



# TRANSLATING SERVICES DOMESTIC REGULATION INITIATIVES INTO PRACTICE

## Benefits and Experiences Implementing Services Domestic Regulation Disciplines

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## LIST OF ACRONYMS

APEC	Asia-Pacific Economic Cooperation
APEC Index	APEC Services Trade Restrictiveness Index
APEC NBPs	APEC Non-Binding Principles for Domestic Regulation of the Services Sector
ASCR	APEC Services Competitiveness Roadmap
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
GRP	Good Regulatory Practices
JOIN	Online Platform to Expedite the Process of Public Participation
MPC	Malaysia Productivity Corporation
OECD	Organization for Economic Cooperation and Development
PNG	Papua New Guinea
REP law	Law on Extended Responsibility of the Producer
STRI	Services Trade Restrictiveness Index (OECD)
US-SEGA	US-Support for Economic Growth in Asia
USAID	United States Agency for International Development
WTO	World Trade Organization
WTO JSI	WTO Joint Statement Initiative on Services Domestic Regulation

## INTRODUCTION

As global trade in services continues to expand and the world enters a post-COVID-19 pandemic stage characterized by an accelerated transition from in-person and analog business models into a digitalized economy, the topic of regulatory good practices in the services sector has become ever more relevant. The Asia-Pacific Economic Cooperation (APEC) has been a leader in enhancing services domestic regulation disciplines, committing under the APEC Services Competitiveness Roadmap (ASCR, 2016–2025) to ensure an open and predictable environment for access to services markets by progressively reducing restrictions to services trade and investment.<sup>i</sup> This target is supported in part by APEC’s commitment to develop a set of good practice principles on domestic regulations in the services sector.<sup>ii</sup> As such, in 2018, APEC endorsed the *APEC Non-Binding Principles for Domestic Regulation of the Services Sector* (hereinafter “APEC NBPs”),<sup>iii</sup> to promote sound domestic regulatory practices for the services sector. Thereafter, members of the World Trade Organization (WTO)—including 16 APEC economies at time of writing—negotiated the *Reference Paper on Services Domestic Regulation* in a process referred to as the *Joint Statement Initiative on Services Domestic Regulation* (hereinafter “WTO JSI”).<sup>iv</sup>

APEC’s prioritization of improved services domestic regulation practices was bolstered by the 2021 ASCR Mid-Term Review, which included a recommendation to respond to the economic implications of COVID-19 by furthering de jure and de facto market opening and dealing with regulatory heterogeneity.<sup>v</sup> In support of this recommendation, APEC Ministers welcomed additional ASCR targets, initiatives, and priority activities, including striving towards full APEC participation in the WTO JSI, and pursuing services regulation and policy reform consistent with the APEC NBPs as a central focus of APEC’s structural reform agenda.

The APEC NBPs and WTO JSI, although institutionally different, share the common challenge of implementation following their adoption. This is the main topic covered by the present brief—i.e., implementation experiences in APEC member economies related to the principles and rules contained in both the APEC NBPs and the WTO JSI.

First, the brief introduces readers to the common elements shared by the APEC NBPs and the WTO JSI, highlighting how economies’ services domestic regulation reform and implementation efforts often work towards or satisfy the disciplines of both initiatives. Next, the brief moves on to an analysis of implementation challenges and actions by governmental agencies related to services domestic regulation in five APEC economies—Thailand; Malaysia; Chinese Taipei; Papua New Guinea; and Chile—based on the experiences shared during a series of consultations and information gathering exercises conducted in the second half of 2022. Finally, the brief presents a set of conclusions and recommendations reflecting the common underlying theme emerging from the analysis of these cases: the importance of comprehensive transparency frameworks encompassing the entire rulemaking process from design to implementation and review.

This brief builds upon previous APEC Group on Services (GOS) initiatives championed by the United States to help prepare APEC economies to reduce “behind the border” barriers and implement good regulatory practices in alignment with the APEC NBPs and other services domestic regulation disciplines. The January 2020 US-SEGA *Study on APEC’s Non-binding Principles for Domestic Regulation of the Services Sector: Transparency and Predictability in Rulemaking*<sup>vii</sup> and associated workshop examined the

importance of transparency and predictability in rulemaking for services sectors and emphasized the process of developing transparent domestic regulations. The January 2021 US-SEGA Study on *Next Generation Practices for Services Authorization in the Asia-Pacific Region*<sup>viii</sup> and associated workshop subsequently highlighted case studies to develop APEC members' awareness of innovative, effective, and emerging regulatory practices related to services authorization in the region. Most recently, and as mentioned above, the August 2021 US-SEGA Study on *APEC's Non-Binding Principles for Domestic Regulation of the Services Sector: A Focus on Domestic Regulations in Trade Agreements*<sup>ix</sup> and associated workshop examined how APEC economies are moving towards greater convergence in domestic regulation rulemaking, demonstrated how APEC's non-binding nature is influencing negotiation processes and domestic regulatory reform within and beyond the Asia-Pacific region, and suggested where APEC economies could focus future reform and implementation efforts.

## THE APEC NBPs AND THE WTO JSI: SIMILARITIES, DIFFERENCES, AND IMPLEMENTATION CHALLENGES

The APEC NBPs and the WTO JSI are key components of a multilateral governance system for domestic regulation in services. They provide a comprehensive set of rules and principles designed to promote good regulatory practices by governments and delegated agencies, consistent with principles of non-discrimination in international trade, such as National Treatment and Most Favored Nation treatment. Together, they cover a universe of economies representing over 90 percent of global trade in services.<sup>x</sup>

As shown in the August 2021 US-SEGA Study, the APEC NBPs and the WTO JSI show high levels of convergence in several substantive areas. Indeed, out of the 19 topic-specific paragraphs covered by the APEC NBPs, the WTO JSI addresses 18, including all topics under principles (B) Administration of Measures; (C) Independence; (D) Transparency; (E) Technical Standards; and (F) Development of Measures. Furthermore, since the APEC NBPs preceded the outcomes delivered at the WTO JSI, the significant similarities between them indicate that a pollination effect has taken place from APEC to the broader multilateral community—reaffirming APEC’s leading role in global trade policy discussions.

