

## 從服務貿易自由化角度論資料在地化措施

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### 摘要

於「世界貿易組織 (World Trade Organization, WTO)」現階段談判停滯的現況下，服務貿易自由化之談判仍於各種場域持續進行，服務貿易之重要性清楚顯現於「跨太平洋夥伴協定 (Trans-Pacific Partnership Agreement, TPP)」、「歐美間「跨大西洋貿易與投資夥伴關係 (Trans-Atlantic Trade and Investment Partnership, TTIP)」、「歐加間「全面性經濟與貿易協定 (Comprehensive Economic and Trade Agreement, CETA) 之服務貿易相關談判之上，更是目前在積極談判中之「服務貿易協定 (Trade in Services Agreement, TiSA)」之談判主題。相關談判進展，對於服務貿易自由化的推展，極為重要。服務貿易牽涉部門極多，而「電子商務 (Electronic Commerce)」與「資訊通信科技 (Information and Communication Technology, ICT)」服務，是各國專注的重點。其中，關於「跨境資料流通 (cross border data flows)」，尤其是「資料在地化 (data localization)」相關措施，更是此一領域談判的重要焦點，對此各國立場不一，因而產生極大的爭議。

跨境資料流通此一議題的發展，並非僅影響跨國貿易相關廠商的市場競爭，而與各國政策管制空間亦有極大關聯。對於跨境資料流通之限制，其考量因素包括國家安全、隱私權與資訊自主等因素。因此，目前有相當國家採取包括資料在地化的管制手段，限制資訊的存取與傳送。另一方面，隱私權的保護法制，亦對於資訊自由流通，產生相當大的影響。此一規範上的拉鋸，也反映在談判進展上。就資料在地化或隱私權保障之法規，各國的規範仍在發展中，其與貿易自由化相互間的影響，也有密切觀察之必要。本文係以上述問題為研究重心，先探討跨境資料流通此一議題之意義與重要性，其次討論資料在地化的內涵與目前的發展趨勢。本文接著探討資料在地化議題於目前服務貿易談判場域上的進展，並點出各國立場之歧義之處。最後，本文嘗試就此一議題之發展方向提出觀察，並探索國內合法管制目的與資訊自由流通調和之可能。

### Abstract

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Within the last decade, the world has seen an unprecedented trend on cross border data flow. The free flow of data is critical for the supply of trade in services in the digital age. Yet, this trend also causes policy concerns in the areas of privacy protection, national security, and law enforcement. Data localization is one of the most prominent responses in light of these concerns. There is therefore a strong tension between the liberalization of the trade in service and data localization measures. This tension has shown in recent trade negotiations such as the Trans-Pacific Partnership Agreement (TPP), Trans-Atlantic Trade and Investment Partnership (TTIP), and the Trade in Services Agreement (TiSA). If this tension persists, it may prove to be an insurmountable obstacle to the further liberalization in world trade. This paper looks into the content and policy objectives of recent data localization measures. Furthermore, this paper analyzes the positions of major countries as reflected in negotiations of major free trade agreements. To conclude, this paper suggests that alternatives to data localization measures should be considered so that the policy objectives could be better served while maintaining the momentum of the further liberalization of trade in services.