Regulatory implications of multilateral trade liberalisation for the South Korean-Australian services market: the case of the Trade in Services Agreement (TiSA)

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BACKGROUND

The **Korea-Australia Free Trade Agreement** (KAFTA) entered into force in December 2014.

KAFTA includes commitments on the **liberalisation of services markets** build upon those made by South Korea and Australia in the World Trade Organization under the **General Agreement of Trade in Services** (GATS).

These commitments guarantee **market access,** but not much in the way of **regulatory harmonisation** for Australian and South Korean service industries.

ANALYTICAL APPROACH

This study aims to investigate the **normative and economic implications** of multilateral market openings and regulatory harmonisation of the South Korean and Australian services sectors **beyond the KAFTA/GATS framework**.

The **mobile communications industry** serves as the initial benchmark analysis in order to empirically assess

whether the multilateral liberalisation of the South Korean-Australian services market can potentially **respond more effectively** to the growing economic competition among service-oriented economies.

SUMMARY FINDINGS

Ultimately, this study argues that the multilateral opening of the South Korean-Australian services market is **on balance beneficial** to the services industries of the two countries.

As such **the KAFTA/GATS framework can be superseded** by further economic integration and regulatory harmonisation in future multilateral trade agreements currently under negotiation by both South Korea and Australia.

E.g. RCEP and particularly the **Trade in Services Agreement** (TiSA).

INTERNATIONAL TRADE IN SERVICES: IT'S COMPLICATED

The global development of digital technologies and the rise of **liberalisation policies in the public services sector**

is increasingly <u>blurring the boundaries</u> between **public/private** and **local/foreign** services.

This dynamic surely complicates the **interpretation** and **application** of international trading rules.

MULTILATERAL TRADE IN SERVICES AT WTO

The WTO member states have <u>not</u> agreed on an exhaustive list of sectors to be covered under the **General Agreement on Trade in Services (GATS)**.

Thus, economic integration in the emerging services sectors **lags behind the global needs of corporate supply chains**.

THE GATS APPROACH TO TRADE LIBERALISATION

Is based on a **positive listing with possible limitations and exceptions**, i.e. once a certain commitment has been decided for a service sector, the sector is deemed fully liberalised unless limitations are duly scheduled.

This explains why trade liberalisation under GATS is so **staggered and uneven** between the Members, as some have committed in only a few sectors, and others in many more.

THE PROBLEMS WITH GATS

The interplay of domestic regulation with market access and national treatment in a **complex and circuitous architecture**.

The weak **legal effect** of GATS in the Member States.

The actual liberalising power of GATS is **contingent on specific commitments** that either grant market access or national treatment, or both for a certain service.

LIFE AFTER GATS

The service-oriented economies in the Asia-Pacific region are **moving away** from the sluggish WTO-GATS system.

More dynamic economies seek further avenues of trade liberalisation at the **bilateral or mega-regional level**

in particular through the **Trade in Services Agreement** (TiSA) proposed by the European Union (EU).

FOR BETTER OR WORSE?

Adding yet **another regulatory layer** to the intricate framework of global trade in services

may have the unintended consequence to encumber the **economic integration process of the Asia-Pacific region**.

NORMATIVE AND ECONOMIC IMPLICATIONS

The question is whether service-oriented Asia-Pacific economies should either:

- embrace the **EU-inspired framework** of trade in services,
- insist on the existing **WTO-GATS system**, or
- circumscribe their services trade regulation efforts within legal environments of **regional economic integration**.

THE TiSA INITIATIVE

In **2013**, the European Commission proposed an International Services Agreement (ISA)

involving a co-opted grouping of 23 WTO members, the so-called **Really Good Friends of Services (RGFS),** counting most of the top global trading economies.

Subsequently, the ISA then evolved as the Trade in Services Agreement (TiSA) in view of **harmonisation with WTO** rules at a later stage.

TiSA INTERPLAY WITH GATS

Only **limited information** on the procedures and substance of the TiSA negotiations have entered the public realm to date.

Despite the declared goal of compatibility with the WTO, the early TiSA negotiations point to **clear departures from GATS practice**,

in particular where it seeks to deal with national treatment measures through a **negative list** approach,

while sticking to a **positive list** approach for market access schedules as it occurs in the WTO negotiations.

THE HYBRID LISTING RATIONALE OF TiSA

Governments often find it easier to progressively liberalize **discriminatory regulation** than to dismantle <u>quantitative restrictions</u> limiting competition in services markets.

The **segmented approach** of TiSA to market opening is likely to lead to <u>complex legal interpretation</u> issues of compatibility with existing GATS schedules.

This situation would create a **variable geometry** to multilateral rule-making of services trade.

THE SPLIT SYSTEM OF SERVICES TRADE

GATS disciplines such as payments and transfers would automatically apply to all measures affecting trade in services that escape the **TiSA negative list** of measures violating national treatment.

These disciplines would only be applicable in sectors and modes of supply where **positively listed market access** commitments were scheduled.

This system would **further unsettle the WTO system** at a time when it is struggling to keep relevant to emerging service sectors, particularly those with **network properties**, such as resources distribution, waste disposal and telecommunications.

