PECC SIGNATURE PROJECT: FTAAP PATHWAYS TO PROSPERITY

POLICY BRIEF

Good Regulatory Practice for Services in APEC: Precedents, Principles and Challenges ahead for FTAAP

Sherry Stephenson, Mia Mikic with assistance of Saliltorn Thongmeensuk

April 2024

AusPECC Pacific Economic Cooperation Council

PECC Pacific Economic Cooperation Council

Contents

Summary and main messages

This Policy Brief is focused on the discussion of the state of good regulatory practice for services in APEC at present, and the challenges that lie ahead in this area as the region's economies move towards the Putrajaya Vision in 2040 and the FTAAP goal of a more collaborative, open and integrated region.

This discussion is part of the broader one on services regulatory reform. Although the understanding of good regulatory practice is present in APEC, it is now very important to strengthen regulatory cooperation and implementation of good regulatory principles and disciplines so that the region can realize the large potential savings in costs for services trade that can result. This will facilitate growth in services trade and boost regional integration more broadly. Regulatory cooperation and reform in services should be at the forefront of APEC's efforts over the coming years as economies work to realize the FTAAP vision.

Through extensive examination of work in various APEC fora over the past years, as well as an examination of the disciplines incorporated into the major RTAs that include all but three of the economies in the region, this study finds that a significant body of rules and guidelines exist for a large swarth of good regulatory practice in services. These have been reinforced recently by the entry into force of the plurilateral agreement at the WTO on *Services Domestic Regulation*, inspired by the earlier *APEC Non-binding Principles on Domestic Regulation for Services*. A great deal of similarity is in evidence between these agreements and relevant disciplines in the four RTAs examined, further underscoring this coherence. In addition, APEC adopted a robust set of good regulatory practices in 2023 in the form of the ***Blueprint on Good Regulatory Practices for APEC*** which covers several areas that are not treated in the plurilateral agreement.

Yet while these principles that support good regulatory practices for services now exist on paper, many economies still have a considerable road ahead to implement them. Five APEC economies have not yet signed onto the plurilateral agreement on services domestic regulation, and its implementation is only in the beginning stage. In addition, work lies ahead for APEC to reinforce understanding of the importance of this area and to put into practice all nine key areas of the ***Blueprint on Good Regulatory Practices for APEC.*** To reap the potential large benefits that are estimated to materialize from these agreements, attention to implementation by all APEC economies will be essential.

> ***The Policy Brief recommends that APEC undertake capacity-building work to help economies implement the agreed WTO disciplines on services domestic regulation that will be applied both regionally and multilaterally. It also recommends that APEC undertake capacity-building work to help economies implement all nine areas of the Blueprint on Good Regulatory Practices for APEC. Both are critical so that these good***

regulatory practices help services play an even more important role in moving APEC towards the FTAAP vision of a more open and integrated region.

The study identifies two areas where neither existing frameworks nor common understanding exist at present in the APEC region for good regulatory practice, and which are operating as fundamental drivers of change for services trade. These are the **digitalization of services trade** and the **role of services in the application of artificial intelligence technologies**. Digital services trade is the most dynamic component of all trade and already represents over half of cross-border services trade. However, in the absence of commonly accepted regulatory frameworks, a plethora of restrictions is being placed on digital services trade, including by economies in the APEC region, which impact data flows amongst other things.

The Policy Brief recommends that APEC deepen its work in the area of digital trade to develop a common regulatory framework for the region that can support realization of the FTAAP vision. Effort in this area can draw upon the content of existing digital economy agreements, but which would need to be evaluated as to their appropriateness for a region-wide framework. A pathfinder approach for certain issues or areas may need to be followed to achieve progress.

In a similar fashion, adoption of artificial intelligence in the output and use of both goods and services is moving at great speed. But the APEC region lacks a common regulatory framework in this space as well. In the absence of this guidance, APEC economies are considering and beginning to adopt divergent regulations toward the application of artificial intelligence technologies.

The Policy Brief recommends that APEC bring discussions of artificial intelligence as an integral part of economic and trade policy analysis rather than viewing it only as a technology. It recommends that APEC carry out work to identify the type of regulatory framework suitable for the region to deal with services-delivered applications for AI deployment. This is particularly relevant to support the realization of the FTAAP vision. Once again, a pathfinder approach for certain issues may need to be adopted to achieve progress.

If not addressed, the divergence in policies and approaches that is arising in response to these two fundamental 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 dampen APEC's goals of greater regional integration. This study has tried to identify the three areas for good regulatory practice in services most in need of attention and policy response by APEC to achieve the FTAAP goal of a more collaborative, open, and integrated region over the next quarter century.

I. Introduction

Good regulatory practice (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 good regulatory practices as "...internationally recognized processes, systems, tools and methods for improving the quality of regulations".[1]

Given the importance of regulations in guiding modern economic activities, achieving a more coherent and coordinated understanding and application of GRP by APEC economies would constitute a major step towards realization of the 2040 Putrajaya Vision. It would be a critical component of APEC's longer-term strategy under the "FTAAP approach" in advancing regional economic and trade integration. Though good regulatory practice 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 facilitator enabling structural reform.

Divergences in regulation increase trade costs, often substantially. Services, more than other sectors of the economy, are heavily regulated. The large majority of barriers to services trade take the form of regulations. The costs of divergent regulations are the main reason that services trade costs are estimated to be three times higher than trade costs for goods.[2] These costs fall disproportionately heavily on micro, small and medium sized enterprises (MSMEs), as well as individual service suppliers. Attention to good regulatory practice for services from an FTAAP perspective 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 economic competitiveness through their incorporation into all economic output.

The FTAAP vision of a much more integrated regional economy will require greater coherence between the individual approaches of APEC economies to services regulation, and more focus on regional cooperation, particularly in areas where rules and frameworks are lacking at present. Understanding the drivers of change that are posing and will continue to 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 in a future FTAAP context.

---

[1] From the WTO Technical Barriers to Trade Agreement. It is of note that the same definition is used in the USMCA trade agreement. https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/implementation-mise_en_oeuvre.aspx?lang=eng#117

[2] 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 cost to services trade come from opaque regulations and cumbersome procedures.

A recent paper commissioned by the United Nations and the WTO Secretariat looking at how to help the growth of digital trade by developing countries emphasized the importance of good regulatory regimes and practices that support digital trade ambitions. It includes what is described as a set of "well understood basic principles of GRP." These are posited to include the following seven areas:

i) Clearly defined objectives for regulating an activity;
ii) Transparency and consultation with stakeholders when defining regulatory objectives and performance standards;
iii) Processes for identifying measures that are cost efficient in achieving a specified regulatory objective;
iv) Consideration of the use of internationally agreed regulatory standards where these exist;
v) Flexibility in responding to changed circumstances in a timely manner;
vi) Independent monitoring and evaluation of outcomes; and
vii) Regular dialogue and consultations with stakeholders.[3]

Before delving into APEC's treatment of good regulatory practice, this Policy Brief first examines how important services have become for the APEC region and how the ongoing process of "servicification" has affected every aspect of economic activity, from output and employment to investment and trade. It then turns to explore what progress has already been made on good regulatory practice for services in APEC through a succinct gap analysis of what has been agreed at the APEC level as well as what has been achieved on GRP in recent regional trade agreements (RTAs). This foundational knowledge is important in order to build on existing measures and regional instruments. The Policy Brief identifies an implementation gap where APEC needs to focus on putting into practice the measures of good regulatory practice that have been incorporated into various principles and agreements.

The Policy Brief subsequently examines major drivers of change that are creating challenges to existing regulatory frameworks in the form of digitalization of services trade and the growing importance of services applications of artificial intelligence. These areas pose specific types of regulatory issues for services, but currently lack dedicated regulatory frameworks. The last section of the Policy Brief puts forward recommendations on what type of further research could be useful in addressing these gaps to allow APEC to move towards the Putrajaya Vision 2040 and the FTAAP goal of a more collaborative, open and integrated region.

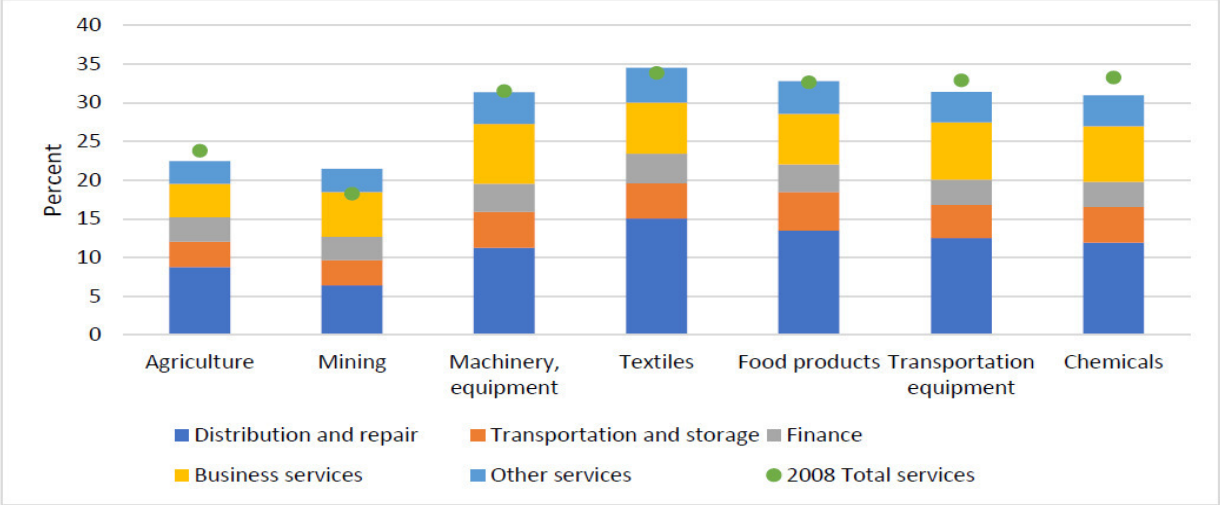
[3] Bernard Hoekman, *Digital Trade: Opportunities and Challenges*, United Nations and WTO Secretariat, https://www.wto.org/english/tratop_e/devel_e/digital_trade2022_e.pdf

II. 'Servicification' and the importance of services in the APEC region

Services are increasing in importance in all areas of economic activity in APEC (and globally). Services constitute over two-thirds on average of GDP in the APEC region and well over half of total employment. The services sector is a major source of job growth, with an estimated 55.3 percent of workers employed in services activity in the region in 2021. Services are also the most important sectoral destinations of investment flows to the region, representing two-thirds of all greenfield investments. Regarding trade, services have steadily increased their share of regional trade in value-added terms, when counting those services incorporated into other traded products or services. On this value-added basis, commercial services now account for more than half of total exports originating from APEC economies. The share of incorporated or value-added services in merchandise exports ranges on average from 23 to as high as 35 percent as shown in Figure 1. Services value-added in the APEC region in manufactured exports stood at over 30 percent in the most recent version available of the OECD Trade in Value-Added or TiVA database (2018).

Globally, services trade grew twice as fast as goods trade from 2010 to 2020. This dynamic growth was also true for APEC as well. Services trade represents a huge potential for growth in the region. As reported to the APEC Economic Committee, modest reductions in services trade restrictions due to improved regulatory practices can lower the cost of exporting services by around 7.5 percent more for smaller firms than for larger firms.[4]

Figure 1. Services share of Value-Added in Merchandise Exports, 2018 (APEC average



Source: OECD Trade in Value-added TiVA 2021. https://www.oecd.org/sti/ind/measuring-trade-in-value-added.htm Note: This data set includes 20 APEC economies (Papua New Guinea is not included).

[4] APEC Policy Brief on Services Competitiveness and Structural Reform, APEC Economic Committee and Group on Services, December 2022, page 6. https://www.apec.org/docs/default-source/publications/2022/12/apec-policy-brief-on-eaasr-and-ascr-services-competitiveness-and-structural-reform/222_ec-gos_apec-policy-brief-on-eaasr-and-ascr.pdf?sfvrsn=5cdc0567_2

Services are particularly important for women and for bringing about greater inclusivity in the economy. On average more women than men work in services activities worldwide, while in the APEC region two-thirds of women are employed in service activities. Services are therefore of critical importance for the inclusivity goals adopted by the APEC Leaders Declaration 2023 as contained in the ***San Francisco Principles on Integrating Inclusivity and Sustainability into Trade and Investment Policy*** .