Likewise, the most significant differences between the two relate to (i) scope (the APEC NBPs are broader than the WTO JSI); (ii) the existence of a dispute settlement mechanism (WTO JSI is subject to the Dispute Settlement Understanding, while the APEC NBPs are not, due to their non-binding nature); and (iii) the built-in level of flexibility of the disciplines, reflected through the use of different terminology (due to their nonbinding nature, the APEC NBPs are drafted using language that implies a greater level of flexibility than that used in the WTO JSI). Nevertheless, the differences relate more to the different institutional natures of APEC and the WTO, rather than to the content of the principles and rules contained therein, which in fact, are quite similar.

Therefore, considering the high level of substantive convergence between the APEC NBPs and the WTO JSI, it should be no surprise that the expected implementation challenges should also be similar. Indeed, when looking at the obligations under the paragraphs on Administration of Measures; Independence; Transparency; Technical Standard; and Development of Measures in both the APEC NBPs and the WTO JSI, it is clear that they may require some type of mechanism or institutional arrangement that turns the principle/obligation into a concrete measure. For instance, under the Transparency disciplines, economies are required to publish all measures, allow for comments prior to the entry into force of a new measure, and establish one or more enquiry points—all of which require the implementation of some type of rulemaking platform. Likewise, under the disciplines on Administration of Measures (which concern the terms and conditions under which an application for a license or authorization to supply a service is submitted to the competent authority), economies are expected to set up requirements and procedures that are transparent and reasonable, so that they can achieve the intended regulatory objective without creating a barrier to trade in services. Here, as this brief will show, the opportunities for technical cooperation between APEC economies are significant.

As discussed later, regardless of their level of development, APEC economies tend to focus their implementation efforts in the area of transparency by setting up digital platforms (allowing for greater publication, comments, and access to enquiry points) which, in time, allow for the development and administration of the measures to be in accordance with the criteria under their scope. For instance, when an economy has set up a public consultation process prior to the entry into force of a measure, in

essence, it is allowing valuable stakeholder input to inform the final content and shape of a regulation. Hence, introducing transparency systems is not just incidental to the substantive elements of a measure; rather, it can determine the degree with which a given regulation complies with the substantive criteria set up in a principle or rule, such as those under the APEC NBPs or the WTO JSI.

Therefore, it is logical for economies to focus their implementation efforts on transparency systems. Indeed, these systems can become catalyzers of good regulatory practice allowing for quicker and more effective enhancement of regulatory environments, and thus, facilitating the conduct of trade in services. In other words, the introduction of transparency frameworks substantially reduces the likelihood of an intended regulation causing an unreasonable or unnecessary burden on trade in services.

## METHODOLOGICAL APPROACH TO CONSULTATIONS WITH APEC MEMBER ECONOMIES

This section presents five practical cases of implementation of domestic regulatory reform that are consistent with the disciplines contained in the APEC NBP and the WTO JSI. In assessing options for case studies, the researchers sought to capture the diversity of APEC economy experiences in implementing the disciplines, as well as diversity in participation in international rulemaking initiatives on services domestic regulation—specifically in selecting economies that are and are not party to the WTO JSI at time of writing. Some of the selected economies display a high level of institutional development leading to robust, successful implementation of services domestic regulatory reforms and procedures. Others are in earlier stages of the implementation process and provide important reference points about the potential obstacles faced when seeking to implement the disciplines, strategies that have or have not been successful in circumventing those obstacles, and potential areas for future capacity building support.

The diversity criteria have been adopted to illustrate that, despite the obvious differences, economies tend to encounter most of their implementation challenges in areas related to transparency systems and efforts that require actions by officials unfamiliar with international rulemaking developments. These are not the only challenges faced by APEC economies, but they constitute a clear pattern that repeats, across the analyzed economies, although with different degrees of intensity and depth.

The applied methodology resulted in the selection of five APEC economies of wide-ranging economic and institutional background: Thailand; Malaysia; Chinese Taipei; Papua New Guinea; and Chile. The practical cases presented in this section correspond to self-selected experiences of the five economies during economy-specific consultations in interview format as well as other information gathering exercises. Representatives from all five economies provided inputs around the following questions:

- What are the main challenges in the implementation of services regulatory reform?
- What are the specific actions taken by your government to address those challenges?
- Please provide at least one example with the greatest possible detail.
- How does your government consult and/or interact with private stakeholders?

This brief reflects the information provided by the five economies during those consultations (which, in some cases, went beyond the initial scope of the questions above), as well as the additional data collected during the APEC Workshop on Translating Services Domestic Regulation Initiatives into Practice: Implementation of Domestic Regulation Disciplines (see **Annex A: Workshop Agenda**), held in Chiang Mai, Thailand on the margins of the APEC Third Senior Officials' Meeting (SOM 3).

Finally, this section makes some general observations on the common elements found across the five selected economies and their implementation experiences. This brief also reinforces the premise that most implementation efforts fall within the scope of “procedural transparency” as described in the January 2020 and August 2021 US-SEGA Studies.

## CASE STUDY ON THAILAND

Overall, Thailand is an open economy with a strong commitment towards international trade governance. Thailand represents a good example of a prosperous developing economy with well-established and effective regulatory environments. Thailand has been an active participant within the WTO JSI.

Given Thailand's level of regulatory development, participation and implementation of WTO JSI commitments has not required any new domestic legislation. Furthermore, Thailand seems to be perfectly comfortable with the implementation APEC NBPs and WTO JSI, as they add another layer of regulatory certainty to the overall domestic environment. Indeed, Thailand's domestic regulation-related regulatory framework can be described through three institutional pillars.

The first pillar is a broad transparency principle established by the Official Information Act of 1997,<sup>xi</sup> which seeks to ensure citizens access to public (governmental) information. Through the act, individual citizens and institutions, including businesses, can request access to information relevant to their interests, such as regulatory frameworks affecting the supply of trade in services.

