



# STUDY ON APEC'S NON-BINDING PRINCIPLES FOR DOMESTIC REGULATION OF THE SERVICES SECTOR

## Transparency and Predictability in Rulemaking

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## ACRONYMS

APEC	Asia-Pacific Economic Community
ASCR	APEC Services Competitiveness Roadmap 2016-2025
CBTS	Clearing Broker Trade Submission
CPTPP	The Comprehensive and Progressive Transpacific Partnership Agreement
CTI	Committee on Trade and Investment
EC	Economic Community
GATS	General Agreement on Trade in Services
GIRG	World Bank Global Indicators of Regulatory Governance
GOS	Group on Services
GRP	Good Regulatory Practices
IEG	Investment Experts' Group
JSIDR	WTO Joint Ministerial Statement on Services Domestic Regulations
OECD	Organisation for Economic Co-operation and Development
RIA	Regulatory Impact Assessment
SCSC	Sub-Committee on Standards and Conformance
STRI	OECD Services Trade Restrictiveness Index
TFA	WTO Trade Facilitation Agreement
TiSA	The Trade in Services Agreement
USMCA	United States-Mexico-Canada Agreement
WTO	World Trade Organization

## EXECUTIVE SUMMARY

Services encompass a wide range of sectors including courier, legal, financial, education, engineering, tourism, telecommunication, and other professional services, among others. Trade in services has rapidly expanded over the last 20 years, growing faster than trade in goods and playing a vital role in the economic development of the global economy. The services sector is the largest employer of workers and a significant driver of economic growth generating more than two-thirds of global GDP and achieving significant poverty reduction outcomes. However, global services trade is directly impacted by a range of domestic regulations which are applied to different modes of services transactions. These domestic regulations affect the entry and operations of both domestic and foreign suppliers of services and have economy-wide impacts.

While there has been some liberalization of services markets, there are significant inefficient and restrictive domestic regulations that affect several services sectors and impose significant costs to importers and exporters in the Asia Pacific region. A primary contributor is a lack of transparency in domestic policymaking environments, e.g., the introduction, administration and enforcement of laws, regulations, procedures and administrative rulings. Regulatory transparency is an essential element in the openness of decision making which is important not only to prevent unnecessary barriers to trade, but also to improve compliance, reduce unpredictability, improve economic efficiency and reduce trade costs.

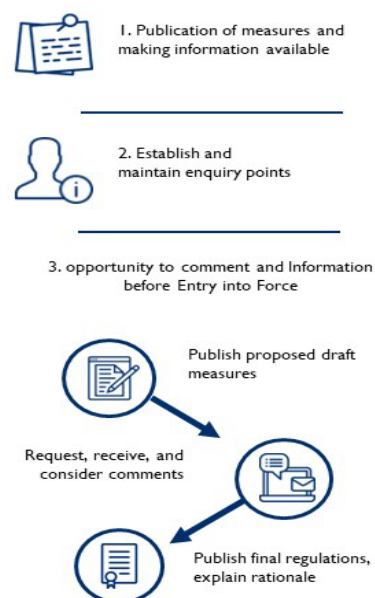
APEC economies approach transparency and predictability in rulemaking in different ways. There is no one-size fits all approach to regulatory transparency and the diversity in regulatory frameworks in APEC reflect a range of different stages of development among member economies. However, APEC member economies have proven that they do agree on a set of core transparency principles, which are laid out in the 2018 APEC Non-Binding Principles for Domestic Regulations of the Services Sector. These non-binding principles were adopted to create a policy and regulatory environment conducive to services markets in the APEC region. APEC is now working to better understand and adhere to the non-binding principles, of which, transparency in rulemaking is a primary component.

This study, which is complemented by inputs from an APEC workshop held in August 2019, examines the **process** of developing domestic regulations, focusing on the transparency provisions of APEC's Non-Binding Domestic Regulation Principles: publishing and making information available, advanced notice and opportunity to comment, and establishment of enquiry points (see Figure I.1); and provides an analysis of transparency and predictability principles in select recent trade agreements and initiatives.

Preliminary findings from this study on transparency and predictability practices in APEC include:

- Most APEC economies either have some form of legal framework in place or have adopted whole of

FIGURE I.1 APEC TRANSPARENCY PROVISIONS



government processes to ensure transparency in rulemaking,

- APEC economies continue to make progress in improving transparency measures, and continue to have support and buy-in across APEC sub-fora,
- Almost all APEC economies publish primary laws and secondary regulations on a central unified website,
- Most APEC economies have a form of contact or enquiry point in which interested parties can submit queries about the supply of a service or access other relevant information,
- Processes surrounding advance notice and comment on draft laws and regulations differ between APEC economies, however almost all APEC economies reported publishing drafts before they enter into force,
- Nearly all APEC economies engage in some form of solicitation of comments from the public, though 14 economies require this practice by law,
- More than half of APEC economies report back to the public on the results of the final decisions by publishing them on a central website or on the website of the relevant ministry or agency,
- A number of APEC economies report that timeframes for consultations are either set by law (7) or are voluntarily set and adhered to across the government though not required by law,
- All four of the major trade agreements or initiatives reviewed in this study included complementary provisions to the APEC Non-Binding Principle D, Transparency, and even push economies towards more transparent practices, and
- Additional provisions included in these agreements, namely the obligation to maintain mechanism for retrospective reviews of laws and regulations, dedicated websites to hold all relevant information, and impact assessments of regulations should be highlighted as international best practices, and significant steps to improve transparency and predictability in the service sector.

While these observations present an overall positive outlook for APEC member commitments to transparency principles, this study also observed that members face a number of challenges and gaps in upholding the principles. Most notably, there are inconsistencies in legal obligations and actual practices. Some member economies have established practices that do not align with their legal framework. For example, while 20 APEC economies publish draft measures before enactment, only 12 have a legal framework requiring this action. Some economies also lack a minimum quality standard or standardized process for consultations across the government. Further, searching for regulatory information for services is challenging, and often service sector suppliers have difficulty accessing information. This difficulty may stem from member economies not utilizing a centralized website for regulations or not regularly updating information on such a website.

APEC member economies have continued to adapt their transparency and predictability frameworks and several best practices have emerged through the years. More economies are engaging in early planning and publishing a forward regulatory agenda annually. Many APEC economies maintain a dedicated website that publishes draft laws and regulations before enactment, and in some cases includes a mechanism for interested parties to submit comments electronically. Finally, several APEC economies prepare some form of regulatory impact analysis to accompany the development of the draft law or regulation.

Looking forward, APEC can leverage the diversity of its membership and its convening power to achieve progress in meeting the goals laid out in the non-binding principles for domestic regulation of the services sector. The Group on Services (GOS) is particularly well placed to draw both from this study and the discussions from August 2019 workshop to determine next steps that will build a stronger understanding and implementation of the transparency provisions in the non-binding principles. Next steps could include a variety of capacity building activities, for example, sharing experiences on different approaches and methodologies to transparency and predictability measures in rulemaking by undertaking a more detailed look at 2-3 services sectors; developing a series of short cases studies on how economies (both APEC and non-APEC) are using innovative tools to improve transparency in rulemaking; and or a undertaking a deeper investigation into the many ways that economies engage stakeholders in public consultations and after final measure are enacted. All of these potential activities not only align with APEC's transparency objectives, but also in meeting provisions contained in recent international trade agreements and initiatives.



## INTRODUCTION

The services sector continues to play a vital role in the world economy, and is a significant driver of economic growth and poverty reduction. It comprises more than two-thirds of the global economy, employing approximately 49 percent of the global jobs in 2018.<sup>1</sup> Developing and transitioning economies have expanded their service sectors faster than developed economies from 2005-2016.<sup>2</sup> With the continuous rise in tradability of services and inclusion of services into global value chains, trade in services is expected to continue playing a crucial role in domestic and global economic growth, employment, and eradicating poverty. Yet, with the ever-changing landscape of the services sector, evidence suggests that unnecessary trade barriers make it difficult and costly for foreign suppliers to enter new markets for services.

Liberalizing trade in services can be challenging as many trade barriers are often found in domestic regulations, commonly referred to as ‘behind the border measures.’ These affect the entry and operations of both domestic and foreign suppliers of services and can have economy-wide impacts. Domestic regulation for services is important to not only correct market failures but also to protect local suppliers and consumers, ensure universal access to essential services, and set qualifications and licensing requirements and technical standards. More importantly, economies have the inherent right to regulate services sectors, and there are several legitimate reasons for doing so, including in the public interest.<sup>3</sup> Some services sectors, such as financial, transportation and telecommunication services are generally regulated more than other sectors, for example, computer services. A key regulatory trade barrier and concern for stakeholders is a lack of transparency in domestic policymaking environments.

In 2018, APEC adopted the APEC Non-Binding Principles for Domestic Regulation of the Services Sector (Annex A) to create a policy and regulatory environment conducive to services markets in the region. To help guide the implementation of these principles, the United States undertook a comprehensive study to examine the importance of transparency and predictability in rulemaking for services sectors. The study places emphasis on the process of developing domestic regulations and focuses on the transparency sub-principle (Section D of APEC’s Non-Binding Principles for Domestic Regulation of the Services Sector), which covers the following elements:

- Ensuring that relevant laws, regulations, procedures, and administrative rulings are published and that information is available for service suppliers or persons seeking to supply a service;
- Establishing an enquiry point or mechanism for service providers and stakeholders to obtain information concerning the supply of a service; and

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<sup>1</sup> World Bank. “Employment in services (% of total employment).” *World Development Indicators*, The World Bank Group, 2018, <https://data.worldbank.org/indicator/sl.srv.empl.zs>.

<sup>2</sup> UNCTAD (2017), *The role of the services economy and trade in structural transformation and inclusive development*, United Nations, New York.

<sup>3</sup> Philippa Dee (2010), *Deepening East Asian Economic Integration in Services*, ERIA Policy Brief.

- Providing an opportunity to comment and making information before entry into force including advance notice of new or amended laws, regulations, procedures or administrative rulings.

To complement the analysis of this study, the United States organized a one-day workshop on August 20, 2019 for APEC's GOS entitled *Translating APEC's Non-Binding Principles for Domestic Regulation for the Services Sector into Practice: A Focus on Transparency and Predictability in Rulemaking*. The presentations and small group discussions served to complement the desk research and contributed to the development of recommendations in Section III.

APEC has a broad policy agenda on promoting trade and facilitating business, which focuses on a range of policy guidelines and analyses to improve market access and regulatory trade barriers for services sectors in the Asia Pacific region. APEC committees and working groups such as the Economic Committee (EC), Committee on Trade and Investment (CTI), and the Investment Experts' Group (IEG) focus broadly on structural and regulatory reform to reduce uncertainties and inefficiencies to improve cross-border trade and investment. Such initiatives include the APEC Principles to Enhance Competition and Regulatory Reform (1999) and the APEC-Organisation for Economic Co-operation and Development (OECD) Integrated Checklist on Regulatory Reform (2005). More specifically, the APEC GOS addresses issues related to trade liberalization and facilitation in services. In 2016, APEC published the strategic APEC Services Competitiveness Roadmap 2016-2025 (ASCR) with commitments and targets for member economies to achieve by 2025, for increasing access to the services sector by ensuring open and predictable environments.

Building on the ASCR, the APEC Non-Binding Principles for Domestic Regulations of the Services Sector was adopted in 2018 to enhance the regulatory environment of the services sector in the region through a common set of good practice principles.

APEC economies represent different stages of economic development, and thus represent a diverse range of regulatory frameworks. Rarely does an economy regress once it has committed to implementing transparency measures, and through the work in APEC and other organizations, economies are continually discussing ways to improve transparency and predictability. In the following sections, this study will explore current transparency practices in APEC; analyze how recent and on-going trade negotiations address transparency and predictability measures; and conclude by identifying trends, gaps/challenges, and best practices in transparency in rulemaking in the region. The study will conclude with recommendations on possible next steps for APEC to consider to progress in meeting the transparency provisions in its non-binding principles on domestic regulation.

## SECTION I. REVIEW OF TRANSPARENCY PRACTICES IN APEC

Regulatory transparency is a crucial element in the openness of decision-making, which is important to not only prevent unnecessary barriers to trade, but also to improve compliance, reduce unpredictability, improve economic efficiency, and reduce trade costs. The quality and efficiency of domestic regulations has the potential to shape the trading environment of economies for the services sector, and economies can in turn experience substantial gains by improving transparency of domestic regulations.<sup>4</sup>

Transparency provides clarity for service suppliers and offers a predictable operating environment in which to supply the service. Domestic regulatory practices can differ from sector to sector, and even within an economy at the federal, municipal, and local levels. Sometimes regulators and government policy-makers may not realize the potential impact of a proposed regulation until they seek input from those that will be the most affected by the new or amended regulation. When stakeholders have access to information and can engage with the government during the rulemaking process, it improves the quality and legitimacy of the regulations developed. Implementing transparency in rulemaking measures expands the ability of an economy to identify possible unintended consequences (to businesses, consumers, and even within the government itself, e.g., consistency with trade obligations) of a draft regulation before it enters into force, and also increases understanding between the regulators and the regulated by lessening “information asymmetry.” Investing in transparency processes will not only boost trust in the government but also promote compliance by firms and individuals.

The findings of this study indicate that APEC economies approach transparency and predictability in rulemaking in a number of ways. There is no one-size fits all approach across the region and APEC economies have adapted (and continue to adapt) their frameworks to fit individual economic development contexts while striving to engage and improve accordingly. Domestic transparency practices in APEC economies range from having a Law on Transparency or Law on Laws to having published general guidelines on good regulatory practices implemented by agencies/ministries. In some cases, there are guidelines or principles established at the central/federal level, which are then applied across the whole of government regardless of industry and with the expectation that everyone is obligated to observe and meet a standard of engagement. However, for some economies, the analysis demonstrates that principles or guidelines may be implemented at an agency- or ministry-specific level, or perhaps even more narrowly focused at the municipal or local level. Some APEC economies have developed ‘smart regulator’ programs, which provide parameters to agencies on what it means to function as a smart regulator, and in at least one APEC economy, there is a centralized body that manages and advises on transparency related processes. The findings also indicate that in a few APEC economies, there is no explicit framework in place, though in some cases, ad-hoc consultation methods are used and final laws and regulations are published and can be found on a ministry or agency website.

Some APEC economies use regulatory policy planning tools to help manage regulatory reform. For example according to World Bank data, 14 economies have reported that they develop forward

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<sup>4</sup> OECD (2017), *Services Trade Policies and the Global Economy*, OECD Publishing, Paris.

regulatory plans, the majority of which are completed on an annual basis, with one economy reporting that it occurs every two years, and two economies reporting that it takes place twice a year. Another transparency-centric tool used by a number of economies is Regulatory Impact Assessment (RIA). Per World Bank literature, there is no generic or common definition of RIA. However, RIA is generally a policy tool used to increase the quality of a proposed or amended regulation by undergoing a multi-step process to define the issue, look at different options to address the problem, and collect data from different sources and stakeholders to be able to examine the issue and different policy options that may be identified. The findings reveal that seventeen APEC economies perform some type of regulatory impact assessment during the process of developing proposed regulations.

This section presents a snapshot of overarching transparency practices in APEC, drawing heavily from data presented in the World Bank's Global Indicators of Regulatory Governance (GIRG),<sup>5</sup> which covers all 21 member economies. A snapshot of the data collected from the World Bank is presented in Figure 1.2. Section I analysis also draws on existing data and information collected through several other sources, including previous APEC activities on transparency, good regulatory practices, and public consultation in various sub-fora. These include the 2011 CTI Sub-Committee on Standards and Conformance (SCSC) Baseline Study on Good Regulatory Practices (GRP) in APEC Member Economies, the 2014 Progress Report on the 2011 GRP Study as well as the recently published May 2019 EC Compendium of Public Consultation Initiatives of Volunteer APEC Member Economies.<sup>6</sup> Other relevant resources include the OECD (both Regulatory Reform and the STRI).