III. Overview of what APEC has done on good regulatory practice

Since its inception APEC has given high priority to transparency and other good regulatory practices (GRP) in its work. Over the past years APEC has developed instruments and guidelines and carried out key studies to help APEC economies incorporate GRP into their regulatory frameworks. This section summarizes five of the most relevant and recent outcomes which are tools for economies to assess their reform efforts. Of these, three are of general application while two are specific to services. This information helps with the identification of gaps in regulatory coverage that will be discussed at the end this Policy Brief.

General regulatory instruments:

In 2003-2005 the *APEC-OECD Integrated Checklist* was developed as part of the APEC-OECD Cooperation on Regulatory Reform, and was approved by the respective executive bodies of APEC and the OECD in 2005.[5] The Checklist is an integrated self-assessment tool that integrates the APEC and OECD principles on regulatory reform with three policy areas – competition, rule-making and market openness – to provide a coherent whole-of-government approach and view on regulations and the regulatory process. The APEC-OECD Checklist includes 39 open-ended questions for domestic authorities to answer when considering the adoption or revision of regulatory, competition or market openness policies, all issues that should be considered during the process of development and implementation of regulatory policy. To date six economies have published self-assessment reports using this Integrated Checklist: Australia; Hong Kong, China; Japan; Korea; Chinese Taipei and the United States

⇒ **In 2011, the APEC Sub-Committee on Standards and Conformance developed a study on *Good Regulatory Practices in APEC Member Economies - Baseline Study*** which reviewed the application of selected GRPs across the 21 APEC members. A 2016 report focuses on those GRPs that promote regulatory quality standards that are particularly important to trade and investment, such as regulatory accountability, reform capacity, consultation, efficiency, and transparency. This report also responds to the APEC Ministerial Declaration in Beijing 2014 concerning implementation of APEC Actions on Public Consultations on Proposed Regulations in the Internet Era, in which Ministers asked that this study explore

[5] APEC-OECD Integrated Checklist on Regulatory Reform: A Policy Instrument for Regulatory Quality, Competition Policy and Market Openness, 2003-2005
https://www.apec.org/docs/default-source/publications/2005/9/apec-oecd-integrated-checklist-on-regulatory-reform/2005_ec_apec_oecd_checklist.pdf?sfvrsn=2c7a9a7_1

how economies are implementing these actions. Finally, this report recommends actions through which APEC can continue supporting the expansion of GRPs to accelerate growth and facilitate inter-APEC trade and investment.[6]

⇒ **In 2023 the APEC Sub-committee on Standards and Conformance adopted a *Blueprint on Good Regulatory Practices for APEC***.[7] This ***Blueprint*** builds upon previous APEC work on GRP, including the ***Integrated Checklist*** mentioned above, but incorporates new concepts designed to bring regulatory practices into the 21st century. It sets out a non-prescriptive mapping of key GRPs to guide efforts at every stage in the regulatory life cycle. Its aim is to help APEC economies to incorporate GRP into regulatory frameworks to increase transparency, improve regulatory quality, and produce better regulatory outcomes. Examples of good regulatory practice cited in the study include "…..allowing an opportunity for public comment by interested persons on proposed or amended regulatory measures; improving accessibility of information about existing laws and regulatory processes; promoting internal coordination in regulatory policy development; and taking account of available information, science, and evidence in regulatory analysis." These practices can be incorporated into laws, rules, regulations, and guidance documents in order to take effect. They can apply to any level of government. Importantly, the GRPs identified in the ***Blueprint*** are applicable to services as well as goods.

⇒ Positing transparency as a foundational principle, the ***Blueprint*** sets out nine key areas of GRP that include the following:

- Support for laws, decrees, regulations, and policies: This involves setting out guidance to ensure that regulations are institutionalized and implemented through a whole of government approach.
- Institutional guidance and mechanisms for implementation: These structures, mechanisms and processes as required formalize a whole-of-government approach that reinforces consistent implementation of GRP.
- Internal government coordination and review: This requires putting into place internal processes and mechanisms for consultation, coordination and review of GRP within an economy.
- Early planning: Regulatory planning guidance at an early stage can provide the public advance notice of anticipated regulatory actions. Such plans provide transparency and ensure a consistent approach.

[6] 2016 Final Report on Good Regulatory Practices in APEC Economies, USAID and APEC CTI Sub-Fora and Industry Dialogues Groups, Sub-Committee on Standards and Conformance, 2017. https://www.apec.org/docs/default-source/publications/2017/8/2016-final-report-on-good-regulatory-practices-in-apec-economies/217_cti_2016-final-report-on-grp-in-apec-economies.pdf?sfvrsn=62412faf_1

[7] Good Regulatory Practices: Blueprint for APEC, USAID, APEC Sub-committee on Standards and Conformance, November 2023. https://www.apec.org/docs/default-source/publications/2023/11/223_scsc_blueprint-for-advancing-good-regulatory-practices-in-the-apec-region.pdf?sfvrsn=b9af402a_2

- Public consultation: Consultations with diverse stakeholders on proposed regulatory action can take various forms, including public notices in gazettes or on websites, the holding of public hearings or workshops.
- Use of high-quality information, evidence and science: High quality scientific and other information should inform analyses of the tradeoffs involved in regulatory options and rationales for regulatory decisions.
- Regulatory analysis tools: Regulatory impact analysis (RIA) is advised to be used to evaluate the costs and benefits of the proposed regulatory options, as well as their potential impact.
- Review of existing regulations: The existing set of laws and regulations that exist in an economy will need to be reviewed over time to ensure relevance and fitness for purpose.
- International regulatory cooperation: Regulatory cooperation is an effort to prevent, reduce, or eliminate the impact of regulatory differences and facilitate innovation and promote economic growth.

  This last principle advocates regulatory cooperation to reduce or eliminate regulatory differences, given that in the modern economic world of interconnected supply chains and movement of capital and people, regulatory actions no longer affect just the domestic economy. Regulatory cooperation can contribute to the development and advancement of GRP through increased understanding of shared regulatory objectives for both services and goods.[8]

Regulatory instruments specific to services:

⇒ **In 2018 APEC economies adopted the *APEC Non-Binding Principles for Domestic Regulation of the Services Sector***, in an Appendix to the CTI Report to APEC Ministers.[9] These ***Non-Binding Guidelines*** include a set of 19 core principles designed to create a regulatory environment that facilitates services trade in the APEC region through good regulatory practices for developing, implementing and reviewing services regulations, focusing on the administrative process relating to licensing requirements and procedures, qualification requirements and procedures in the case that authorization is required for the supply of a service. They also include guidelines for the development of measures and the adoption of technical standards. The ***Guidelines*** are designed to assist APEC economies in continuously streamlining these regulations, thus reducing costs and eliminating barriers to services trade. They are, however, not as broad in their coverage as

[8] Good regulatory practice tools highlighted in the Blueprint include the APEC-OECD Checklist on Regulatory Reform, the OECD Regulatory Enforcement and Inspections Toolkit and the APEC-OECD IRC Resource. ***Good Regulatory Practices: Blueprint for APEC*, op.cit.**

[9] APEC Non-Binding Guidelines for Domestic Regulation of the Services Sector, https://www.apec.org/docs/default-source/Publications/2018/11/2018-CTI-Report-to-Ministers/TOC/Appendix-13---APEC-Nonbinding-Principles-for-DR-Drafting-Group.pdf

the nine key areas outlined above in the ***Blueprint on Good Regulatory Practices for APEC*** that affect all aspects of the regulatory process, from the inception to the adoption, implementation, and review of regulations during their entire life cycle. The *APEC Non-Binding Principles* were instrumental in influencing the successful adoption of the WTO outcome Joint Initiative on Services Domestic Regulation in December 2021 which cover the large majority of the 19 principles in the APEC document. Of the 72 WTO Members who adopted the Declaration for this outcome document, 16 of them are APEC economies.[10] These new disciplines on services domestic regulation entered into force for participating economies during the WTO 13th Ministerial Conference in Abu Dhabi (February 2024) and according to the WTO website, are expected to lower trade costs in services by over $125 billion (US) worldwide through facilitating services trade by streamlining and simplifying regulatory and administrative procedures.[11]

In 2022 an *APEC Policy Brief on Services Competitiveness and Structural Reform* was endorsed by the Joint Report by APEC Economic Committee and Group on Services.[12] The Policy Brief points out that regulatory reform is a key pillar of three APEC bodies at present, namely the:

- APEC Group on Services through its overview of the **APEC Services Competitiveness Roadmap (ASCR),**
- APEC Economic Committee through its **structural reform agenda**, and
- APEC Digital Economy Steering Group through its work on the **APEC Internet and Digital Economy Roadmap (AIDER).**

Under the APEC Services Competitiveness Roadmap (ASCR) the APEC Group on Services has finalized a tool for measuring the regulatory environment in services, namely the APEC Index, which is in the process of being extended to all APEC economies. This index is based on a database of regulatory information on trade barriers affecting services with composite indices that quantify this information in a comparable manner with the purpose of tracking the evolution of regulatory interventions for all APEC economies in all 22 services sectors included in the OECD Services Trade Restrictiveness Index database.[13]

---

[10] See Declaration on the Conclusion of Negotiations on Services Domestic Regulation and accompanying Reference Paper on Services Domestic Regulation, December 2021 on WTO website, https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/1129.pdf&Open=True

[11] WTO Press Release, New disciplines on good regulatory practice for services trade enter into force, https://www.wto.org/english/news_e/news24_e/serv_27feb24_e.html

[12] APEC Policy Brief on Services Competitiveness and Structural Reform, December 2022 https://www.apec.org/docs/default-source/publications/2022/12/apec-policy-brief-on-eaasr-and-ascr-services-competitiveness-and-structural-reform/222_ec-gos_apec-policy-brief-on-eaasr-and-ascr.pdf?sfvrsn=5cdc0567_2

[13] Measuring the Regulatory Environment of Services Trade in the APEC Region, https://apecservicesindex.org/ A report on the APEC Index for Measuring the Regulatory Environment for Services Trade in the APEC Region

To implement the Enhanced APEC Agenda for Structural Reform (EAASR), the Economic Committee has developed a mechanism and useful tools in the form of Individual Action Plans (IAPs) which cover regulatory interventions and reform. These efforts are aimed at improving the regulatory environment and thus economic efficiency in order to enhance growth and regional integration. It has been previously noted that good regulatory practice is a precursor to successful regulatory reform, whether this be in services or other parts of the economy. However, to date APEC economies have put very little coverage of services regulatory interventions and reform into their IAPs. This lack of attention and information on services is debilitating the efforts of the Economic Committee to incorporate the critical area of services into its discussions of structural reform. In its recommendations, the EAASR Mid-term Report explicitly encourages APEC economies to nominate reform actions in the services sector in their future IAPs submissions. [14]

IV. Examining what selected RTAs have done on good regulatory practice

This section discusses the content of four major recent multi-party RTAs in the APEC region and the type of disciplines they have incorporated relevant to good regulatory practice. The four RTAs examined are the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Pacific Alliance, the Regional Comprehensive Economic Partnership (RCEP) and the US-Mexico-Canada Free Trade Agreement (USMCA). A comparative table in Annex 1 shows the coverage of different types of provisions relevant to GRP under each of these agreements as identified by the authors in nine services- specific or services-relevant chapters in each of the four RTAs. The information contained in this table is the basis for the analysis below which helps with the identification of gaps in regulatory coverage that are discussed in Sections V and VI of this Policy Brief.

