



**Asia-Pacific
Economic Cooperation**

Advancing Free Trade
for Asia-Pacific **Prosperity**

Workshop on Best Practices Sharing to Improve Application of the APEC Non-Binding Principles for Domestic Regulation of the Services Sector

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APEC Group on Services

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APEC Project: The Workshop on Best Practices Sharing to Improve Application of the APEC Non-binding Principles for Domestic Regulation of the Services Sector (GOS 01 2019T)

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I. Background

Regulation plays an essential role in the services market. Effective regulation is not only a pre-condition for the successful liberalization of services trade but also a strong driver of growth in the services sector by promoting fair competition and the adoption of new technologies. However, in many economies, regulatory framework is still at an emerging stage. Also, ineffective, non-transparent, and discriminatory regulations often serve as impediments to the growth of the services sector.

In order to provide policymakers of APEC economies with guidance to developing effective rules in the services sector, APEC member economies adopted the APEC Non-Binding Principles for Domestic Regulation of the Services Sector in 2018. The Principles are expected to serve as a guideline for successful regulatory reform and the promotion of regulatory cooperation among APEC economies.

However, since economies are facing various situations and circumstances, there is a need for the regulatory authorities in the region to discuss how to effectively utilize the Principles in establishing regulations tailored to each economy's diverse opportunities and challenges. Especially, given that the APEC Principles are one of the main achievements of various efforts that member economies have made, including continuous discussions in the relevant sub-fora and adoption of APEC Principles for Cross-Border Trade in Services in 2009, it is particularly important to identify possible ways to apply those agreed Principles to each specific environment of services sector. Without substantial and tangible endeavors to vitalize the provisions in the Principles into actual policies, those efforts will be nullified.

In this regard, Korea held an one-day workshop on August 19 in Puerto Varas to collect various views from relevant international organizations and share the best practices of leading members in applying the Principles to not only sector-specific but also cross-cutting issues. The workshop served as a useful opportunity for participating economies to gain a clearer view on how to implement regulatory reform while exploiting the Principles.

II. Objectives

The Workshop on Best Practice Sharing to Improve Application of the APEC Non-binding Principles for Domestic Regulation of the Services Sector aimed at the following objectives.

- To promote awareness on the APEC Principles as a guideline for implementing effective regulatory reform
- To share member economies' best practices in applying the APEC Principles on sector-specific and cross-cutting issues;

- To identify possible challenges and opportunities in implementing the APEC Principles; and
- To discuss ways to harmonize the APEC Principles with economies' right to regulate and to improve the Principles for better regulation

III. Section 1: Enhancing the Understanding of the APEC Non-binding Principles on Domestic Regulations of the Services Sector (Speaker: Dr. Jong Duk Kim, Korea Institute for International Economic Policy)

The economic importance of the services sector has been growing steadily across economies over time. One of the trends that we can find from the statistics (Figure 1) is that the richer an economy is, the larger services share in employment. In 2018, the employment in services sector in the economies with high incomes recorded over 70 percent of total employment while the Middle-Income Economies (MIC) recorded less than 50 percent. The services sector accounts for slightly over 20 percent of total employment in the Least Income Economies (LIC). The increase of trade in services has been led by High Income Economies (HIC, Figure 2). The statistics shows that the share of trade in services in GDP indicates a positive correlation with the richness of the economies. In 2018, while the trade in services recorded less than 8 percent in GDP in MICs, it was more than 15 percent in the HICs.

Figure 1 employment in Services (% of total employment)

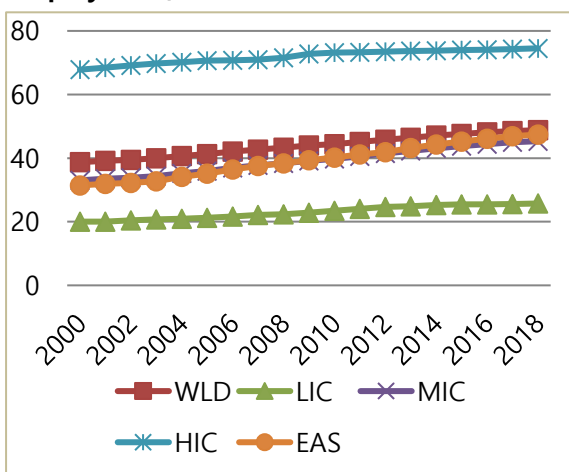
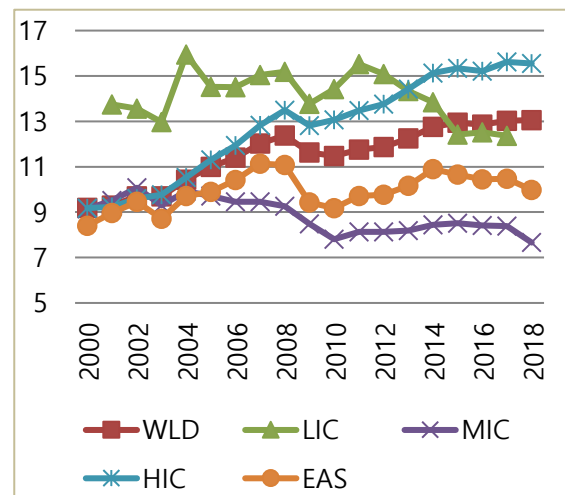


Figure 2 Trade in Services (% of GDP)



Although the services sector has increased its importance in the economic growth of each economy, there has been an intrinsic tension between the autonomy of governments in

regulation and the effective liberalization of services trade. In this regard, it is considered that the Article VI of the GATS (General Agreement on Trade in Services), which covers the domestic regulations, is a great start. However, it still remains provisional so far. At the same time, the importance of domestic regulation in services is well-recognized in the recent mega-regional negotiations such as TiSA, TPP (now CPTPP), TTIP etc.

