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Mr. Gabriel Gari

Queen Mary University of London

United Kingdom

Recent Preferential Trade Agreements' disciplines for tackling regulatory divergence in services: a step too far?

Dr Gabriel Gari



Centre for Commercial Law Studies

Regulatory Divergence

➤ Concept

- Pure' regulatory heterogeneity of services regulations, i.e. differences that are not in any way attributable to protectionist or anti-competitive goals (Mattoo, 2015)

➤ Trade costs

- Need to adjust supply to non-discriminatory but different license or qualification requirements, technical standards, etc. raises trade costs
- Problem compounded by the regulatory intensity of services
- Empirical assessment (Kox & Lejour, 2005, Kox & Nordås, 2007, 2009; Nordås, 2016)

➤ Policy option

- How far should trade agreements go in their quest for tackling regulatory divergence on services?

Tools for Tackling Regulatory Divergence

- I. Disciplines on regulatory transparency

- II. Disciplines on regulatory coherence
 - A. Domestic regulation
 - 1. Substantive disciplines
 - 2. Authorisation processes
 - 3. Administration and review of administrative decisions

 - B. Good regulatory practices

- III. Disciplines on regulatory co-operation

RECENT PTAS

Code	Name	Signature	Entry into force
CHNAUS	FTA between the Gvnt of Australia and the Gvnt of the PR of China	17/06/2015	20/12/2015
CHNKOR	FTA between the Gvnt of the PRC and the Gvnt of the Republic of Korea	15/06/2015	20/12/2015
CHNCHE	FTA between the Swiss Confederation and the Gvnt of the PR of China	06/07/2013	01/07/2014
CHNISL	FTA between the Gvnt of Iceland and the Gvnt of the PR of China	15/04/2013	01/07/2014
CHNCRC	FTA between the Gvnt of the PR of China and the Gvnt the Republic of Costa Rica	08/04/2010	01/08/2011
EUJPN	Agreement between the EU and Japan for an Economic Partnership	-	-
EUVNM	FTA between the EU and the Socialist Republic of Vietnam	-	-
EUSGP	FTA between the EU and the Republic of Singapore	-	-
CETA	Comprehensive Economic and Trade Agreement between Canada and the EU and its MSs	28/10/2016	21/09/2017
EUCOL	FTA between the EU and its MSs, of the one part, and Colombia and Peru, of the other part	26/06/2012	01/08/2013
EUCEN	Agreement establishing an Association between the EU and its MSs and Central America	29/06/2012	01/08/2013
EUKOR	FTA between the EU and its MSs and the Republic of Korea	06/10/2010	01/07/2011
JPNMNG	Agreement between Japan and Mongolia for an Economic Partnership	10/02/2015	07/06/2016
JPNAUS	Agreement between Japan and Australia for an Economic Partnership	08/07/2014	15/01/2015
JPNPER	Agreement between Japan and the Republic of Peru for an Economic Partnership	31/05/2011	01/03/2012
JPNIND	Comprehensive Economic Partnership between the Republic of India and Japan	16/02/2011	01/08/2011
JPNCHE	Agreement on Free Trade and Economic Partnership between Japan and the Switzerland	19/02/2009	01/09/2009
TPP	Trans-Pacific Partnership Agreement	04/02/2016	-
USA KOR	FTA between the United States and the Republic of Korea	30/06/2007	15/03/2012
USA PAN	United States Panama Trade Promotion Agreement	28/06/2007	31/10/2012
USA COL	United States Colombia Trade Promotion Agreement	22/11/2006	15/05/2012
USA PER	United States Peru Trade Promotion Agreement	12/04/2006	01/02/2009
USA OMN	Agreement between United States and Oman on the establishment of a Free Trade Area	19/01/2006	01/01/2009

