

The Australian Department of Foreign Affairs and Trade

# APEC Compendium of Policy and Regulatory Best Practices - Guiding Principles for the Services Sectors

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## Acronyms

AANZFTA	ASEAN Australia New Zealand Free Trade Agreement
AASC	Australian APEC Studies Centre
ABAC	APEC Business Advisory Council
ADB	Asian Development Bank
ADBI	Asian Development Bank Institute
APEC	Asia-Pacific Economic Cooperation
APEC GOS	Group on Services
APQN	Asia Pacific Quality Network
ASEAN	Association of South East Asian Nations
BMG	(APEC) Business Mobility Group
CBPR	(APEC) Cross Border Privacy Rules
CPEA	(APEC) Cross Border Privacy Enforcement Arrangement
CPDG	(APEC) Competition Policy and Deregulation Group
CTI	(APEC) Committee on Trade and Investment
DFAT	Australian Department of Foreign Affairs and Trade
ECSG	(APEC) Electronic Commerce Steering Group
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EWG	(APEC) Energy Working Group
FDI	Foreign Direct Investment
FOTC	Friends of the Chair (APEC Connectivity)
FTA	Free Trade Agreement
FTAPP	Free Trade Area of the Asia Pacific
GATS	(WTO) General Agreement on Trade in Services
GPfD	Government's Partnerships for Development
GVC	Global Value Chains
HRDG	(APEC) Human Resource Development Group
ICT	Information and Communications Technology
IMF	International Monetary Fund
I-TiP	WTO Services Trade Database
MFN	Most Favoured Nation
MRA	Mutual Recognition Agreement
OECD	Organisation for Economic Co-operation and Development
PECC	Pacific Economic Cooperation Council
PPWE	(APEC) Policy Partnership on Women and the Economy
PSU	(APEC) Policy Support Unit
RCEP	Regional Comprehensive Economic Partnership
RIA	Regulatory Impact Analysis
RMIT	Royal Melbourne Institute of Technology University
RTA	Regional Trade Agreement
SMEs	Small and Medium Enterprises
SOM	Senior Officials Meeting
STRI	(OECD) Services Trade Restrictiveness Index
STAR	(APEC) Services Trade Access Requirements database
TEL	(APEC) Telecommunications and Information Working Group
TiSA	Trade in Services Agreement
TOR	Terms of Reference
TPGWP	(APEC) Transportation Working Group
TPP	Trans Pacific Partnership Trade Agreement
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USITC	United States International Trade Commission
WB	World Bank
WTO	World Trade Organisation

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## Executive Summary

This Compendium of good regulatory practice principles has been developed for the APEC Group on Services (GOS) to inform and progress work proposed in the Economic Committee on Structural Reform and Services, as well as in the Committee on Trade and Investment. The GOS recognises the right of APEC economies to regulate and introduce new regulations on the supply of services to meet policy objectives, and the particular need of developing economies to exercise this right. The regulatory principles and good practices in the Compendium are therefore non-binding and voluntary and are presented as a basis for good policy, without prejudice to an economy's policy making or its positions in the WTO or regional and bilateral free trade agreement (FTA) negotiations.

The starting point for addressing good regulatory practices is identifying the needs of business. Services providers within the APEC region want transparency, simplicity, flexibility, certainty, equality and coherence in regulation impacting on services. Removal of barriers to services trade and investment found in behind-the-border domestic regulatory regimes is also of key interest to business.

A series of eight regional symposia convened between 2009-15 examined these issues to identify how to better facilitate trade and investment in specific services sectors (accounting, legal, architectural and engineering, logistics and transport, telecommunications and ICT, mining and energy, financial and higher education services).

A ninth and final symposium considered the outcomes of these earlier examinations of regulation in the above service sectors, along with the critical issue of digitalisation of services globally. This cross-sectoral analysis identified a set of good practice principles as a base for the development of transparent and efficient domestic regulatory settings that would not impede regional trade and investment in services.

This Compendium was developed following the final meeting in Kuala Lumpur in May 2016 drawing on work from the nine symposia and from international institutions such as the World Bank, WTO, and the OECD. This work consistently indicates that governments should foster a pro-competitive and business-friendly regulatory framework to secure the development of services sectors in all economies and reap the benefits of greater services trade and investment across the region.

The principles in the Compendium reflect the central proposition that burdensome regulatory measures and associated compliance costs can limit a services suppliers' flexibility in servicing markets and constrain their international competitiveness.

Regulatory responses should be transparent, efficient and coherent and no more trade restrictive than necessary - at best, kept to the minimum needed to meet economic and societal policy objectives. Stakeholders should have a clear understanding that the benefits of the regulation outweigh the costs of intervention.

A 'one size fits all' regulatory approach is not necessarily appropriate for all sectors or all economies. The Compendium, therefore, contains cross-cutting principles applicable to many services sectors, as well as sector-specific or economy-specific principles, drawn from the work of past symposia.

APEC activity on services is entering into a new phase, following agreement in 2015 on an APEC Services Cooperation Framework. Under the broad Framework, APEC members will develop an APEC Services Competitiveness Roadmap for consideration by APEC Leaders in 2016.

This Compendium will support APEC's work on services beyond 2016, contribute to APEC's knowledge base and be a key resource for individual economies, regulators, policy makers and trade negotiators.

## 1. Restrictions facing foreign services suppliers in international markets

The following table presents key examples of regulatory barriers identified during the series of APEC symposia. Its development is explained in full in Annex 3.3.

**Table 1: Examples of restrictions facing foreign services suppliers in international markets**

Market Access	Foreign equity restrictions on the maximum foreign equity share allowed
	Limitations on foreign equity participation or foreign control of services enterprises
	Limitations/prohibitions on legal form (proprietorship, corporation, partnership is prohibited)
	Requirements to establish a joint-venture with a local partner to provide services
	Limitations that prohibit commercial association between services professionals
	The number of professionals permitted to practice is restricted by quotas
	Limitations on the managing partners or board of directors - majority (at least one) must be nationals, residents, locally-licensed
	Requirements to establish a local presence (local office or branch) in order to provide services cross-border
	Independent self-employed professionals not permitted to provide services
	Requirements to transfer technology or skills as a condition for providing services in the economy
The presence of foreign services enterprises is restricted by economic needs tests	
Mutual Recognition (market access and/or national treatment)	Difficulties with recognition of foreign qualifications for professionals – limited/no laws or regulations that establish a process for recognising higher education degrees gained abroad
	Level of restrictiveness in recognising foreign qualifications: <ul style="list-style-type: none"> <li>• Are foreign services providers required to undertake local examinations to qualify for full membership of the profession and in what language?</li> <li>• Are they required to undertake a period of local practice to become a full member of the local profession?</li> <li>• Is compulsory membership in a professional association for foreign professionals automatically granted if they have required qualifications?</li> </ul>
People Movement Cross-Border (market access and/or national treatment)	Quotas apply to intra-corporate transferees, or those on contract, or those working as independent service suppliers
	Labour market tests apply
	Nationality or citizenship is required for a license to practice.
	Prior or permanent residency is required for a license to practice
	Only locally-licensed professionals can use 'professional titles'
	Requirement to train local workers
	No limited or temporary licensing system is available to provide services in a foreign jurisdiction
Difficulties in obtaining visa and/or work permits	
Other Measures (market access and/or national treatment)	The use of a foreign enterprise's name is prohibited
	Limitations that prevent foreign suppliers from supplying services to the government or preferences are given to local suppliers
	Foreign services providers are subject to restrictions on advertising
	Limitations on transferring payments or profits offshore
Transparency	Regulations are published or otherwise communicated to the public prior to entry into force.
	A public comment procedure is available and open to interested persons, and/or the Regulator has a formal mechanism for consultation with stakeholders, including foreign suppliers.
	Readily available Information on visa processing procedures and time to obtain visa.
	A fixed period of time to complete all official procedures required to register a business.
	The total cost to complete all official procedures required to register a business is not excessive.
	The number of official procedures required to register a business is reasonable?

