本期企劃

基改標示涉及之WTO法律問題研析

WTO Agreements and Genetically Modified Food Labelling

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摘 要

自基改產品問世以來，各界對於其安全性始終存在疑慮，基改技術本身也因涉及道德、宗教以及可能造成之環境問題而存在爭議。雖然過往30餘年間，並未有明確科學證據顯示基改產品較傳統產品具較高之風險，而須基於保護人類生命和健康，或出於動、植物健康考量，對基改產品進行額外管制；但隨著消費者意識抬頭，且基改產品本身存在食品安全外之道德等爭議，許多開放基改產品流通之國家仍要求基改產品應透過產品標示之方法，揭露產品含基改成分或係由基改原物料所生產。鑑於對基改產品之管制（不論是完全禁止或要求標示）曾引發其是否符合世界貿易組織（WTO）規範之討論，特別是該等非關稅貿易障礙

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措施是否符合WTO下食品安全檢驗與動植物防疫檢疫措施協定（SPS協定）以及技術性貿易障礙協定（TBT協定）規範，本文擬就基改標示涉及之WTO法律問題進行探討，並提出設計或實施基改標示規範時應持續關注之問題。

Since the advent of genetically modified (GM) products, the public has been concerned about their safety and possible environmental threats. The morality and religious questions and debates associated with the development and use of GM technology also flare up further controversy. Nevertheless, without scientific evidence showing that GM products bear higher risks than traditional products, the necessity of imposing additional restrictions and regulations on GM products based on protecting human life and health or animal and plant health becomes questionable. Alternatively, countries impose labeling requirements on GMO products to deter deceptive commercial practices and to ensure the consumers' right to know. Through assessing whether the labeling requirement imposed on GMO products violates WTO law, particularly the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement), this paper address the issues that require further attention when designing or implementing GM labeling schemes.

壹、基改產品之爭議以及基改標示規範之發展

隨著科技以及人類對基因科學了解的進步，當前科學家已能透過識別、擷取、轉移和重新組合遺傳物質，利用基因科技

對生物體中的各種基因表現形態加以掌控[1]。相較於傳統育種技術須耗費數十甚至數百年的累積，基因科技為物種改良創造了全新的可能，並被廣泛運用在農業以及醫療等領域。

由於基因科技讓研發人員能挑選、改良甚至使產品具有特定表現特徵，因此基改產品發展之初，即特別著重於具抗旱、高產量、高營養、抗藥性產品之開發，以期能提升嚴苛環境中之農業生產，並透過單位產量提高而減緩人口擴張所造成的糧食危機，並在提升營養攝取的同時，利用其抗藥特性增進除草劑或殺蟲劑之單位使用效果，以降低總體使用量而對環境保護有所助益[2]。雖然基改食品自1990年代問世以來，迄今已存在30餘年，且品項含括玉米、大豆、棉花、馬鈴薯、木瓜、甜菜等重要農產作物，其衍伸產品亦常見於民眾之日常生活，當前亦無科學證據顯示基改食品對人體具有危險性[3]，

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1 U.S. Food & Drug Admin., Science and History of GMOs and Other Food Modification Processes, https://www.fda.gov/food/agricultural-biotechnology/science-and-history-gmos-and-other-food-modification-processes (last visited Oct. 2, 2022); Simonetta Zarrilli, International Trade in GMOs and GM Products: National and Multilateral Legal Frameworks, United Nations Conference on Trade and Development, Policy Issues in International Trade and Commodities Study Series No. 2, at 2 (2005), https://unctad.org/system/files/official-document/itcdtab30_en.pdf (last visited Oct. 2, 2022).

2 U.S. Food & Drug Admin., How GMO Crops Impact Our World, https://www.fda.gov/food/agricultural-biotechnology/how-gmo-crops-impact-our-world (last visited Oct. 4, 2022).

3 *See e.g.,* National Academy of Sciences, *Human Health Effects of Genetically Engineered Crops*, *in* Genetically Engineered Crops: Experiences and Prospects 171, 236-237 (Safety of Genetically Modified Engineered Foods ed, 2016); National Academy of Sciences, Safety of Genetically Modified Engineered Foods: Approaches to Assessing Unintended Health Effects 180 (2004); World Health Organization, Food, Genetically Modified: Q&A, May 1, 2014, https://www.who.int/news-room/questions-and-answers/item/food-genetically-modified (last visited Oct. 1, 2022). 認為基改食品仍有一定風險者，主要認為目前仍缺乏對基改食品之長期風險研究，故無法完全排除其風險性。*See* Valery Federici, *Genetically Modified*