TRANSPARENCY

	Duty to Publish	Duty to provide reasonable period between P and EI	Duty to publish proposed reg.	Duty to allow persons to comment	Duty to notify the other party	Duty to provide information u/r of other party	Duty to provide information u/r from int person
GATS	H	-	-	-	H	H	-
CHNAUS	H	-	S	S	S	H	-
CHNKOR	H	-	S	S	H	H	-
CHNCHE	H	-	-	-	-	H	-
CHNISL	H	-	-	-	H	S	-
CHNCRC	H	S	S	S	S	H	H
EUIPN	H	S	S	S	-	S	H
EUVNM	H	H	S	H	-	H	S
EUSGP	H	H	S	H	-	H	H
CETA	H	-	S	S	-	S	-
EUCOL	H	-	-	S	-	S	H
EUCEN	H	S	-	S	-	S	H
EUKOR	H	H	S	H	-	H	H
JPNMNG	H	S	-	S	-	H	-
JPNAUS	H	-	-	S	-	H	-
JPNPER	H	S	-	S	-	H	S
JPNIND	H	-	-	-	-	H	H
JPNCHE	H	S	-	-	-	H	-
TPP	H	S	S	S	S	H	H
USAKOR	H	S	H	S	-	H	H
USAPAN	H	S	S	S	S	H	H
USACOL	H	S	S	S	S	H	H
USAPER	H	S	S	S	S	H	H
USAOM	H	S	S	S	-	H	H

'H': Hard
'S': Soft

DOMESTIC REGULATION

'H': Hard / 'S': Soft
 'L': Licensing Reqs
 'Q': Qualific. Reqs
 'T': Tech Stands
 'A': Authorisation
 'SS': Specific sector
 'HR': Horizontal
 'HR-': Horizontal
 minus reservations
 'Y': Yes / 'N': No

	Final disciplines on DR	Measures covered	Sectors Covered	Objective & transparent criteria	LPs not a restriction	Necessity	Additional criteria	Relevance of intl' standards	Review results of GATS VI:4
GATS	-	-	-	-	-	-	-	-	-
CHNAUS	-	-	-	-	-	-	-	-	Y
CHNKOR	-	-	-	-	-	-	-	-	Y
CHNCHE	S	LQT	HR	Y	Y	Y	N	Y	N
CHNIS	-	-	-	-	-	-	-	-	Y
CHICRC	S	LQT	HR	Y	Y	Y	N	N	Y
EUJPN	H	LQ	HR-	Y	Y	N	Y	N	N
EUVNM	H	LQ	SS	Y	Y	N	Y	N	N
EUSGP	H	LQ	SS	Y	Y	N	Y	N	N
CETA	H	LQ	HR-	Y	Y	N	Y	N	N
EUCOL	-	-	-	-	-	-	-	-	Y
EUCEN	-	-	-	-	-	-	-	-	N
EUKOR	S	LQT	HR	Y	Y	N	N	N	Y
JPNMNG	H	LQTA	HR	Y	Y	Y	N	N	N
JPNAUS	S	LQTA	HR	Y	Y	Y	N	N	Y
JPNPER	H	LQT	SS	Y	Y	Y	N	N	Y
JPNIND	-	-	-	-	-	-	-	-	Y
JPNCHE	H	LQT	SS	Y	Y	Y	Y	Y	Y
TPP	S	LQT	HR-	Y	Y	N	N	Y	Y
USAKOR	S	LQT	HR	Y	Y	N	N	N	Y
USAPAN	S	LQT	HR	Y	Y	Y	N	N	Y
USACOL	S	LQT	HR	Y	Y	Y	N	N	Y
USAPER	S	LQT	HR	Y	Y	Y	N	N	Y
USAOMN	S	LQT	HR	Y	Y	Y	N	N	Y