A second and more innovative pillar is the enforcement of the Licensing Facilitation Act of 2015.<sup>xii</sup> This instrument is designed to simplify and facilitate doing business in Thailand by requiring public agencies to produce "the licensing manual for the public" for interested parties to access the specific information on matters such as licensing, qualifications, applicable timeframes, and administrative fees, under the purview of each specific agency. For instance, the Trademark Office must produce the licensing manual for the public for the granting of a trademark license under the Trademark Act. Furthermore, the act requires relevant agencies to update their published manuals to reflect the current regulatory requirements.

The third pillar concerns the implementation of electronic government (e-government) services, in particular, the introduction of the Biz Portal central portal<sup>xiii</sup> covering 18 different sub-sites, each once associated to a specific agency. In other words, the central portal is a digital umbrella under which private users can find any of the relevant 18 agency-specific portals containing all necessary information, including the licensing manual for the public described above. For instance, the central portal allows the user to obtain information relating to several services sectors such as retail, financial services, education, and health, indicating the relevant agencies and procedures. In addition, the information displayed includes access to digital payments, and the recognition of e-signature and other authentication methods. All of these topics have been addressed under the WTO JSI and the APEC NBPs.

Overall, Thailand experienced a successful transition to digital services platforms, accelerated by the COVID-19 pandemic, but with effects well beyond. Indeed, officials anecdotally indicated that digitalization has had an impact on women's ability to join the labor market and participate in the economy resulting from the greater access to and efficiency of services.

Regarding challenges, interagency coordination remains an obstacle for the full implementation of trade-facilitating regulatory reform. For instance, despite the existence of the three aforementioned pillars, oftentimes public agencies lag on implementation as the central government does not always have enough personnel and resources to effectively seek compliance, and hence, agencies tend to follow a business-as-usual approach rather than embracing a new way of doing things. This has been a recurrent

reality in the implementation of the licensing manual for the public under the Licensing Facilitation Act. Likewise, because of insufficient or non-existent interagency coordination, transparency efforts reflected in the Licensing Facilitation Act and the central portal are harder to implement. For instance, failing to prepare or update the licensing manual for the public leads to regulatory environment opacity, not in the form of unreasonable, partial, or arbitrary regulations, but in the relatively difficult access to sector and activity-specific regulations (e.g., licensing requirements and procedures, qualification requirements and procedures, technical standards, applicable fees and timeframes, and application review processes). Indeed, since all of the information can be found under the central portal, transparency is not only a matter of individual agency efforts but also of their capacity to coordinate with each other, so that a user seeking detailed regulatory information on retail services (licensing and permits) can retrieve all relevant initial data from a single platform. Finally, the central portal is currently only available in the Thai language, limiting its usefulness to the rest of the APEC business community. However, the Thai government is in the process of developing the central portal to have an English language version, which would add accessibility to the initiative. This is a significant pending task. In addition, the Thai government has been particularly active in supporting the consistency between domestic regulations and international commitments. Relevant agencies also maintain regular dialogues and consultations on regulations and measures that may interact with Thailand's international commitments.

Regarding interaction between public agencies and the private sector, Thailand appears to have built a highly collaborative relationship with local industry. Indeed, there are a variety of instances in which public and private sectors come together and consult with each other: for example, through direct enquiries directed to a specific agency using the central platform on matters relating to the Licensing Facilitation Act, or through regular or ad hoc dialog between central and local governments and industry associations. This is usually the case during the comment period within the rulemaking process, as mandated by the Thai constitution.

In conclusion, Thailand's various implementation efforts are consistent with the principles and disciplines for good regulatory practice sought under the WTO JSI and the APEC NBPs.

## CASE STUDY ON MALAYSIA

In general terms, Malaysia is a trade-oriented economy with a long-standing history of regional and multilateral rulemaking engagement. Malaysia is a Party to the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) communities, although the latter has not yet been ratified domestically. Despite its active role in international trade, at time of writing, Malaysia is not a participant in the WTO JSI. According to Malaysian officials, the matter is under discussion amongst trade policy officials.

Given the Malaysian governmental structure, licensing requirements and procedures, qualifications requirements and procedures, and technical standards often exist at both the central and local levels. Indeed, although laws and regulations are in place and published, their implementation is not always in harmony with the high standards agreed in international agreements. For instance, according to Malaysian officials, CPTPP provisions on domestic regulations and the chapter on regulatory coherence are perceived as hard to implement, because they require a level of cross-sectoral consistency and coordination that is not always present in the Malaysian domestic regulatory framework.

Furthermore, Malaysian trade related agencies encounter difficulties in explaining to local regulators the implications of domestic regulation standards, particularly on transparency. However, this should not be interpreted as a lack of willingness or commitment by competent authorities; rather, it reflects the ongoing challenge of interagency coordination. According to representatives from Malaysia, interagency cooperation and coordination is a key component for the successful implementation of sound regulatory reform consistent with international rules and principles, such as those contained in the WTO JSI and the APEC NBP—a perspective also reflected in other cases studies in this brief.

In order to address the coordination challenge, Malaysia performs regular informal consultations within government, either with individual agencies or with groups of trade, activity, or sector-related agencies. However, consultations between government agencies and industry are less frequent and could be a focus area for future implementation efforts.

Malaysian representatives highlighted the work of the Malaysia Productivity Corporation (MPC) as a vehicle for promoting and implementing good regulatory practices consistent with the APEC NBPs. The MPC is a public autonomous institution originally born from a collaboration between the Malaysian government and the United Nations. Although the legal mandate of the MPC goes far beyond the services regulatory space (Section 7 of the Malaysia Productivity Cooperation Act Objectives<sup>xiv</sup>), the MPC's Guidelines for Good Regulatory Practices (GRP) have been a key instrument for the implementation of domestic regulations principles and commitments in Malaysia.