## 2. Compendium of guiding principles for good policy and regulatory practices

The regulatory principles set out in this Compendium are non-binding and voluntary in nature, presented as a basis for good policy, without prejudice to any economy's specific policy making or its positions in the WTO or regional and bilateral Free Trade Agreement (FTA) negotiations.

### 2.1 Regulatory framework and procedures

- An effective approach to good regulatory practice starts with the formulation of clear, simply-defined and robust policy objectives, the development of sound rules, the establishment of effective independent national institutions and determination to implement reforms.
- APEC economies have the right to regulate the supply of services including introducing new regulations to meet policy objectives.
- Regulatory bodies design rules and regulations to best implement government policies. Relevant regulatory bodies need to be independent and separate from the policy making process; nor should they be directly involved in the provision of the services they are designed to regulate.
- Regulatory bodies should articulate the criteria and policies under which they will refrain from applying the regulatory tools at their disposal, particularly for new services.
- Regulatory Impact Analysis (RIA) is a necessary tool to ensure the costs of implementing new policies do not outweigh benefits. If the burden is greater than the benefits, policy makers should seek alternatives or reconsider the need to intervene at all.
- Regulatory frameworks should be constructed in such a way as to ensure that the various levels of government (national and sub-national) act in a coherent and complementary manner, balancing sector-specific and economy-wide services regulation.
- Widespread and effective consultation with all stakeholders is an essential first step in the development of regulatory settings as it promotes transparency and allows different stakeholders to observe and take part as appropriate.
- Transparency requires laws, regulations, procedures, and administrative rulings of general application to be promptly published or otherwise made available in such a manner as to enable interested persons and other APEC economies to become acquainted with them.
- APEC development and application of measures of services trade restrictiveness, including tools such as the World Bank and OECD Services Trade Restrictiveness Indices (STRI), can help build analytical capacity, strengthen understanding of services trade barriers and improve regulatory transparency and accountability.
- Regulations aligned with global good practices and international standards promote regulatory coherence and consistency and build the necessary confidence to develop stronger cross-border trade and investment in services.
- Transparent and criteria-based approval/decision processes that minimise unnecessary regulatory delays impose the least costs on business. Decisions finalised within established and transparent time frames build confidence in the regulatory system and act as a strong incentive for trade and investment in services.
- Evaluation of chosen policy options, including adequate and timely consideration of implementation issues and measures to test ongoing effectiveness and relevance of regulations delivers the greatest benefits from regulatory reform.
- Regulators need to be able to identify breaches in regulation so they can respond effectively and in a timely fashion.

## 2.2 Market access and national treatment

- The elimination of barriers to new entrants and progressive reduction of existing services trade restrictions encourages competition, stimulates innovation and boosts productivity, economic growth and employment.
- Service suppliers need confidence that regulatory settings will not be more trade restrictive than necessary to meet societal and economic policy objectives.
- All services market participants should be treated equally, fairly and in a non-discriminatory manner.
- Services providers should not be required, as a condition to access the local market, to establish or maintain a commercial presence, use local infrastructure, or become resident. Regulators should test whether such requirements could be achieved without direct government intervention or with less trade distorting intervention.
- Services providers need flexibility to adjust quickly to rapid technological innovation to meet clients/customers' needs and to offer new services in another APEC economy. If the service does not require the adoption of new laws or changes to existing legislation, approval of new services should be timely and not unnecessarily delayed.
- Regulators should avoid restricting the provision of some services to domestic providers as this can raise costs and discourage investment and innovation.
- Foreign services enterprises should be permitted to use the firm name of their choice, respecting an APEC economy's customs or general usage conventions and treated no less favourably than a domestic enterprise.
- Where regulation of cross-border transfer of data and other information is required, policy makers and regulators should consider how to achieve public policy objectives regarding privacy and consumer protection in the least trade restrictive way, as well as exploring other options which do not require direct government intervention.

## 2.3 Mobility of services suppliers

- APEC economies should support the mobility of and access to services providers under all relevant modes of service delivery: fly-in fly-out; cross-border through various communications technologies, or establishing a commercial presence; and, in most instances, through a combination of fly-in fly-out and one or both of the other modes.
- Rules for the temporary entry of services providers should be clear and transparent, and the issuance of entry documentation (visa/immigration formalities) should be timely and efficient.
- Regulations that require foreign service providers to hire local operators or nationals can lead to inefficiencies and discourage investment.
- Local ethical, conduct and disciplinary standards that foreign services providers may be required to submit to should be no more burdensome than requirements on local services providers.
- Regulators should consider alternatives to nationality and minimum residency requirements for foreign services professionals (such as requiring them to disclose to clients/customers their status as a foreign services provider or requiring them to maintain professional indemnity insurance).
- Qualification requirements should be based on transparent criteria, with adequate procedures for the verification and assessment of qualifications held by service suppliers of other APEC members.
  - Due consideration should be given to relevant professional experience, as a complement to educational qualifications (including membership in professional associations).
  - Any deficiency should be identified and the applicant informed of requirements to meet the deficiency.



- Residency requirements should not be a prerequisite for assessing qualifications.
- Delays in processing, once verification and assessment requirements have been fulfilled, should be limited.
- Qualification procedures should be as simple as possible and not constitute an unnecessary barrier to trade in services. To the extent practicable, applicants should need only approach one competent authority.
  - Applicants should be allowed to submit applications at any time.
  - Examinations, where relevant, should be held at reasonably frequent intervals.
  - Where possible, applications should be accepted in electronic format.
  - Where applications are incomplete, the applicant should be informed, missing information identified, and where practicable the applicant provided an opportunity to correct and supplement applications.
  - If deemed appropriate, authenticated copies of applications should be accepted.
  - The applicant should be informed of the reasons for rejection of an application, and the timeframe of appeal.
  - Applications should be processed within a reasonable timeframe.
  - Fees should be set commensurate with administrative costs.
- Licensing regimes should avoid discrimination between foreign and domestic services providers, and should not in themselves be a restriction on trade in services.
- Temporary project specific licensing or registration regimes (based on a home license or professional body membership) can greatly facilitate temporary movement of services professionals.

