

PPECC FTAAP PROJECT

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Policy Brief on Good Regulatory Practice in APEC: Challenges and Way Forward

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The views expressed here are those of the author and do not necessarily reflect those of the PECC nor its members.

What does the Policy Brief examine?

- **Active and ongoing work on GRP underneath the regulatory reform rubric in APEC fora**
 - i) GOS overview of the APEC's Services Competitiveness Roadmap and development of the APEC Index to measure the regulatory environment in services
 - ii) Economic Committee overview of the Enhanced APEC Agenda for Structural Reform (EAASR) and associated Individual Action Plans (IAPs).

TO NOTE: GRP is a precursor to carrying out successful regulatory reform, in services or other sectors

What does the Policy Brief examine?

- **SECOND - What RTAs have done on GRP – what provisions have they incorporated on GRP in services?**

- **Four recent RTAs selected for examination**
 - i) CPTPP
 - ii) Pacific Alliance
 - iii) RCEP
 - iii) USMCA

These four RTAs include 18 of the 21 APEC economies (only missing are Hong Kong China, Chinese Taipei and Papua New Guinea). The sample should therefore be very representative.

Examining RTAs for GRP in Services

- **The PB examines all services relevant chapters in these 4 RTAs. It identifies provisions on GRP (binding and non-binding) in the following chapters:**
 - i) Cross-border trade in services
 - ii) Telecom services
 - iii) Financial services
 - iv) Temporary entry for business persons
 - v) Electronic commerce
 - vi) Government procurement
 - vii) Competition policy
 - viii) Transparency chapter

Summary table found in Annex I of the paper

Examining RTAs for GRP in Services

OF NOTE – Two of the 4 RTAs examined have separate chapters dedicated entirely to regulatory practice

- **CPTPP – Chapter 25 on ‘REGULATORY COHERENCE’**
- **USMCA – Chapter 28 on ‘GOOD REGULATORY PRACTICES’**

These two chapters are similar in what they contain

- i) Review of regulatory measures
- ii) Consultation on proposed measures
- iii) Publication of measures
- iv) Obligatory carrying out of RIA
- v) Regulatory cooperation
- vi) Establishment of committee for oversight

Examining RTA Disciplines on Services Domestic Regulation

Study carried out for the APEC Group on Services also examined in detail the similarities between the content of the *APEC Non-binding Guidelines on Domestic Regulation of the Services Sector* and how these have been incorporated into three major RTAs – the CPTPP, RCEP and the USMCA.

Conclusion:

i) Striking similarity in provisions in these RTAs with the APEC Non-Binding Guidelines for both coverage and content

Findings of Gap Analysis

1. Broad convergence of approach on GRP for services in APEC for parties to the four RTAs in the relevant chapters (comparative Table in Annex 1)
 2. Very strong convergence of approach as well in terms of similar coverage and content of provisions in these RTAs with the principles of the *APEC Non-Binding Guidelines on Domestic Regulation of the Services Sector* relevant to transparency and administration of services regulations
- **CONCLUSION: If these existing frameworks, checklists and RTA provisions are implemented, there will be a convergence of GRP for services in APEC by 2040**

What is missing in GRP for Services?

BUT - The picture is more complex. There are new **Drivers of Change** that are posing serious challenges to Good Regulatory Practice in services.

What are these drivers of change?

- 1. Digitalization of services – 60% of services are now traded digitally**
- 2. Artificial intelligence**

In both of these areas APEC is lacking an overall approach to GRP for services

Changes driven by Digitalization

- **New business performance**

- Digitalization creates new value propositions and competitive advantage
- Through digital technologies, e-commerce and platforms can access new markets and achieve higher scalability, agility and resilience
- SMEs can leverage digitalization to overcome barriers to entry and speed up growth

- **Business model innovation**

- Digitalization is the cornerstone of platform businesses that drive the modern economy
- Platforms can leverage connectivity to create value and capitalize on network effect
- Digitalization provides a critical competitive advantage in terms of costs

- **Regulatory lines blurred**

- Platform businesses blur the lines between products and services, and fundamentally impact market concentration and competition
- Digitalized businesses transcend traditional geographical and administrative boundaries, which leads to legal ambiguity
- Digitalization can lead to lack of business dynamism and market failure, leading to the need for appropriate regulatory intervention

Challenges posed by Digitalization

- **Competition**

- Digitalization's algorithms raise new antitrust concerns, including price discrimination, biased exclusion, and algorithmic collusion.

- **Data Regulation**

- Existing data policies continue to restrict cross-border data flow, creating a significant obstacle to the expansion of digitalization and incurring substantial economic costs in many countries.