Indeed, the MPC promotes the implementation of the guidelines primarily within government agencies so they can streamline their processes, including those for licensing and authorizations. Likewise, the MPC promotes the compliance with the guidelines within the broader community of stakeholders, such as professional associations and businesses operating in Malaysia. Work under the guidelines includes a regulatory impact analysis of regulations across economic sectors, as well as a logical framework for developing new regulations and reviewing existing measures. These institutional arrangements move in a direction consistent with the findings contained in a prior examination under the January 2020 US-SEGA Study that included a review of “best practices.”<sup>xv</sup> In this context, the work of the Malaysia Productivity

Corporation could well fall within the scope of “transparency and predictability,” as presented under the prior study.

It should be noted that the Guidelines for Good Regulatory Practices have not yet been adopted by all relevant public agencies. This might warrant attention as a focus area for future efforts, including direct capacity building support, to strengthen implementation of enhanced services domestic regulation disciplines.

Finally, despite the framework provided by the Guidelines for Good Regulatory Practices and the regulatory impact analysis, at time of writing, there seems to be no concrete economic data illustrating the impact of implementing specific services sector regulatory reforms that fall within the scope of the APEC NBPs or the WTO JSI. Future implementation efforts may benefit from decision-making based on the collection, review, and analysis of relevant data.

## CASE STUDY ON CHINESE TAIPEI

Chinese Taipei exhibits high-level standards in the development and implementation of regulations, demonstrating the importance of effective coordination between trade officials and other relevant regulatory government agencies. This includes trade officials explaining why and how international trade negotiations are conducted, as well as how their outcomes may affect their present and future regulatory capacity. Likewise, in this system, trade officials gain greater knowledge about the day-to-day exercise of regulatory capacity and thereby become more aware of the limitations and elements to be considered while conducting international negotiations.

In this regard, in Chinese Taipei representatives' own estimations, neither the establishment of the agreed APEC NBPs nor the WTO JSI had any impact in the overall ability of regulators to operate within their policy space due to the pre-existing practices in Chinese Taipei's system or has required any legal changes or institutional adaptations.

Nevertheless, Chinese Taipei officials acknowledged that the enhancement of regulatory environments is perceived as a necessary permanent effort, rather than a time-limited goal. Accordingly, and given its level of institutional development, Chinese Taipei has undertaken an ambitious internal benchmarking exercise using the Organization for Economic Co-operation and Development (OECD) Services Trade Restrictiveness Index (STRI) indicators related to services domestic regulation. This benchmarking exercise allows officials to better understand the impact of Chinese Taipei's regulatory positions, enabling continuous updates and enhancements to its regulatory environment. Likewise, Chinese Taipei welcomed the collective work under the APEC Services Trade Restrictiveness Index (APEC Index), which provides an equivalent benchmarking opportunity for all APEC member economies.

Consistent with other case studies in this brief, Chinese Taipei also identified a goal to improve the transparency standards for the entire rulemaking process from conception to implementation and review. To achieve this goal, Chinese Taipei's strategy includes the adoption of policy approaches that are inclusive and seek widened participation by relevant stakeholders, including private individuals. For example, Chinese Taipei has implemented its Online Platform to Expedite the Process of Public Participation (JOIN).<sup>xvi</sup> This comprehensive transparency framework allows for multistakeholder consultation and participation in all stages of the regulatory process (proposal, drafting consultation, review, and implementation). Through JOIN, Chinese Taipei works to enhance the quality of individual regulations, which in turn, has a positive impact in the overall quality of the regulatory environment.

The JOIN platform is not a trade-oriented instrument *per se*; rather, it refers to a more general process of public participation. However, the JOIN platform can also be specifically used for consultation processes for laws and regulations, including those related to services trade (licensing requirements and procedures, qualifications requirements and procedures, technical standards, and authorizations more generally).

The online consultation process is divided into four stages: proposal, consultation, participatory budgeting, and implementation. Additionally, Chinese Taipei officials maintain regular consultations with the private sector, such as business the local and regional Services Coalitions as well as with individual entities. However, the established mechanism for producing regulations is within the JOIN platform.

Finally, considering the advanced stage of development of Chinese Taipei's domestic regulatory environment, is no surprise that it is well-placed to assist other APEC economies in introducing effective means of implementing regulatory reforms consistent with the APEC NBPs and the WTO JSI.

## CASE STUDY ON PAPUA NEW GUINEA

Papua New Guinea (PNG) is an economy with a developing regulatory environment. In other words, institutional challenges are significant. The local authorities are aware of this situation and enthusiastic about pursuing strategies to circumvent these obstacles. Moreover, at this stage of development, PNG is a perfect candidate for the implementation of sound regulatory systems consistent with the principles reflected in the APEC NBPs and the WTO JSI. Furthermore, PNG represents a collective opportunity for the APEC community to fully deploy the organization's potential through intensive collaboration and assistance. This seems to be a widespread view within the government of PNG.

PNG faces challenges related to transparency, interagency coordination, and a relative scarcity of resources. Indeed, a number of agencies in PNG tend to operate in silos, rather than in coordination with each other. Moreover, sometimes their mandates overlap, causing duplication of efforts or confusion that leads to inaction.

Considering these challenges, PNG has made significant efforts to develop more predictable, transparent, and efficient regulatory frameworks in which agencies dialog and coordinate with each other. Perhaps the most significant event in that direction was the 2019 Regulators Summit coordinated by PNG's Investment Promotion Agency. The event focused on the mining, oil and gas, forestry, and fisheries sectors, all of which look at foreign investment as a catalyst for development. The main objective of the summit was to bring together all relevant agencies and produce outcomes that would serve as a blueprint for the enhancement of the regulatory environments for each of the selected economic sectors.