## 2.4 Mutual recognition

- Relevant professional and other stakeholders should be encouraged to cooperate with a view to recognising the professional qualifications of services providers (such as accountants, lawyers, engineers and architects) and help facilitate licensing or registration procedures.
- Mutual Recognition Agreements (MRAs) across the professions can facilitate professional mobility. Greater information sharing, a better understanding of the drivers of demand for MRA's, networking and advocacy with interested APEC members provide the starting point for these efforts.
- Support negotiation of MRAs among professional associations within Domestic Regulation Annexes of bilateral or regional free trade agreements.

## 2.5 Women's participation in services<sup>1</sup>

- APEC members and industry need to do more to empower women to be more fully engaged in business and economic activities across APEC services sectors.
- All stakeholders should support policies and strategies for improving gender equity in leadership positions/bodies, as well as on remuneration and pay equity.
- Governments should support industry efforts to develop policies and strategies that specifically encourage gender equity in relation to recruitment, retention, performance management, promotion, talent identification, succession planning and training.
- APEC members should work with services providers to develop policies and strategies that help employees meet family or care responsibilities, including consideration of alternative and flexible career paths and working arrangements.

<sup>1</sup> Based on symposium discussion and work of Parlour (Australia) Gender Equity Task Force at <http://archiparlour.org/champions-of-change-the-charter/>

- APEC members could provide advice on how to measure progress, benchmark best practice and report achievements in improving gender equity.
- APEC should continue to encourage the development of effective women's networks among its members. Such networks can do much to promote greater equality and gender diversity across services sectors.

## 2.6 International cooperation

- Continuing to work cooperatively with international institutions such as the OECD, World Bank and WTO can build greater understanding and capacity for services to contribute to economic development in APEC.

## 2.7 Privacy and consumer protection

- National privacy rules should be anchored in globally recognised principles such as those developed in APEC's ECSG on Cross Border Privacy Rules (CBPR) and APEC's Cross Border Privacy Enforcement Arrangement (CPEA).
- APEC members should maintain measures to protect consumers and their safety, while empowering them to control their personal data and protect their privacy through education and internet literacy programs.
- Intellectual property protection including copyright should be encouraged through on-going cooperation under APEC's Anti-Counterfeiting and Piracy Initiative.

## 2.8 Capacity building

- Effective, demand driven capacity building is necessary to enhance the capability of policy makers and regulators from developing APEC economies to implement good regulatory practices and policies.
- Information exchange and sharing of experiences can assist in understanding regulatory practices in each APEC economy, and promote institutional capacity-building (such practices could include the production of practical guides for staff in relevant agencies, professional development seminar programs, and ongoing collaborative engagement with international professional and other relevant associations).
- Economies should seek MBSs involvement and support for capacity building initiatives.

## 2.9 Sector-specific good regulatory practices

Sector-specific principles can also be relevant for services providers where there is a specific type of market failure, such as public goods, externalities, asymmetry of information, presence of monopoly or other anti-competitive behaviour affecting universality of access to services.

To this end, for example, APEC has worked cooperatively with the WTO on telecommunications reform and trade liberalisation. In conjunction with the WTO, APEC has held joint workshops on best practices for implementing the WTO GATS Reference Paper on Basic Telecommunications (which provides regulatory principles for this sector).<sup>2</sup>

The development of sectoral domestic regulations has been recognised by WTO members, with the negotiation of a specific set of disciplines for accountancy services in 1998, which will only come onto force once the Doha Development Agenda is completed.<sup>3</sup>

<sup>2</sup> APEC (2009), *Best practice for Implementing the Reference Paper*, APEC-WTO Workshop on Telecommunications, Trade and Regulatory Disciplines, Singapore, April 2009.

<sup>3</sup> See [https://www.wto.org/english/news\\_e/pres98\\_e/pr118\\_e.htm](https://www.wto.org/english/news_e/pres98_e/pr118_e.htm)

The same caveat applies to the sector-specific principles that follow below as to the cross-cutting principles – they are non-binding and voluntary in nature, presented as a basis for good policy, without prejudice to an economy's policy making or positions taken in trade negotiations.

### **2.9.1 Architectural and engineering services**

- Encourage relevant bodies operating the APEC Engineer and APEC Architects Registers to enter into mutual recognition arrangements with other relevant bodies of APEC members operating those registers.
- Agree to review the operation of the APEC Architect and APEC Engineers Frameworks to see how these two frameworks could be improved to better promote cross-border mobility.

### **2.9.2 Accountancy services**

- Professional accountancy organisations within the APEC economies should permit membership to foreign accountancy professionals who satisfy local professional experience and qualifications requirements, including continuing professional development requirements.

### **2.9.3 Legal services**

- Regulatory framework should provide flexibility to permit foreign lawyers and domestic (host country) lawyers to work together by entering into fee-sharing arrangements or other appropriate forms of professional or commercial association.
- Encourage the entitlement by foreign lawyers to practise foreign law on the basis of their recognised qualification to practise that law in their home jurisdiction.
- Foreign lawyers with qualifications recognised in their home jurisdictions should have the right to prepare and appear for home country clients in commercial arbitration, conciliation and mediation proceedings in the host country.

### **2.9.4 Higher education services**

- Encourage the development of independent national level tertiary education quality assurance frameworks in each economy so as to provide a way to compare and harmonise across institutions the level, workload and learning outcomes required from specific qualifications domestically.
- Greater efforts should be made to ensure there is no discrimination in the regulation of cross-border delivery of tertiary education based on the mode by which education courses are delivered. Where there are differences in the ease of recognition of foreign qualifications based on the mode of delivery, such limitations should be transparent and evidence-based.
- Quality assurance and accreditation agencies from the institution's home economy should ensure that the programs offered at a branch campus meet the standards of the home economy where the degree/qualification is valid.
- Make international student visas available to off-shore applicants in all APEC economies. Transparency of visa eligibility, conditions and processing times, including clear communication of forthcoming changes to policies and procedures can facilitate cross-border student mobility.
- Foster mobility and the provision of cross-border higher education services by ensuring that visitor visas for educators and researchers impose minimal regulatory burdens on individuals and institutions.

### **2.9.5 Telecommunications and ICT services**

- At the broadest level, regulatory reform should aim to create a functional regulator, prepare a pro-competitive environment, allocate and manage spectrum on a non-discriminatory basis, expand and

enhance access to telecommunications networks and ICT services, and promote and protect consumer interests, including universal access and privacy.

- APEC policymakers and regulators should work together with industry, consumers, and their own government agencies to establish an inclusive information and communication technologies environment that encourages greater uptake and usage of digital services and growth of the digital economy.
- Foreign suppliers should be able to access and use public telecommunications networks and services, regardless of the state of market liberalisation in the economy.
- Regulation should aim to guarantee access to and/or the sharing of critical public infrastructure in order to lower the barriers to entry for other suppliers seeking to enter the market.
- Strong interconnection is essential to lower the barriers to market entry for new suppliers, especially where there are existing suppliers with large networks and established customer bases.
- Economies should commit to ensuring access to leased circuit services on reasonable and non-discriminatory terms and conditions, and at cost-oriented rates, that are not unduly unfavourable or disadvantageous.
- Insofar as possible, telecommunications suppliers should be allowed to select the technology they use to provide their services. A technology-neutral approach to regulation will provide suppliers with flexibility to select and adapt their choice of technologies based on the merits of their individual business cases.
- APEC economies should work to promote the interoperability of services and technologies, where appropriate, by supporting a global voluntary system for Internet standard setting.
- APEC economies should effectively and efficiently manage spectrum as a precious, finite resource. The aim should be to extend the footprint of mobile broadband access through flexible spectrum management and regional/international spectrum alignment.
- A comprehensive dispute resolution regime with clear, well-defined and timely processes is necessary given the complexity of negotiations surrounding regulatory issues in telecommunications services.
- Given that universal service requires the provision of basic telecommunications services to some areas that may be uneconomic to serve, such requirements should be measured, non-discriminatory, and not unduly burdensome.
- Recognise that other regulatory principles addressed in trade agreements cover: interconnection with major suppliers; conduct of major suppliers; resale; submarine cable landing stations; provisions on number portability; dialling parity and anti-spam.