The efforts to enhance the cooperation in the domestic regulations among the economies have also been made in APEC as well. In 2009, APEC economies adopted the APEC Principles of Cross-Border Trade in Services, followed by the APEC Services Cooperation Framework (ASCF) and the APEC Services Competitiveness Roadmap (ASCR). In 2015, the APEC leaders committed to supporting the member economies' efforts to strengthen the services sector in the region by fostering creativity and innovation through an enhanced regulatory environment. Upholding the request from the leaders, in 2016, Korea proposed to develop a set of non-binding good practice principles for the domestic regulations in the services sector, hoping to provide a guideline for the members to refer to and to create an economic environment that can enhance competitiveness in services. Through a collaborative work in two consecutive drafting group meetings, the APEC economies finally adopted *the APEC Non-binding Principles for Domestic Regulation of the Services Sector*. This work also drew attention from the WTO (S/WPDR/M/74).

There are three characteristics of the APEC Principles. First, the adoption of the Principles falls into the hands of each economy. As indicated in the title, it is non-binding in nature and this feature provides opportunities to think through how an economy should adopt new measures and regulations in line with the Principles. Second, the Principles are the outcome of the collaborative work among the APEC sub-fora, which covers the whole-of-the-region level in its developing process. Lastly, they were built upon the existing instruments. When developing the Principles, there were various documents related to the domestic regulations in the services sector that were referred to, including APEC-OECD Integrated Checklist on Regulatory Reform and the APEC Principles for Cross-Border Trade in Services and etc.

The APEC Principles are composed of General Principles (A) and six specific areas, namely Administration of Measures (B), Independence (C), Transparency (D), Technical Standards (E), Development of Measures (F), and Other Areas (G). The General Principles indicate the scope of the areas to which the document is applied, covering licensing requirements and procedures, qualification requirements and procedures, and technical standards. Also, they include the definition of "authorization" for the purpose of the Principles. The overview of the six specific areas is shown in the table below.

B. Administration of Measures	C. Independence	D. Transparency
<ul style="list-style-type: none"> • Submission of application • Application of timeframes • Electronic application • Processing of applications • Fees and examination 	<ul style="list-style-type: none"> • Competent authority's independent decisions 	<ul style="list-style-type: none"> • Publication and information available • Enquiry points • Opportunity to comment and information before entry into force
E. Technical Standards	F. Development of Measures	G. Other Areas
<ul style="list-style-type: none"> • Open and transparent processes 	<ul style="list-style-type: none"> • Based on objective and transparent criteria • Consistent with Article VI of the WTO GATS 	<ul style="list-style-type: none"> • Supporting recognition efforts: professional qualifications, licensing and/or registration. • Business names: note arbitrarily restrictive

IV. Section 2: Discussions in Other International Organizations (Experiences from the WTO and the OECD)

1. Addressing Transparency and Predictability in Rulemaking – Domestic Regulation Negotiations in the WTO (Speaker: Markus Jelitto, WTO)

i. Discussions on Domestic Regulation in Services

The Article VI paragraph 4 requires that with a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute *unnecessary barriers to trade*, the Council for Trade in Services shall develop any necessary disciplines. It also indicates that such disciplines shall aim to ensure that these requirements are, *inter alia*: (a) based on objective and transparent criteria, such as competence and the ability to supply the service, (b) not more **burdensome than necessary** to ensure the quality of the service, (c) in the case of licensing procedures, not in themselves a restriction on supply of the service.

Following the requirement, the WTO has undertaken relevant negotiations since 1995. In

1997, the Council adopted the Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector(S/L/38) and in the following year, it also adopted the Disciplines on Domestic Regulation in the Accountancy Sector(S/L/64). From 1999 onwards, the Council has undertaken both the work on disciplines applicable across services sectors (“horizontal disciplines”) and the work on other sectoral disciplines. These efforts drew further development from the Ministers. In 2005, the Ministers were committed to moving to the text-based negotiations and since then, on a biennial basis, the negotiations have been carried out based on the Chair’s texts. The years from 2012 to 2015 deserve to be called a hiatus in WTO work on domestic regulations. The ongoing substantive works on domestic regulations were able to move to the plurilateral processes such as TPP and TiSA. Although an outcome couldn’t be accomplished at MC11(2017) as it had been committed in 2016, the members adopted a Joint Statement which paved the way for subsequent discussions in open-ended plurilateral settings.

Since 2018, the work in Joint Initiative on Services Domestic Regulation has been proceeding. Based on a non-attributed version of the negotiating text, 8 rounds of open-ended negotiating meetings in 2018 resulted in a negotiating text (DR8-A). A broad range of members beyond co-sponsors participated in the discussion. By the end of 2018, the members could acquire a general agreement on all disciplines excepting one substantive one, which was related to non-discrimination between men and women in the development of domestic regulatory measures. In May 2019, the Ministers were committed to continuing working on outstanding issues with a view to incorporating the outcome of the work into their respective schedules of specific commitments by the MC12 in the Joint Statement on Services Domestic Regulation (WT/L/1059). In July 2019, the DR8-A was transformed to the format of a “reference paper” for the incorporation into the draft schedules.

ii. Comparison between APEC Principles and the Draft JSI Reference Paper

In general, while all APEC Principles are formulated in “should” language reflecting their non-binding characteristic, the Draft Joint Statement Initiative(JSI) Reference Paper disciplines use varying degrees of obligation including “shall”, “are encouraged”, “to the extent practicable”, “in a manner consistent with its legal system”, and etc. There are differences in the scope of application of the disciplines. JSI Reference Paper disciplines apply, in principle, to sectors that the members committed in their schedules, however, the APEC Principles apply across all sectors. Also, while both the JSI Reference Paper and APEC Principles apply to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, the APEC Principles cover beyond aforementioned areas, such as publication, enquiry points and prior comment applying to any measure of general application.