Indeed, the Regulators Summit produced a report that moves exactly in the direction suggested by the APEC NBPs and the WTO JSI: laying out pathways to avoid overregulation, to actively facilitate trade, to acknowledge the positive impact of streamlined procedures in the ability of small and medium enterprises (SMEs) to develop and grow, and to reflect the importance of interoperability of regulations across sectors. Furthermore, the summit, although primarily focused on reform within the public sector, also highlighted the need to clarify and coordinate efforts between various stakeholders, including local businesses. In this regard, the summit's report recommended establishing a public-private body that would systematically address regulatory challenges in a collaborative fashion. On this particular topic, PNG officials identified APEC as a strong catalyst for domestic reform. Indeed, the report notes that APEC processes such as the APEC NBPs and the APEC Services Competitiveness Roadmap<sup>xvii</sup> have significant influence on PNG decision-making processes for policymaking. At time of writing, the report and the recommendations contained therein have not yet been endorsed by the PNG Cabinet; and PNG officials report that they look forward to pursuing a stream of regulatory reform upon endorsement.

Finally, PNG's regulatory reform efforts extend beyond the outcomes of the summit. For example, PNG has been conducting successful regulatory reform in the telecommunications sector (particularly mobile services), as described in the 2016 APEC Policy Support Unit Report *Case Study on the Role of Services Trade in Global Value Chains: Telecommunications in Papua New Guinea*.<sup>xviii</sup> That report reflects the policy and trade-related value of the deregulation process, and also highlights that further efforts in sectors other than telecommunications are needed to enhance PNG's potential to participate in global value chains. Another example of PNG's ongoing efforts is its launch of a digital transformation policy designed to radically enhance the efficiency of public services through the introduction of new technologies. This policy change is expected to be crystallized through a future digital government law. PNG authorities

believe that the legislation would significantly improve the level of transparency across public agencies, including the processes they administer, such as licensing, the granting of authorizations, and trade-related rulemaking.

## CASE STUDY ON CHILE

Chile is an open economy strongly connected to international markets. Furthermore, trade policy engagement at the multilateral and regional levels is a fundamental component of Chile's overall growth strategy. Chile is a member of the CPTPP (recently ratified by the National Congress), the WTO JSI, and all other Joint Statement Initiatives currently under discussion at the WTO.

In this context, although Chile has not identified any elements of the WTO JSI or the APEC NBPs requiring specific domestic reforms (as a means of implementing international commitments), it has consistently introduced regulatory reforms that are consistent with the rules and principles reflected in the WTO JSI, the APEC NBPs, and the CPTPP chapter on Regulatory Coherence. Some examples include Law No 18.168, General Law on Telecommunications,<sup>xix</sup> and Law No 20.920, Law on Extended Responsibility of the Producer (REP law).<sup>xx</sup>

The General Law on Telecommunications sets the general regulatory framework for applications, licensing requirements, and procedures, and the technical standards for granting operation licenses for all operators (domestic and foreign) in the Chilean telecommunications sector. This law is often described as forward-looking and it has allowed foreign service providers and foreign equity to fully participate in the Chilean market. The core of the regulatory design is an open tender system for the use of spectrums and frequencies and the development and use of physical infrastructure. The central element is the introduction of a transparent rulemaking and licensing-permit granting system, which provides all interested parties with the information needed to understand the regulator's intentions; this, in turn, facilitates competition and price optimization. Ultimately, consumers benefit through competition amongst multiple providers and relatively low services costs.

A second example of successful regulatory reform in Chile is the recently introduced REP law. This piece of domestic regulation was developed under the logic of sustainable development and more specifically, the circular economy. Indeed, its primary objective is the collection and value retention of "residues" that otherwise would end up in a landfill.

The operational impact of the services trade element of the REP law is rooted in the nature of the parties subject to compliance: i.e., the producers or importers of "selected products."<sup>xxi</sup> Since the main importers or producers of the selected products are also retail companies, the REP law acts as a key piece of domestic regulation affecting not only the supply of retail services but also all other services industries connected to the compliance with the REP law, such as residue and waste collection and management (environmental services). Furthermore, determination of which items fall within the selected products category is made via a decree issued by the Ministry of Environment in consultation with interested parties (i.e., producers and importers). The consultation period of 60 days occurs before the decree is issued. During that time, interested parties can make observations and recommendations, all of which must be answered by the regulator (i.e., the Ministry of Environment). Once the decree enters into force, it is effective for 30 months. This process draws a direct link between the REP law and the transparency principles contained in the APEC NBP.

The law also requires importers and producers of selected products to set up "management systems" for compliance with the law to ensure that the residues (of the selected products) are circled back into the economy through recycling or re-use. The management systems are nonprofit organizations set up by the producers and importers with the sole purpose of complying with the REP law. The management

systems enter into contracts with private operators (domestic or foreign-owned) as well as municipal governments to set up residue collection systems and processes for the recycling or re-use of the residues as new products. Through this mechanism, the REP law affects multiple services sectors such retail, environmental, and transport services.

The Chilean case also demonstrates that continuous transparency efforts are an effective means to rapidly enhance regulatory environments. As is seen in the Chilean case, although telecommunications and retail are not always connected, they can be brought together through a shared regulatory thread that advances the goal of transparency by introducing private sector participation and by establishing a regulatory platform that allows for full disclosure and sharing of information.

## GENERAL COMMENTS

**The five studied cases all identify that the main implementation initiatives fall within the area of transparency.** Indeed, the Malaysia Productivity Corporation's Guidelines for Good Regulatory Practices; Chinese Taipei's Online Platform to Expedite the Process of Public Participation (JOIN); Papua New Guinea's 2019 Regulators Summit; Thailand's Official Information Act of 1997, Licensing Facilitation Act of 2015, and Central Portal; and Chile's Law on Extended Responsibility of the Producer built-in consultation process are all measures designed to expand the active role of governments in the implementation of transparent and efficient regulatory systems. Furthermore, these measures often go beyond the strict scope of transparency under the WTO JSI and the APEC NBPs, by adopting a broader understanding of transparency that encompasses the entire lifespan of a regulation from design to implementation and subsequent review. This observation is consistent with the findings presented under the January 2020 and August 2021 US-SEGA Studies.

**Likewise, the different levels of institutional development among the five selected economies are reflected in the type of measures and regulatory reforms adopted by each one of them.** For instance, the speed at which APEC economies transition towards a digitized regulatory space, and the specific type of regulatory reforms introduced to support this transition, vary significantly. Nevertheless, all interviewed economies recognized that the goals are comparable. Indeed, they all seek to adopt measures that make their regulatory environments more transparent, efficient, and predictable.