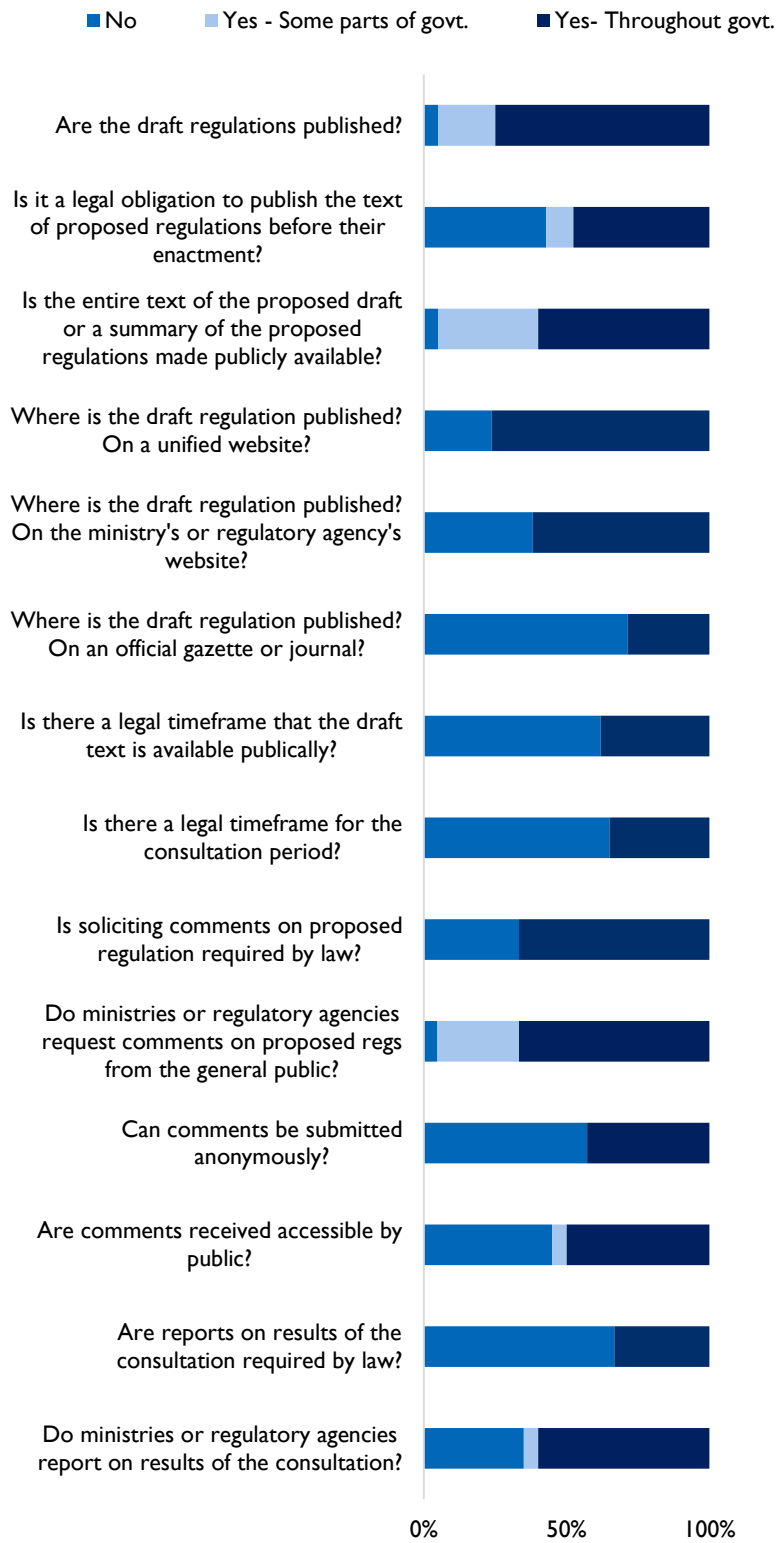
The findings are subsequently complemented by economy-level information gathered through discussions at an APEC Group on Services Workshop on Translating APEC's Non-Binding Principles for Domestic Regulation of the Services Sector into Practice: A Focus on Transparency and Predictability in Rulemaking, which took place in Puerto Varas, Chile in August 2019. (Annex B).

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<sup>5</sup> Data accessed in May 2019.

<sup>6</sup> Only covers 14 member economies.

**FIGURE 1.2 SNAPSHOT OF TRANSPARENCY PRACTICES IN RULEMAKING IN APEC**



Source: The Work Bank, Global Indicators of Regulatory Governance. (rulemaking.worldbank.org).

## **PUBLISHING MEASURES AND MAKING INFORMATION PUBLICLY AVAILABLE**

A key tenet of transparent rulemaking is to ensure that all final laws, regulations, administrative rulings, and procedures are published, available, and easily accessible to the general public. Furthermore, information that businesses and individuals need to be compliant with requirements and procedures to obtain, maintain, amend or renew authorization to enable a business or individual to operate or supply a service in an economy should be promptly published and easily accessible. Clear laws and regulations that are in the public domain (e.g., a website or official Gazette) provide a stable, predictable, and straightforward regulatory environment for all stakeholders, e.g., business community, consumers, academia, other regulators, etc. In addition, it is equally important that published laws, regulations, and information related to the authorization to supply a service are regularly updated to avoid unnecessary confusion, to minimize time and effort spent searching for different versions of laws/regulations, and to ensure that the business community is compliant with the rules.

In APEC, final laws, regulations, procedures, and administrative rulings as well as information related to the supply of a service are generally available on the Internet. Per the World Bank GIRG stats, the majority (20) of APEC member economies publish final versions of primary laws and secondary regulations, which would include those applicable to services, on a central unified website managed by the government. The sites tend to be located within the branch of government responsible for approving the final law, e.g., parliament or congress. In a handful of economies (6), the private sector also maintains a central website that publishes primary and secondary laws and regulations. In 14 economies, legislation and regulations can be accessed online and printed copies can be ordered via the official gazette. Finally, some member economies also reported that final laws and regulations can be found on individual agency or ministry websites.

However, several challenges to locate information exist which may impact service providers, including the lack of easily accessible information or the inability to regularly update information contained on the government and private sector websites. Several APEC economies indicate that relevant ministries and agencies publish applicable information on their individual websites. In some cases, there may be several layers of a central or agency specific website to search through when trying to locate relevant information, including if the service sector is regulated at the state/local level. This makes finding information cumbersome and time-consuming. In other cases, a review of a handful of listed websites found that some were not functioning or were outdated. In addition, only a handful of economies have websites that include laws and regulations both in English and in the native language, which may limit access to information by foreign service suppliers.

Based on the challenges highlighted above, some key considerations to take into account when searching for relevant services related laws, regulations and other information include the following:

- Is the website searchable by key words?
- For non-English speaking economies, is the information available in English?
- If laws and regulations are translated into English, are the translations considered legal representations of the law, or does the measure prevail in only the version of language of the economy?

- Do these central websites include implementing regulations that set out specific requirements for issues related to authorization to supply a service: fees, standards, requirements, and procedures, etc., or does the interested party need to go to the site of the relevant ministry or agency?
- Is all the information centrally located, or in several places? For example, for services sectors that are not regulated at the federal level, is the information to operate at the local level still accessible on the central site, or does the interested party need to go to a local/sub-national website or office to find information necessary for compliance?

There are low-cost online tools and digital solutions that can address the challenges mentioned above and that can be used to expand access to a wide range of users, both from the perspective of the providers and receivers of information. For example, several World Trade Organization (WTO) members have developed or are developing comprehensive trade information portals to meet transparency obligations under the recently ratified WTO Trade Facilitation Agreement (TFA). TFA Article I requires WTO members to publish all information related to the export, import, and transit of goods; make information available through the Internet; establish and maintain an enquiry point, where traders can make queries to a government official or office on trade facilitation issues; and, identify a notification point for government to WTO related communications.

APEC members have done a considerable amount of work cataloguing trade related information generally, e.g., the APEC Trade Repository, as well as identifying restrictions to trade in services more specifically, e.g., the STAR database. Ensuring the comparability of information and keeping information up-to-date as a region on both sites has been a challenge. More recently, GOS has collaborated with the OECD Services Trade Restrictiveness Index (STRI), which collects information on services regulations in 22 sectors. The STRI includes OECD members, in addition to eight additional APEC economies (including China, Indonesia, Malaysia and Russia).<sup>7</sup> While the WTO TFA addresses trade in goods, APEC may want to investigate options where individual APEC economies can either build off of existing trade information portals to include a module on services (if they do not already) or develop a portal for services

#### BOX 1.1 — LAO SERVICES PORTAL

The Lao Services Portal ([www.laoservicesportal.gov.la/](http://www.laoservicesportal.gov.la/)) contains all relevant information pertaining to trade in services in Lao PDR. The website contains legal document, measures, procedures, forms, news, publications, and other information relating to trade in services. Users can search by service sector, divided into the 12 main sectors according to the General Agreement on Trade in Services (GATS) or by specific item the user is looking for. Users can register on the website to receive updated information. The Department of Foreign Trade Policy (DFTP) of the Ministry of Industry and Commerce manages the Lao Services Portal.

The Lao Services Portal was setup as part of *Decree on the Notification and Enquiry of Trade Related Information REF: 363/PM* on August 2010, with the goal of increasing access to information and participation in the development and implementation of trade related measures in regards to trade in services.

<sup>7</sup> OECD (2019), [www.oecd.org/trade/topics/services-trade/](http://www.oecd.org/trade/topics/services-trade/).

specifically. For example, while Lao PDR is not an APEC member (rather an observer), Box 1.1<sup>8</sup> provides a link and brief summary of its services portal, which contains information related to individual services sectors and relevant international agreements.

## **ENQUIRY POINTS FOR SERVICE SUPPLIERS**

Paragraph 14 of APEC’s Non-Binding Rules for Domestic Regulations of the Services Sector indicates that APEC economies “should maintain or establish appropriate mechanisms for responding to enquiries from interested parties regarding the measures referred to in its laws, regulations, procedures, and administrative rulings of general application respecting matters concerning supply of a service.” Enquiry points establish a link or avenue between the government and the public (e.g., business), where queries related to trade in services or supplying a service can be submitted and responded to within a reasonable timeframe. Enquiry points should enhance the flow of information between relevant parties, have the ability to explain relevant regulations and procedures, provide access to complete information and documents/forms, and prevent misunderstanding and non-compliance by businesses or individuals.

A search for centralized services-specific enquiry points as defined above did not yield any results among APEC member economies. The WTO GATS transparency provisions (Article III) includes the establishment of enquiry points for government-to-government queries only. GATS Article IV.2 states that developed members (and to the extent possible other members) shall establish and maintain contact points for service suppliers from developing economies to be able to request information on the conditions of supplying a service in that respective economy. The WTO updates information for both enquiry and contact points on a periodic basis, with a recent update occurring in February 2019.<sup>9</sup> As of February 2019, 16 APEC member economies had notified contact points under the GATS, providing basic information such as general email addresses, telephone, and fax numbers.

During the August 20, 2019 Workshop, a number of APEC economies did elaborate further on how their government handles enquiries from the public. The approaches range from being more segmented, e.g., a ministry or agency having its own contact point where members of the public may reach out for information or send questions to economies to having a more centralized approach where public enquiries (regardless of the sector) are managed through an official information system. Several economies explained that all public agencies are required to respond to enquiries, and have set timeframes and procedures in place on how to respond to enquiries.

## **ADVANCE NOTICE AND OPPORTUNITY TO COMMENT**

Having a transparent and participatory process in rulemaking helps build sustainability and a sense of ownership of laws and regulations when implemented. The 2005 APEC-OECD Checklist on Regulatory Reform highlights the important elements to transparent processes including: engaging in predictable,

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<sup>8</sup> Lao PDR participates as an observer in APEC. The Lao services portal was developed with support from the donor community.

<sup>9</sup> WTO, S/ENQ/78/Rev.18, Contact and Enquiry Points Notified to the Council for Trade in Services, Note by the Secretariat, 01/02/2019



standardized processes for making and changing regulations; widely consulting with interested parties; using plain language when drafting laws and regulations; and, publishing and codifying final measures in a manner that make rules easy to find and understand. Publishing draft laws and regulations before they are finalized, accepting comments and listening to the voice of stakeholders during the rulemaking process, considering those comments when reviewing the draft regulation, and announcing the rationale of the final draft that explains how comments were taken into consideration all contribute to the inclusive development of clearer, higher quality regulations.

In APEC, advance notice and comment practices vary. For example, some economies require new and amended draft regulations to be published via a National Gazette and/or the regulatory agency's website, while other economies do not have any structured obligation for posting or publishing information. With respect to requesting and submitting comments on draft regulations, economies employ different methods for engaging the private sector and civil society. These methods can range from online submissions through a central portal to engaging stakeholders via town halls, focus groups, surveys, or other stakeholder events. Among APEC economies, there is also wide variation in both the length of comment periods, when they exist, and the extent to which economies make stakeholder comments public.

Below the study will look more closely at APEC practices related to publishing draft regulations, providing opportunity to comment on draft regulations, and publishing final decisions and rationale for the new or amended regulation. The analysis provided below uses data collected via the World Bank's GIRG,<sup>10</sup> which comprised of a series of questions related to public engagement in rulemaking (see Figure 1.2 above for a snapshot of questions and a visual breakdown of answers).

## PUBLISHING DRAFT REGULATIONS

The process of publishing draft regulations and requesting public comment includes actions to help the public understand what is being proposed. When a draft regulation is posted, it can and should be accompanied with, at minimum, an explanatory note that may include, among other things, a problem statement, a history of issue (as appropriate), impact analysis, and proposed policy options. This enables stakeholders to have a good understanding of the issue(s) and the potential impact on businesses or livelihoods. It places the stakeholder in a better position to submit constructive, meaningful contributions for the government to consider during the rulemaking process. In addition, publishing the entire text of proposed regulation is important to avoid the risk of misinterpreting the intent of the regulation and minimizing any confusion later in the process or when the final draft is published.

The majority (20) of APEC economies indicate that they publish draft laws and regulations or a summary of proposed regulations before they are adopted and entered into force. Sixteen of the 20 economies reported that publishing drafts before adoption is applied throughout the government while the

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<sup>10</sup> World Bank. Global Indicators of Regulatory Governance, The World Bank Group, 2018, <https://rulemaking.worldbank.org/>. Data collected comprised of responses from government officials from regulatory agencies.

remaining four economies indicated that only some ministries and agencies publish draft regulations. Publication of draft regulations is carried out through a variety of methods, and the most popular is via a central website where all draft regulations are published. In some economies, line ministries and/or agencies also post relevant proposed regulations on their websites. A smaller number of economies (6) also reported that proposed/draft regulations will be printed in an official gazette, journal or other publication (note that some of these have online presence as well as printed). Economies reported using other methods to circulate proposed regulations to stakeholders and include, among other things the following approaches:

- Circulating draft regulations directly to interested stakeholders,
- Holding liaison meetings, seminars, consultative workshops, or briefings,
- Sending daily reports to subscribers through a listserv,
- Sending letters through post or email,
- Accessing a database of experts to send targeted emails depending on subject matter, and
- Convening consultative committees or councils.

