



Good Regulatory Practice for Services in the Digital Era

Challenges for APEC

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The pursuit and adoption of good regulatory practice (GRP) for services in APEC will be critical to regional economic growth and, in the longer term, as APEC economies move towards the Putrajaya Vision in 2040 and the Free Trade Area of the Asia Pacific (FTAAP) goal of a more collaborative, open, and integrated region. The May 2024 meeting of APEC Ministers Responsible for Trade, noted the importance of APEC's services work on competitiveness, structural reform, and domestic regulation. Ministers also underlined the need to advance work on FTAAP in a manner that is market-driven and contributes to "...high standard and comprehensive regional undertakings".

Why is good regulatory practice for services important?

GRP can be viewed as **a set of principles and practices applied to the development, implementation, and review of regulatory instruments – laws, regulations, and guidelines - to achieve economic or public policy objectives in the most efficient way.** The World Trade Organization (WTO) defines GRP as "...internationally recognized processes, systems, tools and methods for improving the quality of regulations".ⁱ Though GRP and regulatory reform are not identical (the former being a subset of the latter), the implementation by APEC economies of modernized and fit-for-purpose good regulatory practices to meet 21st century challenges would be a key enabler of structural reform.

Divergences in regulation increase trade costs, often substantially. Services, more than other sectors of the economy, are heavily regulated, and most barriers to services trade take the form of regulations. The distorting impact of divergent regulations is the main reason that services trade costs are estimated to be three times higher than trade costs for goods.ⁱⁱ These costs fall disproportionately heavily on micro, small and medium-sized enterprises (MSMEs), as well as individual service suppliers. Recent analysis by the World Bank, the WTO and the OECD highlights that services are increasingly critical for stronger economic growth and jobs outcomes.

APEC Ministers Responsible for Trade acknowledged the "...importance of Good Regulatory Practices (GRP) in supporting greater transparency and predictability in the regulatory environment..." in their 2024 Ministerial Statement.ⁱⁱⁱ Attention to GRP for services would assist regional integration by achieving more efficient processes with better-defined regulatory objectives and enhanced regulatory cooperation, thus serving to translate regulations into desired outcomes. This would help capture opportunities for new sources of growth, as services play an increasingly important cross-cutting role in competitiveness through their incorporation into all sectors of the economy, particularly through the process of "servicification".^{iv} In the shorter term, improved regulatory practice can assist with the realization of the objectives set out in the APEC Services Competitiveness Roadmap. In the medium to longer term, better regulatory practice and regulatory cooperation can not only reduce costs but also help to spur innovation and more dynamic services trade.

Digitalization is crucial as it drives economic growth, enhances productivity and fosters innovation. By leveraging digital technologies, APEC economies can improve trade efficiency, expand access to global markets, and promote inclusive development. Furthermore, digitization supports the transition to knowledge-based economies, enabling businesses and public sectors to operate more efficiently and respond more effectively to global challenges. In the context of trade, digitalization has made nearly all services tradeable and has thus contributed to their growing importance.^v Online services delivery has facilitated the ability of all segments of society to engage in services trade, increasing inclusivity. In APEC there has been a tremendous growth in digital services trade over the past decade, with APEC's share of total world exports of digitally delivered services reaching nearly 40% in 2022.^{vi} Good regulatory practice is thus particularly important as well for digital services.

The FTAAP vision of a much more integrated regional economy will require greater coherence between the individual approaches of APEC economies to services regulation, particularly regulation of digital trade, and more focus on regional cooperation in areas where rules and frameworks are lacking at present. Understanding the drivers of change that pose challenges to current regulatory practices, and developing frameworks to collectively meet these new challenges, will be key to APEC's ability to advance its goals for greater integration.

What has APEC achieved so far on GRP for services?