Turning to another aspect of the picture, the case of Chile shows its deep engagement in international trade and rulemaking. In fact, the Law on Extended Responsibility of the Producer is a regulatory effort tied to Chile's compliance with environmental and transparency standards required by international markets with which Chile maintains trade agreements (e.g., the European Union). Moreover, domestic regulatory reform consistent with international rules and principles such as the WTO JSI and the APEC NBPs comes as a direct consequence of a longstanding trade policy engagement at multilateral and regional levels and of a heavy dependency on the services economy (about 70 percent of growth domestic product according to the Central Bank of Chile).

**The economy representatives interviewed for this brief did not link past, present, or future regulatory reforms to the implementation of specific provisions of the APEC NBPs or the WTO JSI.** Of course, this does not mean that such initiatives may not require specific implementation per se, but it does indicate that individual economies implement regulatory reform primarily as a matter of local interests rather than as a result of a foreign-induced process. Accordingly, there seems to be a natural synchrony between domestic-driven regulatory reform and internationally agreed principles and norms applicable to domestic regulations for the services sector. For instance, Thailand's Licensing Facilitation Act of 2015 is not the result of any trade negotiation or discussion; it is instead a reflection of a domestic policymaking process that happens to be consistent with the rules and principles contained in the WTO JSI and the APEC NBPs.

However, information garnered for the Chile case study noted that introduction of the Law on Extended Responsibility of the Producer grew out of, at least to a significant extent, a compliance requirement with domestic regulation criteria, which can be traced back to regional trade initiatives, such as the Chile-EU Association Agreement, and Chile's membership in the OECD. Of course, the

Chilean case does not, in and of itself, represent a trend, but it does indicate that the complementarity of domestic and foreign-driven regulatory reforms efforts can evolve and expand.

**Another common element to all the measures implemented by the five selected economies is the adoption of new digital technologies.** Indeed, all five have incorporated digital advancements as a means of implementing regulatory reform. Additionally, in the context of the COVID-19 pandemic, many of the procedures related to licensing requirements, qualification requirements, technical standards, and authorizations were uploaded to digital platforms in an effort to maintain economic activity while complying with social distancing rules. Furthermore, the introduction of digital technologies to previously in-person or paper-based procedures has automatically made those procedures more transparent and predictable. Publication, follow-up mechanisms, online consultations, and response times are, for the most part, conducted in one or more digital platforms (portals). In other words, the adoption of digital technology has brought about greater compliance with transparency principles and commitments.

**Different levels of economic and institutional development require different approaches to implementation of good regulatory practices.** While Thailand; Malaysia; Chinese Taipei; and Chile face challenges more related to enhancing, streamlining, expanding, and optimizing existing regulatory frameworks (e.g., Licensing Act and Central Portal, Productivity Corporation, JOIN Platform and OECD benchmarking, and the REP law, respectively), Papua New Guinea is focused on setting up the general regulatory frameworks (e.g., Regulator's Summit, Mobile Telecommunications Reform).

**Finally, regulatory reform efforts do not only have an impact on domestic and international services trade, they often also enhance standards of living.** For instance, the acceleration of the digitization process has not only improved telecommunication networks but also the ability of citizens to join the labor market, particularly in the developing world. Likewise, employers have relaxed in-office work requirements allowing employees to spend more time at home, and even eliminate or significantly limit commuting burdens.

More generally, on the topic of social impact, the Chilean example of the Law on Extended Responsibility of the Producer (REP law) is perhaps iconic. As explained earlier, it has a direct regulatory impact on the domestic services economy, including trade in services, but it is primarily a legal scheme for the effective implementation of environmental standards on emissions and waste reduction and elimination. Indeed, while discussions of domestic regulations rules and principles often focus exclusively on the trade effects of regulatory rulemaking and administration, the effects of the regulations and other similar measures go well beyond the trade space. For instance, since the implementation of the REP law, recycling and re-use of selected industrial products in Chile has gone from less than 5 percent in 2016 to over 25 percent in 2021. Although the transition towards a circular economy is not a declared objective of regulatory reform affecting trade in services, it can nevertheless be relevant to it. This is perhaps a component/element of rulemaking that could be explored further by trade officials and domestic regulators.

## CONCLUSIONS AND RECOMMENDATIONS

**The driving element across studied economies is transparency.** Representatives from all five economies mentioned that the most significant implementation efforts come in this arena. Furthermore, they also agreed that transparency efforts, regardless of their level of sophistication, have the most trade-related value. For instance, setting up online consultation and follow-up processes for existing or new regulations allows businesses to have access to all relevant information and to even anticipate new regulatory conditions. Furthermore, because transparency improvements can be introduced at any level of institutional development, it is reasonable to assume that transparency will be the leading edge of regulatory reform in most APEC economies.

**Transparency is an area where APEC economies could benefit from additional capacity building and cooperation initiatives.** Indeed, since transparency-driven efforts often require setting up institutional frameworks, introducing new technologies, and consideration of the varying levels of institutional development among APEC economies, there seems to be a clear opportunity for more developed economies to cooperate with less developed economies by sharing experience, concrete technical assistance, and capacity building efforts. For instance, Papua New Guinea could benefit from the know-how and experience of Chinese Taipei or Thailand in setting up digital platforms dealing with licensing requirements and procedures. In other words, the varying levels of economic and institutional development among APEC economies necessitate different approaches to implementation of principles and commitments for domestic regulation of services.

**Given the comprehensiveness of its provisions, the APEC Services Trade Restrictiveness Index (APEC Index) represents a next step in services regulatory reform benchmarking** (and may be useful in benchmarking other issues as well), and it could easily become APEC's main instrument for assessing regulatory reform. Furthermore, the APEC Index is consistent with a holistic approach for the adoption of good regulatory practices that seek to institutionalize a permanent process for streamlining and updating the regulatory space. Here again, APEC's cooperative nature makes it particularly well-equipped, inter alia, for adopting the APEC Index standards in a way that is responsive to the diversity of its membership.