When it comes to the specific disciplines, there are no substantive differences for provisions relating to submission of applications, electronic applications and acceptance of copies, opportunity to comment and entry into force, application timeframes, and publication and information available. However, small drafting differences between two documents can be found although it is more likely to have limited impact to practices. For example, regarding the processing of applications, while JSI Reference Paper requires competent authorities to complete processing within reasonable time, the APEC Principles require that the processing of applications without undue delay. On fees, both provisions require fees to be reasonable and transparent, however, JSI Reference Paper also requires that they are based on authority set out in a measure. There is also a small difference in the means of submission in the examination process. While both provisions require that the examinations are held at reasonable frequent intervals, in the JSI Reference Paper, members are encouraged to accept requests for examinations in electronic format and consider use of electronic means in other aspects of examination process. Other small differences in drafting between two documents are as follows.

Provisions	APEC Principles	Draft JSI Reference Paper
Enquiry point	<ul style="list-style-type: none"> Have broader scope(measures referred to in its laws, regulations, procedures, and administrative rulings of general application respecting matters concerning the supply of a service 	<ul style="list-style-type: none"> Links with the list of information that is to be published
Technical Standards		<ul style="list-style-type: none"> Mentions specifically international organizations
Development of measures	<ul style="list-style-type: none"> Also indicate that procedures should be “without unjustifiable impediments” for applicants to demonstrate that they can meet requirements 	<ul style="list-style-type: none"> Does not explicitly require that measures that are adopted are consistent with GATS Art. VI:1 Indicates that “procedures do not in themselves unjustifiably prevent fulfilment of requirements”

There are also areas with different substantive coverages. For instance, as to the business names, while the APEC Principles allow the suppliers of other APEC economies to use business names under which they ordinarily trade and otherwise ensure that business

names are not arbitrarily restricted, the JSI Reference Paper doesn't have the corresponding provision (note that the Accountancy Disciplines of 1998 allows restriction of firm names only for legitimate purposes). Also, compared to the JSI Reference Paper that has a draft provision stipulating that the measures related to authorization shall not discriminate between men and women, there is no non-discrimination provision between men and women in the APEC Principles.

Other than aforementioned differences from the APEC Principles, the JSI Reference Paper has following features. First, in light of disparity of number of commitments among Members, the Members with particularly low level of services commitments and implementation capacity are suggested to extend the coverage to additional sectors. Second, a possibility of transitional periods is given to the developing economies. Third, there is the best-endeavor clause relating to technical assistance and capacity building. Finally, the JSI Reference Paper disciplines are not yet adopted; however, they will be given legal effect through inscription in participating Members services schedules.

2. New Developments in Regulatory Policy – the Experience of the OECD¹ (Speaker: Celine Kauffmann, OECD)

i. Background

The OECD has accumulated 25 years of experience in dealing with regulatory policies and better regulations. Since it published the Recommendation on Improving the Quality of Government Regulation in 1995, the OECD has made various efforts to give guidance to the members for establishing better regulatory policies, including APEC-OECD Integrated Checklist on Regulatory Reform (2005) which served as a basis for the APEC Principles, OECD Guiding Principles for Regulatory Quality and Performance (2005), and the Recommendation of the Council on Regulatory Policy and Governance (2012). In the Recommendation, the OECD has reviewed regulatory policies in most of its members plus China, Russia, Indonesia, Malaysia, Peru, Thailand, and Philippines and the document provides a whole-of-government instruments for regulatory policies covering various areas including *explicit policy on regulatory quality, communication, consultation and engagement, regulatory oversight, integrated regulatory impact assessment (RIA), reviews of regulatory stock-ex post evaluation and etc.*

When making regulatory policies, the following elements should be considered;

¹ This section broadly referred to both the presentation material used in the Workshop and the *OECD Regulatory Policy Outlook 2018*

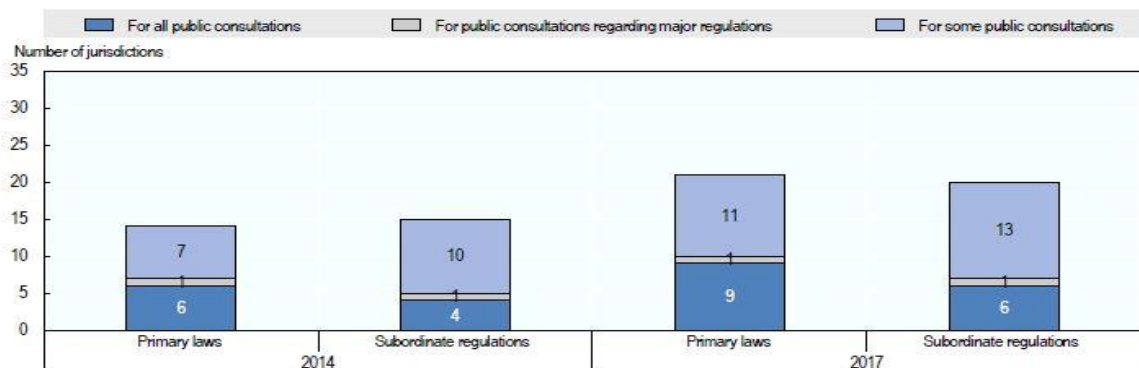
- Move away from a procedural approach to regulatory policy
- Promote evidence-based policy by systematically collecting evidence, monitoring and evaluating results of regulation
- Pay attention beyond regulatory design to regulatory delivery : implementation and enforcement remain the weakest link in the application of regulatory policy
- Mind the governance of regulatory policy: institutions matter
- Consider regulatory frameworks and the impacts beyond borders

ii. Recommendations from OECD members' practices

- **Forward planning**

According to OECD Regulatory Policy Outlook 2018, the number of OECD members publishing a list of regulations to be prepared, changed or repealed online in the next six months or more has increased, but it is not yet established as a consistent practice across the membership. Informing the public more generally about forthcoming consultations is not systematically undertaken although it has slightly improved since 2014 (Figure 3).