Ministries or agencies from 12 economies have a legal obligation to publish the text of proposed regulations before those regulations are enacted, although in some economies this is only sometimes observed. And while nine economies do not have a legal obligation to publish draft text of the proposed regulation, 20 economies responded that they do in fact engage in this practice. It is worth noting that a number of economies engage in transparent rulemaking whether it is legally obligated or not. Many economies that do not have a legal obligation to do so, have practices or guidelines in place that provide frameworks for good regulatory practices.

The timeframes for making the proposed regulation publicly available varies across economies. Eighteen economies responded to varying degrees, and in some cases, the timeframes stated seem to apply to the entire advance notice and comment process, and will be addressed in more detail below. For six economies, the timeframe is set by law.

A number (15) of APEC economies provide background information and or explanatory notes with the proposed regulation to ensure that stakeholders understand the context and general applicability of the draft. Background information may include regulatory impact statements or assessments, tables to compare the old and new regulations, policy papers or white papers, and FAQ's. Again, the comprehensiveness of background materials can range from a general summary of the proposed regulation to more detailed content that includes the overarching rationale or justification of the proposed regulation, policy options that have been considered, cost and benefits of the proposed regulation, among other things. Some economies make a concerted effort to use non-technical or non-legal language in the explanatory notes so that the information can be easily understood.

## PROVIDING OPPORTUNITY TO COMMENT

Several APEC economies have adopted whole of government policies on public consultations regardless if it is required by law. When the government engages in public consultation, i.e., requesting input and advice from stakeholders on draft regulations, the process creates awareness of the proposed new or amended regulation. As noted above, providing detailed background information along with the proposed regulation can help facilitate the engagement. Depending on the complexity of the proposed

regulation or the consultation strategy of the ministry or agency, governments may include a mix open and closed questions in which stakeholders can respond to as appropriate.

There are a range of practices in place in APEC economies that seek and collect comments from the stakeholder during the rulemaking process. As reported in the GIRG, six economies have a specialized government body or agency in charge of soliciting or receiving comments (a recommendation in 2005 APEC-OECD Integrated Checklist), while 15 economies indicated that there were no specialized or central agencies managing the process. APEC economies also noted that comments are typically solicited through an invitation from the government to either provide open comments or respond to a pre-determined set of questions. Nine economies allow the anonymous submission of comments by stakeholders, which can be done under a pseudonym, submitting without attribution, or through the post.

Fourteen out of 21 economies report that soliciting comments from the public is required by law. For those economies where the solicitation of comments is not required by law, several did elaborate that either the government as a whole or some ministries and agencies do still engage in public comment to a certain degree. Thus, not having a legal requirement has not hindered the implementation of good regulatory practices. When asked how often the law or practice of implementing public consultation is observed, nine economies said always, while eight reported that it was sometimes observed, and one economy reported that it was rarely observed. Two economies did not provide a response to this question.

For most economies, outreach to stakeholders primarily takes place through a central website or through the relevant ministry or agency website. Seven economies reported that comments are received through both options, whereas seven other economies confirmed that they solicit comments through the central site only, and four economies only solicit comments through a ministry or agency website. In addition to websites, comments are received through other methods that include ad-hoc meetings with targeted business groups, public meetings, targeted outreach to specific consultative groups, customized communications sent to specific audiences through email, social media, and courier or mail. Some economies will also organize focus groups or consultative workshops to present the draft regulation to a target audience and facilitate a discussion on the proposed regulation.

Sensitive issues, such as national security, law enforcement, military issues, as well as emergency situations and cases of urgent public interest may be exempt from public consultations in 13 economies, though a couple of economies do report that some of these proposed measures will be reviewed ex-post. A little more than half of APEC economies (12) make stakeholder comments available to the general public, which either happens immediately upon posting a comment online or after the consultation process is over.

The timeframe of the consultation period varies among economies, and depends on a number of considerations, including the outreach and public consultation strategy developed by the ministry or agency, the type of measure (e.g., primary or secondary) or complexity of the draft regulation, and/or if the minimum timeframe for consultations is set by law.

Box 1.2 presents a review of illustrative consultation timeframes in APEC. Some economies will factor in additional time for draft laws and regulations that may impact international trade obligations, while other economies remain flexible if the draft regulation proves to be more complex and additional time is needed to conduct a thorough consultation process. Seven APEC economies report that the consultation timeframe is set by law, though several more do practice minimum timeframes set by ministry or agency guidelines. Best practices on consultation timeframes tend to agree on a minimum of 60 days. At least five APEC member economies report that they observe a 60 day comment period for primary laws, which has increased from a reported two economies in 2011 (APEC Baseline Survey on GRPs).

#### **BOX 1.2 – CONSULTATION TIMEFRAMES RANGE IN APEC (ILLUSTRATIVE)**

- Minimum 7 – 15 days
- 30 days for primary legislation
- 40 days set by law
- Approximately 6 weeks
- Typically 1-3 weeks
- 60 days
- For primary laws, 60-90 days
- No limit set by law

#### **PUBLISHING DECISIONS AND THE RATIONALE FOR THE NEW OR AMENDED MEASURES**

A final element of public consultation is for the government to demonstrate that comments were taken into account during the rulemaking process. The collection of information and comments can be done a variety of ways (see above), but at the end of the process, when the final draft measure is ready for review and passage by the relevant authority (e.g., Parliament or Congress), it should be accompanied by analysis and the government's response to comments received during the consultation process. The government should show how it reached its end status, and, it should also provide reasoning as to why it might not have included or taken into account certain opinions or input.

Fourteen APEC economies indicated that they report on the results of the consultations of proposed regulations. The majority of these economies (13) will provide a consolidated responses, while one economy only provides customized responses, and two economies provide either a consolidated response or customized response depending on the situation. These responses can be found on a centralized website, or on the website of the relevant ministry or agency. In addition, responses may be printed in the official gazette, or circulated directly to stakeholders through meetings, emails, or briefing documents. Reporting the final results is required by law in seven APEC economies.

## **SECTION II. ANALYSIS OF SELECTED PREFERENTIAL TRADE AGREEMENTS AND INITIATIVES**

Under Section II of this study, the analysis transitions from reviewing domestic practices of APEC member economies to examining some of the more recent and most ambitious developments on international rulemaking, dealing with the three markers or sub-items under the APEC Non-Binding Principle for Domestic Regulations in the Services Sector, Transparency.

This section will focus on four major trade initiatives, which have substantially advanced the domestic regulations- transparency rulemaking agenda. These include the United States-Mexico-Canada Agreement (USMCA); the Comprehensive and Progressive Transpacific Partnership Agreement (CPTPP); the ongoing WTO based Plurilateral Joint Statement Initiative on Domestic Regulations (JSIDR); and the unfinished Trade in Services Agreement (TiSA).

All four initiatives have advanced the international trade agenda in different spaces. While the USMCA and the CPTPP have concluded, the TiSA is suspended, and the JSIDR is an ongoing process. The selected initiatives reflect the diversity of rulemaking designs at the international level, covering regional integration initiatives as well as dialogues at the core of the multilateral system.

The following analysis will begin by presenting a birds-eye view of domestic regulations disciplines and related transparency provisions in all four aforementioned initiatives. This supports the broad objective of conducting this APEC-wide study, which serves to inform and guide the thinking within APEC on further developing disciplines on transparency in the specific context of non-discriminatory measures of general application affecting trade in services (domestic regulations), and thus, beginning with a general approach, should provide a clear intellectual framework to the outcomes of the present study. Furthermore, this structure will allow APEC to identify specific contributions of each initiative consistent with the APEC Non-Binding Principle D, Transparency, through a horizontal analysis involving a number of different chapters or paragraphs within those initiatives.

Next, the study will explore how three of the initiatives mentioned above - the USMCA, CPTPP, and JSIDR, compare against the specific markers or sub items under the APEC Non-Binding Principle D, Transparency i.e. publications and information available, opportunity to comment and information before entry into force, and enquiry points. The reason behind this selection is to contrast the developments under the umbrella of the WTO versus the progress achieved under preferential trade agreements negotiated outside the coverage of the Marrakesh Agreement. By performing this analysis, this study seeks to convey the overall evolutionary direction under high standard international rulemaking.

Finally, it is important to note that neither the TiSA nor the JSIDR have concluded, and thus, the amount and the quality of the information in the public domain is limited. In the case of TiSA, the process was moving in a direction consistent with the development path signaled by the CPTPP (still TPP at the time), however, conclusions are difficult to draw due to differences among key players on key issues.

## **THE UNITED STATES – MEXICO – CANADA AGREEMENT (USMCA)**

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. On the topic of domestic regulations and transparency, the USMCA can be approached in two stages. First, in terms of general scope, the USMCA incorporates a broad approach covering “measures of general application affecting trade in services,” and includes specific provisions on authorizations, requirements, and procedures. Secondly, the USMCA includes provisions dealing with procedural transparency in at least seven chapters, i.e. Financial Services, Telecommunications, Cross Border Trade in Services, Small and Medium Sized Enterprises, Good Regulatory Practices, Publication and Administration, and Administrative and Institutional Provisions.

Overall, domestic regulations and transparency related provisions found in the first four chapters Financial Services, Telecommunications, Cross Border Trade in Services, and Small and Medium Sized Enterprises are similar or equivalent to those contained in the CPTPP. In other words, the USMCA marks a path of continuation from the original TPP text, rather than a significant departure.

Secondly, and as the study will address later, the substantive improvements and the verification in the implementation of the three specific sub-items under the APEC Non-binding principle D, Transparency, i.e. Publications and information available, opportunity to comment and information before entry into force, and enquiry points, are primarily contained in the last three chapters, i.e. Good Regulatory Practices, Publication and Administration, and Administrative and Institutional Provisions. Indeed, Chapter 28 on Good Regulatory Practices, while limited to regulators at the central level of government, marks a significant evolution from its equivalent under TPP, Chapter 25 on Regulatory Coherence, as it provides for the most complete available set of international rules related to the planning, design, issuance, implementation, and review of regulations to date.

Finally, it is also important to mention Chapter 17 on Financial Services that contains a derogation from the application of Chapters 28 and 29 on Good Regulatory Practices and Publication and Administration, respectively. Instead, Chapter 17 contains its own provision on Transparency and Administration of Measures. Under this provision, the standard applied to the obligations regarding advanced publication, opportunity to comment, and the obligation of the authority to address in writing the substantive comments received, changes from “to the extent possible” to “to the extent practicable.” As not everything that is possible is necessarily practicable, the augmented flexibility of the applicable standard in the case of Financial Services likely reflects specific prudential/regulatory needs of financial regulators. An equivalent, yet more limited derogation is contained in the similar provision under the CPTPP (Article 11.13.3 Transparency and Administration of Certain Measures).

**TABLE 2.1 THE UNITED STATES –MEXICO- CANADA AGREEMENT (USMCA)**

<p><b>CROSS -BORDER TRADE IN SERVICES</b></p>	<p><b>Art. 15.8 Development and Administration of Measures (equivalent to domestic regulations and transparency).</b> Covers measures of general application affecting trade in services, and provides for additional provisions on authorizations, requirements, and procedures.</p> <p>Paragraph 5. Development and adoption of technical standards using an open and transparent process.</p> <p>Paragraph 6. Transparency on information to be provided to services suppliers seeking to provide their services in the territory of a party. A non-exhaustive list is provided, including fees; contact information of relevant authority; opportunities for public involvement; technical standard; and indicative timeframes for the processing of applications, etc.</p>
<p><b>FINANCIAL SERVICES</b></p>	<p><b>Chapter 17 Financial Services.</b></p> <p><b>Art. 17.11 Exceptions, paragraph 2.</b> Chapter 15 on CBTS does not apply to a non-discriminatory measure of general application taken by a public entity in pursuit of monetary and related credit policies or exchange rate policies.</p> <p><b>Art. 17.13 Transparency and Administration of Measures.</b> Exception to the application of Chapters 28 and 29.</p> <p>On advanced publication, opportunity to comment, and the obligation of the authority to address in writing the substantive comments received, the standard applicable to the obligations is modified from “to the extent possible” (Art. 29.2 Publication), to “to the extent practicable.”</p>
<p><b>TELECOM</b></p>	<p><b>Art. 18.3 Access and Use.</b> General obligation to ensure access to and use of public telecommunication services on reasonable and non-discriminatory terms and conditions.</p> <p><b>Art. 18.9 Interconnection with Major Suppliers.</b> Paragraphs 4 and 5. Public Availability of Interconnection Offers and Agreements.</p> <p><b>Art.18.10 Provisioning and pricing of Leased Circuits Services.</b> Paragraph 1, obligation on the Parties to ensure that major suppliers in its territory provide to service suppliers of another Party leased circuit</p>

services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.

**Art.18.12 Access to Poles, Ducts, Conduits, and Rights-of-Way.** Transparency obligation to provide telecommunications services provider of another Party with access a timely basis, on terms and conditions and at rates, that are reasonable, non-discriminatory, and transparent.

**Art.18.14 Conditions for the Supply of Value Added Services**

**Art.18.16 Approaches to Regulations.**

**Art. 18.17 Telecommunication Regulatory Bodies.**

Paragraph 1, Regulatory body to be separate from and not accountable to any supplier of public telecommunications services.

Paragraph 2, Describes a general obligation to ensure that regulatory decisions and procedures are impartial with respect to all market participants.

**Art.18.19 Universal Service** Administration of universal service obligation in a transparent, non-discriminatory, and competitive neutral manner. Introduction of a necessity test for the universal obligation in respect to the kind of universal service.

**Art. 18.20 Licensing Process.** Describes applicable criteria and procedures, terms and conditions, possible timeframes, etc.

**Art. 18.21. Allocation and Use of Scarc Resources.**

Paragraph 1, Objective, timely, transparent and non-discriminatory administration of procedures.

Paragraph 2, General obligation to make publicly available the current state of frequency bands allocated.

Paragraph 4, With respect to spectrum allocation, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition.



**Art. 18.24. Transparency.** Specific provisions additional to Article 29.2 (Publication). These apply when the regulatory body is seeking input for a proposal for a regulation. Likewise, in addition to Article 29.2 (Publication), each Party shall ensure that its measures relating to public telecommunications services are publicly available. A non-exhaustive list is provided.

**SME**

**Art. 25.3 Information Sharing.**

Paragraph 1, Obligation to establish or maintain a publicly available website containing information regarding the Agreement. A non-exhaustive list is provided.

Paragraph 2, Parties shall include in its website, links or information through automated electronic transfer to the equivalent websites of the other Parties, and the websites of its own government agencies and other appropriate entities.

Paragraph 3, Provides an illustrative list of the information described in paragraph 2 (b) (website). For instance, custom regulations and procedures; business registration procedures; trade promotion programs; taxation regulations; technical regulations, standards or conformity assessment procedures; foreign investment regulations, etc.

**TRANSPARENCY  
CHAPTER OR  
EQUIVALENT**

In the case of USMCA, there are 3 interlinked chapters:

**Chapter 28, Good Regulatory Practices.** Describes a comprehensive approach to domestic rulemaking.

**Chapter 29, Publication and Administration.**

**Art. 29.2, Publication**

General obligation to ensure that laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by the Agreement are published or otherwise made available.

Soft obligation (to the extent possible) on making these measures available online.

Soft obligation (to the extent possible), publish measures in advance and provide reasonable opportunity for comments.

Laws and regulations of general application at the central level of government are to be published on a free, publicly accessible website that is capable of performing searches by word search or citation.

**Art. 29.3, Administrative Proceedings.** Transparency in the conduction of administrative proceedings.

**Art. 29.4, Review and Appeal.** General obligation to establish or maintain tribunals or procedures for the purpose of the prompt review and correction of a final administrative action with respect to matters covered by the Agreement.