Since its inception, APEC has given high priority to transparency and other GRP elements in its work. Over the past years, APEC has developed instruments and guidelines to help APEC economies incorporate GRP into their regulatory frameworks. The most recent and comprehensive of these is the ***Blueprint on Good Regulatory Practices for APEC***, adopted in 2023 by the APEC Sub-Committee on Standards and Conformance.^{vii} The *Blueprint* covers regulations for both goods and services, and builds upon previous APEC work on GRP^{viii} but goes further to incorporate new concepts designed to bring regulatory practices into the 21st century. It sets out a non-prescriptive mapping of key GRP in nine key areas to guide efforts at every stage in the regulatory life cycle with the aim of helping APEC economies incorporate GRP into regulatory frameworks to increase transparency, improve regulatory quality, and produce better regulatory outcomes.

A 2022 report pointed out that regulatory reform for services (of which GRP is an important component) is a key focus for three APEC bodies, namely the APEC Economic Committee through its ***Enhanced APEC Agenda for Structural Reform (EAASR)***, the APEC Group on Services through its overview of the ***APEC Services Competitiveness Roadmap (ASCR)***, and the APEC Digital Economy Steering Group through its work on the ***APEC Internet and Digital Economy Roadmap (AIDER)***.^{ix} To implement the EAASR, the Economic Committee has developed a useful tool in the form of Individual Action Plans (IAPs) in which APEC economies list regulatory interventions and reform. To date, however, APEC economies have included few services regulatory interventions and reforms in their IAPs. This was noted in the 2023 EAASR Mid-term Review which explicitly encourages APEC economies to nominate services reforms in their future IAP submissions.^x

APEC made progress on good regulatory practice for services through its adoption in 2018 of the ***APEC Non-Binding Principles for Domestic Regulation of the Services Sector***.^{xi} These include a set of 19 core principles designed to facilitate services trade in the APEC region through good regulatory practices for administrative processes relating to licensing requirements and procedures, and qualification requirements and procedures. The ***APEC Non-Binding Principles*** were instrumental in influencing the content of the plurilateral ***Joint Initiative on Services Domestic Regulation*** finalized in December 2021 (now being brought into application). Of the 72 WTO Members that have adopted this outcome document, 16 are APEC economies.^{xii} According to the WTO, implementation of these disciplines (on an MFN basis) is expected to lower trade costs in services by over \$US125 billion worldwide by streamlining and simplifying regulatory and administrative procedures.^{xiii}

It is notable that there has been a steady convergence in the content of provisions relevant to services domestic regulations in three major RTAs recently concluded in the APEC region, namely the CPTPP, RCEP and the USMCA. These provisions cover administrative procedures for licensing and qualification requirements, and procedures necessary to obtain authorization for the supply of a service. The relevant provisions in the three RTAs are closely aligned with the ***APEC Non-Binding Principles***, supporting greater regulatory coherence within APEC.^{xiv}

What is still missing in APEC despite these advances?

Despite consistent work and notable achievements by several APEC fora, there is still a considerable way to go before GRP becomes a standard for all APEC economies. Three significant gaps are noted below.

- Implementation is missing across a number of the areas highlighted by the ***Blueprint on Good Regulatory Practices for APEC***. A focused effort to include these GRP elements in the regulatory toolkit of each APEC member economy would be valuable. Each area of the ***Blueprint***, from the inception of a regulation to its development, administration and review needs a plan with associated concrete steps.
- The five APEC economies that have not yet done so could consider adhering to the WTO ***Disciplines on Services Domestic Regulation*** so that they are applied by all APEC members. These economies could be provided with capacity-building assistance if needed to enable them to implement these disciplines expeditiously.
- More information on services regulations and reforms could be submitted by APEC economies as an integral part of their IAPs under the EAASR. This would provide greater transparency of regulatory practices and enable the Economic Committee to incorporate more fully the critical area of services into its discussions of structural reform.

What are the new drivers of change for GRP in services and the challenges they pose?

Two major drivers of change are currently posing significant challenges to GRP for services in the APEC region. These are the **digitalization of services trade** and the **role of services in the application of artificial intelligence technologies**. These two technological advances pose specific types of regulatory issues for services but currently lack dedicated regulatory frameworks. In their absence, a plethora of restrictions are being placed on digital services trade, including by economies in the APEC region, which impact commercial data flows, investment, trade, and other commercial decisions. Individual APEC economies are also introducing new regulations on artificial intelligence.