Figure 3 Informing members of the public of forthcoming consultations



Note: Data is based on 34 OECD members and the European Union

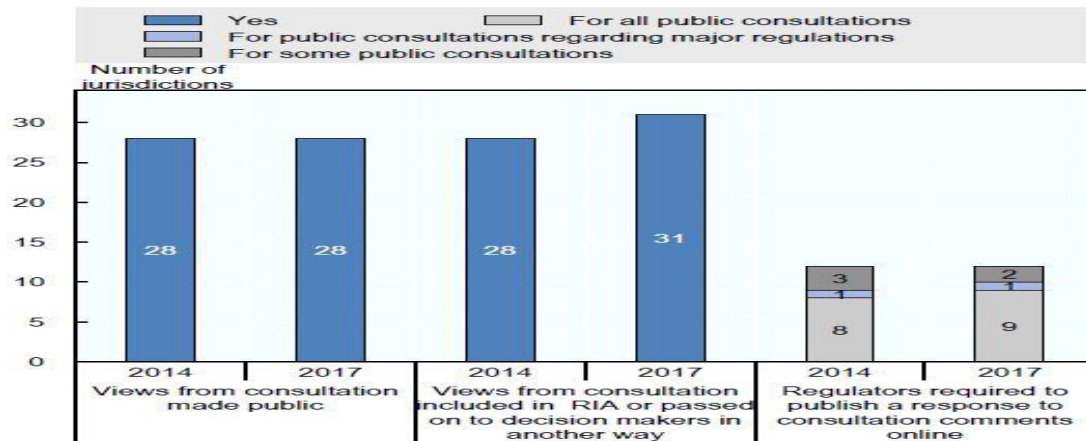
Source: OECD Regulatory Policy Outlook 2018

- **Feedback and use of consultation comments**

OECD members have put in place mechanisms to ensure the transparency of the consultation process and to effectively integrate it into the regulatory process. For instance, the number of members that publish, at least for some regulations, the views of participants expressed during the consultation has further increased. Similarly, most members include views from consultation in the RIA or pass them on to decision makers in some other ways to make sure stakeholders' feedback effectively feeds into the decision-making process.

More broadly, there may be synergies that economies can avail themselves of by incorporating both ex ante and ex post consultations on a central website. However, only a minority of OECD members provides stakeholders with feedback as to how their input was used in the rule-making process by publishing a response to consultation comments online (Figure 4).

Figure 4 Feedback and use of consultation comments



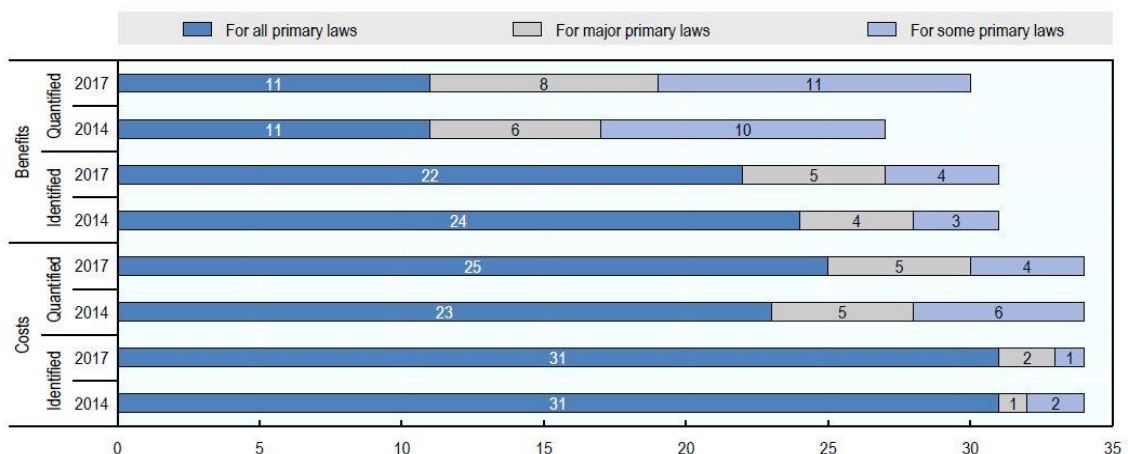
Note: Data is based on 34 OECD members and the European Union.

Source: OECD Regulatory Policy Outlook 2018

- **Be more systematic in gathering key evidences**

The OECD members increasingly quantify costs and benefits, in particular for primary laws. The number of OECD members requiring the quantification of benefits for primary laws has increased since 2014 from 27 to 30. The scope of the requirement of quantifying costs has been extended to 25 compared to 23 members requiring a quantification of costs for all primary laws. Quantification of benefits lags behind quantification of costs. While in the majority of OECD members, quantification of costs is required for all regulations, quantification of benefits is often only required for some regulations (Figure 5).

Figure 5 Analysis of costs and benefits for primary laws



Note: Data is based on 34 OECD members and the European Union

Source: OECD Regulatory Policy Outlook 2018

- **Start carrying out reality checks of your regulations**

The stock of laws and regulations has grown rapidly in most economies. However not all regulations will have been rigorously assessed ex ante, and even where they have, not all effects can be known with certainty in advance. Also, many of the features of an economy of relevance to particular regulations will change over time. Therefore, the 2012 Recommendation calls on government to “[c]onduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objective.”