**Technology plays a key role in facilitating the implementation of transparency-driven processes.** For instance, by digitalizing application procedures, those procedures automatically become more transparent and more predictable. The public response to the COVID-19 pandemic has accelerated the services digitization process.

Overall, this brief confirms previous findings that **transparency measures are the key element in the design, production, follow-up, and implementation of regulatory reform in the services sector.** Moreover, economies seem to be moving in a direction that is consistent with a more expansive understanding of transparency, covering the entire lifespan of regulatory measures. In this sense, transparency, development, and administration of measures seem to be progressively merging into a broader concept of transparency in rulemaking and regulatory procedures.

## ENDNOTES

- <sup>i</sup> “APEC Services Competitiveness Roadmap (2016–2025),” [https://www.apec.org/Meeting-Papers/Leaders-Declarations/2016/2016\\_aelm/2016\\_Annex-B](https://www.apec.org/Meeting-Papers/Leaders-Declarations/2016/2016_aelm/2016_Annex-B).
- <sup>ii</sup> Ibid.
- <sup>iii</sup> “APEC Non-binding Principles for Domestic Regulation of the Services Sector,” final draft, November 13, 2018, <https://www.apec.org/docs/default-source/Publications/2018/11/2018-CTI-Report-to-Ministers/TOC/Appendix-13--APEC-Nonbinding-Principles-for-DR-Drafting-Group.pdf>.
- <sup>iv</sup> World Trade Organization, “Joint Initiative on Services Domestic Regulation: Reference Paper on Services Domestic Regulation,” November 26, 2021, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/SDR/2.pdf&Open=True>.
- <sup>v</sup> At time of writing, the WTO members participating in the WTO JSI include: Albania; Argentina; Australia; Austria; Bahrain, Kingdom of; Belgium; Brazil; Bulgaria; Canada; Chile; China; Colombia; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; El Salvador; Estonia; European Union; Finland; France; Georgia; Germany; Greece; Hong Kong, China; Hungary; Iceland; Ireland; Israel; Italy; Japan; Kazakhstan; Republic of Korea; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Mauritius; Mexico; Republic of Moldova; Montenegro; Netherlands; New Zealand; Nigeria; North Macedonia; Norway; Paraguay; Peru; Philippines; Poland; Portugal; Romania; Russian Federation; the Kingdom of Saudi Arabia; Singapore; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Separate Customs Territory of [Chinese Taipei], Penghu, Kinmen and Matsu; Thailand; Timor-Leste; Turkey; Ukraine; United Arab Emirates; United Kingdom; United States; Uruguay.
- <sup>vi</sup> APEC Policy Support Unit, “APEC Services Competitiveness Roadmap Mid-term Review,” October 2021, [https://www.apec.org/docs/default-source/publications/2021/10/apec-services-competitiveness-roadmap-mid-term-review/221\\_psu\\_apec-services-competitiveness-roadmap-mid-term-review.pdf?sfvrsn=861e0b45\\_1](https://www.apec.org/docs/default-source/publications/2021/10/apec-services-competitiveness-roadmap-mid-term-review/221_psu_apec-services-competitiveness-roadmap-mid-term-review.pdf?sfvrsn=861e0b45_1).
- <sup>vii</sup> Nathan/US-Support for Economic Growth in Asia (US-SEGA), *Study on APEC’s Non-binding Principles for Domestic Regulations of the Services Sector: Transparency and Predictability in Rulemaking*, APEC, January 2020, <https://www.apec.org/Publications/2020/01/Study-on-APECS-Non-binding-Principles-for-Domestic-Regulation-of-the-Services-Sector>.
- <sup>viii</sup> Nathan/US-Support for Economic Growth in Asia (US-SEGA), *Next Generation Practices for Services Authorization in the Asia-Pacific Region*, January 2021. <https://www.apec.org/publications/2021/01/next-generation-practices-for-services-authorization-in-the-asia-pacific-region>.
- <sup>ix</sup> Nathan/US-Support for Economic Growth in Asia (US-SEGA), *Study on APEC’s Non-binding Principles for Domestic Regulation of the Services Sector: A Focus on Domestic Regulations in Trade Agreements*, August 2021. <https://www.apec.org/publications/2021/08/study-on-apecs-non-binding-principles-for-domestic-regulation-of-the-services-sector>.
- <sup>x</sup> World Trade Organization, “Services Domestic Regulation: Rationale and Content, Potential Economic Benefits, and Increasing Prevalence in Trade Agreements,” July 2022, [https://www.wto.org/english/tratop\\_e/serv\\_e/sdr\\_factsheet\\_e\\_oct21.pdf](https://www.wto.org/english/tratop_e/serv_e/sdr_factsheet_e_oct21.pdf).
- <sup>xi</sup> Thailand: Official Information Act of 1997, available online at International Labour Organization (ILO), NATLEX (database of national labor, social security, and related human rights legislation), [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_isn=107400&p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=107400&p_lang=en).
- <sup>xii</sup> LawPlus Ltd., “Licensing Facilitation Act of Thailand” 2015, <https://www.lawplusltd.com/2016/10/licensing-facilitation-act-thailand/>.
- <sup>xiii</sup> Biz Portal, <https://biz.govchannel.go.th/>.
- <sup>xiv</sup> Malaysia Productivity Corporation (Incorporation) Act 1966, <https://www.mpc.gov.my/background/>.
- <sup>xv</sup> The transparency scheme in the APEC NBP focuses on three areas: (i) publication and information available; (ii) enquiry points; and (iii) the opportunity to comment before entry into force.
- <sup>xvi</sup> National Development Council of Chinese Taipei, “Online Platform to Expedite the Process of Public Participation (JOIN),” <https://join.gov.tw/>.
- <sup>xvii</sup> APEC Policy Support Unit., *APEC Services Competitiveness Roadmap (ASCR) Baseline Indicators*, November 2017. <https://www.apec.org/publications/2017/11/apec-services-competitiveness-roadmap-baseline-indicators>.
- <sup>xviii</sup> APEC Policy Support Unit, *Case Study on the Role of Services Trade in Global Value Chains: Telecommunications in Papua New Guinea*, October 2016, <https://www.apec.org/publications/2016/10/case-study-on-the-role-of-services-trade-in-global-value-chains-telecommunications-in-papua-new-guin>.

