

Cite as: 3 NCTU L. REV., September 2018, at 51.

## **“Detention Without Physical Examination” in the American Food Importing System**

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### Abstract

The purpose of the “detention without physical examination” (DWPE) rules is based on the precautionary perspective to prevent the American consumers from injuries due to defective food or drug products. The system enables the Food and Drug Administration detain problematic products in borders through promulgating import alerts. The system has the benefits of quickness and efficiency. However, the system has shortcomings including the timing to discover problematic products and the potential to be deemed as unreasonable trade obstacles under the legal framework of the World Trade Organization. But the system authorizes the FDA the power to detain products in the borderlines and prohibited them from being imported without any prudent evidence or even only based on the appearance of the products. This approach may shift the burden of proof from the importing country and to prevent political disputes by legal mechanisms. The purpose of this article is to understand the DWPE system, to analyze the problems of the system, and to propose recommendations to transplant this system to Taiwan. The article will first

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introduce the DWPE system, analyze important cases, then discuss the disputes under the WTO framework. In conclusion, the article will compare the difference between the Taiwan's importing rules and the DWPE system, and provide legislative amendment recommendations to solve the food safety disputes.

**Keywords:** Detention Without Physical Examination, Border Inspection, Burden of Proof, Appear to Be Adulterated, Food Safety