Evaluations of existing regulations can also produce important learnings about ways of improving the design and administration of new regulations. In this way, ex post reviews complete the ‘regulatory cycle’ that begins with ex ante assessment of proposals and proceeds to implementation and administration.

iii. The Importance of International Cooperation in Regulations

We should pay attention to the undue costs of the ‘regulatory’ heterogeneity. In definition, these costs consist of three parts, namely, the information costs, the specification costs, and the conformity assessment costs. The costs are non-negligible in some sectors and usually distort the Global Value Chains (GVCs). They have various forms from fixed to variable ones. The former affects to the market entry by the service suppliers and the latter acts as a tariff. As they are sector specific and different from each economy’s circumstances, the suppliers who wish to enter a certain market should pay for the conformity costs. Also, these costs are not the priority in highly restricted markets.

According to a study conducted by International Federation of Accountants (IFAC) and Business and Industry Advisory Committee (BIAC) in 2018, the regulatory divergences cost financial institutions 5-10 percent of their annual turnover on average. And 73% of the respondents reported that the increases or substantial increase in their costs were related to the divergent regulation over the past 5 years.

In this context, a regulatory cooperation among the economies is of utmost importance to reduce the undue costs caused by the heterogeneity in regulations. In practice, the regulatory cooperation can and does take many forms including integration and harmonization through supra domestic institutions, specific negotiated agreements, regulatory provisions in trade agreements, regulatory cooperation partnerships, joint rule-

making through inter-governmental organizations, mutual recognition, and adoption of good regulatory practices.

So, how to foster international regulatory cooperation in domestic rule-making process? Unilaterally, economies can foster the consideration of the international environment in the development and revision of laws and regulations. The following tips can be referred.

- Consider international 'standards' in regulatory development and *ex post* evaluation
- Use Regulatory Impact Assessment(RIA) to collect evidences of foreign practices and assess the international impacts
- Engage foreign parties to identify frictions and inconsistencies
- Deal with frictions caused by enforcement and CAP

V. Section 3: Best Practices of Economies

1. APEC Non-binding Principles for Domestic Regulation of the Services Sector and the USMCA (Speaker: Kenneth Schagrin, USTR)

The USMCA, signed on November 30, 2018, reflects the updated trade policy approach by the United States and its North American trade partners, Canada and Mexico. Overall, the USMCA has many similarities with the APEC Principles in the scope of regulated provisions and detailed contents. In particular, several sections of the USMCA including, submission of applications, application timeframes, electronic applications and acceptance of copies, processing of applications, examinations, Independence, technical standards and etc. have almost identical provisions with the APEC Principles, excepting the usage of the languages in obligations. While the APEC Principles are formulated in 'should' language, reflecting its non-binding feature, the USMCA indicates the obligation of the parties in 'shall' language.

However, there are substantial differences between the USMCA and the APEC Principles. In processing of applications, only the APEC Principles require the competent authorities to inform the applicants of the reasons for rejection in writing forms, while the USMCA does not indicate specific means of information. Also, adding to the reasons for rejection, the USMCA requires authorities to inform the timeframe for an appeal or review of the decision to reject the application and the procedures for resubmission of an application, which is not found in the APEC Principles. The differences can also be found in the means of providing information to the stakeholders between two documents. The APEC Principles regulate the economies *to publish* the laws, regulations, procedures, and administrative or otherwise make available *in writing* in a way to enable interested persons to become acquainted with them. However, the USMCA does not restrict the means of acquaintance in written forms.

The USMCA also requires each party to make these measures available online.

When it comes to domestic regulations and transparency, the substantive improvements and the verification in the implementation of the three specific sub-items under the APEC Principles D, Transparency, namely, publications and information available, opportunity to comment and information before entry into force, and enquiry points, are primarily contained in the last three chapters of the USMCA (i.e. good regulatory practices, publication and administration, and administrative and institutional provisions). In particular, compared to the sub-items, Opportunity to Comment and Information before Entry into Force, in the Section D of the APEC Principles, the Chapter 28 of the USMCA has a detailed list of provisions to establish regulations that is more extensive than the APEC Principles providing. These include internal consultation, coordination and review among domestic authorities, information quality (base regulation on reliable and high-quality information), early planning, and etc.

Lastly, as to the development of measures, both documents require the economies or parties to adopt measures which are based on objective and transparent criteria. However, for greater certainty, the USMCA articulates the criteria by saying that they may include competence or ability to supply a service, or potential health or environmental impacts of an authorization. Compared to the USMCA which doesn't mention its relationship to WTO GATS, the APEC Principles require the aforementioned measures to be consistent with Article VI of the WTO GATS.

2. Sharing Chile's Practices When Implementing Domestic Regulation Principles and/or Provisions (Speaker: Oscar Douglas, Undersecretariat of International Economic Affairs of Chile)

Outreaching its citizens is one of the most important elements that a government should take into account in introducing domestic regulations. The effort to increase transparency in rulemaking process is crucial not only to prevent unnecessary barriers to trade but also to provide clarity to the suppliers, to improve compliance, and to reduce unpredictability. Against this backdrop, the APEC Principles give guidance to the member economies under the Section D. Transparency. In particular, the various endeavors of the Chilean government provide us with valuable good practices in implementing the Article 15 of the Principles, which requires the economies to guarantee the opportunity to comment to the regulations and provide relevant information to the citizens before entry into force.

