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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:

Final Draft, November 13th**A. GENERAL PRINCIPLES**

1. 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.¹
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 MEASURESSubmission 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

¹ 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).

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- (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 writing² ;
- (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 opportunity³to provide the additional information that is required to complete the application;

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

² 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.

³ For greater certainty, such opportunity does not require a competent authority to provide extensions of deadlines.

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- (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.⁴

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.⁵

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

⁴For greater certainty, the authority is not responsible for delays due to reasons outside of its competence.

⁵For greater certainty, this paragraph does not mandate a particular administrative structure.

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promptly publish⁶ 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.

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 measures⁷ with due regard to the exceptions provided according to the GATS;
 - (b) provide interested persons a reasonable opportunity to comment on such proposed measures;

⁶ 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.

⁷ 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.

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- (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:
- (a) such measures are based on objective and transparent criteria⁸;
 - (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

⁸ 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.

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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.