### **2.9.6 Financial services**

- Encourage efforts to align financial services sector regulation with global best practices.
- Avoid discriminatory taxation treatment of foreigner earnings in the host economy as it can be a strong disincentive to foreign investment. Excessive withholding tax laws impact on foreign entities' ability to run a business.
- Capital charges should be applied at a level appropriate to financial and economic circumstance. Where possible, economies should align domestic capital requirements with international norms, such as those recommended by the Basel Group of Bank Supervisors (acknowledging that variation in capital standards among jurisdictions may be necessary in certain situations).
- Capital controls can impede the ability of foreign entities to repatriate profits and reallocate capital among subsidiaries, reducing their ability to operate effectively.
- Cross-border collaboration between home and host financial regulator on the implementation of international regulatory requirements will contribute to smooth and more efficient financial service.

- 
- Reduce variation in standards and regulations for cross-border financial data flows and develop common standards as far as practicable. For prudential reasons, policies should also take into account the personal data protection of depositors and consumers and ensure safety of international data transmission. Regulators need to balance the efficient flow of data across borders with data security and the privacy of financial consumers.
  - Improve financial inclusion and financial literacy as these are critical elements in the development of financial markets, financial participation and social development in emerging economies.
  - Policy makers and regulators should support the development of fin tech in the delivery of financial service, monitor progress and consider a light touch approach to regulation consistent with maintaining prudential and financial stability.

### **2.9.7 Mining and energy services**

- Incubate a culture of collaboration between government, academia and industry. Strong mining/energy-related R&D and close collaboration between universities, government-funded research institutions and mining and energy enterprises and related service suppliers can boost the competitiveness of an economy's mining and oil and gas sectors.
- Avoid government imposed technology transfer requirements for mining and energy services providers commercialising products and services for global markets.
- Encourage the formation of 'clusters' of services activity associated with the mining and energy sectors as a way to enhance competitiveness, boost services SME access to global supply chains and promote the use of advanced new technologies. Successful clusters can help SME's attract larger global customers.

### **2.9.8 Transport and logistics services**

- Permit services providers to supply a broad range of logistics services, so that they can genuinely offer their customers a point-to-point service, without breaks in the supply chain.
- Ensure logistics service providers can gain access to critical infrastructure-related services, at ports, airports, and road and rail terminals on reasonable and non-discriminatory terms.

### 3. Annexes

#### Annex 3.1: Review of past symposia<sup>4</sup>

The Australian Government working in partnership with the APEC Studies Centre at RMIT University organised and delivered eight services symposia over the 2009-2015 period.<sup>5</sup> These were: architecture and engineering (Singapore, December 2015), mining and energy (Perth, June 2015), telecommunications and ICT (Manila December 2014), transport and logistics (Hong Kong, June 2014), higher education services (Kuala Lumpur, August 2013), financial (Singapore, November 2012) accounting (San Francisco, September 2011), and legal services (Singapore, July 2009).

Funded APEC economies participating in the symposia included Chile, China, Indonesia, Mexico, Papua New Guinea, Peru, the Philippines, Thailand and Vietnam. The symposia brought together regulators, policy makers, business representatives and academics to share experiences and discuss policy and regulatory issues in the service sector under consideration.

The symposia drew on the work of various international institutions (World Bank, WTO and OECD), and also APEC's work pointing to the strong linkages between services regulatory reform, productivity growth and economic prosperity. In addition to reviewing the broad advice from these international institutions, the symposia examined the following key issues as basis to stimulate discussion:

- *Regulatory intervention* – what are the key regulatory principles for competitiveness in services? A one size fits all approach should be avoided and solutions may need to be on a case-by-case basis?
- *Regulatory certainty* – how can a government best maintain transparency in laws, regulations, procedures and administrative decisions impacting on trade and investment in services?
- *Market access and national treatment* – what are the benefits of greater foreign competition in services markets in APEC economies?
- *Trade negotiations* – how to encourage WTO 'plus' ambition in regional and bilateral services trade negotiations?
- *Women's empowerment* – what more can be done to remove regulatory and other barriers, and to empower women to participate more fully in the services sectors of their economies?
- *International/regional cooperation* – what more can APEC economies do, for example, a regulators' fora for exchanges of information and benchmarking of good practice, effective MRAs, streamlining qualifications procedures and licensing requirements for professionals, more work on technical standards for services?
- *Capacity building* – what are the priorities and implementation issues for developing APEC economies?

These key issues were addressed in each symposia report, and together with the identified 'good regulatory practices' the reports were tabled for adoption by the APEC Group on Services (GOS).

The final symposium in Kuala Lumpur (24-25 May 2016) drew together the previous efforts and worked to finalise a *Compendium of Guiding Principles and Good Regulatory Practices in Services Trade*. The Compendium will be an important contribution to APEC's work on services in 2016.

<sup>4</sup> For more information on the symposia reports see <http://bit.ly/facilitatingservices>.

<sup>5</sup> Funding was from the Australian Government's Partnerships for Development (GPfD) facility.

### Annex 3.2: Policy framework for regulation of services

Regulatory reform and regulatory coherence has become an important issue within APEC as economies seek to further develop more open markets. Addressing trade and investment restrictions faced by local enterprises across the region, therefore, has emerged as an important priority. APEC has previously sought to improve regulatory coherence in the region through initiatives such as the APEC Principles to Enhance Competition and Regulatory Reform in 1999, the APEC-OECD Integrated Checklist on Regulatory Reform in 2005,<sup>6</sup> as well as efforts by other APEC fora to consider principles of good public sector governance and structural reform in APEC economies. It is a key component on the agenda of the APEC Economic Committee and APEC Structural Reform Agenda and investment in services is relevant to APEC's Investment Facilitation Action Plan, developed by the Investment Experts' Group.<sup>7</sup>

#### Good regulatory policy and reform in services

There are many public policy reasons for governments to regulate but the underlying economic justifications fall into various categories of market failure, as shown in Table 2 below.

**Table 2: Typical Market Failures affecting the Services Sector**

Market failure	Regulation	Sectors/products
Asymmetric information	Licensing Prudential regulation Consumer rights Contract law Information disclosure	Finance Professional services Distribution
Externalities	Taxes/subsidies	Transport R&D Education Health Cultural services
Network externalities	Standards Measures aiming at reducing switching costs	Telecommunications Credit cards
Economies of scale	Pro-competitive regulation	Network industries Aggregators
Public goods/services	IPR Government provision Subsidies	R&D Knowledge and information Infrastructure (up to a point) Defence, police

Source: Hildegunn Nordas (2016). Also see Drake-Brockman (2016).