### **Chapter 30 on Administrative and Institutional Provisions.**

Art. 30.5, Agreement Coordinator and Contact Points.

## **THE COMPREHENSIVE AND PROGRESSIVE TRANSPACIFIC PARTNERSHIP AGREEMENT (CPTPP)**

The CPTPP was signed on March 8, 2018 and entered into force among the first six Parties to have ratified it (Canada, Australia, Japan, Mexico, New Zealand, and Singapore) on December 30, 2018. On January 14, 2019, the CPTPP entered into force for Vietnam. As the name suggests, the CPTPP comprises eleven economies (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, and Viet Nam) all of which are APEC members.

Regarding the topic of domestic regulation and transparency, the CPTPP can be approached via different angles. First, in terms of general scope, the CPTPP incorporates a broad approach covering “measures of general application affecting trade in services,” and includes specific provisions on authorizations, requirements and procedures. Furthermore, the CPTPP includes provisions dealing with procedural transparency in at least seven chapters, i.e. Financial Services, Telecommunications, Cross Border Trade in Services, Small and Medium Sized Enterprises, Regulatory Coherence, Transparency and Anti-Corruption, and Administrative and Institutional Provisions.

Overall, domestic regulation and transparency related provisions found in the first four chapters Financial Services, Telecommunications, Cross Border Trade in Services, Small and Medium Sized Enterprises are similar or equivalent to those contained in the USMCA. Indeed, the CPTPP is the proximate precedent to the enhancements reflected in the USMCA, in particular, the combination of the chapters on Good Regulatory Practices, and Transparency and Anti-Corruption.

Secondly, and as the study will address later, the substantive improvements and the verification in the implementation of the three sub-items under the APEC Non-binding principle D, Transparency, i.e. Publications and information available, opportunity to comment and information before entry into force, and enquiry points, are primarily contained in the last three Chapters i.e. Regulatory Coherence, Transparency and Anti-Corruption, and Administrative and Institutional Provisions (similar to USMCA).

Finally, Chapter 11 on Financial Services (Article 11.13.3 Transparency and Administration of Certain Measures) contains a derogation from the application of Paragraphs 2, 3, and 4 of Article 26.2 (Publication). Instead, Chapter 11 includes a tailored provision on Transparency and Administration of Measures, which is equivalent to the same provision in the USMCA. However, the derogation under Article 17.13 of the USMCA is applicable to the entire chapters 28 (Good Regulatory Practice) and 29 (Publication and Administration), while the derogation under CPTPP is more limited.

Furthermore, under Article 11.13.3 the standard applied to the obligations regarding advanced publication, opportunity to comment, and the obligation of the authority to address in writing the substantive comments received, changes from “to the extent possible” (paragraphs 2, 3, and 4 of Article 26.2 (Publication)) to “to the extent practicable.”

**TABLE 2.2 - THE COMPREHENSIVE AND PROGRESSIVE TRANSPACIFIC PARTNERSHIP AGREEMENT (CPTPP)**

<p><b>CROSS-BORDER TRADE IN SERVICES</b></p>	<p><b>Art. 10.8 Domestic Regulations.</b></p> <ul style="list-style-type: none"> <li>• Parties shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.</li> <li>• Additional provisions on measures relating to qualification requirements and procedures, technical standards, licensing requirements, and authorizations.</li> <li>• Transparency on information to be provided to services suppliers seeking to supply their services in the territory of a party. A non-exhaustive list is provided.</li> </ul> <p><b>Art. 10.11 Transparency.</b> General obligation to maintain or establish appropriate enquire mechanisms. Obligation should take into account the resource and budget constraints of small administrative agencies.</p>
<p><b>FINANCIAL SERVICES</b></p>	<p><b>Art. 11.11 Exceptions.</b> Chapter 10 on CBTS does not apply to a non-discriminatory measure of general application taken by a public entity in pursuit of monetary and related credit policies or exchange rate policies.</p> <p><b>Art. 11.13 Transparency and Administration of certain Measures.</b></p> <ul style="list-style-type: none"> <li>• All measures of general application to which the chapter applies shall be administered min reasonable, objective an impartial manner.</li> <li>• On advanced publication, opportunity to comment, and the obligation of the authority to address in writing the substantive comments received, the standard applicable to the obligations is modified from “to the extent possible” (art. 26.2 Publication), to “to the extent practicable.”</li> </ul>
<p><b>TELECOMMUNICATIONS</b></p>	<p><b>Art.13.3 Approaches to Regulations.</b></p> <p><b>Art.13.4 Access to and Use of Public Telecommunications services.</b> General obligation to ensure access to and use of public telecommunication services on reasonable and non-discriminatory terms and conditions.</p> <p><b>Art. 13.11 Interconnection with Major Suppliers.</b> Paragraphs 4 and 5. Public Availability of Interconnection Offers and Agreements.</p>

**Art. 13.12 Provisioning and Pricing of Leased Circuits Services by Major Suppliers.** Paragraph 1, obligation on the Parties to ensure that major suppliers in its territory provide to service suppliers of another Party leased circuit services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.

**Art. 13.14 Access to Poles, Ducts, Conduits, and Rights-of-Way Owned or Controlled by Major Suppliers.** Transparency obligation to provide telecommunications services provider of another Party with access a timely basis, on terms and conditions and at rates, that are reasonable, non-discriminatory, and transparent.

**Art. 13.16 Independent Regulatory Bodies and Government Ownership.**

- Regulatory body to be separate from and not accountable to any supplier of public telecommunications services.
- Paragraph 2 describes a general obligation to ensure that regulatory decisions and procedures are impartial with respect to all market participants.

**Art. 13.17 Universal Service**

- Administration of universal service obligation in a transparent, non-discriminatory, and competitive neutral manner.
- Introduction of a necessity test for the universal obligation in respect to the kind of universal service.

**Art. 13.18 Licensing Process.** Describes applicable criteria and procedures, terms and conditions, possible timeframes, etc.

**Art. 13.19 Allocation and Use of Scarce Resources.**

- Paragraph 1, Objective, timely, transparent and non-discriminatory administration of procedures.
- Paragraph 2, General obligation to make publicly available the current state of frequency bands allocated.
- Paragraph 4, With respect to spectrum allocation, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition.

**Art. 13.22 Transparency.** Specific provisions additional to Article 26.2.2 (Publication). These apply when the regulatory body is seeking input for a proposal for a regulation. Likewise, in addition to Article 26.2.1

	(Publication), each Party shall ensure that its measures relating to public telecommunications services are publicly available. A non-exhaustive list is provided
<b>SMALL AND MEDIUM-SIZED ENTERPRISES</b>	<p><b>Art. 24I Information Sharing.</b></p> <ul style="list-style-type: none"> <li>• Paragraph 1, Obligation to establish or maintain a publicly available website containing information regarding the Agreement. A non-exhaustive list is provided.</li> <li>• Paragraph 2, Parties shall include in its website, links or information through automated electronic transfer to the equivalent websites of the other Parties, and the websites of its own government agencies and other appropriate entities.</li> <li>• Paragraph 3, Provides an illustrative list of the information described in paragraph 2 (b) (website). For instance, custom regulations and procedures; business registration procedures; trade promotion programs; taxation regulations; technical regulations, standards or conformity assessment procedures; foreign investment regulations, etc.</li> </ul>
<b>TRANSPARENCY CHAPTER OR EQUIVALENT</b>	<p>In the case of the CPTPP, there are 3 interlinked Chapters or sections of them.</p> <p><b>Chapter 25 on Regulatory Coherence</b> (equivalent to Chapter 28 of USMCA on Good Regulatory Practices).</p> <p><b>Chapter 26 on Transparency and Anti-Corruption.</b></p> <p><b>Art 26.2 Publication</b></p> <ul style="list-style-type: none"> <li>• General obligation to ensure that laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by the Agreement are published or otherwise made available.</li> <li>• Soft obligation (to the extent possible) on making these measures available online.</li> <li>• Soft obligation (to the extent possible), publish measures in advance and provide reasonable opportunity for comments.</li> <li>• Laws and regulations of general application at the central level of government are to be published on a free, publicly accessible website that is capable of performing searches by word search or citation.</li> </ul> <p><b>Art. 26.3, Administrative Proceedings.</b> Transparency in the conduction of administrative proceedings.</p>

**Art. 26.4, Review and Appeal.** General obligation to establish or maintain tribunals or procedures for the purpose of the prompt review and correction of a final administrative action with respect to matters covered by the Agreement.

**Article 26.5: Provision of Information**

- If a Party considers that any proposed or actual measure may materially affect the operation of this Agreement or otherwise substantially affect another Party's interests under this Agreement, it shall, to the extent possible, inform that other Party of the proposed or actual measure.
- On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of this Agreement, whether or not the requesting Party has been previously informed of that measure.
- A Party may convey any request or provide information under this Article to the other Parties through their contact points.
- Any information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

**Chapter 27 on Administrative and Institutional Provisions.**

**Art. 27.5 Contact Points.**

## **THE WTO BASED PLURILATERAL-JOINT STATEMENT INITIATIVE ON DOMESTIC REGULATIONS**

At the World Trade Organization's (WTO) Eleventh Ministerial Conference in December 2017, 59 members sponsored a Joint Ministerial Statement on Services Domestic Regulations (WT/MIN(17)/61), that reaffirm the commitment to "advancing negotiations on the basis of recent proposals as set out in WT/MIN(17)/7/Rev.2 and related discussions in the WPDR (Working Party on Domestic Regulations) and future contributions by Members to deliver a multilateral outcome. Members reaffirm this commitment to the ongoing work in the Ministerial Statement in May 2019 (WT/L/1059). This is the genesis of the ongoing discussions at the core of the WTO.

As of today, and based on information publicly available, WTO members continue to discuss the development of further disciplines under the mandate contained in Article 6 of the General Agreement on Trade in Services (GATS). Such efforts focus the development of a Reference Paper applicable to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services. The disciplines of this reference paper would build on existing disciplines under the GATS, in particular those under GATS Articles III and VI.

Indeed, the scope of the discussion, and thus, of the disciplines to be agreed is limited to a subset of measures covered by the larger universe of domestic regulations, i.e. measures of general application affecting trade in services. Furthermore, the provisions currently under discussion that are related to the specific sub-items contained in APEC Non-binding principle D, Transparency, i.e. publications and information available, opportunity to comment and information before entry into force, and enquiry points apply only where specific commitments have been undertaken.

Although these WTO-based efforts are welcome and support efforts which are at the core of the multilateral trading system, they are not generally as extensive as commitments under preferential trade agreements, including the CPTPP and USMCA. This is true even when read in conjunction with existing GATS obligations. In particular, this is the case when compared to the much broader scope of application vis-a-vis the three specific sub-items under the APEC Non-binding principle D, Transparency.

The current negotiations address the three specific markers (Publications and information available, opportunity to comment and information before entry into force, and enquiry points) in three different provisions under discussion that use the same denominations as in the APEC Non-Binding Principles, proving that pollination from APEC into other fora in the international trading system is real and effective.

In terms of the legal standard applicable to the obligations, the WTO based discussions are being proposed using softer nomenclature. While the USMCA and the CPTPP (except for Financial Services) use language such as "shall," "shall encourage," or "to the extent possible," the Reference Paper discussions use terms such as "to the extent practicable and in a manner consistent with its legal system for adopting measures" (applicable to opportunity to comment and information before entry into force). In contrast, regarding enquiry points and publication an information available the WTO-based discussions use the terms "shall."



**TABLE 2.3 - THE WTO BASED PLURILATERAL-JOINT INITIATIVE ON DOMESTIC REGULATIONS**

<p><b>SECTION II – DISCIPLINES ON DOMESTIC REGULATIONS</b></p>	<p>Lay out of all disciplines to be negotiated and agreed on a plurilateral basis. The scope of the disciplines is limited to measures by Members relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services. These disciplines should be read in conjunction with the General Agreement on Trade in Services (GATS), Article 6, Domestic Regulations.</p> <p>Provisions in this initiative dealing with any of the three markers contained in Principle D, Transparency, of the APEC Non-Binding Principles for Domestic Regulation of the Services Sector (i.e. Publication and Information Available; Enquiry Points; and Opportunity to Comment and Information before Entry into Force), are only applicable within the limits of the scope described above.</p>
<p><b>SUBMISSION OF APPLICATIONS</b></p>	<p>Members shall, to the extent practicable (lower standard than “to the extent possible”) avoid requiring an applicant to approach more than one competent authority for each application for authorization.</p>
<p><b>APPLICATION TIMEFRAMES</b></p>	<p>Member shall ensure that competent authorities to the extent practicable (applicable standard) permit submission of an application at any time during the year. When specific timeframes exist, it shall ensure that the competent authorities allow a reasonable period for the submission of an application.</p>
<p><b>ELECTRONIC APPLICATIONS AND ACCEPTANCE OF COPIES</b></p>	<p>Competent authorities to endeavor (applicable standard) to accept electronic applications.</p> <p>Competent authorities should (applicable standard) accept authenticated copies, unless originals are required to protect integrity of the authorization process.</p>
<p><b>PROCESSING OF APPLICATIONS.</b></p>	<p>The member shall ensure (applicable standard) that the competent authority, to the extent practicable (applicable standard), provide an indicative timeframe.</p> <p>Provide without undue delay, information on the status of the application, when requested by the applicant.</p>

	<p>To the extent practicable (applicable standard), ascertain without undue delay the completeness of an application.</p> <p>Inform the applicant if the application is complete, and of a decision.</p> <p>Inform the applicant if the application is incomplete. Indicate why it is incomplete and provide an opportunity to complete.</p> <p>Inform the applicant if the application is rejected. Indicate why has been rejected and inform of review procedures if they exist.</p>
<b>FEES</b>	<p>Members shall ensure that authorization fees are reasonable, transparent, based on authority set out in a measure, and do not themselves restrict the supply of the service.</p>
<b>ASSESSMENT OF QUALIFICATIONS</b>	<p>Members shall ensure (applicable standard) that competent authorities schedule an examination at reasonably frequent intervals, and provide applicants with a reasonable period of time to request the examination.</p> <p>Members are encourage to accept request for examination in electronic format.</p>
<b>INDEPENDENCE</b>	<p>Member shall (applicable standard) ensure that competent authorities reach and administer its decisions in a manner independent from any supplier.</p>
<b>PUBLICATION AND INFORMATION AVAILABLE (ONE OF THE APEC SPECIFIC MARKERS WITHIN NON-BINDING PRINCIPLE D, TRANSPARENCY)</b>	<p>Member shall (applicable standard) publish or otherwise make publicly available in writing:</p> <p>Contact information of relevant authorities; fees; requirements and procedures; technical standards; procedures for appeal or review; indicative timeframes for processing applications; opportunities for public involvement; and procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications.</p>

**ENQUIRY POINTS (ONE OF THE APEC SPECIFIC MARKERS WITHIN NON-BINDING PRINCIPLE D, TRANSPARENCY)**

Members shall (applicable standard) maintain or establish appropriate mechanisms for responding to inquiries from service suppliers or persons seeking to supply a service, within the scope of this initiative.

**OPPORTUNITY TO COMMENT AND INFORMATION BEFORE ENTRY INTO FORCE (ONE OF THE APEC SPECIFIC MARKERS WITHIN NON-BINDING PRINCIPLE D, TRANSPARENCY)**

To the extent practicable and in a manner consistent with its legal system for adopting measures, each member shall (applicable standard) publish in advance: laws and regulations of general application (within the scope of this initiative); documents providing sufficient details about possible new laws and regulations, as to allow interested persons and other members to assess how it impacts their interest.

