

How China's Cyber Security
Law Affects International
Business, Trade in Services and
the Electronic Data Transfer

Analysis within the scope of the General
Agreement on Trade in Services

Davide Francesco Serrago

Veröffentlichungen aus dem LL.M.-Stu-
diengang Internationales Wirtschaftsrecht
der Universität Zürich und des Europa In-
stituts an der Universität Zürich

2018 Band 101

Content

Index of abbreviations.....	7
Bibliography	9
Material.....	11
Case Law.....	15
I. Introduction	17
II. Cyber Security Law of the People’s Republic of China	19
1. Abstract of the law	19
a) General Provisions	20
b) Support and Promotion of Network Security, Network Operations Security and Network Information Security	21
c) Monitoring, Early Warnings, and Emergency Responses, Legal Responsibility and Supplementary Provisions	22
d) Circular 32.....	24
2. Potential major impact under CSL.....	25
a) Free flow of data	25
b) Data localizations	26
c) Inspections.....	28
d) EU Law	29
e) Swiss Law	32
aa) Intelligence Service Law	32
bb) Information Protection Law.....	32
cc) Data Protection Act.....	32
f) Cyber Security worldwide.....	33
III. Impact on global trade in services.....	35
1. General Agreement on Trade in Services	35
2. Commitments under the General Agreement on Trade in Services	36
a) General obligations	36
aa) Free flow of data.....	37
aaa) Most Favoured Nation.....	37
bbb) Transparency	38
bb) Data localizations.....	39
aaa) Most Favoured Nation.....	39
bbb) Transparency	40
cc) Inspections.....	40
aaa) Most Favoured Nation.....	40
bbb) Transparency	40

b)	Special commitments	40
aa)	Horizontal Commitments.....	41
bb)	Service sector and subsector CPC 841 and CPC 842	42
cc)	Service sector and subsector CPC 843.....	43
3.	Justification for restriction	44
a)	General Exemptions (Art. XIV GATS).....	44
aa)	Public morals or public order.....	45
bb)	Protect human, animal or plant life or health.....	47
cc)	Secure compliance with laws and regulations	48
b)	Security Exceptions (Art. XVIIbis GATS).....	49
IV.	Conclusions	51
1.	Potential impact on Switzerland and other trading partners.....	51
a)	Potential impact.....	53
b)	Keep up to date and interact with the relevant departments	54
c)	Request transparency and pursue free trade	54
d)	Diplomatic protection.....	54
e)	„Comply or die”	55
f)	Comparison with the EU and the USA.....	55
2.	Possible Swiss Position.....	57
	Appendix.....	59
	Appendix 1: Cyber Security Law of the People’s Republic of China	59
	Appendix 2: Circular of the Ministry of Industry and Information Technology on Clearing up and Regulating the Internet Access Service Market (Circular 32).....	76