Market failures include the existence of externalities, that is, community-wide costs or benefits arising from provision of a service; the existence of natural monopolies and a desire to maintain a strong competition policy or universal provision of certain "public" services; the existence of information asymmetries and the need to ensure consumer protection and safety by ensuring suppliers meet quality standards, both technical and services related. In the case of many professional services consumer protection is the central regulatory objective.

<sup>6</sup> OECD-APEC, 2005. The checklist is a voluntary tool that member economies may use to evaluate their respective regulatory reform efforts. There are four parts to the checklist; a horizontal questionnaire followed by three specific policy areas; (i) regulatory policies; (ii) competition policies; and (iii) market openness policies.

<sup>7</sup> See, for example, APEC, 2007 and Buckle, 2007.

Moreover, as in many economies, APEC's services sector is large and complex with various government ministries and agencies involved in overseeing its development. As a result, services are subject to many different domestic regulatory regimes. Regulation can be very specific to the sector concerned (such as licensing regimes) or can be more cross-cutting<sup>8</sup> across the services sector more generally. Government measures applying horizontally often include immigration laws and procedures, labour market/economic need tests or other regulations attached to the temporary movement of foreign services suppliers. In many economies, restrictions or limitations on foreign investment and the establishment of commercial presence can be cross-cutting and applicable to different services sectors.

Regulations can be imposed at the national, state/provincial or local level. They can impact directly and indirectly on international services trade. Regulation can be discriminatory or non-discriminatory and impact on both national and foreign services suppliers or enterprises, principally in terms of access to the domestic market and an enterprises' operations.

Business persons want coherence in domestic regimes regulating services. Unfortunately, in most APEC economies, there is no one single government agency with full understanding of all the specific details of any particular regulatory regime. Coordination between ministries/departments tends to be weak. Many sectoral services regimes are more complex and burdensome than they need to be, with overlapping duplicative regulatory requirements.

Services experts remain concerned that decades of services trade negotiations have produced a plethora of rules and commitments but very little real liberalisation.<sup>9</sup> Mattoo, for example, points to a form of 'negotiating tunnel vision', which has led to a focus on reciprocal market opening rather than on creating the regulatory preconditions for liberalisation. He argues that: (i) current trade disciplines are a useful but inadequate restraint on regulatory protection; (ii) proposed trade disciplines on domestic regulation add value but do not solve existing problems and can create new "hold back" problems; (iii) that much more could be achieved through greater emphasis on regulatory cooperation; and (iv) certain forms of regulatory cooperation create a risk of exclusion for non-participants which can and should be addressed.

### **Right to regulate**

The basis of all international services trade agreements is the WTO General Agreement on Trade in Services (GATS). The GATS expressly recognises the right of members to regulate the supply of services to meet their own policy objectives. Moreover, the GATS permits members in certain circumstances to introduce or maintain measures in contravention of their obligations under the Agreement, including the Most Favoured Nation (MFN) obligation requiring all trade partners to be treated equally. This can include measures necessary to: protect public morals or maintain public order; protect human, animal or plant life or health; or secure compliance with laws or regulations not inconsistent with the Agreement.<sup>10</sup>

In addition, it should be noted that the GATS Annex on Financial Services entitles Members, regardless of other provisions of the GATS, to take measures for prudential reasons, including measures to ensure the integrity and stability of the financial system. Furthermore, in the event of serious balance-of-payments difficulties, WTO Members are allowed to temporarily restrict trade, on a non-discriminatory basis, despite the existence of specific commitments to open markets.<sup>11</sup>

Most international trade agreements follow the GATS and explicitly recognise the principle of the right to regulate.<sup>12</sup>

### **Making regulation less burdensome**

<sup>8</sup> Trade negotiators often use the term 'horizontal'.

<sup>9</sup> Mattoo. 2015.

<sup>10</sup> A good discussion of these issues can be found in Mamdouh (2011), Aik Hoe Lim et al (2014) and WTO (2013(d)).

<sup>11</sup> WTO (1995).

<sup>12</sup> For example, the TPP Agreement (Article 10.8 in the Cross-border Services Trade Annex) recognises the right of Parties to regulate and to introduce new regulations on the supply of services in order to meet policy objectives.



An effective approach to sound regulation starts with a clear policy vision, understanding the sectors' role in the economy, its contribution to society, and public policy objectives. Overall, the regulatory challenge involves the formulation of sound policy objectives, the development of rules, the establishment of effective independent national institutions and, finally determination to implement reform.<sup>13</sup>

Clear identification of the policy objectives and the specific issues being addressed is critical to good regulatory practices. Establishing agreed objectives means there has to be comprehensive consultation with affected parties. It is also important to have a clear understanding of the likely benefits and costs of the reforms, and for all stakeholders to know which agency has responsibility for their implementation. Setting an appropriate time period for the implementation of changes is the final step in effective regulatory reform.

These steps are not necessarily easy. Policy formulation can pose difficulties in some circumstances. Often it can be hard to differentiate between legitimate policy objectives and protectionist measures that introduce market distortions and inefficiency. The key challenge facing policy makers and regulators is how to identify the good regulatory approaches while meeting legitimate policy objectives. The Australian Government applies 10 principles in relation to best regulatory practices.

#### **Ten principles for Australian government policy makers**

1. Regulation should not be the default option for policy makers: the policy option offering the greatest net benefit should always be the recommended option.
2. Regulation should be imposed only when it can be shown to offer an overall net benefit.
3. The cost burden of new regulation must be fully offset by reductions in existing regulatory burden.
4. Every substantive regulatory policy change must be the subject of a Regulation Impact Statement.
5. Policy makers should consult in a genuine and timely way with affected businesses, community organisations and individuals.
6. Policy makers must consult with each other to avoid creating cumulative or overlapping regulatory burdens.
7. The information upon which policy makers base their decisions must be published at the earliest opportunity.
8. Regulators must implement regulation with common sense, empathy and respect.
9. All regulation must be periodically reviewed to test its continuing relevance.
10. Policy makers must work closely with their portfolio Deregulation Units throughout the policy making process.

Source: Department of Prime Minister & Cabinet, 2014, The Australian Government Guide to Regulation, Commonwealth of Australia.

#### **Work of International Institutions**

These kinds of principles permeate the work of other organisations and institutions involved in advising on good regulatory practice. For example, the OECD, World Bank, WTO and APEC all have a number of publications (including toolkits) to assist economies with economy-wide and services sector regulatory reform. These reports underline the regulatory autonomy of member economies to regulate subject to rules/principles aimed at minimising trade restrictive effects. They highlight the need to (i) identify national and sectoral priorities; (ii) identify institutional constraints and capacity needs; (iii) establish channels of communications with key stakeholders; and (iv) to conduct trade-related regulatory audits and impact analyses. Publications that address these issues, including approaches to services regulatory reform include:

<sup>13</sup> This section draws on WTO (Mamdouh, 2011) and the World Bank services toolkit (see Sáez, Sebastián, Daria Taglioni, et al, 2014).