- A recent OECD report (November 2023) finds 96 data localization measures across 40 countries, with 4 pending. Over two-thirds restrict data storage and flow.

- **Platform Regulation**

- Issues around harmful content, including illegal content, fundamental rights infringement, media plurality threats, intentional manipulation

- Two possible approaches: (1) content-moderation-based approach and (2) process-based approach.

Digitalization – Existing instruments

- **APEC instruments**
 - APEC Framework for Securing the Digital Economy (2019)
 - APEC Guidelines for Creating Voluntary Cybersecurity ISP Codes of Practice (2012)
 - APEC Cross-Border Privacy Rules (2011)
- **Binding provisions in RTAs with APEC economies**
 - CPTPP ; USMCA; RCEP; Pacific Alliance
- **Other instruments that influence APEC economies**
 - DEPA ; IPEF

BUT APEC lacks a region-wide framework for digital services trade. Diverging views over privacy, data localization and regulation of cross-border data flows exist.

Digitalization- Further Research

- Ways to build trust for cross-border data flow and encourage less restrictive data localization policies
- Desirability for APEC to adapt to international guidelines, such as the G7 Action Plan, Standard Contractual Clauses, and ASEAN Model Contractual Clauses
- Examination of the relevance of the EU Digital Services Act and the Digital Economy Partnership Agreement (DEPA) as sources of inspiration for a possible framework for APEC on digital services in an FTAAP future vision

Changes driven by Artificial Intelligence

- **AI is a potentially very disruptive technology.**
 - AI improves existing product quality, productivity and introduces new consumption choices to the market.
 - Can bring about welfare gains from international trade.
 - AI will likely replace some jobs, but the effect may be small and only in the short-run
- **Characteristics of AI**
 - Can be divided into narrow-purpose and general-purpose
 - Narrow-purpose AI specializes in one task and can perform it in with a superhuman specs. (NLP, Image Recognition AI, etc)
 - General-purpose AI can perform several tasks but might as useful and effective as narrow-purpose AI. (ChatGPT, Midjourney, etc)
 - AI has extremely high horizontal linkages – it can be adopted into any sector and boost performance.

Challenges posed by Artificial Intelligence

- **AI's risks and potential impact**

- Risks from AI producers: misuse of users' information that violates privacy, misuse of AI to manipulate consumers behavior to make sub-optimal choices.
- Risks from the government: AI could be used to excessively monitor citizens, AI as a tool to spread false information or propaganda.

- **AI regulatory challenges**

- AI will pose tremendous challenges to regulators. Regulation should be proportionate to the risks AI entails.
- AI regulation can be misused as disguised protection in trade policy.
- AI solutions are often embedded into products, i.e., autonomous vehicle, smart censoring, and so on, thus blurring the line between goods and services. This will make regulation challenging as service should be allow to move freely, but products need to meet defined standards so they will not harm consumers.

AI– Existing instruments

- **APEC Non-binding instruments**
 - Currently, there are no non-binding instruments on AI in APEC.
- **Binding Rules in RTAs**
 - Currently, there are no binding rules or provisions on AI in RTAs.
- **Relevant international and regional instruments**
 - OECD Recommendation
 - UNESCO Recommendation
 - G7: Hiroshima Process Guideline and Code of Conduct
 - EU: Artificial Intelligence Act
 - US: National AI Initiative Act of 2020, Algorithmic Accountability Act of 2022, Voluntary AI risk framework; NIST, AI Guidance
 - China:

AI- Regulatory gaps

- **Lack of region-wide frameworks to regulate AI**
 - Different economies will define their own rules to mitigate AI adverse effects. Thus, the competition ecosystem between countries could evolve in vastly different ways, leading to a high compliance cost for both the AI developer and the deployer and fragmentation of the regional market.
 - A key question to answer is whether the objective AI application or its final impact should be regulated
 - **Coverage of potential AI regulation is unclear – goods, services or both?**
 - The rules governing goods & services trade under the WTO are different in several regards. AI which originates as a service could be embedded into products, making it unclear whether the AI technology should be treated as a good or a service and where the regulation should be applied.

AI and Services – Further research

USEFUL EXAMINATION COULD BE CARRIED OUT ON:

- Effect of AI on labour market and comparative advantage
- Classification issues arising from AI in services applications
- Optimal regulation for data privacy and security
- Misuse of AI by authorities and potential impacts on trade
- Relevant instruments to draw upon for development of a potential framework for AI and services at the economy and regional level in APEC

THANK YOU!~.