

出口管制制度及 WTO 適法性探討：以美國出口管制制度及 爭議為例

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摘要

以國家或其他安全為由的出口管制並非新制度，1917 年美國便已制定「與敵通商法」限制與敵國貿易。美蘇冷戰爆發，美國及其盟國復成立「多邊出口管制統籌委員會」，使得出口管制多邊化。近年來各國出口管制多係以 2004 年聯合國安理會第 1540 號有關避免大規模毀滅性武器擴散之決議為依據。自 2017 年起，美國又以「國家安全」為由，限制美國新目標國家——中國之科技出口。本文旨在藉由出口管制的演變及類型化歸納，探討其於 WTO 法制下的依據及合法性，以及降低因政治、保護主義等因素導致其濫用而成為不合法之貿易障礙。

關鍵字：出口管制、國家安全

Abstract

Export control regime based on national or other security grounds are not new. As early as 1917, the United States already enacted the Trading with the Enemy Act (TWEA) to restrict trade with enemy countries. In light of the Cold War between the United States and the Soviet Union, and the United States and its allies resumed the establishment of the "Coordination Committee for Multilateral Export Controls" (COCOM), thus effectively multilateralized export control regime. In recent years, most countries' export control regimes are created in accordance with the 2004 UN Security Council Resolution No. 1540 on avoiding the proliferation of weapons of mass destruction. Nonetheless, since 2017, the United States has again restricted its technology export to a new target, namely China, on the grounds of "national security". Yet the definition of national security this time is conceptually and substantially

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different. Against this background, the purpose of this article is to explore the basis and legitimacy of the export control under the legal system of WTO, and to address possible issues of politics and protectionism, making the system a possible obstacle to illegal trade.

Keywords: Export control, national security

