

科技部人文社會科學研究中心  
補助科技部跨領域研究計畫之前置規劃案結案報告

食品安全風險之分析、政策與法制：  
以含萊克多巴胺豬肉為例

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## 中文摘要

台灣正處於都市化加速、國人飲食習慣改變、食品銷售與生產方式快速變遷的時期，在此背景下，食品安全(food safety)成為台灣消費者和政府主管單位的一項核心關切，本前置計畫旨在研究與分析私營標準(private standards)，從不同國家的實踐情況中歸納出給台灣的兩項建議。

一是台灣有必要發展自己對於特定進口食品(例如豬肉)之風險程度的分析和**管理規範**，特別是在國內民眾偏好傾向不接受既有的國際食品安全標準(例如 Codex 有關萊克多巴胺的殘留容許量)時。此種規範可以是政府官方制訂的標準，也可以是民間業者自發性的私營標準，但本文認為在進口豬肉的問題上，私營標準較為適合台灣。另一項建議是，管理上要借助市場誘因(market incentives)的提升讓台灣自己的食安標準能被落實且發揮預期之功能。當市場誘因越大的時候(例如：消費者的購買意願高、辨識機制的可靠度強、生產者的獲利空間大)，私營標準被落實的情況也會越好。

本前置計畫藉由「後市場」途徑的數據分析，發現私營標準可以在政府適度協助下，透過商品標示與資訊匯流的模式達到確實提升國人食品安全的成麥。但值得注意的是，因為台灣是 WTO 的會員，政府對於私營標準的態度和涉入程度有可能會導致其牴觸 WTO 架構下特定貿易協議(例如：SPS、TRIMs)之法律義務。

此外，不論是政府或私人所制定與執行的食品安全標準，倘若無嚴格科學證據支持，相關措施有可能違反地主國政府在國際投資協定之下對於外國投資者所應承擔的義務，地主國並可能進一步遭提出投資仲裁以要求地主國政府進行賠償。在台灣亟欲與歐洲聯盟、美國與加拿大締結雙邊投資協定或與貿易暨投資架構協定(Trade and Investment Framework Agreement)之際，台灣政府如何建構完善的對外投資法律及政策架構，以提供外國投資者穩定的投資法律環境，同時兼顧政府與私人制定合法與妥適之食品安全標準以維護國人健康的需求，藉以避免遭到外國投資者就相關食品安全標準訴諸投資仲裁，亦為本研究探討的議題。

## Abstract

Taiwan is in the period of accelerated urbanization; changes in the eating habits of the people, and rapid changes in food sales and production methods are emerging. In this context, food safety has become a core concern of Taiwanese consumers and government. The project aims to study and analyze private standards, and draws on two recommendations for Taiwan, based on the practices of different countries.

First, it is necessary for Taiwan to develop its own risk analysis and management standards for specific imported foods (such as pork), especially when domestic people do not accept existing international food safety standards (such as Codex's tolerance for ractopamine residues). This kind of standard can be a standard set by the government or a private standard voluntarily followed by the private industry. However, this pre-project believes that the private standard is more suitable for Taiwan when it comes to imported pork. Another suggestion is that the risk management should promote market incentives for that Taiwan's own food safety standards could be implemented as we expected. When market incentives are greater (eg. consumers' willingness to buy, identification mechanisms are more reliable, and producers' profit margins are greater), private standards could be better enforced.

Through data analysis by the "post-market" approach, this pre-project found that private standards can, with appropriate government assistance, truly improve food safety for the Taiwanese people through the model of product labeling and information disclosure. However, it is worth noting that because Taiwan is a member of the WTO, the government's attitude and involvement in private standards might lead to possible violation of the legal obligations of certain trade agreements (eg SPS, TRIMs) under the WTO framework.

In addition, if the food safety standards formulated and implemented by the government or private individuals are not supported by strict scientific evidence, the relevant measures may violate the obligations of the host country government to foreign investors under the international investment agreement. And investment arbitration might be brought to seek compensation from the host government. When Taiwan is eager to conclude a BIT with the European Union, the United States and Canada, or a

Trade and Investment Framework Agreement, how could the Taiwanese government construct a sound foreign investment legal and policy framework to provide foreign investors a stable investment legal environment, while taking into account the needs of the government and the private sector to formulate legal and appropriate food safety standards to safeguard the health of the Taiwanese people, so as to avoid foreign investors resorting to investment arbitration for relevant food safety standards, is also the issue discussed in this pre-project.

### 關鍵詞 (keywords)

食品安全、健康風險、私營標準、國際貿易、萊克多巴胺、規制權、國際投資協定、徵收、公平與公正待遇、投資者與國家爭端解決機制

Food Security, The Risk of Health, Private Standards, International Trade, Ractopamine, The Right to Regulate, International Investment Agreements (IIAs), Expropriation, Fair and Equitable Treatment (FET), Investor-State Dispute Settlement (ISDS).