⇒ **Similarities**: The four RTAs examined show a remarkable convergence and similarity in the included provisions relevant to good regulatory practice in all the

can be found at https://apecservicesindex.org/documents/APEC-Index-for-measuring-the-regulatory-environment-for-services-trade-in-the-APEC-region.pdf

The APEC Index is based upon, but not identical to, the OECD Services Trade Restrictiveness Index (STRI). The OECD STRI was launched in 2014 and provides information on regulations affecting trade in services in 22 sectors across all 38 OECD member countries and Brazil, the People's Republic of China, India, Indonesia, Kazakhstan, Malaysia, Peru, Singapore, South Africa, Thailand, and Vietnam. These countries and sectors represent over 80 percent of global trade in services. See https://qdd.oecd.org/subject.aspx?Subject=063bee63-475f-427c-8b50-c19bffa7392d An annual monitoring report is issued summarizing trends in the regulatory environment for services. The most recent one is *OECD Services Trade Restrictiveness Index: Policy Trends up to 2023*, https://issuu.com/oecd.publishing/docs/stri_policy_trends_up_to_2023_final

The OECD STRI database includes tools that allow for the comparison of levels of regulatory intervention across countries. https://www.compareyourcountry.org/service-trade-restrictions?cr=oecd&lg=en

[14] Enhanced APEC Agenda for Structural Reform: Mid-term Review Report 2023, APEC Policy Support Unit, October 2023, https://www.apec.org/docs/default-source/publications/2023/10/223_psu_eaasr-mid-term-review-report.pdf?sfvrsn=6f690a32_2

services-specific and services-relevant chapters of the agreements. This is true for the following areas (as highlighted in the comparative table):[15]

- **Cross-border Trade in Services Chapter** (or Trade in Services Chapter in RCEP). This chapter across the four RTAs contains similar provisions on domestic regulation; recognition; transparency and public notice; response to inquiry; recognition of professional services qualifications; and establishment of a working group or committee to oversee implementation of the chapter.
- **Telecommunications Services (public services)** chapter across the four RTAs likewise has similar provisions on allowing diverse forms of regulation to achieve common objectives of pro-competitive telecom markets (in 3 of the 4 RTAs); independence of the regulatory body from the telecom supplier; ability to comment in developing regulations; transparency and publication; and establishment of a committee to oversee implementation (in 3 of the 4 RTAs).
- **Financial Services** chapter that sets out similar provisions on recognition; transparency; publication of measures (in 3 of the 4 RTAs); ability to comment; response to inquiry; reasonable period of time for deciding upon a new regulation (in 3 of the 4 RTAs); and establishment of a committee to oversee implementation of the chapter.
- **Temporary Entry for Business Persons** chapter with a similar provision to share experience with regulations on temporary entry (3 of the 4 RTAs).
- **Electronic Commerce** chapter setting out similar provisions for the exchange of experience and regulation on e-commerce; and the encouragement of methods of self-regulation for the private sectors (in 3 of the 4 RTAs).
- **Government Procurement** chapter containing similar provisions on publication of measures; domestic review; exchange of experiences and information on regulations and best practices; and the establishment of a committee to oversee implementation of the chapter.
- **Competition Policy** chapter setting out similar content and provisions on good regulatory practice in terms of transparency, procedural fairness, ability to ask for review of a decision or sanction, and cooperation, including agreed technical assistance (in 3 of the 4 RTAs).
- **Transparency chapter or similar relevant provisions in other chapters** on publication of all laws and regulations under the agreement; opportunity for comment; requirement for a reasonable period of time before laws and

[15] It is of note that there were no provisions relevant to good regulatory practice identified in the following chapters in these RTAs: Development; Small and Medium-sized Enterprises; State-Owned Enterprises and Designated Monopolies; Competitiveness and Business Facilitation; Cooperation and Capacity-Building (These provisions would be generally applicable to everything in the agreement but nothing specific mentioning regulations)

regulations come into force (in 3 of the 4 RTAs); procedures for review and appeal; and establishment of contact points.

⇒ **Differences:** Two major differences in the treatment and coverage of good regulatory practice were identified in the RTAs examined. These are:

- **Separate chapters in two of the four RTAs dedicated entirely to regulatory practice.** Two of the four RTAs examined (CPTPP and the USMCA) contain a separate chapter dedicated to this area: Chapter 25 in the CPTPP on "Regulatory Coherence" and Chapter 28 in the USMCA on "Good Regulatory Practices". These chapters are similar in the provisions they include, namely a review of regulatory measures; consultation on proposed measures; publication of measures; requirement for carrying out of regulatory impact analysis; regulatory cooperation; and establishment of a committee to oversee implementation of the chapter.

- **Inclusion of a provision on the incorporation of the private sector and civil society into the process of development of laws and regulations. Two of the four RTAs examined contain a provision in this area:** the chapter in the CPTPP on Transparency and Anti-corruption (Chapter 26), and in the USMCA on Publication and Administration (Chapter 29).

A recent study carried out for the APEC Group on Services also examined the similarities between the content of the ***APEC Non-binding Principles on Domestic Regulation of the Services Sector*** and how these have been incorporated into four major RTAs, including the CPTPP, RCEP and the USMCA, which collectively encompass 18 out of 21 APEC economies.[16] This analysis compared the provisions of the RTAs with the *APEC Non-binding Principles*. The study concluded that there has been a steady convergence in APEC's approach towards services domestic regulation and in the content of the provisions relevant to this in recent RTAs as regards the licensing requirements and procedures, qualification requirements and procedures, involved in the authorization necessary for the supply of a service. Three figures illustrating the striking similarity of the *APEC Non-Binding Principles* with the provisions involving these regulatory measures contained in the CPTPP, RCEP and the USMCA can be found in Annex 2.A, 2.B and 2.C of this Policy Brief.

In the area of services domestic regulation, this Policy Brief finds that there is a convergence of approach on good regulatory practice for services domestic regulation in APEC for most APEC economies. However, while convergence exists on paper, it will need implementation to be effective in practice. Moving towards the FTAAP objectives for greater regional integration will demand focused attention on regulatory cooperation for services. It will also be important to encourage the five APEC economies that have not yet adopted the outcome of the plurilateral ***Reference Paper on Services Domestic Regulation*** at the WTO to do so as soon as possible.

[16] APEC's Non-Binding Principles for Domestic Regulation of the Services Sector: A Focus on Domestic Regulations in Trade Agreements, 2022, https://www.wto.org/english/tratop_e/serv_e/study_apec.pdf

Implementation of the content of the ***Reference Paper*** should be given prominence in discussions and in capacity-building actions across relevant APEC fora.

The necessity for implementation of the nine areas of GRP identified in the ***Blueprint on Good Regulatory Practices for APEC*** discussed in Section III should also be underscored. The content of the ***Blueprint*** is broader than the principles and disciplines that have been agreed for services domestic regulation and covers the entire range of the regulatory process, from inception to development to administration to review, with explicit suggestions for actions to be undertaken in each of the nine key areas. APEC members must consider how best to support the implementation of this ***Blueprint***, including through targeted capacity building. Such discussions on implementation have yet to be initiated.

The above assessment on existing principles and disciplines for services domestic regulation and for good regulatory practices in APEC is, however, far from the entire story. Services are going through major transformations at present brought about by significant – and potentially disruptive – drivers of change in the world economy. These drivers of change (discussed below) are posing major challenges to good regulatory practice in services. Regulatory frameworks are lacking at present in two key areas that are critical to APEC's economic growth and integration objectives in an FTAAP vision.

V. Drivers of change in the services area and the challenges they pose to good regulatory practice

Two major transformational forces or drivers of change that currently pose challenges to good regulatory practices for services are the following:

i) digitalization of services transactions and associated data flows;
ii) application of artificial intelligence to services activities.

One of the recommendations set out in the 2022 Blueprint on GRP carried out for APEC is to "***Look to relevant instruments, guidance, and resources developed by international bodies and fora when developing regulation in order to build regulatory compatibility among APEC economies***".[17] This is unfortunately impossible to do when there is currently a lack of a global or regional comprehensive regulatory framework to deal with the above transformative and disruptive drivers of change in the services area, making the objective of achieving GRP in these areas fraught with challenge. Another recommendation in the Blueprint study is to "***Work in APEC on common approaches and regulatory best practices, particularly for emerging technologies."*** That recommendation will be elaborated upon below in Section VIII.

[17] Good Regulatory Practices: Blueprint for APEC, 2023, *op.cit.,* page 10.

VI. Digitalization of services trade and lack of general regulatory framework

A. Changes being driven by digitalization

The digital economy has grown two and a half times faster than global GDP over the last fifteen years, fundamentally changing how businesses operate. Digital technologies can revolutionize the business performance of firms large and small alike, in aspects ranging from efficiency and productivity to resilience[18] This is especially significant in the context of cross-border trade and e-commerce, where digitalization has been pivotal in reshaping the industry and paving the way for transformative business models. Growth in the global exports of digitally deliverable services has been explosive over the past decade, as illustrated in Figure 2.[19]

Changes that have been wrought by digitalization are manifest in the following areas:

- ***Business performance and growth:*** Digitalization enhances efficiency, reduces costs, and creates new value propositions, redefining competitive advantage away from traditional factors. E-commerce relies on digital technologies and platforms for global reach at lower costs, improving business performance. This shift benefits emerging markets, especially SMEs, fostering growth and enabling efficient operations. [20] Digitalization impacts supply chains, business strategy, and resilience, as evident in the resilience of services trade during the Covid-19 pandemic and has been instrumental in transforming business performance and growth globally.[21]

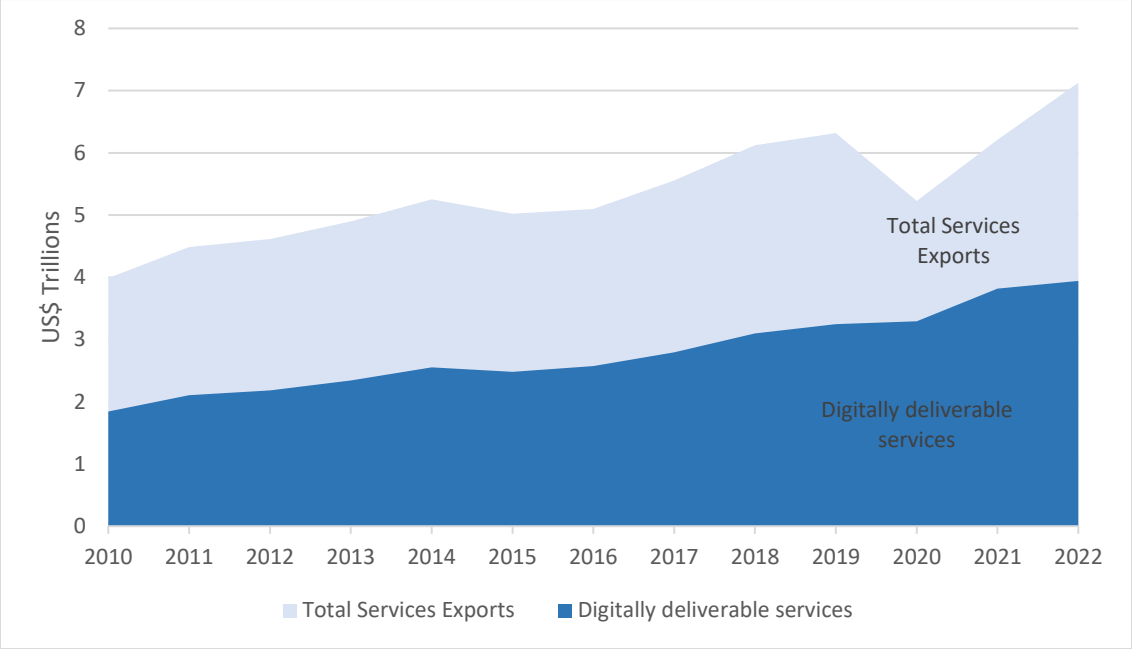
[18] OECD, "Economic Outlook Volume 2019 Issue 1". OECD. 2019. Accessed November 14, 2023, https://www.oecd.org/economy/outlook/digitalisation-and-productivity-complementarities/

[19] It is important to note that a product classified as being digitally deliverable does not mean that it is always digitally delivered in practice when traded internationally. Digitally deliverable trade will therefore be greater than trade that is actually digitally delivered https://unctadstat.unctad.org/datacentre/reportInfo/US.DigitallyDeliverableServices

[20] Majumdar, Shouvik Kishore, Angana Parashar Sarma, and Srishti Majumdar. "E-commerce and Digital Connectivity: Unleashing the Potential for Greater India–ASEAN Integration." *Journal of Asian Economic Integration* 2, no. 1 (2020): 62-81.