- APEC-OECD. 2005. *Integrated Checklist on Regulatory Reform, A Policy Instrument for Regulatory Quality, Competition Policy and Market* (a joint activity of the OECD Regulatory Reform Programme (Directorate for Public Governance and Territorial Development) and the APEC Competition Policy and Deregulation Group (CPDG) convened in Mexico).
- Molinuevo, Martin, and Sebastián Sáez. 2014. *Regulatory Assessment Toolkit: A Practical Methodology for Assessing Regulation on Trade and Investment in Services*. Washington, DC: World Bank.
- Sáez, Sebastián, Daria Taglioni, Erik van der Marel, Claire H. Hollweg, and Veronika Zavacka. 2014. *Valuing Services in Trade: A Toolkit for Competitiveness Diagnostics*. Washington, DC: World Bank.
- Aik Hoe Lim and Bart De Meester (eds.). 2014. *WTO Domestic Regulation and Services Trade: Putting Principles into Practice*, World Trade Organisation (WTO), Geneva, Switzerland.
- APEC, 2014. *APEC Economic Policy Report on Good Regulatory Practices*, APEC Secretariat, 2014.
- Mattoo Aaditya, 2015. *Services Trade and Regulatory Cooperation*, E15 Expert Group on Service (The E15 Initiative: Strengthening the Global Trade System), published by the International Centre for Trade and Sustainable Development and the World Economic Forum, Geneva, July 2015.
- Mamdouh, Hamid. 2011. *Services Liberalisation, Negotiations and Regulations*, Paper presented at the ADBI-PECC Conference “Services Trade: New Approaches for the 21<sup>st</sup> Century”, Chinese University of Hong Kong, 1-3 June 2011.
- PECC/ADBI, 2011. *Services Trade Approaches for the 21st Century*, Report of the Task Force established by the Asian Development Bank Institute (ADBI) and the Pacific Economic Cooperation Council (PECC).
- WTO, 2013(d). *Services-related regulatory challenges facing developing countries: Background Note by the Secretariat*, Working Party on Domestic Regulation, S/WPDR/W/51, 13 March 2013, Geneva.

## Databases and analytical tools

### **APEC STAR database<sup>14</sup>**

APEC has been working to improve its Services Trade Access Requirements (STAR) database of measures affecting trade and investment in services. The STAR database is a business-friendly, online tool designed to help service providers from APEC economies take advantage of new export opportunities (see Section 3.6 for more detail).

### **WTO databases**

The WTO has a set of linked databases that provides services trade and other statistics, as well as information on WTO Members' commitments under the WTO's General Agreement on Trade in Services (GATS), services commitments in regional trade agreements (RTA), and applied measures in services. The database is known as I-TIP.

### **OECD and World Bank services trade restrictiveness indexes**

The OECD prepares Services Trade Restrictiveness Indexes (STRIs) for OECD economies and key partners (Brazil, the People's Republic of China, India, Indonesia, the Russian Federation and South Africa). The STRI analysis examines pro-competitive regulation, explicit barriers to trade and investment, and domestic regulation that may negatively impact on trade in selected services.

<sup>14</sup> APEC 2014(b), accessed at: <http://servicestradeforum.org/>

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The STRIs translate the qualitative information contained in the database into numerical values that can be used for quantitative policy analysis, including impact assessment of policy reforms, coherence of regulatory reform or progress towards meeting targets. The STRIs take values between zero and one, one representing a totally closed and zero a fully open sector.

Details on the OECD STRI scores by country or comparisons across countries are available through the OECD database at: <http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm>. The OECD Services Trade Restrictiveness Index Simulator is available at: <http://sim.oecd.org/index.ashx>.

The World Bank also prepares services trade restrictiveness indexes and maintains a Services Trade Restrictions Database. The database provides comparable information on services trade policy measures for 103 countries, five sectors (telecommunications, finance, transportation, retail and professional services) and key modes of delivery.

Within each subsector-mode the Bank assesses policy regimes in their entirety and maps the bundle of applied policies into five broad categories (with associated scores): completely open (0); virtually open but with minor restrictions (25); major restrictions (50); virtually closed with limited opportunities to enter and operate (75); completely closed (100).

The World Bank database is available at: <http://iresearch.worldbank.org/servicetrade/>. More information about the database is available at [Ingo, Gootiiz & Mattoo \(2012\), Guide to the Services Trade Restrictions Database, World Bank Policy Research Working Paper \(WPS6108\)](#).

### Annex 3.3: Good regulatory practices in international trade agreements

#### Typology of barriers to service exports

The focus of this report has been on identifying policy-relevant barriers that affect the export of services within the APEC region and on good regulatory practices that facilitate services trade and investment. A policy-relevant barrier could be defined as anything that unnecessarily impedes the ability of businesses in the region to export services by increasing the costs of exporting a service, restricting the supply of the service export, or inhibiting the demand for the service in an export market.<sup>15</sup>

The following table presents a typology of key restrictions and barriers to trade in services identified throughout the eight past symposia. These are the types of restrictions that trade negotiators try to reduce or eliminate. The table also draws on the work of international institutions such as the WTO, OECD and World Bank, as well as the work of APEC itself.

The approach is to consider measures (discriminatory and non-discriminatory) affecting market access and national treatment, and measures that restrict the movement of business persons across borders to supply services. This is not a complete list and does not necessarily cover all sector specific restrictions.

**Table 3: Examples of restrictions facing foreign services suppliers in international markets**

Market Access	Foreign equity restrictions on the maximum foreign equity share allowed
	Limitations on foreign equity participation or foreign control of services enterprises
	Limitations/prohibitions on legal form (proprietorship, corporation, partnership is prohibited)
	Requirements to establish a joint-venture with a local partner to provide services
	Limitations that prohibit commercial association between services professionals
	The number of professionals permitted to practice is restricted by quotas
	Limitations on the managing partners or board of directors – majority (at least one) must be nationals, residents, locally-licensed
	Requirements to establish a local presence (local office or branch) in order to provide services cross-border
	Independent self-employed professionals not permitted to provide services
	Requirements to transfer technology or skills as a condition for providing services in the economy
	The presence of foreign services enterprises is restricted by economic needs tests
Mutual Recognition (market access and/or national treatment)	Difficulties with recognition of foreign qualifications for professionals – limited/no laws or regulations that establish a process for recognising higher education degrees gained abroad
	Level of restrictiveness in recognising foreign qualifications: <ul style="list-style-type: none"> <li>• Are foreign services providers required to undertake local examinations to qualify for full membership of the profession and in what language?</li> <li>• Are they required to undertake a period of local practice to become a full member of the local profession?</li> <li>• Is compulsory membership in a professional association for foreign professionals automatically granted if they have required qualifications?</li> </ul>
People Movement	Quotas apply to intra-corporate transferees, or those on contract, or those working as independent service suppliers
	Labour market tests apply
	Nationality or citizenship is required for a license to practice.
	Prior or permanent residency is required for a license to practice

<sup>15</sup> Australian Productivity Commission, 2015. As explained in Annex 3.2 this definition recognises that there may be a rationale for governments to intervene in markets to meet national policy objectives, including the need to address market failures (such as, externalities, public goods, information asymmetry, monopolies and a lack of effective competition).