1. Members are encouraged to apply the same transparency principle to procedures and administrative rulings of general application.
2. To the extent practicable and in a manner consistent with its legal system for adopting measures , each member shall (applicable standard) :
3. Provide interested persons and other Members a reasonable opportunity to comment on proposed measures or documents (referring to those measures); and
4. Consider comments received.

In publishing a law or regulation or I advance of such publication, to the extent practicable and in a manner consistent with its laws and regulations (applicable standard), a Member is encouraged (applicable standard) to explain the purpose and rationale of the law or regulation.

Members shall, to the extent practicable, endeavor (applicable standard) to allow reasonable time between publication and the date in which services suppliers will have to comply with the published law or regulation.

**TECHNICAL STANDARDS**

Members shall encourage (applicable standard) their competent authorities to adopt technical standards developed through and open and transparent process.

**DEVELOPMENT OF MEASURES**

Members shall encourage any body, including international organizations, designated to develop technical standards to use open and transparent processes.

Regarding measures relating to authorizations for the supply of services, Members shall ensure (applicable standard) that:

- Are based on objective and transparent criteria;
- The procedures are impartial, and adequate for the applicants to demonstrate if they meet the requirements;
- Procedures do not themselves unjustifiably prevent fulfillment of requirements

**DISCRIMINATION BETWEEN MEN AND WOMEN**

Some WTO Members have proposed a discipline prohibiting measures that discriminate between men and women. Exceptions to this discipline would apply where differential treatment is “reasonable and objective” and “aims to achieve a legitimate purpose” and also in the case of temporary measures to accelerate de facto equality. Because the proposal is not accepted by all participating Members, and thus its outcome is uncertain, this paper does not include the proposed discipline in the comparison below.

## **THE TRADE IN SERVICES AGREEMENT (TiSA)**

The TiSA talks started formally in March 2013 and developed over the course of the next three years until November of 2016. At that point, and after twenty-one negotiating rounds, the process was suspended. The initiative comprised twenty-three members of the WTO,<sup>11</sup> including the European Union, representing about 70 percent of global trade in services flows.

It is important to highlight that the TiSA process, (although Geneva-based and oriented in the view of many participants to feed back into the multilateral trading system), was a plurilateral endeavour in response to the lack of progress on services negotiations at the WTO. Therefore, many of the benchmarks brought forward to the negotiating table by individual participants reflected their experience from preferential trade agreements. Indeed, the TiSA negotiation ran parallel to the Trans-Pacific Partnership (TPP) negotiations, and thus, the cross-pollination from one to the other was a regular event.

Regarding the domestic regulation and transparency related provisions in TiSA, similar to USMCA and the CPTPP, the analysis can be split into two parts. First, in general terms, the TiSA covers a scope of domestic regulations similar to that of the CPTPP and USMCA. Under TiSA, Parties shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner, but it is subject to the terms and limitations set out in schedules of specific commitments. In other words, the initially broad scope of application is linked to the quality of the commitments entered into.

Likewise, the transparency provisions of TiSA begin with a general provision under the main or core text of the agreement (additional to the annexes under negotiation, and a potential complement to the GATS) calling for the publication of all measures of general application which pertain to, or affect the operation of the agreement (referencing GATS language). In effect, this sets a broad scope of application of transparency consistent with USMCA and CPTPP. Furthermore, under the specific annexes, participants were negotiating additional disciplines on domestic regulations dealing with measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services, subject to the terms and, imitations set in schedules of specific commitments. Again, the reach of the commitments undertaken limits the scope of the disciplines.

Additionally, TiSA discussions included annexes on financial services, telecommunications, transparency, and administrative and institutional provisions. Regarding domestic regulation related transparency measures, the financial services and telecommunications annex under TiSA are of similar depth and scope as the provisions contained in the CPTPP. Here, the cross-pollination effect of TPP discussions into TiSA discussions seems to have been relevant. For instance, TiSA participants discussed annex-

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<sup>11</sup> Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey and the United States. Of these, the EU has no free trade agreements on services with Chinese Taipei, Israel, Pakistan or Turkey

specific provisions on transparency in the field of financial services (similar to USMCA and CPTPP). Furthermore, under the annex on telecommunications, a specific transparency provision was under discussion which was equivalent to the one contained under USMCA Article 18.24 and CPTPP Article 13.22. These disciplines are additional to the annex on transparency under discussion.

Secondly, TiSA took a similar approach regarding the specific sub-items contained in APEC Non-binding principle D, Transparency, i.e. Publications and information available, opportunity to comment and information before entry into force, and enquiry points. Indeed, there were two sets of disciplines under discussion i.e. the Annex on Transparency, and Part IV of the Agreement on Administrative and Institutional Provisions, which need to be read in combination.

As for publications and information available, the Transparency annex discussions were leaning towards incorporating a provision under which the parties shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by the agreement are promptly published or otherwise made available. In addition, participants discussed the publication in advance of laws and regulations, or the documents that provide sufficient details about possible new laws or regulations. Indeed, these discussions lay out a broad scope of application equivalent to similar provisions under CPTPP and USMCA.

Likewise, regarding the opportunity to comment and information before entry into force, within the same provision under the Transparency Annex parties discussed providing interested persons with the opportunity to comment on the measures or documents mentioned above.

Lastly, on enquiry points, the Transparency annex refers to an obligation on the Parties to maintain or establish appropriate mechanisms for responding to enquiries from service suppliers. Additionally, both of them included discussions on “contact points” to facilitate communications between the parties on matters covered by the agreement.

All combined, these discussions would amount to equivalent provisions found both under CPTPP and USMCA. However, it is important to note that they do not amount to the comprehensive approach on rulemaking process contained under the USMCA (see, Table 2.5 as well as Section III).

**TABLE 2.4 - THE TRADE IN SERVICES AGREEMENT (TISA)**

The negotiation of this agreement is currently suspended, and thus, the information provided in the following chart and paragraphs is unofficial. Furthermore, as the negotiating texts are not in the public domain, all the references made do not reflect a final agreement or a final negotiating position of any of the parties involved. Finally, despite the availability of some portions of the negotiating text through informal and unofficial digital outlets, it is not possible to reproduce any provision under negotiation in its entirety.

**CORE TEXT**

**Art. Transparency.**

- Publication of all measures of general application, which pertain to or affect the operation of the Agreement, at the latest by the time of entry into force.
- Publication of international agreements to which a Party is a signatory which pertain to or affect trade in services.

**Art. Domestic Regulations.**

- Parties shall ensure (applicable standard) that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
- The scope of application of this discipline is subject to the terms and limitations set out on each Parties' schedule of commitments.

**DOMESTIC REGULATIONS ANNEX**

**Scope:**

Measures relating to licensing requirements and procedures, qualification requirements and procedures, an technical standards, affecting trade in services with respect to which a party has undertaken a commitment, and subject to any terms or imitations as set out in its schedule.

The discussions under this annex, also included disciplines on:

- Development and administration of measures;
- Treatment of applications for authorization to supply a service;
- Authorization fees;
- Indicative timeframes for the processing of applications;

- Assertion on the completeness, incompleteness, or rejection of an application to an authorisation to supply a service, including the possibility for the applicant to complete an incomplete application or re-submit a rejected application.

**Transparency Paragraph:**

- When a Party requires an authorisation to supply a service, the Party shall provide the information necessary for the service supplier to persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. This obligation is additional to the general publication obligation for publication under the Transparency Annex (laws, regulations, procedures and administrative rulings of general application).
- Such information shall include (applicable standard):
- Indicative timeframes for processing applications; technical standards; fees, contact information of relevant authorities; opportunities for public involvement; appeal and review procedures on applications, among others.

**FINANCIAL SERVICES ANNEX**

**Art. Self-Regulatory Organisations.** Parties shall ensure (applicable standard) that a rule of general application adopted or maintained by a self-regulatory organisation of the Party is promptly published or otherwise made available.

**Art. Transparency.** Core Text provision on Domestic Regulations shall not apply to Financial Services. Instead, the transparency disciplines applicable to financial services are laid out here.

Discussions under TiSA included:

- Ensuring that all measures of general application within the scope of the Annex are administered in a reasonable, objective and impartial manner.
- Regarding authorizations for the supply of a service:
- Parties shall Provide (applicable standard) information necessary to be able to comply with the requirements and procedures for obtaining, amending and renewing authorizations.
- Shall, to the extent practicable (applicable standard) provide indicative timeframes for processing applications.
- Shall endeavour (applicable standard) to accept electronic applications.



## TELECOMMUNICATIONS ANNEX

- Shall accept (applicable standard) authenticated copies of documents, in place of originals, unless originals are required to protect the integrity of the authorisation process.
- Also, Parties are to provide information on the status of an application, including when an application is considered incomplete, complete or is rejected.
- Parties shall, to the extent practicable, (applicable standard) permit an applicant to submit an application at any time and allow a reasonable period for the submission.

### **Disciplines on authorization fees:**

Reasonable, transparent, and not in themselves restricts the supply of services.

### **Disciplines on measures relating to licensing requirements and procedures, qualification requirements and procedures, Parties shall:**

- Ensure that they are based on objective and transparent criteria;
- Ensure that the competent authority reaches and administers its decisions in an independent manner;
- Ensure that procedures are impartial, and ensure that the procedures are adequate for applicants to demonstrate whether they meet the requirements where such requirements exist;
- To the extent practicable, avoid approaching more than one competent authority for each application.

The discussion under this Annex included disciplines similar-comparable to those included under the USMCA and particularly, the TPP. For instance:

- Telecommunications Regulatory Bodies;
- Approaches to Regulation;
- Licenses (when a license is required, the party shall ensure public availability of criteria and procedures; terms and conditions; period of time it normally takes to reach a decision concerning an application); Furthermore, Each Party shall ensure that, on request, an applicant receives the reasons for any denial of a license; imposition of supplier specific conditions; revocation of a license; refusal of a license.
- Access to and Use of Public telecommunications Services;
- Treatment of Major Suppliers;
- Interconnection Obligations relating to Major Suppliers;

- Universal Service (including a necessity test);
- Allocation and Use of Scarce Resources;
- Transparency.

Under this article, Parties discussed chapter specific provisions additional to the general provisions on transparency under the Core Text and the Annex on Transparency.

Each Party shall ensure that its measures relating to public telecommunications services are made publicly available. A non-exhaustive list is provided.

**TRANSPARENCY ANNEX  
OR EQUIVALENT**

In the case of TiSA, there were two relevant bodies dealing with horizontal transparency provisions, including contact points. A Transparency Annex, and Part IV of the Agreement on Administrative and Institutional Provisions.

**Transparency Annex:**

**Scope:**

- Parties shall ensure (applicable standard) that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such manner as to enable interested persons and Parties to become acquainted with them.
- Also, the discussions covered the publication in advance of laws and regulations within the scope, or the documents that provide sufficient details about possible new law or regulation (one of the APEC specific markers within non-binding principle D, Transparency)
- Opportunity to comments on those measures or documents (one of the APEC specific markers within non-binding principle D, Transparency).
- Parties are encouraged to explain the purpose and rationale of the law or regulation.
- Parties, to the extent practicable, are encouraged to allow reasonable time between publication and the date on which service suppliers must comply with the law or regulation.
- Parties shall designate a contact point or points to facilitate communications between the parties on any matter covered by this Agreements, and respond promptly to all requests by any other Party for specific

information on any of its measures of general application, which pertain to or affect the operation of this Agreement (one of the APEC specific markers within non-binding principle D, Transparency).

- Parties shall maintain or establish appropriate mechanisms for responding to enquiries from service suppliers or persons seeking to supply a service regarding its measures of general application, which pertain to or affect the operation of this Agreement.

**Administrative and Institutional Provisions:**

A provision on Contact Points equivalent to the same language contained in the transparency Annex was under discussion. Additionally, each Party shall notify the other Parties in writing of its designated contact points no later than 60 days after the entry into force of the Agreement (one of the APEC specific markers within non-binding principle D, Transparency).

## **COMPARATIVE CHART ACCORDING TO PRINCIPLE D, TRANSPARENCY, APEC NON-BINDING PRINCIPLES FOR DOMESTIC REGULATIONS OF THE SERVICES SECTOR**

The following table provides a detailed comparison between three of the four initiatives covered by the study, i.e. the USMCA, the CPTPP, and the WTO-based JSI on Domestic Regulations. This selection of the initiatives was based on the need to clearly illustrate the differences between two highly advanced preferential trade agreements (USMCA and CPTPP) and a negotiating process taking place at the core of the multilateral trading system (WTO-based JSI on Domestic Regulations).

Overall, the three initiatives include provisions that address the specific sub-items contained in APEC Non-binding principle D, Transparency, i.e. Publications and information available, opportunity to comment and information before entry into force, and enquiry points. However, there are clear differences regarding the scope of the measures under publication; the opportunity to comment (and the material means through which this could be done); the amount of information provided before the entry into force; and enquiry or contact points. These are detailed below.

The WTO-based JSI on Domestic Regulations (hereafter JSI) contains the fewest binding obligations of the three initiatives, likely reflecting the greater number and diversity of negotiating parties. The scope of the publication disciplines is restricted to fees, contact information of relevant authorities, requirements and procedures, indicative timeframes for processing applications, opportunities for public involvement, and procedure for monitoring or enforcing compliance with terms and conditions of licenses or qualifications (although this gap is ameliorated by existing publication requirements of the GATS). In contrast, USMCA and CPTPP cover laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by the agreements. Furthermore, the USMCA mandates parties to publish online information regulatory processes and mechanisms employed by their regulatory authorities to prepare, evaluate, or review regulations.

Likewise, regarding advanced publication the JSI contains a softer obligation by using the expression “to the extent practicable and in a manner consistent with its laws and regulations, each member shall.” In contrast, the CPTPP and the USMCA include much stronger obligations using the expression “to the extent possible, each party shall.” It is worth highlighting that under the JSI participants have considered the possibility to encourage each other to include an explanation of the purpose and rationale of the law or regulation (further to the publication). Both USMCA and CPTPP incorporate such obligation, but under a stricter legal standard.

Additionally, both USMCA and CPTPP provide for the advanced publication of regulations of general application (at the central level of government) respecting any matter covered by the agreements that is likely to affect trade or investment between the parties of the agreements. This publication shall be done in an official journal, website, preferably online, and consolidated into a single portal. Such publication should be made no less than 60 days in advance of the date on which comments are due.

Furthermore, both USMCA and CPTPP include provisions dealing with early planning, which impose an obligation on the parties to publish annually a list of regulations that it reasonably expects within the next twelve months to adopt or propose to adopt. In contrast, the JSI does not, thus far, hold a discussion around such discipline. This type of obligation may have an impact on the quality and amount

of comments to be submitted prior to publication. Therefore, it could affect the overall quality of the measures to be published and implemented.

Regarding the obligation to provide interested persons and the other parties with the opportunity to comment on a proposed measure, the situation is the same as with advanced publication. The strength of the legal obligations differs substantially from the USMCA and CPTPP, compared to the JSI talks. Furthermore, as we explained above for USMCA and CPTPP, if regulations affecting trade between the parties are to be published no less than 60 days before comments are due, then this obligation is likely to have a significant impact on the quality and quantity of the comments to be submitted.

Additionally, under USMCA parties shall maintain a dedicated website containing the text of the regulation, impact assessment, explanation of the regulation, explanation of the data, other information and analyses that the authority relied upon to support the regulation, and the name and contact information of an individual official from the regulatory authority who may be contacted for enquiries. This provision is unique to the USMCA. Such data should be published before the regulatory authority finalizes its work on the regulation, and at a time that would enable the authority to take into account the comments submitted. Furthermore, under USMCA after the information listed above has been published, interested persons should be allowed to submit comments electronically or by mail to a published address.