Chile has made its efforts to accommodate various opinions and inputs to the regulatory measures that it plans to implement. These efforts divide broadly into 5 areas; informative meetings with the civil society, official communications issued by the Ministry of Foreign Affairs, participation in several cross-ministry round tables, transparency law and publicity of all public acts, and periodical meeting with Point of Contact for International Affairs of each Ministry.

i. Informative Meetings with the Civil Society

Every time Chile negotiates a commercial agreement, it invites all interested people and stakeholders to open meetings, in order to explain the scope and main provisions discussed in the negotiations, and the objectives pursued by Chile. Even though there are no special meetings regarding domestic regulations, every interested person may request a meeting with negotiators, in order to raise their concerns or get acquainted with the specific disciplines.

ii. Official Communications Issued by the Ministry of Foreign Affairs

When negotiating services agreements, the Undersecretary of International Economic Affairs sends an official communication to all agencies with horizontal or sector-specific competences on services. These communications invites them to designate a point of contact to which the government can address all the concerns that may arise throughout the negotiations. After completing the negotiations, the Undersecretary of International Economic Affairs communicates the results of those negotiations to the same point of the contact in order for them to consider the achieved results.

iii. Participation in Several Cross-ministry Round-tables (examples)

- **Committee for Services Exports**

Once a month, the Undersecretary of International Economic Affairs participates in a meeting coordinated by the Ministry of Finance among all agencies with competences on services and representatives of the private sector, with the sole purpose to discuss ways to increase Chilean services exports. Among those meetings, the Undersecretary informs the Committee of the negotiations being carried out, as well as the results of the negotiations that have been completed. Presentations have been made regarding all implications of all services disciplines, including domestic regulations.

- **Round-tables for the Negotiation of the Mutual Recognition Agreements**

The Undersecretary of International Economic Affairs participates in meetings coordinated by the Ministry of Education for the definition of the policies regarding the negotiations of

the mutual recognition agreements.

- **Ad-hoc Round-tables when Regulations on these Issues are being Evaluated or have been Presented**

The Undersecretary of International Economic Affairs participates in meetings coordinated by the Ministry of Education for the definition of policies regarding the negotiation of mutual recognition agreements. Domestic regulations are important in this context, since licensing procedures are specifically important in the case of professional services.

iv. Transparency Law and Publicity of all Public Acts

According to Law No.20.285, Chile recognizes every person's right to access to public information. This right works as a ground for allowing each person to request and obtain public information, which is deemed as any information possessed by public entities. This law entered into force in 2009. Such guarantee is important in the case of domestic regulations and transparency as all requirements and conditions must be published in advance. It is also crucial in terms of the fact that every person who has participated in a licensing procedure may request information regarding its current status.

v. Periodical Meetings with Point of Contact for International Affairs of each Ministry

The Undersecretary of International Economic Affairs often holds meetings with other agencies, particularly with international points of contacts, where the undersecretary explains and discusses all implications of the disciplines contained in services agreements as well as in other instruments such as the APEC Principles.

vi. Obstacles regarding APEC Domestic Regulations Principles

There are several obstacles that the Chilean government has faced in the rule-making process. Firstly, although it is essential to accommodate the inputs from other relevant agencies into the negotiating process, it is difficult to engage them during the negotiations. Secondly, identifying measures that may affect the standards being negotiated by the Chilean government is also difficult. Lastly, it is worth pointing out that the timing is crucial. It is much easier to intervene while an application procedure is being created than to intervene once the procedure has been created.

3. Pathway for Domestic Services Reform-Australia's Example (Speaker: John Donnelly, DFAT of Australia)

For Australia, services account for three quarters of its economy and provide more than four out of five jobs in its domestic economy. However, most Australian services are

predominately oriented towards the domestic market and make up a much smaller proportion of Australia's exports. This presents a huge opportunity. In this regard, Australia shared the details of its recent efforts to boost its services competitiveness in terms of both a cross-cutting (horizontal) and sector specific (vertical) issue.

The Australian government has commissioned two studies, *Barriers to Growth in Services Exports* (2015, conducted by the Australian Productivity Commission) and *Australian Services Trade in the Global Economy* (2018, conducted by the OECD).

- The former focused on the education, financial services, health services, information technology, professional services and tourism sectors – one of its recommendations led to establishing a **Professional Services Mutual Recognition Unit (MRU)** in the Department of Foreign Affairs and Trade in 2016.
- The latter highlighted areas of opportunity and the importance of strategic domestic reforms to boost Australia's services trade competitiveness – and led to the development of a **Services Exports Action Plan (SEAP)** in 2019.

i. **Cross-cutting Pillars**

Based on the OECD study, the Australian government developed an industry-led Services Exports Action Plan (SEAP), which focuses on three cross-cutting pillars:

- Address domestic regulatory complexity (pillar 1): Domestic policy decisions have real implications for the competitiveness of Australian services exporters. Reducing barriers at home should be a priority.
- Make progress on barriers overseas (pillar 2): Government should work with industry to overcome behind-the-border and regulatory barriers in important markets and promote Australian regulatory practices.
- Support services firms as they internationalize (pillar 3): Services exporters face different challenges to goods exporters in overseas markets, so tailored government assistance is warranted.

In particular, for pillar 1 on domestic reform, specific actions are aimed at the following objectives:

- Ensuring trade and investment issues are considered in policy-making
- Developing a program of domestic regulatory reform
- Working towards domestic regulation of professions in Australia

- Improving the quality of data and statistics on services exports
- Making it easier for services firms to access international talent
- Ensuring tax policy and advice support other efforts to drive financial services exports
- Reviewing Australia’s prudential and licensing capital requirements for financial services exporters.

ii. Sector-specific deep dive

The Australian government is focused on working with industry to identify steps that can support exports in key services sectors where there is untapped potential for the Australian economy. One area is mutual recognition and harmonization across APEC, which aims to reduce barriers to mobility and boost professional service exports throughout the region. The work of the MRU, established in 2016, is an example.

The MRU provides assistance to Australian professional associations by working with domestic regulators in target economies. Its purpose is to secure international recognition of Australian qualifications and licensing as well as recognition of overseas qualifications. In a recent APEC project on ‘Improving Professional Licensure²’, Australia identified key requirements for qualifications recognition and licensing across five economies (Chile, Peru, Malaysia, Thailand and Australia) in the fields of architecture and engineering. Furthermore, Australia as APEC champion for mutual recognition is leading further work in this area as part of the final push for achieving the Bogor Goals.