Cross-Border (market access and/or national treatment)	Only locally-licensed professionals can use 'professional titles'
	Requirement to train local workers
	No limited or temporary licensing system is available to provide services in a foreign jurisdiction
	Difficulties in obtaining visa and/or work permits
Other Measures (market access and/or national treatment)	The use of a foreign enterprise's name is prohibited
	Limitations that prevent foreign suppliers from supplying services to the government or preferences are given to local suppliers
	Foreign services providers are subject to restrictions on advertising
	Limitations on transferring payments or profits offshore
Transparency	Regulations are published or otherwise communicated to the public prior to entry into force.
	A public comment procedure is available and open to interested persons, and/or the Regulator has a formal mechanism for consultation with stakeholders, including foreign suppliers.
	Readily available Information on visa processing procedures and time to obtain visa.
	A fixed period of time to complete all official procedures required to register a business.
	The total cost to complete all official procedures required to register a business is not excessive.
	The number of official procedures required to register a business is reasonable.

Source: OECD, WTO, World Bank, APEC STAR database documents referenced throughout this Compendium and material provided to the Consultant by the Australian Department of Foreign Affairs and Trade.

### The WTO and General Agreement on Trade in Services (GATS)

International trade agreements seek to address the types of services trade restrictions identified above in Table 2. The basis of all international services trade agreements is the GATS, which comprises a framework of general obligations, schedules of commitments, annexes, and ministerial decisions. The framework includes rules that cover all service sectors while the schedules of commitments specify, for each country, whether and to what extent foreign firms will be accorded market access and national treatment in specific service sectors. The Agreement also covers issues of domestic regulation and transparency.

- *Market access* – refers to the ability for foreign services suppliers to enter a market. It is a fundamental characteristic of all trade agreements, as it assists in addressing barriers to market entry and providing a level of certainty for business. Market access is one of the key measures that business will use to assess the quality of ongoing market liberalisation.
- *National treatment* – requires domestic regulation to be crafted so as not to discriminate between foreign and domestic services suppliers.
- *Domestic regulatory disciplines* – are the commitments Parties to trade agreements make to objectivity and efficiency in licensing, standards and qualification requirements within their economy.
- *Transparency* – refers to transparency in laws, regulations, procedures and administrative rulings affecting service suppliers in an economy. It is important because it ensures there is no information imbalance between domestic and foreign services suppliers. It is a key consideration for business in determining whether to export or establish a presence overseas.

Achieving and maintaining these conditions requires strong domestic regulation disciplines, and where necessary domestic regulatory reforms.

Apart from market access and national treatment measures, which are subject to scheduling, trade liberalisation under the GATS does not limit a governments' ability to regulate.

This results from the way GATS distinguishes between three types of measures:<sup>16</sup>

- i. quantitative restrictions on market entry, or on the outputs of service suppliers, (including foreign equity limits), whether discriminatory or not;
- ii. discriminatory measures against foreign services and services suppliers by modifying conditions of competition in favour of national services and services suppliers; and
- iii. domestic regulations that are neither discriminatory nor quantitative in nature.

Measures in categories (i) and (ii) cover market access and national treatment limitations that WTO members seek to reduce or eliminate through successive rounds of trade negotiations. Domestic regulations in category (iii) are not considered 'trade restrictions' as such, but the GATS acknowledges that they may nevertheless have trade restrictive effects. As a result, the GATS mandates the development of relevant disciplines principally on qualification requirements and procedures and licencing under GATS Article VI.<sup>17</sup>

The GATS approach to services trade liberalisation has been replicated in a number of bilateral and regional free trade agreements.<sup>18</sup> It is significant that APEC's has made efforts to develop good regulatory practices through input into the Trans Pacific Partnership (TPP) negotiations, with APEC supporting the inclusion of a dedicated chapter on regulatory coherence within the agreement.

Nevertheless, trade analysts remain concerned that GATS provisions dealing with domestic regulation are among its weakest. This is despite acknowledgement that greater regulatory cooperation or harmonisation would help promote and consolidate domestic regulatory reform and facilitate trade. Part of the explanation lies in the fact that so many different government agencies are typically involved in services regulation and trade negotiators rarely have full information or coordinating responsibilities that help bring the regulators with them to the negotiating table. This naturally results in generally defensive negotiating stances. Just as relevant, however, is the overwhelming concern of policy makers that reform of domestic regulations does not encroach on national sovereignty and a desire to retain discretionary space to regulate in an economy's national interest.

The negotiation of domestic regulation disciplines in the WTO remains a vexed issue. At the 10<sup>th</sup> Ministerial Conference in Nairobi in December 2015, some WTO members called for the start of text-based negotiations based on proposals dealing with transparency in domestic regulation. These members were calling for disciplines on the detailed publication of regulatory measures, the establishment of mechanisms to respond to requests for information by service suppliers, and publication of draft regulations to facilitate comments of service suppliers. Other members, principally developing economies, said they were not ready to commit to new obligations on domestic regulation in the services sector. They also expressed concern that a selective focus on 'transparency' in the services negotiations would undermine the development dimension of the WTO Doha Round, including efforts to improve the capacity of developing countries to trade effectively in commercial services.<sup>19</sup>

### **Domestic regulation in FTA negotiations involving APEC members**

Notwithstanding the number of bilateral and regional FTAs already struck within the Asia-Pacific region, economies are continuing to engage in comprehensive free trade negotiations to press forward efforts to open markets and pursue regulatory reforms in services and other sectors. Parties to an agreement often negotiate provisions on domestic regulation, as well as on transparency in developing and applying

<sup>16</sup> Aik Hoe Lim and Bart De Meester (eds.). 2014.

<sup>17</sup> WTO, 2013(d).

<sup>18</sup> The ASEAN-Australia-New Zealand Free Trade Agreement adopted a GATS-like approach as have a number of other FTAs in the region.

<sup>19</sup> See [https://www.wto.org/english/thewto\\_e/minist\\_e/mc10\\_e/briefing\\_notes\\_e/brief\\_services\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc10_e/briefing_notes_e/brief_services_e.htm)

regulations and recognition arrangements. Many of these provisions are modelled on or adapted from the WTO GATS Agreement.

The Regional Comprehensive Economic Partnership (RCEP) is one such current negotiation. RCEP is an ASEAN-centred proposal for a regional free trade area, which would initially include the 10 ASEAN member states and those economies which have existing FTAs with ASEAN – Australia, China, India, Japan, Republic of Korea and New Zealand.

Negotiations are also ongoing on a Trade in Services Agreement (TiSA). TiSA is a plurilateral, sector-specific trade agreement focused solely on trade in services. Currently, 50 economies, representing 70 percent of global trade in services and 67 percent of global economic output, are negotiating the TiSA in Geneva, Switzerland. TiSA includes eleven APEC members. Participating economies are: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, European Union (representing its 28 Member States), Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Republic of Korea, Switzerland, Turkey and the United States. TiSA negotiations are an effort by this subset of WTO members towards updating GATS disciplines to reflect developments in FTA practice and unilateral liberalisation since the GATS was agreed, particularly given services negotiations in the WTO have effectively stalled.