If not addressed, the divergence in policies and approaches arising in response to these two drivers of change will risk fragmentation of trade and investment flows in the services area and create incompatible regulatory frameworks in APEC. This will raise the costs of services trade, negatively impact growth, stifle innovation, and impede APEC's goal of greater regional integration.

- *Digitalization of services trade*

As previously highlighted, digital services trade is the most dynamic component of all trade and already represents over half of cross-border services trade globally. According to [APEC \(2023\)](#), the value of digitally deliverable services in intra-APEC trade grew by 7.8 percent annually on average between 2000 and 2018 (double the growth rate of non-digitally deliverable services). This outpaced the growth in overall commercial services resulting in trade in digitally deliverable services quadrupling from around \$US140 billion to more than \$US550 billion between 2000 and 2018. Consequently, the share of digital trade within overall trade in commercial services in APEC increased from 25.5 percent in 2000 to 32.9 percent in 2018, demonstrating the increasing importance of digital trade. This digital transformation has enhanced business performance, reduced costs, and facilitated global e-commerce, especially benefiting SMEs, women and marginalized groups. Digital platforms, leveraging technologies like AI and big data, have reshaped industries, creating new sources of comparative advantage and gains from services trade. However, to make the most of this opportunity

digitalization demands swift regulatory adaptation, which has not been the case in APEC. Currently, there are gaps in regulatory frameworks, divergent practices in individual economies, and a marked increase in restrictions related to digital trade.

These challenges are linked to the lack of a coherent approach in the region to regulation for the digital economy which creates problems, including for competition, data flows, and platform regulation.

- **Competition:** Algorithms used in digital platforms can lead to price discrimination, exclusionary practices, and potential algorithmic collusion, challenging existing antitrust mechanisms.
- **Cross-Border Data Flow Restrictions:** Data are crucial for digitalized services trade. Increasing data localization and privacy measures restrict data flows, thus impeding digital trade and innovation.
- **Platform Regulation:** Large online platforms pose risks related to harmful content, requiring comprehensive regulatory frameworks (such as the EU Digital Services Act) to address issues including illegal content dissemination.

APEC has identified a broad range of objectives for the digital economy that are set out in the 2017 **APEC Internet and Digital Economy Roadmap**.^{xv} Among these are the promotion of interoperability, the development of holistic government policy frameworks for the digital economy, and the promotion of coherent and cooperative regulatory approaches affecting the Internet and digital economy. In 2022 a subset of APEC members decided to encourage non-APEC members to adopt the **APEC Cross-Border Privacy Rules (CBPR)**, a set of rules for privacy protection that builds on the APEC Privacy Framework to ensure privacy protections and facilitate cross-border flows of personal data. This is an important development in ensuring privacy protections for cross-border flows of personal data, implemented by companies that pledge to ensure that their data privacy policies are consistent with the **APEC Privacy Framework**.^{xvi} In 2023 APEC went further by establishing the **Global Cooperation Arrangement for Privacy Enforcement (CAPE)**.^{xvii}

Despite the progress on data privacy, APEC has not been able to progress sufficiently on all of the objectives contained in the **Internet and Digital Economy Roadmap** and still lacks a comprehensive framework for digital trade. While some APEC economies have included provisions on digital trade in their RTAs, including the CPTPP, USMCA, and RCEP, these are not uniform or comprehensive. Stand-alone digital economy agreements such as the Digital Economy Partnership Agreement (DEPA) of Chile, New Zealand, the Republic of Korea, and Singapore offer innovative structures but are still nascent.

- *Services applications of artificial intelligence*

As with any new technology, AI is a disruptive force with a huge potential as a service-transmitting technology, enhancing productivity and innovation in most services sectors beyond what other technologies have been able to do. There is no general agreement on whether AI falls into the goods or services area. However, artificial intelligence is most often viewed as a service transmitting technology. From this perspective, it can be defined as “a service that outsources AI to enable individuals and companies to explore and scale AI techniques at minimal cost”.^{xviii} AI’s positive impacts include facilitating the development of new services, job transformation and increased productivity, helping make services trade a key driver of sustainable development in a more integrated APEC region.

