



Translating Services Domestic Regulation Initiatives into Practice: Benefits and Experiences Implementing Services Domestic Regulation Disciplines

AT A GLANCE



Improving Services Domestic Regulation is a Priority in APEC

As global trade in services continues to expand and the world enters a post-COVID-19 pandemic stage characterized by an accelerated transition from in-person business models into a digitalized economy, the topic of regulatory good practices in the services sector has become ever more relevant. APEC has been a leader in enhancing services domestic regulation disciplines, committing under the APEC Services Competitiveness Roadmap (ASCR, 2016–2025) to ensure an open and predictable environment for access to services markets by progressively reducing restrictions to services trade and investment. In 2018, APEC endorsed the APEC Non-Binding Principles for Domestic Regulation of the Services Sector (hereinafter “APEC NBPs”), to promote sound domestic regulatory practices for the services sector. Thereafter, members of the World Trade Organization (WTO)—including 16 APEC economies at time of writing—negotiated a reference paper under the *Joint Statement Initiative on Services Domestic Regulation* (hereinafter “WTO JSI”). The APEC NBPs and WTO JSI, although institutionally different, share the common challenge of implementation following their adoption. The following sections aim to examine select APEC economy implementation experiences to identify potential good practices and recommendations for future areas of work.

The APEC NBPs and the WTO JSI: Similarities, Differences, and Implementation Challenges

The APEC NBPs and the WTO JSI are key components of a multilateral governance system for domestic regulation in services. They provide a comprehensive set of rules and principles designed to promote good regulatory practices by governments and delegated agencies, consistent with principles of non-discrimination in international trade, such as National Treatment and Most Favored Nation treatment. The APEC NBPs and the WTO JSI show high levels of convergence in several substantive areas. Out of the 19 topic-specific paragraphs covered by the APEC NBPs, the WTO JSI addresses 18, including all topics under principles (B) Administration of Measures; (C) Independence; (D) Transparency; (E) Technical Standards; and (F) Development of Measures.

The most significant differences between the two relate to (i) scope (the APEC NBPs are broader than the WTO JSI); (ii) the existence of a dispute settlement mechanism (WTO JSI is subject to the Dispute Settlement Understanding, while the APEC NBPs are not, due to their non-binding nature); and (iii) the built-in level of flexibility of the disciplines, reflected through the use of different terminology (due to their nonbinding nature, the APEC NBPs are drafted using language that implies a greater level of flexibility than that used in the WTO JSI). Considering the high level of substantive convergence between the APEC NBPs and the WTO JSI, it should be no surprise that the expected implementation challenges should also be similar.

Implementation Experiences in APEC Economies

Methodological Approach to Consultations with APEC Member Economies

In assessing options for case studies, the researchers sought to capture the diversity of APEC economy experiences in implementing the disciplines, as well as diversity in participation in international rulemaking initiatives on services domestic regulation—specifically in selecting a mix of economies that are and are not party to the WTO JSI at time of writing. Some of the selected economies display a high level of institutional development leading to robust, successful implementation of services domestic regulatory reforms and procedures. Others are in earlier stages of the implementation process and provide important reference points about the potential obstacles faced when seeking to implement the disciplines. These economies highlight strategies that have or have not been successful in circumventing those obstacles, and potential areas for future capacity building support. The applied methodology resulted in the selection of five APEC economies of wide-ranging economic and institutional backgrounds: Thailand; Malaysia; Chinese Taipei; Papua New Guinea; and Chile. Representatives from all five economies provided inputs around the following questions:

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

Case Study on Thailand

Thailand represents a good example of a prosperous developing economy with well-established and effective regulatory environments. Thailand's domestic regulation-related regulatory framework can be described through three pillars: the **Official Information Act of 1997**, providing widespread access to regulatory frameworks and relevant information; the **Licensing Facilitation Act of 2015**, which mandates upkeep of "the licensing manual for the public" with information on qualifications, applicable timeframes, and administrative fees, amongst other matters; and the **Biz Portal central e-government portal**, which contains all necessary information to process licensing and other governmental actions through 18 different agencies. Overall, Thailand experienced a successful transition to digital services platforms, accelerated by the COVID-19 pandemic, but with effects well beyond. Regarding challenges, while Thailand demonstrates strong public-private collaboration, **interagency coordination** remains an obstacle for trade-facilitating regulatory reform, creating barriers to implementation of the **transparency** efforts reflected in the Licensing Facilitation Act and the Biz Portal.