[21] Roy, Catherine B., "Unlocking the Benefits of Digitalization: Simple Strategies for Rapid Success". Forbes. April 7, 2023. Accessed November 14, 2023, https://www.forbes.com/sites/forbescoachescouncil/2023/04/07/unlocking-the-benefits-of-digitalization-simple-strategies-for-rapid-success/?sh=5d982d037877 And
OECD, "E-commerce in the times of COVID-19". OECD. October,7 2020. Accessed 14 November, 2023, https://read.oecd-ilibrary.org/view/?ref=137_137212-t0fjgnerdb&title=E-commerce-in-the-time-of-COVID-19

Figure 2. Growth in Global Exports of Digitally Deliverable Services 2005-2022



Note: Digitally deliverable services are an aggregation of the BPM6/EBOPS 2010 services categories insurance and pension services, financial services, charges for the use of intellectual property n.i.e., telecommunications, computer and information services, other business services, and audiovisual and related services. Source: UNCTAD calculations based on WTO and UNCTAD (2022)

- ***The emergence of digital platforms:*** Digitalization in services has given rise to transformative platform businesses, shaping the modern economy.[22] This shift enables innovative value creation through technologies like AI and big data. Platforms, driven by digitalization, facilitate connectivity, data utilization, and network effects, providing businesses with cost advantages, agility, and resilience. [23] As a result, traditional models are compelled to transform. Overall, the impact of digitalization of services on the business landscape is profound, with platform models expected to contribute significantly more to international trade by 2025.[24]

- ***Regulatory considerations: market concentration and competition:*** Digitalization reshapes regulations by transcending traditional boundaries, demanding a paradigm shift. The dynamic nature of digital technologies necessitates swift regulatory adaptation to address cross-border challenges, monopolistic tendencies in platform markets, and the

[22] Jia, Yibo, Jingqin Su, Li Cui, Lin Wu, and Kim Hua Tan. "Platform Business Model Innovation in the Digitalization Era: A "driver-process-result" Perspective." *Journal of Business Research* 160 (2023): 113818.
[23] Beyond Now, " How to adopt a digital platform business model". Beyond Now. 2023. Accessed November 15, 2023, https://www.beyondnow.com/en/insights/market-insights/how-to-adopt-a-digital-platform-business-model/
[24] Vasiljev, Zoran. "The Future is Platform: How Platform Business Model is Shaping the New Era of Business". VegaIT. June, 22 2023. Accessed November 15, 2023, https://www.vegaitglobal.com/media-center/business-insights/the-future-is-platform-how-platform-business-model-is-shaping-the-new-era-of-business

evolving nature of goods and services.[25] Governments are reevaluating competition policies to try and balance innovation with a tendency towards concentration in platform and other digital providers. International cooperation is crucial for effective regulation in the face of digitalization's transborder capabilities. The increase in 'servicification' blurs the lines between goods and services and underscores the transformative impact of digitalization on regulatory frameworks.[26]

B. Challenges posed by digitalization of services trade

The above-mentioned changes create new opportunities for entrepreneurs, but they also pose challenges for policymakers and regulators to strike a balance between customer protection and fostering a digital ecosystem, as discussed below:

- ***Competition:*** In terms of competition, digitalization has introduced new challenges for existing antitrust mechanisms, particularly concerning algorithms. Algorithms can have pro-competitive effects, but they can also pose risks to markets through unilateral conduct of firms. This may involve price discrimination or exclusionary practices using algorithmic bias in favor of the platform's own products. [27] The potential for algorithmic collusion exists, such as participation in pricing cartels.[28]

- ***Cross-border data flow restrictions and regulation:*** Data are crucial for digitalization and AI development and application across sectors. Existing policies and practices increasingly restrict cross-border data flows, including data localization, privacy, and security measures, and source code requirements along with technology transfer rules, posing a significant obstacle to digitalization and incurring economic costs in many jurisdictions.[29]

---

[25] Jullien, Bruno, and Wilfried Sand-Zantman. *The Economics of Platforms: A Theory Guide for Competition Policy*. Information Economics and Policy 54 (2021): 100880.

[26] OECD, *Spurring growth and closing gaps through digitalization in a post-COVID world: Policies to LIFT all boats*. OECD. 2021. Accessed November 15, 2023, https://www.oecd.org/global-forum-productivity/events/Spurring-growth-and-closing-gaps.pdf

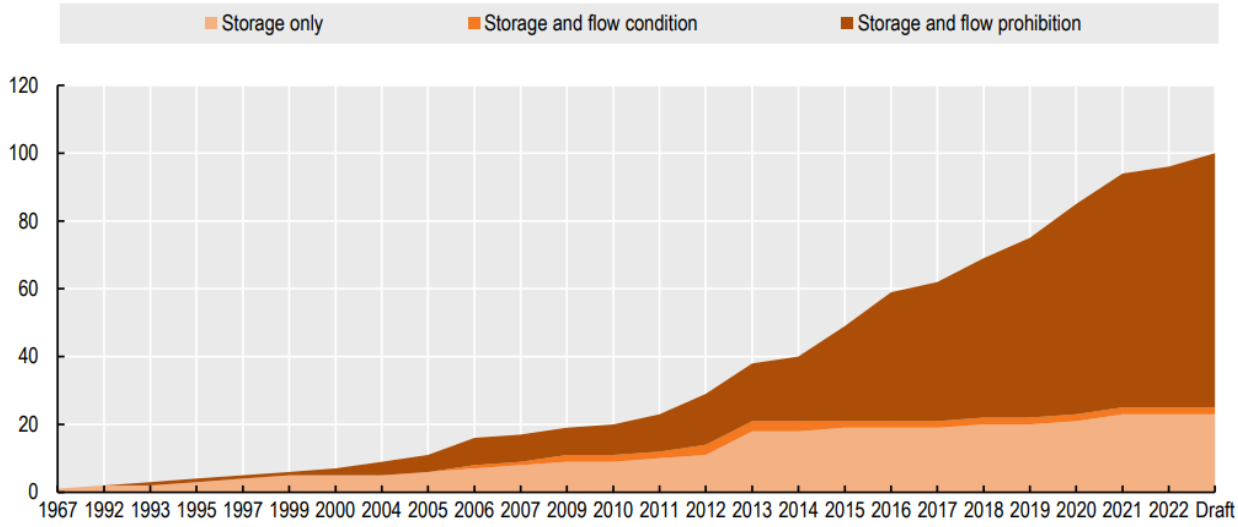
[27] OECD, *Algorithms and Collusion: Competition Policy in the Digital Age*, 2017, www.oecd.org/competition/algorithms-collusion-competition-policy-in-the-digital-age.htm
See also *Competition and Collusion in a World of Algorithmic Pricing: Antitrust Risks and Enforcement Trends*, https://www.cov.com/-/media/files/corporate/publications/2024/02/competition-and-collusion-in-a-world-of-algorithmic-pricing-antitrust-risks-and-enforcement-trends.pdf

[28] OECD, Antonio Capobianco, *Digital Cartels & Algorithms*, 2019, https://ec.europa.eu/competition/cartels/icn/capobianco.pdf

[29] Nigel Cory, *Cross-Border Data Flows: Where Are the Barriers, and What Do They Cost?,* Information Technology & Innovation Foundation, 2017: https://www2.itif.org/2017-cross-border-data-flows.pdfl, as cited in World Economic Forum, "Data Free Flow with Trust: Overcoming Barriers to Cross-Border Data Flows," Briefing Paper, 2023 https://www3.weforum.org/docs/WEF_Data_Free_Flow_with_Trust_2022.pdf , and

The OECD has classified the current policy approach to data flows into three categories: i) open transfer; 2) conditional transfer; and 3) limited transfer.[30] Increasingly, the adoption of restrictive measures is pushing policy away from open transfer and into the second and third restrictive categories. The OECD estimated in 2023 that there were 96 measures across 40 economies in place restricting data flows, with four new regulations in draft form. Almost half of these measures have been applied after 2015. Notably, these measures are increasingly restrictive, with over two-thirds involving a data storage requirement along with a prohibition on data flows.[31] Figure 3 shows how data localization measures have been growing and becoming more restrictive over the past decade.

Figure 3. Data localization is growing and becoming more restrictive



Note: Data localisation measures are defined as explicit requirements that data be stored or processed domestically.
Source: OECD, "The Nature, Evolution and Potential Implications of Data Localisation Measures", OECD, Nov 2023

The Global Trade Alert database reveals a total of 2,517 policy interventions that discriminate against foreign service suppliers in the digital economy. These interventions include import tariffs, digital services taxes (DST), preferences given to local firms in public procurement measures, and implementation of measures that restrict the cross-border transfer and use of

Sherry Stephenson, *Actions to Make Data Free Flow with Trust Operational in Practice*, 2021, Policy Brief T20 Task Force on Digital Transformation, https://www.t20italy.org/wp-content/uploads/2021/09/TF4-PB15-1.pdf

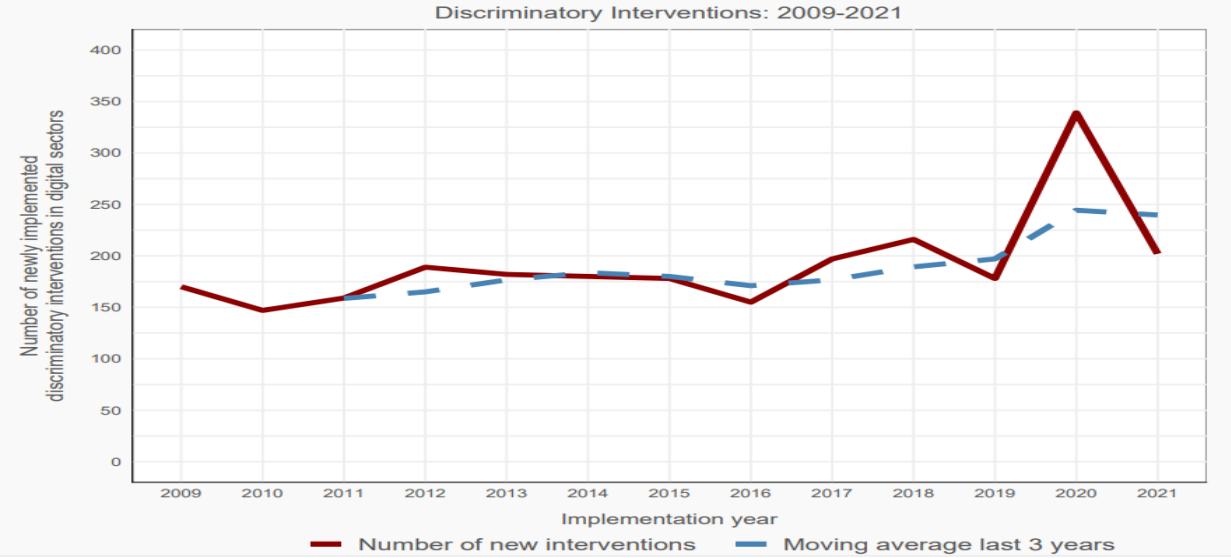
[30] Francesca Casalini and Javier López González, "Trade and Cross-Border Data Flows", OECD Trade Policy Papers, no.220, 2019: https://doi.org/10.1787/b2023a47-en.

[31] Del Giovane, C., J. Ferencz and J. López González (2023), "*The Nature, Evolution and Potential Implications of Data Localisation Measures*", OECD Trade Policy Papers, No. 278, OECD Publishing, Paris, https://doi.org/10.1787/179f718a-en .

data. The growth of these policies, as shown in Figure 4, is creating barriers to trade and investment, and leading to the digital fragmentation of the world economy.[32]

Restricting data flows is having a negative impact on economic growth, output, and trade, though the impact can be challenging to measure. A study by Frontier Economics, opting for a moderately liberalizing path rather than a moderately restrictive one, estimated that liberalization of data flow restrictions would contribute over 1.5 percent to the annual GDP of the EU, roughly equivalent to a year's worth of GDP growth for EU members.[33]

Figure 4. Growth in discrimination against foreign firms operating in digital sectors



Source: Simon J. Evenett and Johannes Fritz, "Emergent Digital Fragmentation The Perils of Unilateralism," CEPR Press, 2022

⇒ ***Platform regulation:*** Large online platforms, beyond competition challenges from algorithms, pose potential issues of harmful content. The recent EU Digital Services Act attempts to address some of these in the form of (i) dissemination of illegal content, (ii)

[32] Simon J. Evenett and Johannes Fritz, *Emergent Digital Fragmentation: the Perils of Unilateralism*, CEPR Press, 2022, https://www.hinrichfoundation.com/research/wp/digital/emergent-digital-fragmentation-the-perils-of-unilateralism/ .

[33] Frontier Economics, *The Value of Cross-Border Data Flows to Europe: Risks and Opportunities*, 2021: https://digitaleurope-website-v1.s3.fr-par.scw.cloud/uploads/2021/06/Frontier-DIGITALEUROPE_The-value-of-cross-border-data-flowsto-Europe_Risks-and-opportunities.pdf, as cited in World Economic Forum, "Data Free Flow with Trust: Overcoming Barriers to Cross-Border Data Flows,"

negative impacts on fundamental human rights, (iii) media plurality risks, and (iv) intentional manipulation.[34] Addressing these harms poses a challenge for policymakers.

