

劍指義大利—《台美對等貿易協定》中地理標示條款初探

陳秉訓*

摘要

本文檢視美國近期的對等貿易協定，特別就地理標示條款的規範方式與內容進行分析，並指出該些規範意在移除起司與醃製肉類產品之貿易限制。本文更關注《台美對等貿易協定》的地理標示條款，除了具體條文內容的介紹外，還提醒可能的條款違反問題。地理標示在我國是規範在商標法內，並落實在產地標章之相關規定中。值得注意的是義大利商有幾件產地標章註冊，所涉及之起司與醃製肉類產品落入《台美對等貿易協定》第 3.5 條所不希望發生之產品名稱使用限制之產品類型。本文欲由 DARJEELING 案（最高行政法院 100 年度判字第 2145 號判決及前審判決），以提醒美國的起司或醃製肉類產品可能會侵害該些義大利商的產地證明標章權。

關鍵字：對等貿易協定，地理標示、美國、台灣、歐盟

* 國立政治大學科技管理與智慧財產研究所教授。

Abstract

This article reviews recent reciprocal trade agreements signed by the United States and focuses on geographical indication (GI) clauses. This article identifies various modes of GI clauses and analyzes the contents thereof. These GI clauses address the United States's concern that GI protection may limit the market access of American cheese and meat products. This article further discusses the GI clauses of the U.S.-Taiwan Agreement on Reciprocal Trade. The details of GI clauses will be introduced, while a warning of Taiwan's potential violation will be mentioned. In Taiwan, GIs are protected by the Trademark Act which uses a form of "location of production" certification marks. This article points to four "location of production" certification marks protecting their corresponding EU GIs. Based on the DARJEELING case, this article discusses whether relevant cheese or meat products will infringe the certification mark rights of those EU GIs.

Keywords: Reciprocal trade agreement, geographical indication, United States, Taiwan, European Union