

## **Article 6 of Administrative Penalty Act and Its Relationships with Extraterritoriality of Fair Trade Act**

*Ming-Jye Huang\**

### **Abstract**

Till now, Taiwan's academic circles and Fair Trade Commission and courts generally acknowledge that the relevant administrative penalty provisions in the Fair Trade Act of Taiwan can be applied extraterritorially like other countries' competition laws. And its theoretical basis lies in the effect doctrine principally developed in U.S. Antitrust Laws. This article argues that those academic opinions, administrative decisions, and court judgements ignore the territorialism provisions of Article 6 of the Administrative Penalty Act. Article 6 of the Administrative Punishment Act, which was enacted imitating Articles 3 and 4 of the Criminal Act, should be interpreted according to the regulatory purpose and concept implanted in Articles 3 and 4 of the Criminal Act. Almost all criminal law researchers in Taiwan assert that Articles 3 and 4 of the Criminal Act were legislated with reference to the idea of territorialism, prohibiting their extraterritorial application based on the effect doctrine. Under this understanding, this article first clarifies the diverse and ambiguous concept of "extraterritorial application" and clarifies its proper normative connotation. Afterwards, it argues that (1) Article 6 of the Administrative Penalty Act does not prescribe the effect of extraterritorial application based on the effect doctrine; (2) the relevant provisions of Administrative Penalty Act should not be broadly interpreted to be able to be applied extraterritorially simply because it involves administrative penalty, not criminal penalty; (3) The interpretation and application of laws and regulations should follow the legal interpretation criterion of "presumption against extraterritorial application"; (4) the "consequences" in Paragraph 3, Article 6 of

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\* Professor of Law, College of Law, National Taiwan University.

E-mail: jrhuang@ntu.edu.tw

the Administrative Punishment Act are not equal to “effects” in effect doctrine; and (5) international comity factors object the extraterritorial effects of Article 6 of the Administrative Punishment Act. In addition, a detailed review of the enforcement of Fair Trade Act by Fair Trade Commission and courts also shows that no case of extraterritorial application of Fair Trade Act based on the effect doctrine has ever existed since the enactment of that Act. This article finally suggests that Fair Trade Act should be amended to insert a new provision that stipulates its extraterritoriality based on effect doctrine in order to reinforce its enforcement effectiveness.

**Keywords: Legislative Jurisdiction, Fair Trade Act, Administrative Penalty Act, Effect Doctrine, International Comity, Extraterritorial Application of Laws, Competition Law, Territorialism, Attribution Doctrine**