4. The Survey on Domestic Regulations in APEC Concerning Online Shopping Platform Services Providers – Chinese Taipei (Speaker: Dr. Roy Chun Lee, Taiwan WTO and RTA Center, Chung Hua Institution for Economic Research)

i. Background

In order to better understand the actual practices of APEC economies in specific sectors and to apply the APEC Non-binding Principles for Domestic Regulation of the Services Sector, Chinese Taipei conducted a survey on the online shopping platform services. The survey aimed to study four categories of information covered in the APEC Principles, namely, a) licensing requirements and procedures, b) qualification requirements and procedures, c) transparency, d) business names. For the purpose of the survey, the online shopping

² Improving Professional Licensure: Member Economy Case Studies and Workshops (HRD 09 2018S)

platform services referred to the provisions of internet-based platform services (e.g. website) for wholesale and retail products and services mainly by third parties. In most cases, the service operators charge service fees based on transactions. The survey has been carried out from May 2019 to 22nd July 2019 and a total of 17 economies responded to the questionnaire.

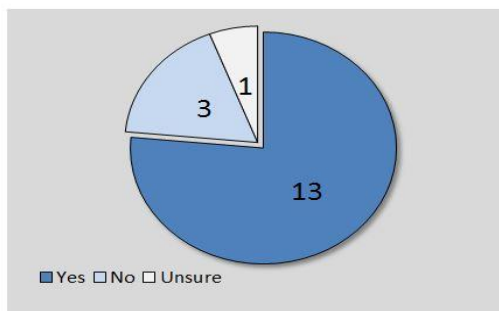
ii. Key results

For cross-border, local presence, and prior authorization, most APEC members surveyed (14/17; 82%) allow services to be provided in the form of cross-border supply (e.g. without having a local presence). Only 3 economies require prior authorization. All economies which require local presence also require authorization.

Figure 6 Cross-border supply & Authorization

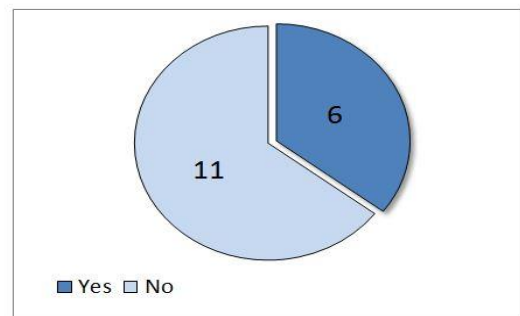
Question 1.1 Cross-border supply only

Are foreign online shopping platform services allowed to be provided in the form of cross-border supply (i.e., without having a local presence)?



Question 1.2 Authorization requirement

Is a foreign shopping platform service provider required to obtain authorization before providing services?



Six economies surveyed answered that they require some types of business and/or tax registration to provide services, however these requirements are not necessary as pre-conditions. Also, only one economy reported that it is requiring a condition of hiring qualified professionals for operating an online shopping platform and it has a requirement for recognition of a “qualified professional” as well. Lastly, all economies subject to registration and/or IPR regulations, allow the use of business names ordinarily used in the jurisdiction of other APEC economies.

From the survey, many consistencies in the actual practices of the APEC economies with the APEC Principles could be found. Even though there is a limitation in the number of the economies that answered the survey, all 5 economies are making information publicly available and accepting authenticated copies. They also have tracking mechanisms, offer reasons of denial, and allow re-submission and fees information. 4 out of 5 economies provide prompt notifications and 3 out of 5 operate single window which allows the applicants to contact or engage with a single authority to complete application processes.

Finally, 14 out of 17 economies offer opportunity for public comments.

iii. Implications

One of the key findings of the survey is that the APEC Principles serve as a good benchmark for the member economies to understand the convergence and divergence in the regulatory regimes based on e-commerce across the APEC region as well as providing the basis for information and experience sharing. Also, according to the collected responses, most APEC economies' practices are consistent with the APEC Principles. It is recommended to consider applying the Principles to other sectors that are of interest to APEC members.

VI. Section 4: Policy Recommendations

The purpose of this workshop was to identify useful ways to improve the capacity of the member economies in terms of the actual application of the APEC Principles. Considering it, the following policy recommendations from the above lessons can be drawn.

1. Set criteria to apply for systematic program reviews on regulations

According to the OECD's efforts to find out better ways to implement regulatory policies, to acquire clearer pictures on the current status of its regulatory environment, each economy should take it into account to promote evidence-based policy by systematically collecting evidence, monitoring and evaluation results of regulation. In particular, quantifying costs and benefits of the regulations is essential to systematically gather and process key evidences on the current regulatory status. Considering that even the OECD members are showing rather insufficient performance in quantifying the benefits of the regulations compared to the costs, it is recommendable for the APEC members to set criteria for systematic program reviews to include both costs and benefits of ongoing regulations to gain enough evidences. This work will help to identify limitations of current legal system which need to be addressed.

2. Establish an online platform for incorporating ex ante and ex post consultations

As the OECD pointed out, it is essential to enhance accessibility to the consultation cases of economies in order to acquire evidences for evidence-based policy. In this regard, it is recommended to establish online platforms, such as a website, for member economies to share their experiences. In addition, as we can see from the Chilean government's experience, it is hard to identify measures which might have impact on negotiation process on the regulations. In order to increase efficiency of the negotiations, it is important to minimize the possibility of letting negotiations being stuck by the unforeseen aspects of measures. In this point, by sharing the cases and consultations, the member economies

could empirically analyze them so as to find out and deal with probable measures that could become obstacles to their negotiations. This would help them to increase efficiency in their negotiating process.