ECONOMIC ANALYSIS OF MULTILATERAL TRADE IN SERVICES LAW

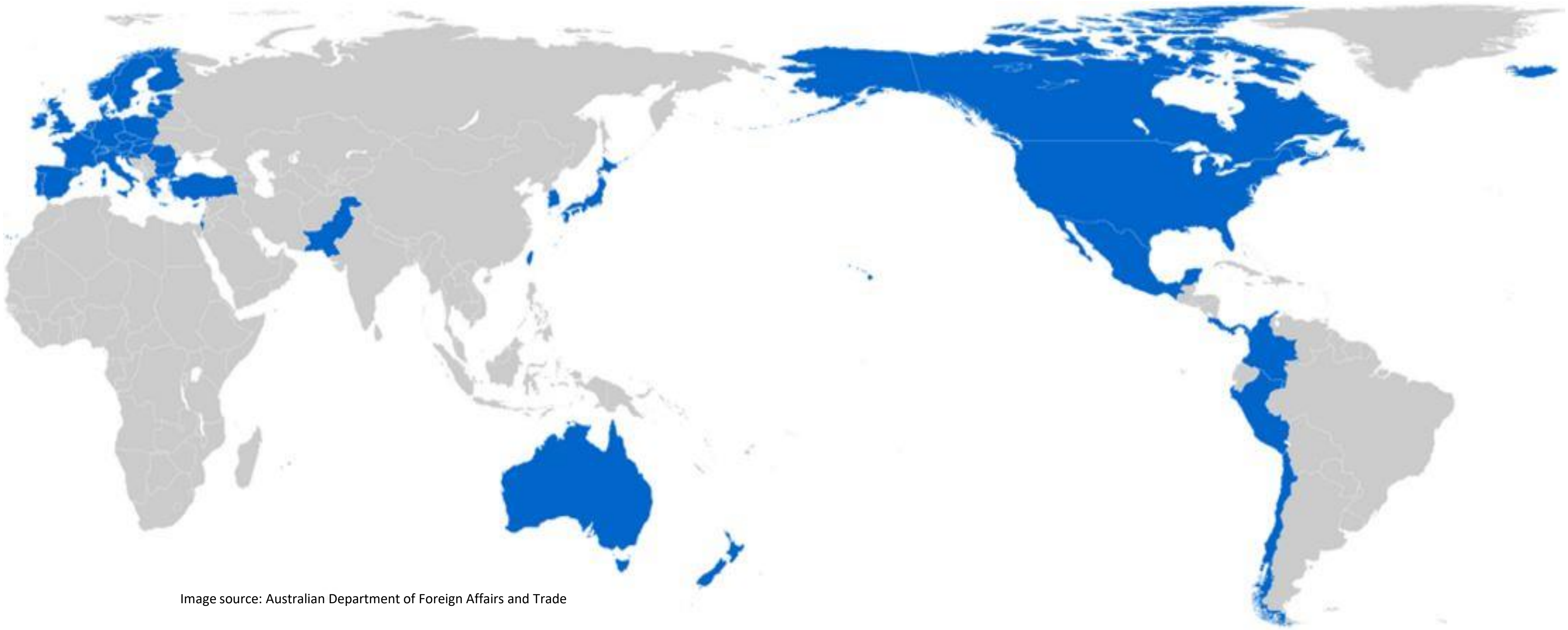

Image source: Australian Department of Foreign Affairs and Trade

This study uses an **empirical model of the mobile telecommunication industry** situation within the potential TiSA environment as the initial benchmark and proxy analysis of services labour markets liberalisation.

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EMPIRICAL MODEL

Seeks to identify whether domestic market regulation and/or market access influence the **profits of telecommunications services firms** operating within the jurisdictions covered by TISA.

The end result is a **dataset capable of panel analysis** and comprised of 70 companies resident in TiSA related jurisdictions over two successive annual periods.

THE STATISTICAL CORRELATIONS

Restrictiveness in terms of domestic regulation and market access contributes to profits of mobile telecommunication services firms.

However, **domestic regulation** maintains a **positive coefficient**,

Whereas **market access** maintains a **negative coefficient.**

Together this implies that **the lower the restriction on market access the greater the profits**,

while **the greater the domestic regulation the greater the profits**.

THE EMPIRICAL FINDINGS

This appears at odds with the theoretical understanding of **trade restrictiveness and profits**.

However, this can be resolved if **three additional factors** are considered:

1. Homogeneity of services
2. Trade creation
3. Regulatory harmonisation

THE EMPIRICAL IMPLICATIONS

The TiSA is expected to **produce scale effects** and, in turn, be **trade creating**.

This explains why the lower the restriction on market access the greater the profits in mobile telecommunications, i.e. **the larger the market for the same service, the larger the profit**.

Given the homogeneity of the service, further gains can be achieved through **creation of common higher standards**.

This also explains why empirically the more **harmonised the domestic regulation**, the greater the profits in mobile telecommunications.

CONCLUSIONS

For service-oriented economies in the Asia-Pacific region it is desirable to **enter the largest possible services trade ‘club’** (be it GATS, TiSA or a regional partnership) and,

once they are in, it is in the new members’ interests (i.e. more profitable) to **raise the standards of membership** in terms of domestic regulation harmonisation,

provided that the normative crossover with other trade instruments does not offset the economic gains with increased **regulatory complexity**.