Regarding enquiry points or contact points, the JSI does address the marker under the APEC Non-Binding Principle D, Transparency. Indeed, participants currently discuss the inclusion of an obligation to maintain or establish appropriate mechanism for responding to inquiries from service suppliers or persons seeking to supply services. However, this obligation does not amount to the equivalent provision under USMCA as described in the paragraph above. Likewise, under CPTPP parties shall designate contact points to facilitate communications between the parties on matters covered by the agreement, and shall notify the other Parties in writing of the designated contact point no later than 60 days after the date of entry into force of the Agreement.

Lastly, USMCA contains a provision on Final Publication (Article 28.12), indicating what needs to be published in a final regulatory impact assessment or equivalent document, once the authority finalizes its work on a regulation (e.g. compliance date; rationale and objectives achieved by regulation; authorities' views on substantive issues raised during the production of the regulation; major alternative approaches that were considered in developing the regulation, and the reasons supporting the alternative that was chosen; relationship between the regulation and the key evidence data used). Likewise, Parties shall publish online a description of the processes and mechanisms employed by its regulatory authorities to prepare, evaluate, or review regulations.

These provisions are unique to USMCA and are indicative of the evolution from the disciplines on procedural transparency and good regulatory practices from the original TPP, later CPTPP. And perhaps they also indicate that such level of sophistication requires a state of institutional readiness that was not present in all the eleven Parties to the CPTPP, but that it is to be found among the USMCA community.

**TABLE 2.5 - COMPARATIVE CHART ACCORDING TO PRINCIPLE D, TRANSPAPERENCY, APEC NON--BINDING PRINCIPLES FOR DOMESTIC REGULATIONS OF THE SERVICES SECTOR**

	<p align="center"><b>UNITED STATES-MEXICO-CANADA AGREEMENT (USMCA)</b></p>	<p align="center"><b>THE COMPREHENSIVE AND PROGRESSIVE TRANSPACIFIC PARTNERSHIP AGREEMENT (CPTPP, TPP II or former TPP)</b></p>	<p align="center"><b>THE WTO BASED PLURILATERAL-JOINT INITIATIVE ON DOMESTIC REGULATIONS</b></p>
<p><b>PUBLICATION AND INFORMATION AVAILABLE</b></p>	<p><b>Article 29.2: Publication</b></p> <p>1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available in a manner that enables interested persons and the other Parties to become acquainted with them. To the extent possible, each Party shall make these measures available online.</p> <p>3. Each Party shall ensure that its laws and regulations of general application at the central level of government are published on a free, publicly accessible website that is capable of performing searches for these laws and regulations by citation or through a word search, and shall ensure that this website is kept updated. Annex 29-A sets out each Party’s websites</p>	<p><b>Article 25.3: Scope of Covered Regulatory Measures</b></p> <p>Each Party shall promptly, and no later than one year after the date of entry into force of this Agreement for that Party, determine and make publicly available the scope of its covered regulatory measures. In determining the scope of covered regulatory measures, each Party should aim to achieve significant coverage.</p> <p>(Regulatory measure means a measure of general application related to any matter covered by this Agreement adopted by</p>	<p>Member shall (applicable standard) publish or otherwise make publicly available in writing:</p> <ul style="list-style-type: none"> <li>• Contact information of relevant authorities; fees;</li> <li>• requirements and procedures;</li> <li>• technical standards; procedures for appeal or review;</li> <li>• indicative timeframes for processing applications;</li> <li>• opportunities for public involvement; and</li> </ul>

	<p><b>Article 28.15: Information About Regulatory Processes</b></p> <p>1. Each Party shall publish online a description of the processes and mechanisms employed by its regulatory authorities to prepare, evaluate, or review regulations. The description shall identify the applicable guidelines, rules, or procedures, including those regarding opportunities for the public to provide input.</p> <p>2. Each Party shall also publish online:</p> <p>(a) a description of the functions and organization of each of its regulatory authorities, including the appropriate offices through which persons can obtain information, make submissions or requests, or obtain decisions;</p> <p>(b) any procedural requirements or forms promulgated or utilized by any of its regulatory authorities;</p> <p>(c) the legal authority for verification, inspection, and compliance activities by its regulatory authorities;</p> <p>(d) information concerning the judicial or administrative procedures available to challenge regulations; and</p>	<p>regulatory agencies with which compliance is mandatory).</p> <p><b>Article 25.5: Implementation of Core Good Regulatory Practices</b></p> <p>5. Subject to its laws and regulations, each Party should ensure that relevant regulatory agencies provide public access to information on new covered regulatory measures and, where practicable, make this information available online.</p> <p><b>Article 26.2: Publication</b></p> <p>1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available in a manner that enables interested persons and Parties to become acquainted with them.</p> <p>5. Each Party shall, with respect to a regulation of general application adopted by its central level of government</p>	<ul style="list-style-type: none"> <li>• procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications.</li> </ul>
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	<p>(e) any fees charged by a regulatory authority to a person of a Party for services rendered in connection with the implementation of a regulation, including for licensing, inspections, audits, and other administrative actions required under the Party’s law to import, export, sell, market, or use a good.</p>	<p>respecting any matter covered by this Agreement that is published in accordance with paragraph 1:</p> <p>(a) promptly publish the regulation on a single official website or in an official journal of national circulation; and</p> <p>(b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.</p>	
<p><b>OPPORTUNITY TO COMMENT AND INFORMATION BEFORE ENTRY INTO FORCE</b></p>	<p><b>Article 29.2: Publication</b></p> <p>Paragraph 2. Each Party shall, to the extent possible:</p> <p>(a) publish in advance a measure referred to in paragraph 1 that it proposes to adopt; and</p> <p>(b) provide interested persons and the other Parties a reasonable opportunity to comment on a proposed measure referred to in subparagraph (a).</p> <p><b>Article 28.6: Early Planning</b></p> <p>Each Party shall publish annually a list of regulations that it reasonably expects within the following 12 months to adopt or propose to adopt. Each regulation identified in the list should be accompanied by:</p>	<p><b>Article 25.5: Implementation of Core Good Regulatory Practices</b></p> <p>7. Each Party should, in a manner it deems appropriate, and consistent with its laws and regulations, provide annual public notice of any covered regulatory measure that it reasonably expects its regulatory agencies to issue within the following 12-month period.</p> <p><b>Article 26.2: Publication</b></p> <p>2. To the extent possible, each Party shall:</p>	<p>To the extent practicable and in a manner consistent with its legal system for adopting measures, each member shall (applicable standard) publish in advance: laws and regulations of general application (within the scope of this initiative); documents providing sufficient details about possible new laws and regulations, as to allow interested persons and other members to assess how it impacts their interest.</p> <p>Members are encouraged to apply the same transparency principle to procedures and</p>



	<p>(a) a concise description of the planned regulation;</p> <p>(b) a point of contact for a knowledgeable individual in the regulatory authority responsible for the regulation; and</p> <p>(c) an indication, if known, of sectors to be affected and whether there is any expected significant effect on international trade or investment.</p> <p>Entries in the list should also include, to the extent available, time tables for subsequent actions, including those providing opportunities for public comment under Article 28.9 (Transparent Development of Regulations).</p> <p><b>Article 28.7: Dedicated Website</b></p> <p>1. Each Party shall maintain a single, free, publicly available website that, to the extent practicable, contains all information that it is required to publish pursuant to Article 28.9 (Transparent Development of Regulations).</p> <p>2. A Party may comply with paragraph 1 by making publicly available information on, and providing for the submission of comments through, more than one website, provided the information can be accessed, and submissions can be made, from a single web portal that links to other websites.</p>	<p>(a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and</p> <p>(b) provide interested persons and other Parties with a reasonable opportunity to comment on those proposed measures.</p> <p>3. To the extent possible, when introducing or changing the laws, regulations or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations or procedures, proposed or final in accordance with its legal system, are made publicly available and the date when they enter into force.</p> <p>4. With respect to a proposed regulation of general application of a Party's central level of government respecting any matter covered by this Agreement that is likely to affect trade or investment between the Parties and that is</p>	<p>administrative rulings of general application.</p> <p>To the extent practicable and in a manner consistent with its legal system for adopting measures, each member shall (applicable standard):</p> <p>Provide interested persons and other Members a reasonable opportunity to comment on proposed measures or documents (referring to those measures); and</p> <p>Consider comments received.</p> <p>In publishing a law or regulation or 1 advance of such publication, to the extent practicable and in a manner consistent with its laws and regulations (applicable standard), a Member is encouraged (applicable standard) to explain the purpose and rationale of the law or regulation.</p> <p>Members shall, to the extent practicable, endeavor (applicable standard) to allow reasonable time between publication and the date in which services</p>
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	<p><b>Article 28.9: Transparent Development of Regulations</b></p> <p>1. During the period described in paragraph 2, when a regulatory authority is developing a regulation, the Party shall, under normal circumstances, 2 publish:</p> <p>(a) the text of the regulation along with its regulatory impact assessment, if any;</p> <p>(b) an explanation of the regulation, including its objectives, how the regulation achieves those objectives, the rationale for the material features of the regulation, and any major alternatives being considered;</p> <p>(c) an explanation of the data, other information, and analyses the regulatory authority relied upon to support the regulation; and</p> <p>(d) the name and contact information of an individual official from the regulatory authority who may be contacted concerning questions regarding the regulation.</p> <p>At the same time the Party publishes the information listed in subparagraphs (a) through (d), the Party shall also make publicly available data, other information, and scientific and technical analyses it relied upon in support of the regulation, including any risk assessment.</p> <p>2. With respect to the items required to be published under paragraph 1, each Party shall</p>	<p>published in accordance with paragraph 2(a), each Party shall:</p> <p>(a) publish the proposed regulation in an official journal, or on an official website, preferably online and consolidated into a single portal;</p> <p>(b) endeavour to publish the proposed regulation:</p> <p>(c) no less than 60 days in advance of the date on which comments are due; or</p> <p>(d) within another period in advance of the date on which comments are due that provides sufficient time for an interested person to evaluate the proposed regulation, and formulate and submit comments;</p> <p>(e) to the extent possible, include in the publication under subparagraph (a) an explanation of the purpose of, and rationale for, the proposed regulation; and</p> <p>(f) consider comments received during the comment period, and is encouraged to explain any significant modifications made to</p>	<p>suppliers will have to comply with the published law or regulation.</p>
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	<p>publish them before the regulatory authority finalizes its work on the regulation<sup>3</sup> and at a time that will enable the regulatory authority to take into account the comments received and, as appropriate, make revisions to the text of the regulation published under subparagraph I(a).</p> <p>3. After the items identified in paragraph I have been published, the Party shall ensure that any interested person, regardless of domicile, has an opportunity, on terms no less favorable than those afforded to a person of the Party, to submit written comments on the items identified in paragraph I for consideration by the relevant regulatory authority of the Party. Each Party shall allow interested persons to submit any comments and other inputs electronically and may also allow written submissions by mail to a published address or through another technology.</p> <p>4. If a Party expects a draft regulation to have a significant impact on trade, the Party should normally provide a time period to submit written comments and other input on the items published in accordance with paragraph I that is:</p> <p>(a) not less than 60 days from the date the items identified in paragraph I are published; or  (b) a longer time period as is appropriate due to the nature and complexity of the regulation, in order to provide interested persons adequate opportunity to understand how the regulation may affect their interests and to develop informed responses.</p>	<p>the proposed regulation, preferably on an official website or in an online journal.</p>	
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	<p>5. With respect to draft regulations not covered under paragraph 4, a Party shall endeavor, under normal circumstances, to provide a time period to submit written comments and other input on the information published in accordance with paragraph 1 that is not less than four weeks from the date the items identified in paragraph 1 are published.</p> <p>6. In addition, the Party shall consider reasonable requests to extend the comment time period under paragraph 4 or 5 to submit written comments or other input on a draft regulation.</p> <p>7. Each Party shall endeavor to promptly make publicly available any written comments it receives, except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content. If it is impracticable to publish all the comments on the website provided for in Article 28.7 (Dedicated Website), the regulatory authority of a Party shall endeavor to publish those comments on its own website.</p> <p>8. Before finalizing its work on a regulation, a regulatory authority of a Party shall evaluate any information provided in written comments received during the comment period.</p> <p>9. When a regulatory authority of a Party finalizes its work on a regulation, the Party shall promptly publish the text of the regulation, any final impact</p>		
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	<p>assessment, and other items as set out in Article 28.12 (Final Publication).</p> <p>10. The Parties are encouraged to publish government-generated items identified in this Article in a format that can be read and digitally processed through word searches and data mining by a computer or other technology</p> <p><b>Article 28.12: Final Publication</b></p> <p>1. When a regulatory authority of a Party finalizes its work on a regulation, the Party shall promptly publish, in a final regulatory impact assessment or other document:</p> <p>(a) the date by which compliance is required;</p> <p>(b) an explanation of how the regulation achieves the Party’s objectives, the rationale for the material features of the regulation (to the extent different than the explanation provided for in Article 28.9 (Transparent Development of Regulations)), and the nature of and reasons for any significant revisions made since making the regulation available for public comment;</p> <p>(c) the regulatory authority’s views on any substantive issues raised in timely submitted comments;</p> <p>(d) major alternatives, if any, that the regulatory authority considered in developing the regulation and reasons supporting the alternative that it selected; and</p>		
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	<p>(e) the relationship between the regulation and the key evidence, data, and other information the regulatory authority considered in finalizing its work on the regulation.</p> <p>2. Each Party shall ensure that all regulations in effect are published on a free, publicly available website.</p> <p><b>Article 28.15: Information About Regulatory Processes</b></p> <p>1. Each Party shall publish online a description of the processes and mechanisms employed by its regulatory authorities to prepare, evaluate, or review regulations. The description shall identify the applicable guidelines, rules, or procedures, including those regarding opportunities for the public to provide input.</p>		
<p><b>ENQUIRY POINTS (CONTACT POINTS)</b></p>	<p><b>Article 28.19: Contact Points</b></p> <p>Each Party shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 30.5 (Agreement Coordinator and Contact Points). A Party shall promptly notify the other Parties of any material changes to its contact point.</p> <p><b>Article 30.5: Agreement Coordinator and Contact Points</b></p> <p>1. Each Party shall designate an Agreement Coordinator to facilitate communications between</p>	<p><b>Article 25.6: Committee on Regulatory Coherence.</b></p> <p>5. Each Party shall designate and notify a contact point to provide information, on request by another Party, regarding the implementation of this Chapter in accordance with Article 27.5 (Contact Points).</p>	<p>Members shall (applicable standard) maintain or establish appropriate mechanisms for responding to inquiries from service suppliers or persons seeking to supply a service, within the scope of this initiative</p>

	<p>the Parties on any matter covered by this Agreement, as well as other contact points as required by this Agreement.</p> <p>2. Unless otherwise provided in this Agreement, each Party shall notify the other Parties in writing of its Agreement Coordinator and any other contact point provided for in this Agreement no later than 60 days after the date of entry into force of this Agreement.</p> <p>3. Each Party shall promptly notify the other Parties, in writing, of any changes to its Agreement Coordinator or any other contact point.</p> <p>4. On the request of another Party, the Agreement Coordinator shall identify the office or official responsible for a matter and assist, as necessary, in facilitating communication with the requesting Party.</p>	<p><b>Article 27.5: Contact Points</b></p> <p>1. Each Party shall designate an overall contact point to facilitate communications between the Parties on any matter covered by this Agreement, as well as other contact points as required by this Agreement.</p> <p>2. Unless otherwise provided in this Agreement, each Party shall notify the other Parties in writing of its designated contact points no later than 60 days after the date of entry into force of this Agreement for that Party. A Party shall notify any Party for which this Agreement enters into force at a later date of its designated contact points, no later than 30days after the date on which the other Party has notified its designated contact points.</p>	
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## **SECTION III. TRENDS, CHALLENGES, AND BEST PRACTICES**

Based on the information contained in the previous sections, the study identifies a set of best practices and places them in a larger context by suggesting possible trends in transparency and predictability-related measures in the field of trade in services. Identifying best practices will allow member economies to self-examine and eventually, self-improve, when and where appropriate, and it is likely to facilitate the further exchange of information and experience sharing among the APEC community. Furthermore, best practices are usually indicative of emerging or well-established trends.