Case Study on Malaysia

Malaysia is a trade-oriented economy with a long-standing history of regional and multilateral rulemaking engagement. Licensing and qualification requirements and procedures often exist at both the central and local levels. As such, Malaysian trade related agencies encounter difficulties in explaining to local regulators the implications of domestic regulation standards, particularly on transparency, which reflects a challenge in **interagency coordination**. In order to address the coordination challenge, Malaysia performs regular informal consultations within government. Malaysia has also established the **Malaysia Productivity Corporation (MPC)**, a public autonomous institution that serves as a vehicle for promoting and implementing good regulatory practices consistent with the APEC NBPs. The MPC's **Guidelines for Good Regulatory Practices (GRP)** have been a key instrument for the implementation of domestic regulation principles and commitments in Malaysia, primarily for government agencies to streamline processes, by operationalizing an impact analysis of regulations across economic sectors, as well as a logical framework for developing new regulations and reviewing existing measures.

Case Study on Chinese Taipei

Chinese Taipei exhibits high-level standards in the development and implementation of regulations, demonstrating the importance of effective coordination between trade officials and other relevant regulatory government agencies. Nevertheless, Chinese Taipei officials acknowledged that the enhancement of regulatory environments is perceived as a necessary permanent effort, leading to two goals: **(1) improving transparency standards** through inclusive and widened stakeholder participation; and **(2) identifying benchmarking standards** with a sufficiently high common denominator that applies to all APEC economies. On improving transparency, Chinese Taipei has implemented its **Online Platform to Expedite the Process of Public Participation (JOIN)** as a comprehensive framework for multistakeholder participation in all stages of the regulatory process. On benchmarking, Chinese Taipei identified the **Organization for Economic Cooperation and Development (OECD) Services Trade Restrictiveness Index (STRI)** and **APEC Services Trade Restrictiveness Index (APEC Index)** as useful tools against which to benchmark its services domestic regulation implementation efforts.



Regardless of level of development, APEC economies tend to focus implementation efforts in the area of **transparency** by setting up digital platforms, allowing for greater publication, comments, and access to enquiry points. These systems can become catalyzers of good regulatory practice allowing for quicker and more effective enhancement of regulatory environments, and thus, facilitating the conduct of trade in services.

Case Study on Papua New Guinea

At its current stage of development, Papua New Guinea (PNG) is an ideal candidate to implement sound regulatory systems. PNG also represents a collective opportunity for APEC to fully deploy its potential through intensive **collaboration and assistance**. PNG faces challenges related to **transparency, interagency coordination**, and a relative **scarcity of resources**. Considering these challenges, PNG has made significant efforts to develop more predictable, transparent, and efficient regulatory frameworks in which agencies dialog with each other. Most significantly, the **2019 Regulators Summit**,

coordinated by PNG's Investment Promotion Agency, aimed to bring together all relevant agencies to produce recommendations that would work towards enhanced regulatory environments for the selected economic sectors. Another example of PNG's ongoing efforts is its launch of a **digital transformation policy** designed to radically enhance the efficiency and transparency of public services through the introduction of new technologies.

Case Study on Chile

Chile is an open economy strongly connected to international markets, and trade policy engagement is a fundamental component of Chile's overall growth strategy. Chile has consistently introduced regulatory reforms that are consistent with the WTO JSI and APEC NBPs, including the **General Law on Telecommunications**, which includes an open tender system for spectrums, frequencies, and physical infrastructure, thereby introducing a transparent system that provides key information for both foreign and domestic providers to understand the regulator's intentions. Another example is the **Law on Extended Responsibility of the Producer (REP law)**, which includes an effectively developed consultation system, through which related service providers and other interested parties can make observations and recommendations to be addressed by the regulator. The Chilean case demonstrates that **transparency** is a quick and effective means to enhance regulatory environments, and can be achieved by introducing **private sector participation** and by establishing platforms for full disclosure and sharing of information.

Conclusions and Recommendations

Across the five studied economies, transparency has been cited as a key driver in the design, production, follow-up, and implementation of regulatory reform in the services sector. For instance, setting up online consultation and follow-up processes for existing or new regulations allows businesses to have access to all relevant information and to anticipate new market-regulatory conditions. Moreover, economies seem to be moving in a direction that is consistent with a more expansive understanding of transparency, covering the entire lifespan of regulatory measures. In this sense, transparency in the development and administration of measures seems to be progressively merging into a broader concept of transparency in rulemaking and regulatory processes. Based on these findings, the following recommendations were made:



Transparency is an area where APEC economies could benefit from additional capacity building and cooperation initiatives. There seems to be a clear opportunity for more developed economies to cooperate with less developed economies by sharing experience, concrete technical assistance, and capacity building efforts.



Given the comprehensiveness of its provisions, the APEC Services Trade Restrictiveness Index (APEC Index) represents a next step in services regulatory reform benchmarking (and may be useful in benchmarking other issues as well), and it could easily become APEC's main instrument for assessing regulatory reform. APEC's cooperative nature makes it particularly well-equipped, inter alia, for adopting the APEC Index standards in a way that is responsive to the diversity of its membership.



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

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