Nevertheless, challenges posed by AI are complex and spread across several areas. These include:

- **Privacy and Data Misuse:** AI can violate privacy through personal data misuse.
- **Competition and Fairness:** AI may lead to unfair competition and consumer manipulation.
- **Automation and Productivity:** Excessive automation may lead to productivity loss due to AI’s limited decision-making flexibility.

- **Information and Polarization:** AI can create echo chambers and spread misinformation.
- **Upskilling, reskilling and reevaluating traditional education:** AI might lead to employment disruptions so there will be a need to adapt the approach to education and skilling to mitigate and minimize these potential adverse effects.

APEC lacks a framework for good practice on AI regulation and has not begun to discuss the issue. Some economies are taking steps towards AI regulation. For example, the United States promotes innovation through soft law, risk assessment mandates, and federal initiatives like the 2020 [National AI Initiative Act](#). In contrast, China has implemented specific regulations like the [Algorithm Recommendation Regulation](#) and the [Deep Synthesis Regulation](#). Outside the APEC region, the European Union has adopted a risk-based framework under the [EU AI Act](#), categorizing AI systems by level of risk.

The lack of a region-wide AI regulatory framework opens the door for divergent approaches and ultimately increased compliance costs for AI developers and users.^{xix} AI's dual nature as a service and a component of goods complicates regulatory clarity. APEC economies need to consider exploring suitable frameworks to ensure AI's benefits while mitigating its potential harms.^{xx}

What more can APEC do to advance GRP for services?

The recommendations below suggest areas for research and policy actions that could be pursued by APEC to address existing gaps in its current work on GRP for services and to confront the new challenges for GRP posed by digitalization and artificial intelligence.

- 1. APEC could undertake capacity-building work to help economies implement all nine areas of the Blueprint on Good Regulatory Practices for APEC, through the SCSC.**
- 2. APEC could encourage all member economies to adopt the WTO plurilateral Joint Initiative Disciplines on Services Domestic Regulation and provide capacity-building to help implement these disciplines under the guidance of the Group on Services.**
- 3. The Economic Committee could continue to encourage APEC economies to focus more on services regulations and reforms in their IAPs, and to make these a greater focus of its discussions and evaluations of work on EAASR.**
- 4. APEC could deepen its work on digital trade to build a greater shared understanding, increased coherence and, potentially, a common regulatory framework. Such efforts could draw upon the content of existing digital economy agreements and be carried out jointly by the Economic Committee, the Digital Economy Steering Group, and the Group on Services. This work could follow the objectives set out in the APEC Internet and Digital Economy Roadmap.**
- 5. APEC could initiate discussions on artificial intelligence as an integral part of economic and trade policy analysis rather than viewing it only as a technology.**
- 6. APEC could carry out work through a cross-fora effort to identify the type of regulatory framework for AI that would be suitable for the region and support the longer-term realization of the FTAAP vision. A pathfinder approach might need to be adopted to achieve progress.**

Endnotes

This note represents the views of the authors as a contribution to the APEC/ERIA joint on-line workshop on 19 June 2024 on Good Regulatory Practice for Services.

This shortened Policy note is based on a longer, more detailed Policy Brief under the title ***Good Regulatory Practice for Services in APEC: Precedents, Principles and Challenges ahead for FTAAP*** that can be found on the website of the Australian PECC at <https://www.apec.org.au/ftaap-pathways-to-prosperity>

ⁱFrom the WTO Technical Barriers to Trade Agreement. It is of note that the same definition is used in the [USMCA trade agreement](#).