Given that Asia Pacific remains the main engine of global economic growth, trade, and innovation, the identification of best practices and trends in transparency and predictability-related services rulemaking could also serve as a catalyst for the promotion of a forward-looking agenda on beyond-the-border trade facilitation or structural reforms. Indeed, APEC's ability to create new dialogues and narratives that are later used by international rulemaking and negotiating instances, such as the WTO and the vast network of existing regional trade agreements, is well recognized. Such exploration may be an opportunity for advancing an agenda on good/best regulatory practices well beyond the boundaries of the Asia Pacific.

Such forward-looking agenda would certainly attract the attention of the business community. The creation of sound regulatory spaces through enhanced engagement of interested parties at all stages of the rulemaking process (prior, during and after implementation) has significant value, both as a matter of institutional densification and trade.

Likewise, the present study builds on current and well-paced work undertaken by APEC in the specific field of services domestic regulations. The Non-Binding Principles for Domestic Regulation of the Services Sector represent a significant and influential effort by APEC member economies that could have positive effects both at the domestic and international levels. These principles provide APEC members economies and the broader international trade community with a set of guidelines or a roadmap to direct the establishment of sound regulatory environments that allow for the successful development of domestic and international trade in services markets. In particular, the Non-Binding Principles could place APEC economies at the vanguard of the development of a more coherent regulatory space to conduct business within the region and beyond.

Finally, the information contained in this section can provide an additional impetus for APEC member economies to continue their individual efforts in their domestic regulatory spaces, as well as a source for the demystification of the challenges involved in the implementation of the non-binding principles. APEC provides a unique space to actively support international cooperation efforts, and offers sufficient space for economies to combine experiences and efforts towards the creation of a free and open trading space in the Asia Pacific and the world.

### **TRENDS AND CHALLENGES**

Based on the information and analyses contained in the previous sections, the study has identified clear and emerging trends in transparency and predictability-related measures consistent with the overall objective of building a more coherent and reliable regulatory environment.



Furthermore, it is important to note that these trends come with a certain degree of consistency between domestic practices and international trade negotiations. Likewise, the study has identified specific areas of regulatory practice where clear trends have not yet been established, and thus, the challenge to advance a more ambitious regulatory reform agenda persists. This is particularly true at the domestic level, along with some significant developments under international rulemaking.

## TRENDS

For purposes of this study, we have characterized ‘trends’ as specific practices that are followed by at least 11 APEC member economies. It is important to note that this analysis details a methodological approach, and thus, it does not seek to impose a certain understanding or specific value-judgement on any measures, practices, or member economy behavior. Furthermore, the fact that a practice or measure constitutes a trend does not prevent the same measure or practice to be characterized as, for instance, a best practice.

Overall, there seems to be a well-established trend among APEC member economies regarding the **online publication of laws and regulations of general application affecting trade in services**. Although the principle is not perfectly implemented, the trend is clear and there are no indications of backtracking. Moreover, it seems that transparency related measures once they have been introduced, become permanent features of the regulatory landscape.

**Publication in advance** (before enactment) has been legally adopted by at least 12 APEC member economies, but an additional number of economies follow the practice regardless of the non-existence of a legal obligation. This principle is probably the most important of all the three specific sub-items under APEC Non-binding principle D, Transparency. Without publication in advance measure, both the opportunity to comment and making information available before entry into force, become virtually irrelevant.

The World Bank data indicates that twenty APEC member economies **publish draft regulations (before or after enactment)** and 13 publish the **full draft text**, as opposed to an abstract. Additionally, 16 APEC member economies use a **unified website** to comply with transparency principles and 13 do so through an **agency or ministry specific website**. Therefore, there is a well-established trend in publication of draft measures online.

A total of 14 APEC member economies prepare **reports on the consultation process (comments)** through their respective ministries or regulatory agencies. Seven economies publish such reports on a **ministry or regulatory agency specific website**, while a total of 10 do it on a **unified website**.

In twenty APEC member economies, ministries or regulatory agencies **request comments from the general public on draft legislation**, although the legal obligation to do so only exist in 14 economies. However, it is not clear how many of those members economies are under the obligation to effectively consider those comments.

A total of 17 APEC member economies conduct **regulatory impact assessment** studies on proposed laws and regulations at some point of the rulemaking process. Furthermore, 15 include ex-ante impact assessments.

## CHALLENGES/GAPS

For purposes of this study, critical gaps and challenges are characterized as those practices that are followed by less than 11 member economies. As stated earlier, this reflects a methodological approach for the study and does not represent in any way a specific value-judgement on any measure, practice, or member economy behavior nor seek to impose a point of view or perspective. Furthermore, the fact that a practice or measure is characterized as a challenge in one economy, does not prevent the same measure or practice to be characterized as, for instance, a best practice in other contexts. In fact, since best practices are usually more technically and administratively demanding, the categories of challenges and best practices may coincide.

Most noticeably, there seem to be **gaps/challenges between the existing legal obligations and the actual practices** of some member economies. For instance, while eight APEC member economies do not have a **legal mandate/obligation to publish draft measures before enactment**, 20 APEC economies do publish the drafts. Likewise, regarding the existence of a **legal deadline for the publication of draft measures**, while only eight member economies include this obligation, 11 economies actually **implement a deadline**. Therefore, while a trend has been established, members do not necessarily align their practices with their legal frameworks. Tackling this situation would not automatically improve the level of treatment provided because these practices are usually part of internal guidelines or practices established, but it could have a significant effect in enhancing the level of legal certainty/predictability of the rulemaking process.

A comparable situation takes place regarding the existence of a **legal timeframe for the consultation** process. While only seven member economies include such legal provision, a total of 14 do **implement a timeframe**, regardless of the legal gap. Again, aligning legal regimes and practices could have a significant effect in enhancing the level of legal certainty/predictability to the rulemaking process.

Lastly, while the online publication of measures is present across APEC member economies, searching and **finding the relevant regulatory information for most services activities remains a challenging exercise**. Indeed, since the supply of services usually involves navigating through different regulatory spaces, e.g. telecommunications regulations, or foreign investment regimes, organizing relevant sector or activity-specific search engines, which use the information already provided by either unified or agency/ministry specific websites, could make a tangible difference in terms of business/services facilitation.

## BEST PRACTICES

Best practices, in this context, embodies the limits of what is possible at a given time in a specific field. In the case of services trade-related transparency and predictability measures, best practices are usually reflective of a standard that is either the one applied by one member or a small group of members, whether they do it based on an international commitment or as a matter of good domestic regulatory practice or both.

In Section II, the study provides individual analyses on four major trade initiatives. Out of those, two (USMCA and CPTPP) contain a clear set of best practices related to transparency and predictability. Some of those best practices that have the potential to enhance the regulatory rulemaking process, and

thus, of the measures produced. This below list is not an exhaustive enumeration of best practices, rather, it constitutes a possible initial approach to a more complex and lengthy analysis.

- The obligation to maintain mechanisms for **retrospective review** of laws and regulations with the aim of keeping a sound regulatory environment that is up to date and is dynamic enough as to identify areas where improvement is needed, including amendments, derogations, and the production of new measures. This obligation represents a significant step forward in the use of international trade agreements as a tool for establishing new benchmarks in regulatory practice.
- The obligation to publish annually, a list of the regulations that are to be implemented. This **early planning** mechanism allows interested parties to anticipate to regulatory processes and possible practical effects on the conduction of trade in services. Furthermore, it can have a positive impact on the quality of the comments submitted by interested parties throughout the rulemaking process.
- The obligation to maintain a **dedicated website**, which holds all relevant information throughout the rulemaking process. This allows for a one-stop shop, providing a high level of transparency to the entire process, including the impact assessment studies, the full text of the regulations, and the scientific and technical information on the basis of which the authority is making its decisions on the final shape of a given regulation.
- The possibility for interested parties to **submit their comments electronically** is a best practice not yet implemented by all member economies. While most member economies provide for the opportunity to comment, a paperless process is not yet the trend.
- The obligation to prepare **impact assessments of regulations** affecting trade in services both during the rulemaking process and at the end of it (a priori and ex post), is a key component of a follow-through mechanism. Such a mechanism does not prejudge the content of a given regulation, but rather seeks to assure that through a transparent, open and accountable process, the end result is likely to be of higher quality, and thus, probably more durable.

As a final reflection, these best practices, trends and challenges should seek to enhance not only the quality of the regulations produced, but also establish higher standards of public accountability. Indeed, rulemaking process affecting people's economic activities can have significant impact on their livelihoods and their ability to prosper, more generally. Moreover, identifying best practices should be an exercise that celebrates ingenuity and entrepreneurship, as core elements of the international cooperation efforts conducted by APEC.

## RECOMMENDATIONS

The following recommendations are drawn from the study findings as well as from the August 2019 small group workshop discussions. The recommendations are not exhaustive, nor formal proposals for specific work, but provide some ideas of how APEC can continue to make progress in achieving its goals related to the implementation of APEC's non-binding principles on domestic regulation of the services sector, with a focus on transparency and predictability.

- Undertake a review across CTI, EC and SCE sub-fora to catalogue APEC activities and reports on good regulatory practices, structural reform initiatives, and transparency in rulemaking, which could be used as a reference document for the Group on Services. The reference document could be used to leverage work in and collaborate with other sub-fora when designing capacity building activities to help APEC economies meet APEC's Non-Binding Principles for Domestic Regulations of the Services Sector.

- Identify 2-3 services sectors to examine against the transparency sub-items of APEC’s non-binding principles across APEC member economies (or volunteer economies). Many of the participants that attended and actively engaged in the August 2019 workshop discussions came from Ministries of Trade or Foreign Affairs and were able to provide information and share experiences related to their own ministry or agencies’ engagement in rulemaking, e.g., vis-à-vis trade in services negotiations. This follow up study would focus on the processes of a specific ministry or regulatory agency responsible for a service sector and how they implement transparency and predictability measures (e.g., advance notice and comment, publication of legal and administrative measures, and enquiry points) related to the development or amendment of relevant laws and regulations. The analysis could provide economies with practical examples, which may vary depending on the degree of regulation of the service sector (i.e., some service sectors are more regulated than others), whether it is regulated at the federal or local level, as well as how the rulemaking process at a ministry/agency may differ between sectors or even depending on the level of economic development. APEC member economies could identify additional capacity building activities based on the results of the analysis.
- Conduct a study to highlight APEC member economy best practices in engaging in public outreach and generating awareness both during the consultation process as well as when draft regulations are in place. This study only briefly touches on how economies reach out to stakeholders to seek feedback on draft regulations, e.g. through advisory groups, holding briefings or consultative workshops, etc. However, during the August 2019 workshop discussions, it was suggested that economies could learn more from one another about different methods and techniques used during the outreach and awareness building process (which also improves transparency). One economy also mentioned that the development of a public awareness strategy for final laws and regulations was a helpful way to ensure stakeholder understand the implications and are able to be compliant of the new or amended rule. The results of this proposed analysis could develop general guidelines to inform governments how to engage stakeholders differently but effectively depending on the complexity of the law/regulation or the services sector.
- Develop a short paper of case studies that examines how economies (both APEC and non-APEC) are using technology and innovation to increase transparency and predictability in the rulemaking process. The case studies could focus on innovative processes, e.g., e-consultation platforms or the use of mobile applications that help stakeholders access rules and regulations, to improving transparency and access to services-related domestic regulations, e.g., by developing economy level services information portal in an APEC economy (see Box I-1 on Laos Services Portal).

## **ANNEX A - APEC NON-BINDING PRINCIPLES FOR DOMESTIC REGULATION OF THE SERVICES SECTOR**

*In the spirit of APEC's underlying approach of open regionalism;*

*Recognizing the dependence of all APEC economies on the services sector as a driver of economic growth, employment, and competitiveness;*

*Emphasizing the importance of creating a policy and regulatory environment conducive to services market in APEC region;*

*Recognizing the right of APEC Economies to regulate and introduce new regulations on the supply of services in order to meet policy objectives, and the particular need of developing economies to exercise this right;*

*Mindful of the shared commitments of APEC economies to achieving greater regional economic integration in services markets in the APEC region;*

*Acknowledging diversity in the level of development of APEC economies, and mindful of the particular economic situation and specific needs of developing economy members;*

*Reaffirming the APEC Principles for Cross-Border Trade in Services adopted in 2009, which encouraged the application of Most-favoured-nation treatment and National treatment to all APEC members;*

*Guided by APEC Service Competitiveness Roadmap endorsed by the Leaders in 2016 and its implementation plan, which instructed members to develop a set of good practice principles on domestic regulations in the services sector;*

*Having in mind the ongoing negotiations on domestic regulations in WTO based on paragraph 4 of Article VI of GATS;*

*Without prejudice to APEC economies' positions with respect to discussions in the WTO or other negotiations;*

*APEC Economies recognize the following non-binding principles:*

### **A. GENERAL PRINCIPLES**

- I. The principles should apply to measures taken by an APEC Economy, including by non-governmental bodies in the exercise of powers delegated by that Economy, relating to licensing requirements and procedures, qualification requirements and procedures, and technical

standards, and with respect to paragraphs 12, 14, and 15, measures of general application affecting trade in services.<sup>12</sup>

2. For the purpose of these principles, “authorization” means the granting of permission to a person to supply a service, as a result of a procedure a person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards.
3. Each APEC Economy should ensure that measures subject to these principles are administered in a reasonable, objective and impartial manner.

## **B. ADMINISTRATION OF MEASURES**

### Submission of Applications

4. APEC Economies should, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorization. An APEC Economy may require multiple applications for authorization where a service is within the jurisdiction of multiple competent authorities.

### Application Timeframes

5. If an APEC Economy requires authorization for the supply of a service, the competent authorities of that APEC Economy should, to the extent practicable, permit an applicant to submit an application at any time throughout the year; and if a specific time period for applying exists, allow a reasonable period for the submission of an application.

### Electronic Applications and Acceptance of Copies

6. If an APEC Economy requires authorization for the supply of a service, the competent authorities of that Economy should:
  - (a) endeavor to accept applications in electronic format; and

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<sup>12</sup> For greater certainty, the principles referred to in paragraph 1 do not apply to any measures that are not covered under the General Agreement on Trade in Services (GATS).

- (b) accept copies of documents that are authenticated in accordance with that Economy's domestic law, in place of original documents, unless original documents are required to protect the integrity of the authorization process.

### Processing of Applications

7. If an APEC Economy requires authorization for the supply of a service, the competent authorities of that APEC Economy should:
- (a) provide an indicative timeframe for processing of an application;
  - (b) without undue delay, initiate the processing of application and ascertain the completeness of an application for processing under domestic laws and regulations;
  - (c) in the case of an application considered complete for processing under domestic laws and regulations, within a reasonable period of time after the submission of the application, ensure that
    - i. the processing of the application is completed, and
    - ii. the applicant is informed of the decision concerning the application, to the extent possible in writing<sup>13</sup>;
  - (d) at the request of the applicant, provide without undue delay information concerning the status of the application;
  - (e) in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable:
    - i. inform the applicant that the application is incomplete;
    - ii. at the request of the applicant provide guidance on why the application is considered incomplete; and
    - iii. provide the applicant with the opportunity<sup>14</sup> to provide the additional information that is required to complete the application;

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<sup>13</sup> Competent authorities can meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, "in writing" may include in electronic form.

