing Member States' fair and equal treatment to all bidders. Some Reciprocal Defense Procurement Agreements signed by the United States Government and its allies during the Cold War also require mutual assurances of nondiscrimination in defense procurement. Therefore, principles of nondiscrimination and procurement procedures relating to transparency become the basis to ensure a fair and competitive process in defense procurement.

Since the U.S. government sells billion-dollars-worth defense articles to the R.O.C. annually through the Foreign Military Sales (FMS) program, the laws and regulations governing FMS become very important to the R.O.C. Government for its interests. Do the procurement procedures in FMS meet the requirements of traditional economic theory and international agreements on defense procurement? Can representatives of the R.O.C. Government involve the negotiation between the U.S. government and contractors? This research will examine domestic laws and regulations of the US to see the rights and obligations of the R.O.C. Government for its interests.