ⁱⁱ According to S. Miroudot et. al. (2013) [Measuring the cost of international trade in services | World Trade Review | Cambridge Core](#). The authors estimate that more than 40 percent of the cost of services trade comes from opaque regulations and cumbersome procedures. A more recent paper estimates that average costs of regulatory barriers to cross-border services trade (expressed as percentages of total trade value- ad valorem equivalents), stand at around 57 per cent for communication services and 54 per cent for business services, around 60 per cent for transport services, around 103 per cent for insurance services, and around 255 per cent for financial services. All numbers should be understood as the potential for reduction of services trade costs in the long run. For more details see Benz, S. and A. Jaax (2020-07-08), [The costs of regulatory barriers to trade in services: New estimates of ad valorem tariff equivalents](#), OECD Trade Policy Papers, No. 238, OECD Publishing, Paris.

ⁱⁱⁱ [APEC Ministers Responsible for Trade Joint Statement 2024, Arequipa, Peru 18 May 2024](#).

^{iv} On a value-added basis, commercial services now account for more than half of total exports originating from APEC economies, and the share of incorporated or value-added services in merchandise exports ranges on average from 23 to as high as 35 percent in different products. In the APEC region two-thirds of women are employed in service activities. Services are therefore also of critical importance for the inclusivity goals adopted by APEC Leaders in the [San Francisco Principles on Integrating Inclusivity and Sustainability into Trade and Investment Policy](#).

^v According to the [WTO 2023 Global Trade Outlook and Statistics](#), digitally delivered services exports reached US\$3.82 trillion in 2022, representing 54 percent share in total global services exports.

^{vi} This is a sum of digital exports listed in [WTO 2023 Global Trade Outlook and Statistics](#), Table 5.

^{vii} [Good Regulatory Practices: Blueprint for APEC](#), USAID, APEC Sub-committee on Standards and Conformance, November 2023.

^{viii} [APEC-OECD Integrated Checklist on Regulatory Reform: A Policy Instrument for Regulatory Quality, Competition Policy and Market Openness, 2003-2005](#). See also [APEC Policy Brief on Services Competitiveness and Structural Reform](#), Joint Report by Economic Committee and Group on Services, December 2022.

^{ix} APEC Internet and Digital Economy Roadmap (AIDER), 2017 https://www.apec.org/docs/default-source/groups/ecsg/17_csom_006.pdf

^x [Enhanced APEC Agenda for Structural Reform: Mid-term Review Report 2023](#), APEC Policy Support Unit, October 2023.

^{xi} [APEC Non-Binding Guidelines for Domestic Regulation of the Services Sector](#)

^{xii} [Reference Paper on Services Domestic Regulation](#), December 2021.

^{xiii} WTO Press Release, [New disciplines on good regulatory practice for services trade enter into force](#), 27 Feb 2024.

^{xiv} [APEC's Non-Binding Principles for Domestic Regulation of the Services Sector: A Focus on Domestic Regulations in Trade Agreements](#), 2022. Of the 21 APEC economies, 18 of them are parties to these three RTAs.

^{xv} [APEC Internet and Digital Economy Roadmap](#), October 2017. This document states that it aims to provide "...guidance on key areas and actions to facilitate technological and policy exchanges among member economies and to promote innovative, inclusive, and sustainable growth, as well as to bridge the digital divide in the APEC region.

^{xvi} [APEC Privacy Framework](#), 2005.

^{xvii} Joshua Meltzer, [APEC Digital Economy and Trade: Outcomes in 2023 and Prospects for 2024 and Beyond](#), National Bureau of Asian Research, February 2024.

^{xviii} [What is artificial intelligence as a service? Definition, architecture, and trends](#), *Spiceworks*, 10 February 2022.

^{xix} Johannes Fritz and Tommaso Giardini, [Emerging Contours of AI Governance and the Three Layers of Regulatory Heterogeneity](#), Digital Policy Alert, 15 May 2024.

^{xx} To foster a globally inclusive approach, in 2023 the UN Secretary-General convened a multi-stakeholder High-level [Advisory Body on AI](#) to undertake analysis and advance recommendations for the international governance of AI. In December 2023, this body released [an interim report](#) calling for a robust global framework to regulate AI. The interim report does not advocate for a singular AI governance model but proposes underlying principles and functions essential for an effective global framework.