3. Hold informative meetings for interested people and stakeholders in services sector

As being suggested from the presentation of the Chilean government, informative meetings for the stakeholders of commercial agreements are helpful for enhancing the transparency. In order to help them better understand the scope, objectives and expected results of the negotiations, it is advisable to invite them to the meetings to address the issues concerned. Moreover, it is also recommendable to offer them certain rights to request for holding the meetings to the competent entities. This would increase the responsiveness of the entities to the needs from the beneficiaries. In addition, it would help promoting sharing information and finding out the unexpected needs and concerns.

4. Accumulate practices to introduce digital means in applying the APEC Principles

One outstanding difference that can be found in the APEC Principles compared to the WTO JSI Reference Paper and the USMCA is that the former doesn't require the members to utilize digital means when they implement its provisions. For instance, when it comes to the means of submission in the examination process to obtain authorization, while the Reference Paper encourages the members to accept requests for examinations in electronic format and consider use of electronic means in other aspects of examination process, the APEC Principles doesn't have such requirement. Similarly, in transparency area, the APEC Principles only require the member economies to ensure publishing their laws, regulations, procedures, and administrative rulings concerning supply of a service in written form while the USMCA explicitly requires each party to make those measures available online.

In fact, the APEC Principles also have an endeavoring provision to accept applications for authorization in electronic format. However, noting that one of the reasons that APEC economies adopted the Principles is to promote efficiency in necessary procedures, it is worth considering for the economies to proactively introduce digital means in various steps of the process as much as possible. It would also be helpful to share each member's best practices and accumulate those efforts in the APEC level as appropriate.

5. Identify areas of cooperating among the like-minded members to promote regulatory convergence

As the OECD indicated, we should pay attention to the undue costs of the 'regulatory' heterogeneity. The efforts of the Australian government to develop policy programs in

mutual recognition area, which promote the regulatory convergence between Australia and target economies, are referable. In particular, it is worth noting that by linking domestic stakeholders with domestic regulators in the target economies, the MRU provides tangible and substantive assistance to whom in needs. This approach of cooperating with like-minded economies in certain areas can serve as a practical move to expand the scope of regulatory convergence. It is also important to take account that the actual progress in international cooperation is not able to be made without substantive efforts of the government to proactively identify specific areas which need policy assistance to narrow gaps between the system itself and the reality that stakeholders face.

Annex – Workshop Program

Program

- **Title:** Workshop for Sharing Best Practices to Improve Application of the APEC Non-binding Principles for Domestic Regulation of the Services Sector
- **Time:** August 19, 2019 from 9:30 to 17:30
- **Venue:** Puerto Varas, Chile, in the margin of GOS2

SESSION	
9:30 – 10:00	Welcome and Opening Remarks
Session 1 10:00 – 11:00	<p>Presentation about the APEC Non-Binding Principles for Domestic Regulation of the Services Sector</p> <p>In order to ensure a good regulatory environment for the services sector, APEC member economies adopted the APEC Non-Binding Principles for Domestic Regulation of the Services Sector (the APEC DR Principles) in November 2018. Korea will briefly introduce the background and key points of the APEC DR Principles and go over the strengths and weaknesses.</p> <p><u>Speaker</u> Dr Jong Duk Kim (Korea Institute for International Economic Policy)</p>
11:00 – 11:20	Coffee/Tea Break
Session 2 11:20 – 12:30	<p>Views of Other International Organizations</p> <p>Speaker from the WTO Secretariat will talk about what is being discussed within the WTO regarding Domestic Regulation in the Services Sector. In addition, speaker from the OECD Secretariat will go over the discussions at the OECD on regulatory reform such as the APEC-OECD Integrated Checklist on Regulatory Reform and the OECD Principles of Good Regulation. The speakers of the two organizations will also share their assessment on the APEC DR Principles and suggest ways to enhance the implementation of the principles.</p> <p><u>Speakers</u> Mr Markus Jelitto, Counsellor with the Trade in Services Division at the WTO Ms Celine Kauffmann, Deputy Head of OECD Regulatory Policy Division</p>

12:30 – 14:00	Lunch
Session 3 14:00 – 16:00	<p>Sharing Best Practices: Sector Specific and Cross-cutting Issues</p> <p>In this session, regulators and relevant officials from member economies will present best practices in implementing the APEC DR Principles in order to find effective ways to use them for regulatory reform. They will also identify possible obstacles to implementing the principles and share the lessons learned. This session will be divided into two parts: one focusing on cross-cutting issues in regulatory practices and the other on issues in specific service sectors.</p> <p><u>Speakers</u></p> <p>Mr Kenneth Schagrin, Deputy Assistant of USTR for Services</p> <p>Mr Oscar Douglas, expert of the Undersecretariat of International Economic Affairs of Chile</p> <p>Mr John Donnelly, Director of Services International Engagement, in DFAT’s Investment and Economic Division of Australia</p> <p>Dr Roy Chun LEE, Deputy Executive Director of Taiwan WTO and RTA Center, Chung Hua Institution for Economic Research</p> <p>Questions & Answers</p>
16:00 – 16:20	Coffee/Tea Break
Session 4 16:20 – 17:20	<p>Discussion</p> <p>In the last session, participants will discuss ways to harmonize the APEC DR Principles with the right of member economies to regulate and make suggestions to overcome some of the challenges in implementing the APEC DR Principles. Ways to improve the principles for better regulation will also be a topic of discussion.</p> <p><u>Moderator</u></p> <p>Dr Jong Duk Kim(Korea Institute for International Economic Policy)</p> <p><u>Panelists</u></p> <p>Welby Leaman(Walmart)</p> <p>Speakers in Session 2 and 3</p>
7:20 – 17:30	Closing