AUTHORISATION PROCESS

	Reasonable timeframe	Inform u/r about status application	Opportunity to correct minor errors	Inform applicant decision	Inform u/r reasons for denial app	Ensure fees are reasonable	Accept doc copies and/or electronic app	Sectors covered
GATS	H	H	-	H	-	-	-	SS
CHNAUS	-	H	H	S	S	-	-	SS
CHNKOR	H	H	-	H	-	-	-	SS
CHNCHE	-	-	-	-	-	-	-	-
CHNIS	H	H	-	H	-	-	-	SS
CHICRC	H	H	-	H	-	-	-	SS
EUJPN	H	-	H	H	H	S	S	HR-
EUVNM	H	-	H	H	H	S	S	SS
EUSGP	H	-	H	H	H	S	S	SS
CETA	H	H	H	H	H	H	S	HR-
EUCOL	H	H	-	H	-	-	-	SS
EUCEN	H	H	-	H	-	-	-	SS
EUKOR	H	H	-	H	-	-	-	SS
JPNMNG	H	H	-	H	-	-	-	HR
JPNAUS	H	H	S	H	H	-	-	HR
JPNPER	H	H	-	H	-	-	-	HR
JPNIND	H	H	-	H	-	-	-	SS
JPNCHE	H	H	-	H	-	-	-	SS
TPP	H	H	S	H	H	H	S	HR-
USAKOR	H	H	-	H	-	-	-	HR-
USAPAN	H	H	-	H	-	-	-	HR-
USACOL	H	H	-	H	-	-	-	HR-
USAPER	H	H	-	H	-	-	-	HR-
USAOMN	H	H	-	H	-	-	-	HR-

'H': Hard
 'S': Soft
 'SS': Specific Sector
 'HR': Horizontal
 'HR-': Horizontal
 minus reservations

REGULATORY COOPERATION

	Regulatory Cooperation on Any Matter	Regulatory Cooperation on Financial Services	Regulatory Cooperation on e-commerce	Regulatory Cooperation on Telecommunications	Regulatory Cooperation on Mov. of Natural Persons
GATS	-	-	-	-	-
CHNAUS	-	Y	Y	-	-
CHNKOR	-	Y	Y	-	-
CHNCHE	-	Y	-	-	Y
CHNISL	-	-	-	-	Y
CHNCRC	-	-	-	-	-
EUJPN	Y	Y	Y	-	Y
EUVNM	-	-	Y	Y	-
EUSGP	-	-	Y	Y	-
CETA	Y	Y	Y	-	-
EUCOL	-	-	Y	Y	-
EUCEN	-	-	Y	-	-
EUKOR	-	-	Y	-	-
JPNMNG	-	-	Y	-	-
JPNAUS	-	Y	Y	Y	-
JPNPER	-	-	-	-	-
JPNIND	-	Y	-	-	-
JPNCHE	-	Y	Y	Y	-
TPP	Y	Y	Y	Y	Y
USAKOR	-	Y	Y	-	-
USAPAN	-	Y	Y	-	-
USACOL	-	Y	Y	-	-
USAPER	-	Y	Y	-	-
USAOM	-	Y	-	-	-

'Y' = Yes

Findings

- Plenty of evidence of GATS plus and GATS extra disciplines on regulatory transparency, regulatory coherence and regulatory cooperation
- While there are some common patterns within each 'family' of PTAs, there is not such a thing as a PTA template
- Changing nature of trade agreements (negative vs positive obligations; specific commitments vs trade rules; horizontal vs vertical obligations)
- Increasingly blurring remit of trade agreements
- Implications for parties, third parties, individuals



Thank You

g.gari@qmul.ac.uk

Implications for parties to PTA

- Expected trade gains from tackling regulatory divergence

But...

- Trade gains outweigh implementation costs?
- Forced alignment to regulatory hegemon?
- Too soon to tell. Empirical evidence not yet available

Implications for third parties

➤ Trade diversion?

- Regulatory Transparency
- Regulatory coherence
- Regulatory cooperation

➤ Multilateral negotiations?

- Domestic regulation (China, EU, Japan)
- E-commerce (EU, Japan, US)
- Investment facilitation (China, EU, Japan)