<sup>xix</sup> Law 18168: General Law of Telecommunications, available online via Library of the National Congress of Chile, <https://www.bcn.cl/leychile/navegar?idNorma=29591>.

<sup>xx</sup> Law 20920: Establishes a Framework for Waste Management, Extended Producer Responsibility and Promotion of Recycling, available online via Library of the National Congress of Chile, <https://www.bcn.cl/leychile/navegar?idNorma=1090894>.

<sup>xxi</sup> Batteries, lithium batteries, rubber tires, electrical appliances, oil and lubricants, and PET packages.

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<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/SDR/2.pdf&Open=True>.

\_\_\_\_\_. 2022. “Services Domestic Regulation. Rationale and Content, Potential Economic Benefits, and Increasing Prevalence in Trade Agreements.” July.  
[https://www.wto.org/english/tratop\\_e/serv\\_e/sdr\\_factsheet\\_e\\_oct21.pdf](https://www.wto.org/english/tratop_e/serv_e/sdr_factsheet_e_oct21.pdf).

## ANNEX A: WORKSHOP AGENDA

# Agenda

## Translating Services Domestic Regulation Initiatives into Practice – Implementation of Domestic Regulation Disciplines

25 August 2022

2:30PM Thailand Local Time | Chiang Mai, Thailand

	<p><b>Opening Remarks</b></p> <p><b>Thomas Fine</b>, Convenor, APEC Group on Services</p>
<b>Session 1</b>	<p><b>Setting the Scene: Research Brief on Implementation and Impact of Enhanced Domestic Regulation Disciplines in the APEC Region</b></p> <p><i>In this session, the author of the associated research brief will provide an introduction to services domestic regulation issues in the APEC region, as well as the services domestic regulation initiatives that endeavor to address these issues, including the APEC Non-binding Principles for Domestic Regulation of the Services Sector (APEC Non-binding Principles) and the World Trade Organization Joint Statement Initiative on Services Domestic Regulation (WTO DR JSI). Drawing on draft findings from the research brief, the author will present: 1) the potential economic benefits economies may experience by implementing these initiatives, including benefits relating to sustainability and inclusivity; 2) main challenges economies may face in implementing these initiatives; and 3) an initial identification of trends and good practices in the implementation of services domestic regulatory reform, to be explored further in the subsequent sessions.</i></p> <p><b>Felipe Sandoval</b>, Senior Services Sector Specialist, US-Support for Economic Growth in Asia (US-SEGA)</p>
<b>Session 2</b>	<p><b>Practical Cases: APEC Economy Experiences in Implementing Enhanced Services Domestic Regulation Disciplines</b></p> <p><i>This session aims to share economies' experiences and results of implementing enhanced services domestic regulation disciplines, such as those included in the APEC Non-binding Principles and/or the WTO DR JSI. Where possible, speakers will discuss the specific actions undertaken, domestic stakeholders involved, economic benefits (including benefits related to sustainability and inclusivity), any challenges faced, and lessons learned. Presentations will be followed by a facilitated discussion and question-and-answer period, where participants will have an opportunity to share if and how identified practices are similarly applied within their own economies, and engage in dialogue to further explore how economy experiences could be applied or leveraged in unique domestic contexts.</i></p>

	<p><b>Moderator: Felipe Sandoval</b>, Senior Services Sector Specialist, US-Support for Economic Growth in Asia (US-SEGA)</p> <p><b>Roy Lee</b>, Senior Deputy Executive Director, Taiwan WTO &amp; RTA Center, Chung Hua Institution for Economic Research, Chinese Taipei (<i>virtual presentation</i>)</p> <p><b>Prewprae Chumrum</b>, Executive Director, Bureau of Trade in Services and Investment Negotiations, Department of Trade Negotiations, Ministry of Commerce, Thailand (<i>virtual presentation</i>)</p> <p><b>Sumathi Balakrishnan</b>, Director, Services Sector Development, Ministry of International Trade and Industry (MITI), Malaysia</p> <p><i>Facilitated Discussion, Question-and-Answer Period</i></p>
<p><b>Session 3</b></p>	<p><b>Good Practices and Next Steps for Implementing Enhanced Domestic Regulation Disciplines</b></p> <p><i>Building on the previous sessions, this session aims to present private sector and thought leader perspectives on how services domestic regulatory reform and enhanced practices can benefit business environments, services sector stakeholders, and economies in the Asia-Pacific region. This session also aims to offer potential good practices and next steps that economies can take to further implementation efforts—particularly by providing information on effective engagement with the private sector, implementation processes for related trade initiatives, and lessons learned from and plans for related technical assistance. Presentations will be followed by a question-and-answer period, where speakers and participants can discuss potential actions and next steps for APEC economies to implement enhanced services domestic regulation disciplines.</i></p> <p><b>Moderator: Paul Howorth</b>, Co-Founder, Red Hat Impact</p> <p><b>Laura Baiker</b>, Economic Affairs Officer, Trade in Services and Investment Division, WTO (<i>virtual presentation</i>)</p> <p><b>Kim Yaeger</b>, Senior Director, Coalition of Services Industries</p> <p><b>Jaime Coghi Arias</b>, Chairman of WTO DR JSI Negotiations; Minister Counsellor and Deputy Permanent Representative to the WTO, Ministry of Foreign Trade, Costa Rica</p> <p><b>Matthew Stephenson</b>, Head, Investment Policy and Practice, International Trade and Investment, World Economic Forum (WEF)</p> <p><i>Question-and-Answer Period</i></p>
	<p><b>Closing Remarks</b></p>

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