The ***Digital Services Act (DSA)*** adopted by the European Union is the first instrument of its kind that tries to strike a balance between developing regulation that is not overly strict in hindering digital technology development but nonetheless robust enough for consumer protection. The DSA adopts a process-based approach. One key reason for this approach is to learn from the experiences of platform providers who primarily utilize automatic content moderation tools for consumer facilitation, particularly in combating spam. However, the outcomes of the content moderation efforts often swing between being too restrictive (false positives) or too lenient (false negatives), leading to criticism and concerns about the boundaries of freedom of speech.[35]

Despite employing a process-based approach, the DSA imposes obligations to regulate the operations of platform businesses. The level of strictness depends on their size; for instance, all types of platform providers have transparency reporting obligations, but the content that must be reported may vary.[36] The FTAAP project may wish to examine further the approach and content of the EU's Digital Services Act, as well as different measures applied to companies with respect to size, to see whether these would suit the region's need for a regulatory framework for online digital services.

C. Existing regulatory frameworks on digitalization in the APEC region

APEC non-binding instruments: APEC instruments relevant to digitalization fall into two main categories: those related to cybersecurity and those related to data privacy. Both are soft law instruments which nonetheless offer valuable insights into recommended policy towards digitalization. Notably, the ***APEC Framework for Securing the Digital Economy*** and ***APEC Guidelines for Creating Voluntary Cybersecurity ISP Codes of Practice*** set voluntary norms for a secure digital environment. In brief, the former aims to harmonize APEC member economies' policies, while the latter focuses on internet service providers as critical infrastructure. The APEC Cross-Border Privacy Rules focus on promoting commercial data flows by entrusted private actors. Despite their non-binding status, these instruments help shape the digital landscape, as

[34] Sally Broughton Micova, *What is the harm in size? very large online platforms in the digital services act*, ISSUE PAPER, October 2021, https://cerre.eu/wp-content/uploads/2021/10/211019_CERRE_IP_What-is-the-harm-in-size_FINAL2.pdf.

[35] Hertie School. Centre for Digital Governance, *How will the European Union govern social media platforms under the Digital Services Act?*, June, 2023, https://www.hertie-school.org/en/digital-governance/research/blog/detail/content/how-will-the-european-union-govern-social-media-platforms-under-the-digital-services-act.

[36] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), http://data.europa.eu/eli/reg/2022/2065/oj

well as prompting discussions on the need for binding treaties for digitalization in other contexts. The regulatory gaps not addressed by these instruments will be discussed in the next section.

⇒ ***APEC Framework for Securing the Digital Economy***, introduced in 2019, provides "non-binding principles and strategic recommendations to inform member economies as they develop policy and regulatory frameworks to secure their digital economies and their digital futures.[37] The principles stipulated in it consist of awareness, responsibility, cooperation, and privacy. Together with these principles, strategic recommendations are also introduced to support practical application of the principles. Seven recommendations are advanced in the areas of: digital risk management; development of economic strategies; resilient critical information infrastructure (CII); strengthened collaboration; empowerment of digital users; adoption of digital security technologies for trust; and personal data security.

⇒ ***APEC Guidelines for Creating Voluntary Cybersecurity ISP Codes of Practice***, introduced in 2012, provide "a set of guidelines for ISP cybersecurity."[38] Their key objective is "to provide information for economies to assist them to develop effective ISP cyber security codes of practice. The Guidelines provide member economies with options for how to establish a code of practice and how to implement such a code.[39] In the first section, the guidelines provide a comprehensive framework to engage with the internet service industry, addressing topics including the establishment of a responsible Internet society, a strategy to engage stakeholders, and encouragement of the participation of Internet Service Providers (ISP). The guidelines propose a strategy to raise cybersecurity awareness and to respond to cybersecurity threats through network management, methods for contacting affected users, and remedial assistance to affected users. Lastly, the guidelines offer ideas for implementing a code of practice, consisting of launching, managing, reviewing, and establishing a framework for cooperation in cybersecurity.

⇒ ***APEC Cross-border Privacy Rules (CBPR)*** adopted in 2011, cover data flows of commercial transactions for certified companies in APEC participating economies. The CBPR system is a government-backed data privacy certification scheme that companies can apply to and join to demonstrate compliance with internationally recognized data privacy protections.[40] The CBPR system implements *the APEC Privacy*

[37] APEC, "APEC Framework for Securing the Digital Economy," APEC, accessed December 13, 2023, https://www.apec.org/publications/2019/11/apec-framework-for-securing-the-digital-economy

[38] APEC, "APEC Guidelines for Creating Voluntary Cyber Security ISP Codes of Practices," APEC, accessed December 13, 2023, https://www.apec.org/publications/2012/03/apec-guidelines-for-creating-voluntary-cyber-security-isp-codes-of-practice

[39] APEC, "APEC Guidelines for Creating Voluntary Cyber Security ISP Codes of Practices," APEC, accessed December 13, 2023, https://www.apec.org/docs/default-source/publications/2012/3/apec-guidelines-for-creating-voluntary-cyber-security-isp-codes-of-practice/2012_tel_isp-code-of-practice.pdf?sfvrsn=9e6319c3_1

[40] *APEC Cross-border Privacy Rules* (for data flows), 2011, https://cbprs.org/ An APEC economy must demonstrate that it can enforce compliance with the CBPR system's requirements before joining. Currently,

Framework endorsed by APEC Leaders in 2005 and updated in 2015. The CBPR system is designed to ensure that regulatory differences do not block businesses' ability to deliver innovative products and services. Through the CBPR system, governments certify companies to ensure that when personal information moves across borders for commercial transactions, it is protected in accordance with the standards prescribed by the system's program requirements and that this protection is enforceable across participating jurisdictions. The CBPR system protects personal data by requiring enforceable standards; accountability; risk-based protections; consumer-friendly complaint handling; consumer empowerment; consistent protections; and cross-border enforcement cooperation. While digital identity approaches vary, the CBPR System serves as a voluntary mechanism aligning with the Privacy Framework.[41]

Binding rules in RTAs: While APEC lacks an instrument with rules on digital services trade, some APEC member economies have included digital provisions in their recent trade agreements, including in the CPTPP, USMCA and RCEP, as noted above. Relevant provisions in these agreements deal with personal information (data) protection, electronic signatures, paperless trading, source codes and no customs duties on electronic transmission, among others. In particular, the USMCA and the CPTPP show a large degree of similarity in terms of inclusion of these provisions.[42] A table in Annex 3 shows the clauses related to digital trade found in these RTAs.

It is of note that the table in Annex 3 also includes information on seven recent Digital Economy Agreements (DEA) of a standalone nature. An impressive 17 APEC economies have signed one or more of these agreements. The Digital Economy Partnership Agreement (between New Zealand, Chile, and Singapore) is notable for its originality in structure and content (and was negotiated and signed fully online during the Covid pandemic!) Singapore appears to be cementing its position as a hub for these agreements, as a signatory of six of the seven DEAs in place at present. These DEAs reproduce many of the provisions contained in the Electronic Commerce chapter of the CPTPP and the Digital Economy chapter of the USMCA, but often go beyond in new areas including digital identities, standards and technical regulation for digital trade, and artificial intelligence. Although still nascent, this may be an indication of a growing convergence of treatment of digital trade by economies in the region, though outside the context of free trade agreements. APEC economies may wish to examine the usefulness and feasibility of developing a framework based on elements of these DEAs that could be extended more

nine of 21 APEC economies participate in the system: Australia, Canada, Japan, the Republic of Korea, Mexico, the Philippines, Singapore, Chinese Taipei, and the United States

[41] Stephanie Honey, *Digital Identity in APEC: Deepening Trust, Inclusion and Interoperability in the Digital Economy*, The Federation of Thai Industries, June, 2023, accessed November 17, 2023, https://km.fti.or.th/wp-content/uploads/2023/06/ABAC-Digital-Identity-Report.pdf.

[42] Peter Lovelock, *The New Generation of Digital Trade Agreements: Fit for Purpose,* in the PECC State of the Region Report, 2021, https://pecc.org/state-of-the-region-reports/287-2020-2021/888-chapter-2-the-new-generation-of-digital-trade-agreements-fit-for-purpose

See also Redacción Opportimes, *E-commerce: differences between the Pacific Alliance and CPTPP*, Opportimes, July 9, 2023, accessed November 17, 2023, https://www.opportimes.com/e-commerce-differences-between-the-pacific-alliance-and-cptpp/.

broadly as part of the path towards the FTAAP goal of greater regional integration. A framework in this area could be designed in a flexible manner and include the possibility of some groups of APEC economies moving at faster speeds and others at slower speeds in order to grow into agreed digital standards over time.

D. Gaps in regulatory frameworks for digital services trade in APEC

Currently there is a big gap in the APEC region in the lack of an overall instrument to deal with digital trade. Existing sensitivity in the region over data privacy and where to draw the line between government intervention in the market and impacts on individuals has resulted in quite divergent approaches to the regulation of data flows and other aspects of digital trade. This divergence is behind the increasing number of restrictions on digital trade being adopted by APEC economies and will prove to be a powerful challenge to achieving progress towards greater regional economic integration by 2040 under the FTAAP context and the Putrajaya Vision.

VII. Artificial intelligence in services products and processes

A. Changes being driven by Artificial intelligence (AI)

AI has been one of the most controversial disruptive technologies in this decade. It is also not well understood. AI can be thought of as a process where computer systems perform human-like tasks by reasoning, extrapolating from past experiences, learning in an iterative fashion, and solving problems. 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*". [43] Under this definition, it would be considered a service delivering AI technology by companies to potential end users.

Broadly, disparate technologies such as machine learning (ML), natural language processing (NLP), computer vision, and robotics come under the AI roof. While to date the impact of AI on job loss is thought to be relatively minor, the real impact may in fact be felt in innovation, which may have positive spillover effects on international trade. [44] AI is expected to lead to the development of new services and to the upgrading of traditional services, both of which could result in higher welfare and productivity.[45, 46]

---

[43] *What is artificial intelligence as a service? Definition, architecture and trends*, Spiceworks, 10 February 2022, https://www.spiceworks.com/tech/cloud/articles/artificial-intelligence-as-a-service/

[44] OECD *Artificial Intelligence and International Trade*, OECD Trade Policy Papers, 2022. https://doi.org/10.1787/13212d3e-en.

[45] Trefler, Daniel, and Ruiqi Sun, *AI, Trade and Creative Destruction: A first look*, NBER working paper 29980, National Bureau of Economic Research, 2022. https://doi.org/10.3386/w29980.

[46] Furman, Jason, and Robert Seamans, *AI and the Economy*, NBER working paper 24689, National Bureau of Economic Research, 2018. https://doi.org/10.3386/w24689.

To better understand the impact of artificial intelligence, the OECD has divided AI into two categories – artificial narrow intelligence (ANI) and artificial general intelligence (AGI) ANI is an artificial intelligence specialised in one task, while AGI is a general-purposed AI which can assist users with several tasks. Both are expected to benefit the economy, trade and production if widely adopted and properly regulated.

Artificial intelligence is an embodiment of General-Purpose Technology (GPT), a technology which can reinforce any type of production process. Examples of GPTs in the past are the widespread adoption of electricity and more recently the Internet, both of which provided firms adopting the technology with unprecedented advantage.[47] However, GPT needs complementary innovation, or co-invention, to benefit the adopter; for instance, electricity provides a powerful source of energy, but it needs electricity users to function.[48]

Likewise, AI can boost a firm's forecasting ability, thus allowing it to make better decisions. But to do so, it needs several complimentary technologies to function, i.e., significant amounts of data, high performance computing, and so on. Consequently, the firm with a sophisticated digital infrastructure is more likely to adopt AI. This implication of this is that AI adoption may widen the gap between developed and developing economies in APEC as the latter would have a higher cost adopting the technology. For these reasons, protectionism in services, together with divergent regulatory structures governing services, could be especially harmful in the applications of AI to trade. An appropriate regulatory framework could help the APEC region to cope with this new technology and to lessen these potentially negative impacts.