<sup>14</sup> For greater certainty, such opportunity does not require a competent authority to provide extensions of deadlines.

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time; and

- (f) in the case of a rejected application, to the extent possible, either upon their own initiative or upon the request of the applicant in writing, inform the applicant in writing of the reasons for rejection and, where applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application solely on the basis of a previously rejected application.
8. The competent authorities of each APEC Economy should ensure that authorization, once granted, enters into effect without undue delay subject to the applicable terms and conditions.<sup>15</sup>

#### Fees

9. Each APEC Economy should ensure that the authorization fees charged by its competent authorities are reasonable, transparent, and do not in themselves restrict the supply of the relevant service.

#### Examinations

10. If an APEC Economy requires an examination in order to obtain authorization for the supply of a service, the competent authorities of that Economy should schedule such an examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination.

### **C. INDEPENDENCE**

11. If an APEC Economy adopts or maintains measures relating to authorization for the supply of a service, the Economy should ensure that the competent authority reaches and administers its decisions in an independent manner.<sup>16</sup>

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<sup>15</sup> For greater certainty, the authority is not responsible for delays due to reasons outside of its competence.

<sup>16</sup> For greater certainty, this paragraph does not mandate a particular administrative structure.



## D. TRANSPARENCY

### Publication and Information available

12. Each APEC economy should ensure that its laws, regulations, procedures, and administrative rulings of general application respecting matters concerning supply of a service are promptly published or otherwise made available in writing in such a manner as to enable interested persons to become acquainted with them.
13. If an APEC Economy requires authorization for supply of a service the Economy should:  
promptly publish<sup>17</sup> the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information should include, inter alia, where it exists:
  - a. the requirements and procedures;
  - b. contact information of relevant competent authorities;
  - c. fees;
  - d. technical standards;
  - e. procedures for appeal or review of decisions concerning applications;
  - f. procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;
  - g. opportunities for public involvement, such as through hearings or comments; and
  - h. indicative timeframes for processing of an application.

### Enquiry Points

14. Each APEC Economy should maintain or establish appropriate mechanisms for responding to enquiries from interested persons regarding the measures referred to in its laws, regulations, procedures, and administrative rulings of general application respecting matters concerning supply of a service.

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<sup>17</sup> For purposes of these principles, "publish" means to include in an official publication, such as an official journal, or on an official website. APEC Economies are encouraged to consolidate electronic publications into a single portal.

## Opportunity to Comment and Information before Entry into Force

15. To the extent possible, each APEC economy should:
- (a) publish in advance any laws, procedures, and regulations or administrative rulings of general application that it proposes to adopt in relation to matters concerning supply of a service and the purpose of these measures<sup>18</sup> with due regard to the exceptions provided according to the GATS;
  - (b) provide interested persons a reasonable opportunity to comment on such proposed measures;
  - (c) consider such comments in a manner consistent with its legal system for adopting measures;
  - (d) allow reasonable time between publication of final regulations relating to the text of a law or regulation referred to in subparagraph (a) and their effective date; and
  - (e) explain the purpose and rationale of such law or regulation.

## **E. TECHNICAL STANDARDS**

16. Each APEC Economy should encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and should encourage anybody designated to develop technical standards to use open and transparent processes.

## **F. DEVELOPMENT OF MEASURES**

17. If an APEC Economy adopts or maintains measures relating to authorization for the supply of a service, the Economy should ensure that:

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<sup>18</sup> For greater certainty, APEC Economies may comply with this Principle by publishing a policy proposal, discussion document, summary of regulation or other document that contains sufficient detail to allow interested persons and other economies to assess whether and how their trade or investment interests may be affected.

- (a) such measures are based on objective and transparent criteria<sup>19</sup>;
- (b) such measures are consistent with Article VI of the WTO GATS;
- (c) the procedures are impartial, and that the procedures are adequate and without unjustifiable impediments for applicants to demonstrate whether they meet the requirements, where such requirements exist

## **G. Other Areas**

### Supporting recognition efforts

18. Where professional bodies of APEC Economies are mutually interested in establishing dialogue on issues related to recognition of professional qualifications, licensing and/or registration, the relevant APEC Economies should consider supporting the dialogues of those bodies in its territory where requested and appropriate.

### Business Names

19. If an APEC Economy requires authorization for the supply of a service, each APEC Economy should, subject to its laws and regulations:
- (i) permit service suppliers of any other APEC Economy to use the business names under which they ordinarily trade in the territory of the other APEC Economy; and
  - (ii) otherwise ensure that the use of business names is not arbitrarily restricted.

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<sup>19</sup> For greater certainty, such criteria may include, inter alia, competence and the ability to supply a service, including to do so in a manner consistent with an APEC Economy's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

## ANNEX B – WORKSHOP AGENDA

### Translating APEC’s Non-Binding Principles for Domestic Regulation for the Services Sector into Practice: A Focus on Transparency and Predictability in Rule Making

20 August 2019

Venue: Enjoy Hotel, Puerto Varas

Location: Puerto Varas, Chile

<b>DAY ONE</b>		<b>20 August 2019</b>	
8.30 – 9.00 am		<b>Registration and Arrival</b>	
9.00 – 9.10 am		<b>Welcome Remarks</b> <b>Krasna Bobenreith</b> , Convenor, APEC Group on Services, Chile	
9.10 – 9.20 am		<b>Participant Introductions</b>	
<b>Session I</b> 9.20 – 9.30 am		<p><b>Overview of the APEC Workstream and Workshop Objectives</b></p> <p><b>Thomas Fine</b>, Director, Services and Investment, Office of the United States Trade Representative (USTR), United States</p> <p><i>This session will provide the broad context for the focus on transparency and predictability in rulemaking vis-à-vis APEC’s non-binding principles for domestic regulation of the services sector. This session will also introduce the scope and parameters of a study to be undertaken by the United States which examines the transparency and predictability frameworks of APEC’s non-binding principles on Domestic Regulations in the Services sector.</i></p> <p>Questions and Answers</p>	

<p><b>Session 2</b> 9.30 -10.30 am</p>	<p><b>Initial Findings of the Study on Transparency and Predictability in Rulemaking Components of APEC Non-Binding Principles</b></p> <p><i>The session focuses on the initial findings of the study undertaken by the United States. In particular, the presentations will focus on the following elements of the study:</i></p> <ul style="list-style-type: none"> <li>• <i>Review practices and frameworks in place for i) publication and information available, ii) enquiry points, and iii) opportunity to comment and information before entry into force;</i></li> <li>• <i>Overview of transparency and predictability principles in recent FTA's; and</i></li> <li>• <i>Best practices, challenges, and gaps in meeting transparency and predictability principles.</i></li> </ul> <p><b>Victoria Waite</b>, Trade and Services Specialist, US-SEGA, United States <b>Felipe Sandoval</b>, Services Specialist, US-SEGA, Chile</p> <p>Questions and Answers</p>
<p><b>10.30 – 10.45 am</b></p>	<p><b>Coffee Break</b></p>
<p><b>Session 3</b> 10.45 – 12.00</p>	<p><b>Small Group Work – Exploring the Domestic Contexts</b></p> <p><i>Building on the key discussion points in Session 1, participants will be organized into several small groups. The session will be facilitated by experts, and the conducted using a set of guiding questions that will aim to draw out and share individual economy experiences to improve participants’ awareness about how agencies/economies engage in the process of developing new or amended domestic regulations of services sectors.</i></p> <p>Report back to plenary. Questions and Answers</p>
<p><b>12:00 – 1:00 pm</b></p>	<p><b>Lunch</b></p>

<p><b>Session 4</b> 1.00 – 2.15 pm</p>	<p><b>Addressing Transparency and Predictability in Rulemaking – A Multilateral Approach</b></p> <p><i>This session will focus on the particular perspectives of experts from multilateral agencies such as the WTO and the OECD. In particular, the discussions will focus on the comparison of transparency provisions of the non-binding domestic regulation principles with WTO obligations of various Agreements (e.g., GATS and others); examine how economies are improving regulatory quality, explore good practices relating to regulatory cooperation as well as the implementation of regulation in the context of the OECD STRI.</i></p> <p><b>Moderator:</b> Felipe Sandoval, Services Specialist, US-SEGA, Chile</p> <p><b>Markus Jelitto</b>, Counsellor, Trade in Services Division, World Trade Organization (WTO)</p> <p><b>Hamid Mamdouh</b>, Senior Counsel, King &amp; Spalding LLP, Geneva Office</p> <p><b>Janos Ferencz</b>, Trade Policy Analyst, Organisation for Economic Cooperation and Development (OECD)</p> <p>Questions and Answers</p>
<p><b>Session 5</b> 2.15 – 3.15 pm</p>	<p><b>Importance of Transparency Principles in Developing Domestic Regulations from a Private Sector Perspective</b></p> <p><i>As beneficiaries and constituents of the government, the private sector plays an important role to providing information to governments (e.g., policy makers, regulators, negotiators, etc.) on how proposed laws and regulations, including trade agreements, will impact businesses. For example, through the rulemaking process, the private sector, can voice support for reforms/domestic regulations (independent from the government), identify additional policy options, and provide technical input and expertise that can have a dramatic impact on the design of domestic regulations. Speaker(s) can focus on the 3 transparency sub-principles (information is published and available, advance notice and comment, and the establishment of enquiry points) and provide examples of how the private sector has engaged in the past (domestic and international as applicable). Discussion should also include challenges faced and ideas for how governments might be able to improve transparency and predictability of the DR in services.</i></p> <p><b>Rodrigo Aznarez</b>, Customs and Trade Compliance Manager, UPS LATAM</p> <p><b>Welby Leaman</b>, Senior Director for Global Government Affairs, Walmart</p> <p>Questions and Answers</p>
<p><b>3.15 – 3.45 pm</b></p>	<p><b>Coffee Break</b></p>

<p><b>Session 6</b> 3.45– 5.30 pm</p>	<p><b>Small Group Discussions – Sharing Economy-level Experiences</b></p> <p><i>This session will build off the morning’s small group session and draw out additional information on how participants (either their agencies or more broadly their economies) engage the private sector during the rulemaking process. This will provide an opportunity to highlight best practices and lessons learned in meeting national or international commitments. Small groups will be encouraged to identify ways to support/improve transparency and predictability within APEC and aligned with the non-binding DR principles.</i></p> <p>Report back to plenary. Questions and Answers</p>
<p>5.30 – 5.40 pm</p>	<p><b>Wrap up and Evaluations</b></p>

## ANNEX C – TERMS OF REFERENCE

### Translating APEC's Non-Binding Principles for Domestic Regulation of the Services Sector into practice – a focus on transparency and predictability in rule making

#### Activity Background

The services sector is the largest employer of workers and a significant driver of economic growth; generating more than two-thirds of global GDP and achieving significant poverty reduction outcomes. However, global services trade is impacted by a range of domestic regulations which are applied to the different modes of services transactions. These affect the entry and operations of both domestic and foreign suppliers of services and have economy-wide impacts.

Domestic regulations serve the purpose of both responding to market failures in a given context, as well as protecting local suppliers from foreign competition. Therefore, identifying and measuring trade barriers in the service sector is complex and usually linked with domestic regulatory reforms. Therefore, the removal of critical impediments to services trade and investment which are found in behind-the-border domestic regulatory regimes, is an important element of facilitating trade and investment in the APEC region.

While there has been some liberalization of services markets, there are significant inefficient and restrictive domestic regulations that affect several services sectors and impose significant costs to importers and exporters of services in the Asia Pacific region. Some of the key service market access and regulatory trade barriers for businesses in the region remain the lack of transparency in domestic policymaking environments in terms of the introduction, administration and enforcement of laws, regulations, procedures and administrative rulings for licensing, qualification and technical standards. Regulatory transparency is an essential element in the openness of decision making which is important not only to prevent unnecessary barriers to trade, but also to improve compliance, reduce unpredictability, improve economic efficiency and reduce trade costs. It reflects the basis for regulatory decisions and their implementation as well as costs and benefits.

The General Agreement on Trade in Services (GATS) recognizes the rights of Governments to regulate in various parts of the Agreement, while at the same time ensuring that licensing, qualifications and other requirements do not pose discriminatory burdens for foreign services providers or that quantitative limitations on service suppliers are managed to mitigate the risks of restricting competition. The GATS also charges Members with developing disciplines on procedure and requirements for obtaining authorization to provide services along with associated technical standards.

APEC's broad policy agenda on promoting trade and facilitating business has focused on a range of policy guidelines and analysis which aim to improve services market access and regulatory trade barriers in the Asia Pacific region. APEC groups such as the Economic Committee (EC), the Investment Experts' Group (IEG) and the Group on Services (GOS) as well as the Committee on Trade and Investment (CTI) more broadly, have sought to improve regulatory reform and coherence through initiatives such as the APEC Principles to Enhance Competition and Regulatory Reform (1999), the APEC-OECD Integrated Checklist on Regulatory Reform (2005), as well as through relevant analysis such as the APEC Economic



Policy Report on Services (2016). More specifically, the APEC Services Competitiveness Roadmap (ASCR) identifies promoting good regulatory practice as a way of addressing restrictions on trade and developing competitive services sectors. Following on from the ASCR, in 2018, the APEC Non-binding Principles for Domestic Regulation of the Services Sector were adopted to create a policy and regulatory environment conducive to services markets in the APEC region.

## Activity Description

With the objective of increasing awareness of the likely impacts of the procedures for adopting measures related to authorizing services in the Asia Pacific region, and to guide the implementation of the APEC Non-binding Principles for Domestic Regulation of the Services Sector which were endorsed by members in 2018, the United States will conduct a study that analyzes the transparency and predictability of procedure for adopting such measures. Given the somewhat limited level of policy research conducted in the Asia Pacific region on this specific topic, the proposed study will explore critical weaknesses in domestic regulatory environments relating to services markets in the APEC region by placing emphasis on a sub-set of issues relating to regulatory transparency. This emphasis corresponds to specific elements of the Non-binding Principles for Domestic Regulations of the Services Sector pertaining to the adoption and publication of measures (refer to Attachment A).

The analysis will be guided by the key research question of which regulations create unnecessary barriers to trade in services and why is improved regulation important for effective services trade liberalization in the APEC region? In doing so, the analysis may also include the following topics detailed below.

1. The extent to which APEC economies ensure that its laws, regulations, procedures and administrative rulings are published or communicated/made available in writing prior to entry into force;
2. If an economy requires authorization for the supply of a service, what is the extent to which requirements and procedures for obtaining, maintaining, amending and renewing such authorization is made available? This will include an assessment of the following elements:
  - Information on requirements and procedures;
  - Whether public comment procedures (including notice and comment on development of regulations) are available/open to service providers;
  - Information about setting costs/fees associated with all official procedures;
  - Information about the process for adopting technical standards;
  - Practices for ensuring consistency in application, procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications
  - The use of objective and transparent criteria as the basis for to measures relating to authorization for a supply of a service; and
  - Predictability in terms of timeframes, allowing reasonable time for processing applications.

The study will also collate and showcase **good practice examples, case studies and lessons learned** from economies in the region and globally, either horizontal or sectoral in application, with the aim of disseminating best practices which could serve to inform policy making and support the prioritization of policy action in APEC economies.

The APEC specific case studies will be selected based on detailed consultations with economy-level representatives and regulators from APEC economies.

## ANNEX D – REFERENCES

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<sup>20</sup> The draft text of TiSA is not public information. Authors used preexisting knowledge on the agreement in Section II.