

論投資協定中地主國公共政策需求之保障—以跨太平洋夥伴協定為例

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摘要

TPP 協定於 2015 年 10 月 6 日正式達成協議，追求高標準的貿易自由化與便捷化，而被視為是 21 世紀貿易協定之里程碑。投資議題被納入 TPP 協定之中，可以預期將與過往的投資協議有所不同，尤其是投資以外之重要公共議題，如環保、勞動、健康、文化等相關問題，某些程度上必須加以整合，與自由貿易的目的交互平衡運作。然而，投資協定之本旨在於保障投資人之個人權利、限制地主國的政策空間；再加上私人對國家的投資爭端解決機制的輔助，使地主國重大政策的推動受到嚴重的干預。本文即以 TPP 協定為例，檢討所謂「二十一世紀貿易協定」的典範，是否能解決投資人保障與地主國公共政策需求之衝突。對於 TPP 協定投資章對地主國公共政策之保障程度，包含國民待遇、公正公平原則、間接徵收、不符合措施與公益需求條款等，提出觀察與總結。

Abstract

The Trans-Pacific Partnership Agreement (hereinafter “TPP”) was officially concluded on Oct. 6, 2015. The TPP sets high standards for the liberalization and facilitation of international trade, which is considered as a notable landmark in the development of free trade agreements. The investment issues included in TPP are different from those in previous investment agreements. To be specific, the social concerns, such as environment, labor, public health and culture would be integrated in order to balance the public interest and protection for investors. However, the purposes of investment agreements are to protect investors’ rights and restrict the host states’ policy-making room. The paper will illustrate context of the investment chapter under TPP, including the issues regarding national treatment, fair and equitable treatment, indirect expropriation, non-conforming measures and corporate social responsibility. In conclusion, level of protection on host states’ discretion on public policies would be clarified.

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