B. Challenges posed by the application of AI to services

A study by Acemoglu defines several harms that AI might bring to society which would lessen consumer welfare and create declines in overall productivity, namely,[49]

(i) it could violate privacy from misuse of personal data;

(ii) it could lead to unfair competition if firms are treated differently, i.e., if only domestic firms are allowed to access government data;

(iii) an AI solution with its powerful prediction capabilities could manipulate consumer behaviour;

(iv) excessive automation brought about by AI (namely when the firms or economies choose to automate a task which would have been better off

[47] Agrawal, Ajay K., Joshua Gans, and Avi Goldfarb. "Similarities and Differences in the Adoption of General Purpose Technologies." SSRN Electronic Journal, 2023. https://doi.org/10.2139/ssrn.4364724.

[48] Bresnahan, T., M. Trajtenberg. General Purpose Technologies 'Engines of Growth'? Journal of Econometrics. 65, 1995, 83-108

[49] Acemoglu, Daron. "Harms of AI." NBER Working Paper Series, Working Paper 29247, September 2021. https://doi.org/10.3386/w29247.

with human agents)[50] could lead to productivity loss, as AI sometimes lacks flexible decision making;

(v) it could create echo chambers in social media which could lead to widespread false information/propaganda and generate political polarization;

(vi) AI use by employers could go beyond socially acceptable data privacy standards.

As a general purpose technology, AI should accelerate productivity and spur innovation on the part of services firms by improving prediction capacities. But it may also harm consumers' privacy and threaten economies' security.[51] Thus, the argument for regulating AI. The objective is to develop 'good' or appropriately crafted AI governance that does not hamstring industry growth and is not disguised protection, particularly as AI solutions are increasingly embedded as services into autonomous vehicles, robots, machines, and a wide range of consumer products.

For all the above reasons, artificial intelligence poses a big regulatory challenge. It is important that APEC economies address this challenge and the desirability of regulating general AI use and applications as well as how best to do so, in order to ensure that AI contributes to productivity enhancement and regional economic growth, and that its potential harms are properly mitigated.

APEC has only recently begun to examine AI in its discussions. A 2022 Policy Brief by the APEC PSU examined the challenges posed by AI to economic policymaking.[52] It found that while AI can be immensely powerful in data analysis and logic, on policy-relevant concepts such as fairness, justice, and equity, it fares much less well since it cannot understand causality and cultural nuances adequately. The Policy Brief discusses the benefits of AI and examines the limitations and risks in its application. These risks and challenges are present at every stage of the life cycle of AI development include those depicted in Figure 5, namely design, data and modelling; verification and validation; deployment; and operation and monitoring.[53] The Policy Brief

[50] Acemoglu, Daron, and Pascual Restrepo. "Artificial Intelligence, Automation and Work." NBER WORKING PAPER SERIES Working Paper 24196, 2018. https://doi.org/10.3386/w24196.

[51] Pasquale, Frank (2015) The Black Box Society: The Secret Algorithms that Control Money and Information. Cambridge, MA: Harvard University Press. And Zubo, Shoshana (2019) The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power. London, UK: Profile Books

[52] *Artificial intelligence in economic policymaking*, APEC Policy Support Unit, November 2022. https://www.apec.org/publications/2022/11/artificial-intelligence-in-economic-policymaking . A more recent APEC study examined how AI has been used within the APEC region to combat the COVID-19 health crisis. See *The Current State of AI Implementation within the APEC Region for COVID-19 Mitigation,* Report by SOM Steering Committee on Economic and Technical Cooperation (SCE), Policy Partnership on Science, Technology, and Innovation (PPSTI), November 2023. The aim of the study is to encourage the use of AI in combating the COVID-19 pandemic, as well as any potential future pandemics. https://www.apec.org/publications/2023/11/the-current-state-of-ai-implementation-within-the-apec-region-for-covid-19-mitigation.

[53] OECD, *Artificial Intelligence in Society*, June 2019, https://www.oecd-ilibrary.org/science-and-technology/artificial-intelligence-in-society_eedfee77-en

suggests that the AI-augmented future must remain human-centric, including through the establishment of AI governance frameworks "…*to provide clarity on its use and ensure that regulatory imperatives are met".*

Figure 5. The AI Policy Cycle

Source: Adapted from M. Howlett and S. Giest, "Policy Cycle," International Encyclopedia of the Social & Behavioral Sciences, 2nd ed (Elsevier, 2015), https://doi.org/10.1016/B978-0-08- 097086-8.75031-8 as cited in op. cit., APEC Policy Support Unit, Policy Brief No.52, November 2022.

The APEC Business Advisory Council (ABAC) issued a publication in 2020 on artificial intelligence, to raise the profile of AI on APEC's agenda. The publication discusses how AI-based technologies are being implemented across APEC economies to spur economic growth, address societal challenges, and solve critical business issues. It sets forth several recommendations from ABAC on how APEC can bolster its role in addressing the policy implications of AI-based technologies and specifically recommends including AI as a part of the broader APEC economic agenda going forward.[54]

C. Existing regulatory frameworks on AI in the APEC region

APEC Non-binding instruments: Currently there are no non-binding instruments in APEC on AI. There are also no governance frameworks that have been developed on AI within APEC.

Binding rules in RTAs: There are no binding rules on AI in the RTAs negotiated by APEC economies.

[54] *Artificial intelligence in APEC: Overview of the state of AI in APEC economies and the enabling initiatives that will drive further adoption*, ABAC, 2020, https://ncapec.org/wp-content/uploads/2020/11/ABAC-AI-Report.pdf

It is of note that while not 'binding', there is a clause on artificial intelligence in Article 8.2 of the Digital Economy Partnership Agreement. It reads as follows:

> *3. To this end, the Parties shall endeavour to promote the adoption of ethical and governance frameworks that support the trusted, safe, and responsible use of AI technologies (AI Governance Frameworks).*
>
> *4. In adopting AI Governance Frameworks, the Parties shall endeavour to take into consideration internationally recognised principles or guidelines, including explainability, transparency, fairness and human-centred values.*

Current initiatives at the international level involving AI regulation: At the international level, several recent initiatives involving discussion of AI have taken place. In November 2023, led by the UK, the first global AI Safety Summit was held with an aim to discuss international cooperation on AI to promote economic growth, sustainable development, and innovation as well as to protect human rights and foster public trust and confidence. During the summit, 28 Countries – including the EU, USA, China, France, and Japan, agreed upon cooperation to develop AI risk-based policies to ensure safety while recognizing the applicable legal framework and circumstances relevant at the domestic level.[55] Another example is the establishment of the UN AI Advisory Body in October 2023. Among the tasks of the AI Advisory Body is that of strengthening international cooperation on AI governance.[56]

Current initiatives at the economy level involving AI regulation: A few large economies and/or economic groupings are taking early approaches towards the regulation of AI.

⇒ The US approach emphasizes promoting innovation to maintain leadership in AI by repurposing existing law and introducing soft law for governance.[57] The 'National AI Initiative Act of 2020' created the 'National Artificial Intelligence Initiative Office' tasked with supporting AI development.[58] The Algorithmic Accountability Act of 2022 requires companies to conduct a risk assessment to determine the impact of automating critical decision-making processes and report their findings to the Federal

---

[55] "The Bletchley Declaration by Countries Attending the AI Safety Summit, 1-2 November 2023", AI Safety Summit, accessed November 17, 2023, https://www.gov.uk/government/publications/ai-safety-summit-2023-the-bletchley-declaration/the-bletchley-declaration-by-countries-attending-the-ai-safety-summit-1-2-november-2023

[56] "UN Secretary-General launches AI Advisory Body on risks, opportunities, and international governance of artificial intelligence", UN AI Advisory Body, accessed November 17, 2023, https://www.un.org/sites/un2.un.org/files/231025_press-release-aiab.pdf

[57] "FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence." The White House. October 30. https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/.

[58] "The EU and the US: Two Different Approaches to AI Governance." n.d. https://www.oii.ox.ac.uk/news-events/news/the-eu-and-the-us-two-different-approaches-to-ai-governance/.

Trade Commission (FTC).[59] Other, smaller initiatives are also being pursued by federal agencies, such as the development of a voluntary AI risk framework by the 'National Institute of Standards and Technology (NIST)'[60] or Business Guidance on the Usage of Artificial Intelligence (AI Guidance) by FTC.[61] Moreover, the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence states that developers of AI systems that pose a risk to U.S. security, economy, public health, or safety must share safety test results with the government before releasing them to the public.[62]

⇒ China has taken the first step towards regulating AI by adopting various AI-related laws and regulations. The Algorithm Recommendation Regulation aims to regulate the use of algorithm recommendation technologies for providing internet information services in the PRC. The Deep Synthesis Regulation focuses on the use of deep synthesis technologies for providing internet information services in the PRC. Finally, the Generative AI Regulation regulates the development and use of all generative AI technologies for providing services in the PRC.[63]

⇒ In the European Union, The EU Commission adopted a risk-based mandatory framework under the 'AI Act', which categorizes AI systems based on their level of perceived risk: unacceptable risk AI; high-risk AI; limited risk AI; and minimal risk AI systems. In addition, the AI Act also imposes transparency obligations for all general-purpose AI models. "These additional obligations include self-assessment and mitigation of systemic risks, reporting of serious incidents, conducting test and model evaluations, and cybersecurity requirements."[64]

D. Gaps in regulatory frameworks on AI in APEC

No region-wide regulatory frameworks on artificial intelligence: The most prominent gap in this area is the lack of a region-wide framework to regulate AI in APEC. As discussed above, at present

[59] "US Federal AI Governance: Laws, Policies and Strategies." n.d. https://iapp.org/resources/article/us-federal-ai-governance/.
[60] "AI Risk Management Framework | NIST." 2023. NIST. March 30. https://www.nist.gov/itl/ai-risk-management-framework.
[61] Christiana State, Preetha Chakrabarti, Dalton Hughes, and Sarah Rippy. "Everyone's Talking AI, Including the FTC: Key Takeaways from the FTC's 2023 AI Guidance." Lexology. March 13, 2023. https://www.lexology.com/library/detail.aspx?g=2c9dc6b1-25a4-41bb-ae34-973a6c871d7a.
[62] "Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence." The White House. October 30, 2023. https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/.
[63] "China's New AI Regulations." Latham & Watkins. August 16, 2023. https://www.lw.com/en/admin/upload/SiteAttachments/Chinas-New-AI-Regulations.pdf
[64] "Shaping Europe's digital future." European Commission. March 6, 2024. https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai

different economies define their own rules and approaches to address the impact of AI, some of which involves regulating AI technology. However, these regulatory choices are not uniform. Thus, the competition ecosystem between APEC economies in the adaptation and use of AI will likely be quite divergent if a region-wide regulatory framework is not established.

Challenges yet to be addressed: One of the most important changes driven by AI is that it blurs the line between goods and services. As AI applications are widely considered to be services, the rules of the WTO GATS and the services chapters of RTAs should apply. But when AI is embedded into products, i.e., autonomous vehicles or industrial machineries, then it is not clear as to which set of rules should govern and whether the technology should be treated as a service or good or both. However, when AI is embedded into products, should these necessarily be subjected to risk assessment for AI as well? This problem could be accentuated if a region-wide approach to AI regulation is not defined, and if APEC economies set their own standards, as it could lead to high compliance costs for AI developers and users.

It is notable that the services area is not mentioned in the 2022 PSU Policy Brief on AI. The question of which body in APEC should deal with the AI governance issue is likewise not addressed. This is also the case for the earlier 2020 study on AI commissioned by the ABAC for APEC's consideration which contains an extensive set of case studies and detailed recommendations but no mention of services.[65]

Clarifying whether AI is to be treated as a good or a service or jointly integral to both could be of the essence in helping to determine what type of regulatory framework would be appropriate. If AI is deemed to be constituted by the service applications that outsource the AI technology, then APEC economies could decide that the appropriate framework (or one of them) would be a services regulatory framework for artificial intelligence.

It is also possible that AI should be subject to its own economy-wide general regulatory framework. This is something that APEC economies need to explore further in the coming years so that an appropriate regulatory framework (or more than one) for AI can be developed and put in place by 2040.

VIII. Main points and recommendations for future work

The discussion in this Policy Brief underscores why services and good regulatory practice are so important for APEC as the region moves towards the Putrajaya Vision 2040 and the FTAAP goals of a more open and integrated region. APEC is now very much a services economy, and good regulatory practice in the services area is critical for growth and regional integration. APEC has always opted for non-binding agreements and flexible soft law to guide the policy direction of its member economies. But given the rapid development of digital technology and iterative AI, these instruments will need to be developed quickly and adapted flexibly, as the need arises.

[65] See sources in footnotes 52 and 54.

- **Conclusions**

This Policy Brief points out that both principles and regulatory frameworks have been developed by APEC and exist for GRP in the region. Many of these contain principles of general application and therefore relevant to services. However, APEC has also developed and is working on services specific regulatory frameworks and guidelines.

In terms of general approaches to services domestic regulation and administration of regulations, the Policy Brief underscores that there has been a significant convergence of approach and understanding in the APEC region for services domestic regulation principles and disciplines through the adoption of the ***APEC Non-Binding Principles for Domestic Regulation of the Services Sector***, followed by the plurilateral ***Reference Paper on Services Domestic Regulation,*** which came into force during the WTO 13th Ministerial Conference. Many of the rules and provisions in the more recent RTAs in the region are similar to those in the ***APEC Non-Binding Principles*** in both content and approach with regards to the rules they contain for services regulation and services-relevant chapters. This is welcome progress. However, implementation of the ***Principles*** and the disciplines in the ***Reference Paper*** for services domestic regulation is still outstanding in many APEC economies. Only when implemented will such disciplines serve to reduce the costs of divergent regulatory practices across the APEC region.

Additionally, this Policy Brief argues for APEC to focus as well on the implementation of the broader principles of good regulatory practice (as applied to services) contained in the ***Blueprint on Good Regulatory Practice for APEC*** adopted in 2023. This ***Blueprint*** covers nine key areas of GRP along the entire life cycle of the regulatory process, including design, development, implementation, and review, with appropriate consultations along the way. It advocates a whole of government approach in undertaking this process, as well as regulatory cooperation both at the regional and international level for the use of best practices and regulatory standards. APEC economies have yet to begin discussion of the implementation of this important ***Blueprint.***

The Policy Brief also highlights the serious gaps in coverage of regulatory instruments in the APEC region for two of the most recent drivers of change in the services area. Digitalization of services trade and the current rapid development and application of artificial intelligence (AI) technologies to services output and processes create significant challenges to good regulatory practices in the services area. The Policy Brief points out that while certain rules exist in the digital services area in chapters of RTAs as well as in Digital Economy Agreements, there is no general regulatory framework at present in APEC for digital trade. Similarly, there is no framework agreement for the role of services in the new technology of artificial intelligence and its applications. Nor has this been dealt with yet in the context of RTAs. Yet the extremely rapid growth of digital trade and AI applications is advancing so quickly that the challenges they both bring must be addressed urgently. These are key areas that will have a huge impact on how the economies of the APEC region evolve over the next two decades and how an FTAAP vision will be achieved.

- **Recommendations for future work**

In addition to work on the implementation of existing principles and disciplines for services domestic regulation, along with the implementation of the GRP contained in the 2023 ***Blueprint on Good Regulatory Practice***, this Policy Brief recommends that APEC economies begin to examine what type of future framework in the services area will be relevant for the challenges posed by digitized services trade and by services delivery of generative AI processes and technology. Digital services and AI are transforming the regional economy and appropriate policy settings will be critical to making the most of the opportunities they offer in the FTAAP future context. Greater understanding could be advanced through a more targeted research effort and associated discussions that would examine the issues below in these two areas.

To examine for digital services trade:

i) the deficiency or shortcomings in current APEC instruments in addressing digital services trade considering the growing restrictions affecting cross-border data flow and the proliferation of measures affecting digital services trade. Is the APEC CBPR instrument adequate at present, and if not, how can it be adapted and made more effective? What else is needed?

ii) the identification of the appropriate regulatory framework designed to prevent possible consumer and societal harms caused by digital platforms and to ensure that digital services trade remains open and efficient. Should the recent EU Digital Services Act governing digital platforms be examined to see whether it could serve as a model regulatory approach in the elaboration of a similar instrument in APEC? Would a content-moderation-based or process-based approach to regulation of digital platforms be a preferable model for APEC?

iii) How to build on elements of the Digital Economy Partnership Agreement (DEPA) as well as elements of other digital economy agreements and disciplines in RTAs as components of a possible APEC-wide framework for digital trade.

To examine for services and artificial intelligence:

iv) challenges posed by AI to good regulatory practice for services and services trade; the impacts of AI and its related innovations, namely, the impact of AI on employment and trade, optimal regulation regarding data privacy and security considering AI applications; risks of misuse of AI and mechanisms to prevent this, among others.

v) ways to bring the discussion of AI within the context of APEC's work so that AI is viewed not only as a technology but as part of economic and trade policy discussions. This should involve relevant APEC fora – specially the Group on

Services - as well as regulators, industry, and other stakeholders in discussing AI's role in trade and in developing a coherent regional approach to regulation.

vi) identification of the type of regulatory framework suitable for APEC to deal with services delivered applications for AI deployment. Exploration of the following questions, among other:

--What type of region-wide regulation could ensure that AI deployment will not have negative impacts on the consumers without hindering industry growth?

--Would a risk-based approach like the EU's AI risk assessment be appropriate for APEC?

--Should a regulatory framework for AI in APEC cover both services and goods? Or should a separate framework specific to services delivering AI technology and applications be developed in addition to a broader framework covering AI use in general?

Further exploration of the above could be informed by examining guidelines from other organizations such as the G7 Action Plan, the EU Digital Services Act and GDPR, Standard Contractual Clauses and ASEAN Model Contractual Clauses, and by canvassing the input of experts and trade policy analysts. Findings could be discussed in public-private dialogues with the participation of relevant stakeholders. The development of a framework or set of guidelines or principles should be targeted with the objective of helping APEC define and implement good regulatory practices for both digital services trade and services delivery of generative AI applications that would advance the FTAAP vision of a more open and integrated APEC region.

Annex 1
Summary Template for Provisions relevant to "Good Regulatory Practice"
In recent trade agreements with Asia Pacific economies

	CPTPP	Pacific Alliance	RCEP	USMCA
Chapter on Regulatory Coherence	**X (Chp.25)**	**--**	**--**	**X (Chp.28)**
➢ Review of Regulatory measures	X	--	--	X (Art.28.9)
➢ Consultation on Proposed measures	X	--	--	X (Art.28.9)
➢ Publication	X	--	--	X (Art.28.9)
➢ Carrying out of Regulatory impact analysis	X	--	--	X (Art.28.11)
➢ Regulatory cooperation	X	--	--	X (Art.28.17)
➢ Committee on Regulatory coherence	X	--	--	X (Art.28.18)
Provisions in Services-relevant Chapters				
Cross-border Trade in Services				
➢ Domestic regulation	X	X	X (Art.8.15)	X (Art.15.8)[66]
➢ Recognition	X	X	X (Art.8.16)	X (Art.15.9)
➢ Transparency and public notice	X	X	X (Art.8.10&8.14)	X (Art.15.8)
➢ Response to inquiry	X	X	X	X (Art.15.8)
➢ Recognition of professional services qualifications[67]	X (Annex)	X (Annex)	X (Annex 8C)	X (Annex 15-C)

[66] Article 15.8 is not entitled Domestic regulation but rather "Development and Administration of measures."
[67] As a part of the Annex on Professional Services to the Cross-border Trade in Services Chapter 15 in the USMCA there is an Appendix that contains detailed guidelines for "Mutual Recognition Agreements or Arrangements for the Professional Services Sector"

➢ Working Group or Committee established	X	X	X (Art.8.24&18.6)	X (annex 15-c)
Telecommunications (public services)				
➢ Allowing for diverse forms of regulation	X	--	X (Art.3)	X (Art.18.16)
➢ Independence regulatory body from supplier	X	X	X (Art.12)	X (Art.18.17)
➢ Ability to comment in developing regulations	X	X	X (Chp.17)	X (Art.18.24.1)
➢ Transparency and publication	X	x	X (Art.16)	X (Art.18.24.2)
➢ Committee established	X	--	Covered by Joint Committee (Art.18.1)	X (Art.28.27)
Financial Services				
➢ Recognition	X	X	X (Art.6)	X (Art.17.12)
➢ Transparency	X	X	X (Art.7)	X (Art.17.13)
➢ Publication of measures	X	X	--	X (Art.17.13.7)
➢ Ability to comment	X	X	X (in Chp.17)	X (Art.17.13.7)
➢ Response to inquiry	X	X	X	X (Art.17.13.7)
➢ Reasonable time period	X	X	--	X (Art.17.13.7)
➢ Committee established	X	X	Covered by Joint Committee (Art.18.2)	X (Art.17.19)
Temporary Entry Business Persons				
➢ Sharing experience with regulation on temporary entry	X	--	X (Art.9.7)	X (Art.16.6.2)

Electronic Commerce[68]				
➢ Exchange experience and regulation on e-commerce	X	X	X (Art.12.4)	X (Art.19.14.1)
➢ Encourage methods of self-regulation for the private sector	X	X	--	X (Art.19.14.1)
Competition policy[69]				
➢ Procedural fairness	X	--	X (Art.13.3)	X (Art.21.2)
➢ Opportunity to present evidence	X	--	--	X (Art. 21.2)
➢ Opportunity to seek review of sanction	X	--	X (Art.13.3)	X(Art.21.2)
➢ Cooperation between competition authorities	X	--	X (Art.13.4)	X (Art.21.3)
➢ Mutually agreed technical cooperation activities	X	--	X (Art.13.6)	X (Art 21.3)
➢ Transparency	X	--	X (Art.13.3)	X (Art.21.5)
➢ Response to inquiry	X	--	X (Art.13.8)	X (Art.21.2)
Government Procurement				
➢ Publication of measures	X	X	X (Art.16.4)	X (Art.13.5)
➢ Domestic review	X	X	--	X (Art.13.18)
➢ Exchange experience and information on	X	X	X (Art.16.5)	X (Art.13.21)

[68] The chapter covering electronic commerce in the USMCA is entitled "Digital Trade" (Chapter 19).
[69] The Pacific Alliance Agreement does not contain a chapter on Competition Policy.

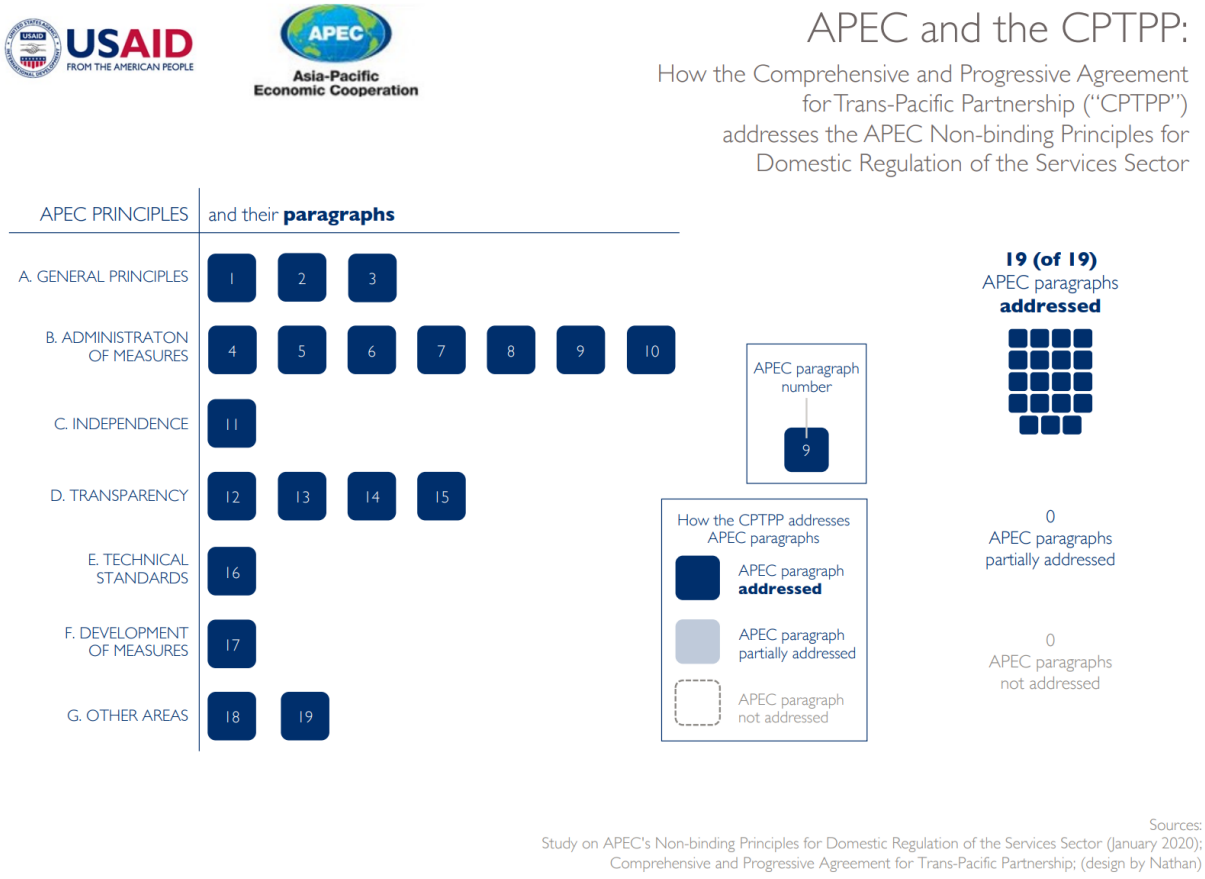
regulations and best practices ➢ Committee established	X	X	X (Art.16.6&16.7)	X (Art.13.21)
Transparency[70,71]				
➢ Publication of all laws and regulations	X	X	X (Art.17.3)	X (Art.29.2)
➢ Opportunity to comment	X	X	X (Art.17.6)	X (Art.29.3)
➢ Period of time before laws and regulations come into force	X	X	--	X (Chp.28.9)
➢ Review and appeal	X	X	X (Chp.18)	X (Art.29.4)
➢ Establishment of contact points	X	X	X (Chp.18)	X (Chp.28.19)
➢ ***Incorporate private sector &society into the development of laws and regulations***	X	--	--	X (Chp.28.10)

Key:
X Provision or chapter exists
--- No provision or chapter exists

[70] The chapter with transparency provisions is entitled "Transparency and Anti-corruption" in the CPTPP Agreement (Chapter 26). In the USMCA Agreement the general provisions on transparency appear in the chapter entitled "Publication and Administration" (Chapter 29).
[71] In the RCEP Agreement transparency provisions appear in the chapter on "General Provisions (Chapter 17).

Annex 2.A

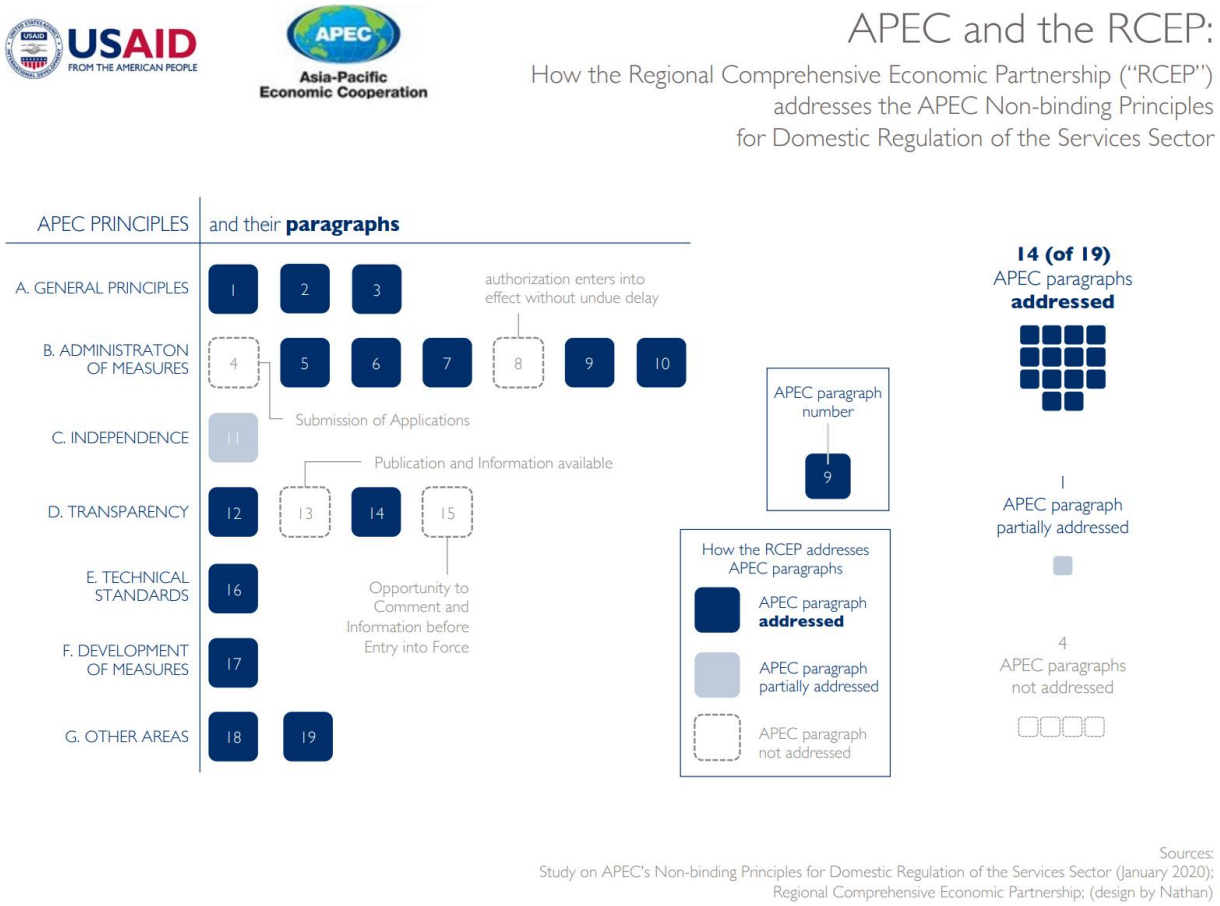
Similarity between the CPTPP provisions on transparency and administration of regulatory measures and the APEC Non-Binding Principles for Domestic Regulation of the Services Sector



Source: https://www.wto.org/english/tratop_e/serv_e/study_apec.pdf, p.14

Annex 2.B

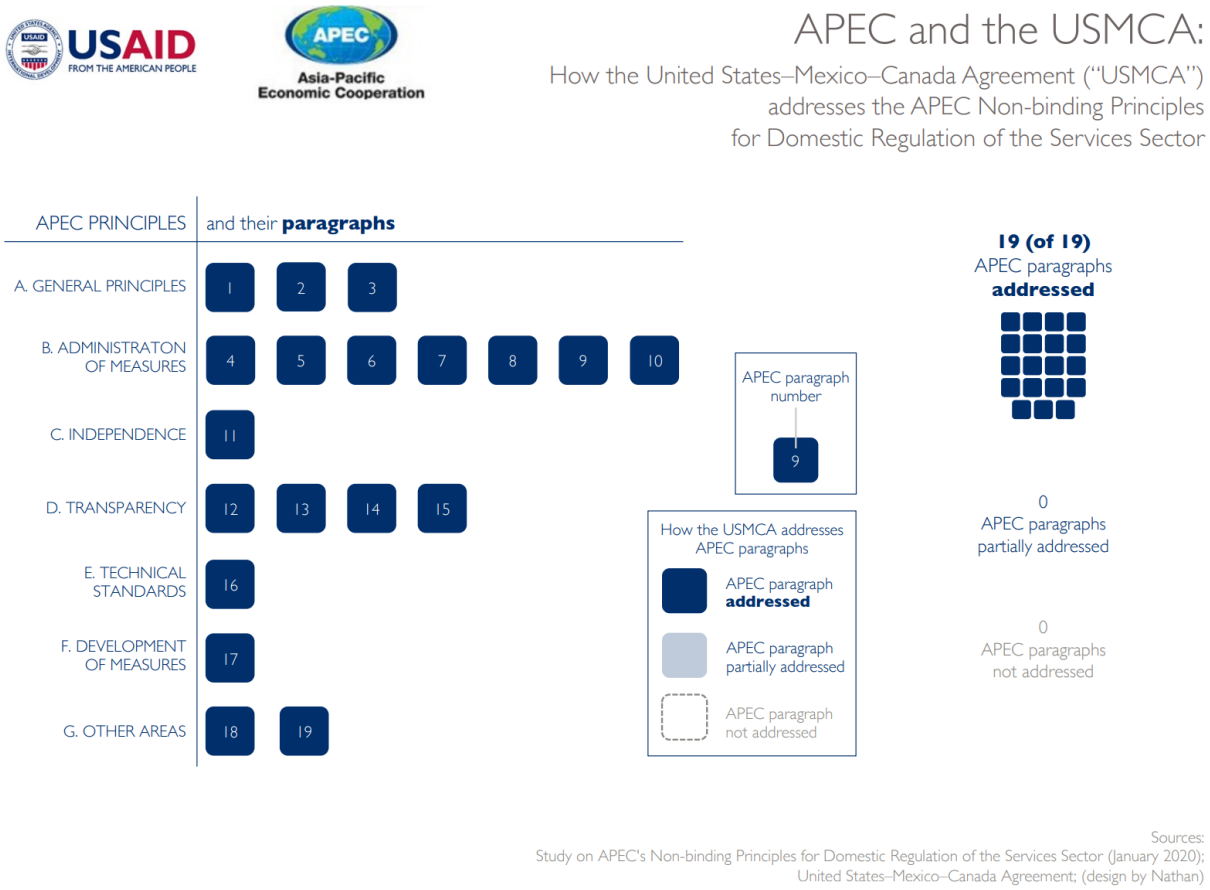
Similarity between the RCEP provisions on transparency and administration of regulatory measures and the APEC Non-Binding Principles for Domestic Regulation of the Services Sector



Source: https://www.wto.org/english/tratop_e/serv_e/study_apec.pdf, p.17

Annex 2.C

Similarity between the USMCA provisions on transparency and administration of regulatory measures and the APEC Non-Binding Principles for Domestic Regulation of the Services Sector



Source: https://www.wto.org/english/tratop_e/serv_e/study_apec.pdf, p.20

Annex 3

Digital Economy Agreements and selected RTAs: Coverage of Digital-related Provisions

Digital related provisions	CPTPP (2018)	USJPDTA (2019)	DEPA (2020)	ASDEA (2020)	USMCA (2020)	AAEC (2021)	UKSDEA (2022)	RCEP (2022)	KSDPA (2023)	EUDSP (2023)
Digital trade commitments to facilitate digital trade	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑
No customs duties on electronic transmissions	☑	☑	☑	☑	☑		☑	☑	☑	
Domestic electronic transactions framework	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑
Electronic authentication and signatures	☑	☑		☑	☑	☑	☑	☑	☑	☑
Paperless trading	☑		☑	☑	☑	☑	☑	☑	☑	☑
Electronic invoicing			☑	☑			☑		☑	☑
Electronic payments			☑	☑		☑	☑		☑	☑
Express shipments	☑		☑	☑					☑	☑
Online consumer protection	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑
Personal information protection	☑	☑	☑	☑	☑	☑	☑	☑	☑	☑
Unsolicited commercial electronic messages	☑	☑	☑	☑	☑		☑	☑	☑	☑
Submarine telecommunication cable system				☑			☑			☑
Location of computing facilities		☑		☑	☑		☑		☑	
Data innovation			☑	☑			☑		☑	☑
Open government data		☑	☑	☑	☑		☑		☑	☑
Source code	☑	☑		☑	☑		☑		☑	☑
Digital identities			☑	☑	☑		☑		☑	☑
Standards, technical regulations and conformity assessment for digital trade				☑			☑		☑	☑
Artificial intelligence			☑	☑			☑		☑	☑

Source: Adapted From the table developed by Mingcong Li, World Economic Forum Trade and Investment Platform. Based on the framework by Deborah Elms (2022) in her presentation at the Multi-Year Expert Meeting on Trade, Services and Development, UNCTAD

CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership (between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) – Electronic Commerce Chapter
USJPDTA = U.S.-Japan Digital Trade Agreement
DEPA = Digital Economy Partnership Agreement (between New Zealand, Chile and Singapore)
ASDEA = Australia-Singapore Digital Economy Agreement
AAEC = ASEAN Agreement on Electronic Commerce
UKSDEA = UK-Singapore Digital Economy Agreement
RCEP = Regional Comprehensive Economic Partnership (between 10 ASEAN member states + China, Japan, South Korea, Australia, and New Zealand) Electronic Commerce Chapter
KSDPA = Korea-Singapore Digital Partnership Agreement
EUDSP = European Union-Singapore Digital Partnership
USMCA = US-Mexico-Canada Free Trade Agreement – Digital Trade Chapter