The Trans Pacific Partnership (TPP) is another ambitious agreement addressing services as well as other trade issues. Parties to the TPP reached agreement on 5 October 2015 and the text of the agreement was released on 5 November 2015. Like RCEP, the TPP is seen as a possible pathway towards realising the vision of a Free Trade Area of the Asia-Pacific (FTAAP). The TPP involved 12 negotiating parties – Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam.

The TPP contains a ‘Regulatory Coherence’ chapter to encourage good regulatory practices among TPP Parties.<sup>20</sup> Greater adherence to good regulatory practices in the TPP will result in improved business environments and contribute to maximising the potential gains from the Agreement. Importantly, the TPP chapter on regulatory coherence encourages parties to: (i) review proposed regulatory measures to determine the extent to which the development of such measures adheres to good regulatory practices; and (ii) seeks to strengthen coordination and consultation to reduce red tape for investors. Parties are also encouraged to conduct regulatory impact assessments in order to determine that new regulations are both necessary and appropriate.

Specific to the service sector, the TPP Chapter on Cross-Border Services Trade contains obligations on Domestic Regulation and Transparency, as well as a separate Annex on Professional Services. The Annex contains specific references to the work in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.<sup>21</sup>

<sup>20</sup> See: <http://dfat.gov.au/trade/agreements/tpp/summaries/Documents/regulatory-coherence.pdf>

<sup>21</sup> See, for example: <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/ch10-cross-border-trade-in-services.pdf>

## Annex 3.4: Increasing the participation of women in services trade

### APEC priorities

Promoting women's economic empowerment and greater inclusion of women in economic activity is high on APEC's agenda. This goal has been recognised by APEC Ministers and Leaders and implemented through a variety of APEC working groups and projects. At the APEC Policy Partnership on Women and the Economy (PPWE) meeting in May 2015 participants finalised a strategic plan and committed to take concrete action to promote efforts to integrate gender considerations across all APEC activities as a priority. The meeting also advanced the implementation of the APEC Women and the Economy Dashboard, which contains indicators to measure women's advancement.<sup>22</sup>

APEC updated the Terms of Reference for the *Policy Partnership on Women and the Economy*, in Manila in September 2015. The revised TOR, for example, seek to:

- assist APEC fora and actively cooperate with them to identify and address priority gender equality and women and the economy issues within their work, including inviting the Chairs of the relevant sub-fora to the PPWE meetings to discuss issues that are relevant to each group;
- promote and report on women's representation across APEC and within individual fora;
- assess the use of gender equality criteria in project proposals, reporting and evaluation, revising the gender equality criteria, where appropriate and seek to ensure that at least one secretariat representative from member economies has specific gender equality and women in the economy expertise at all times;
- collect and share best practices in gender equality integration amongst fora and on an annual basis select one topic area of best practice to be featured at the PPWE meeting.

The World Bank, ADB and Asia Foundation (in collaboration with APEC) have also undertaken considerable research on women's entrepreneurship in the region,<sup>23</sup> as have various national women's network groups. The broad conclusion of the research is that women's entrepreneurial potential remains underutilised across most service sectors within the Asia-Pacific region, and that disempowerment, marginalisation and exclusion impact more on women than men.

### Women's empowerment

It is generally accepted that women in APEC, on average, have comparably lower labour force participation rates than in many OECD economies.<sup>24</sup> Recent symposia on transport and logistics, telecommunications and ICT, mining and energy and architectural and engineering services highlighted the low participation of women in these relatively male-dominated services sectors.

With APEC Leaders pressing for greater empowerment of women across the Asia-Pacific region, there is a visible trend of employers investing in a wide range of programs to support gender diversity and equality, but change remains slow. National and international research points to the way forward, highlighting that those organisations with greater gender diversity are more innovative and profitable, and more closely reflect the values of the communities in which they operate.<sup>25</sup>

Many studies examining women's participation in the workforce underline the need for business to embrace modern management and the importance of including women in management positions. The only

<sup>22</sup> See the APEC Press Release at: [http://www.apec.org/Press/News-Releases/2015/0503\\_PPWE.aspx](http://www.apec.org/Press/News-Releases/2015/0503_PPWE.aspx).

<sup>23</sup> For example, the following publications provide a wealth of material: World Bank (2010), *Economic Opportunities for Women in East Asia and Pacific Region*, Washington DC; APEC-Asia Foundation (2013), *Access to Trade and Growth of Women's SMEs in APEC Developing Economies: Evaluating Business Environments in Malaysia – Philippines – Thailand* (This APEC report was a collaborative effort between the Asia Foundation and its partners, the APEC Secretariat and US Department of State); ADB (2014), *Using Information and Communications Technology to Support Women's Entrepreneurship in Central and West Asia*, ADB Briefs, No. 23 May 2014.

<sup>24</sup> Pasadilla G, 2016.

<sup>25</sup> Kanga M, 2014.



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way organisational cultural change of this nature can be effected is through leadership from the top. The boards and executive teams of services enterprises need to understand the business imperative of employing more women in their respective organisations, and making greater efforts to change their firm's culture and practices to achieve these outcomes.

A review of recent studies across a number of services sectors on creating gender inclusive leadership, well-being and diversity in the workplace highlighted that:<sup>26</sup>

- Leadership for change needs to come from the top.
- Industry boards need to seek qualified women to serve, as there is a positive correlation between increasing women on boards and in senior leadership and attraction of women to these sectors.
- Firms need to develop and implement multi-faceted strategies that address cultural change, as well as specific initiatives that are incorporated into their operational priorities.
- Firms should create case studies of best practices in their organisations that can be shared across the services sector.
- Firms should initiate policies and practices that support family-related responsibilities and equally support men's family responsibilities.
- Sectors and firms should develop measurement and reporting tools to assess progress and hold leaders accountable for achieving results.

<sup>26</sup> For example, see Kanga (2014), Parlour (2014) and Centre for Women in Politics and Public Leadership, (2012).

### **Annex 3.5: A profile of services sectors covered by past symposia**

Eight services symposia over were held over the period 2009-2015. These were: architecture and engineering (Singapore, December 2015); mining and energy (Perth, June 2015); telecommunications and ICT (Manila, December 2014); transport and logistics (Hong Kong, June 2014); higher education (Kuala Lumpur, August 2013,); financial (Singapore, November 2012); accounting (San Francisco, September 2011)); and legal services (Singapore, July 2009).

#### **Professional services**

The professional services addressed in this report cover accounting, legal, and architectural and engineering services. These professional services play an important role in economic development, are key to establishing an economy's financial, legal, and regulatory framework and the provision of public services, including for infrastructure development. Typically, in most economies, professional services providers are subject to registration, certification, and licensing requirements which can act as trade barriers for foreign services providers when domestic regulation is overly complex, opaque, burdensome, and uneven across economies.<sup>27</sup>

The most significant trade barriers for professionals are restrictions limiting their temporary entry into another economy as intra-corporate transferees, contractual services suppliers or independent services suppliers. In some economies temporary entry is subject to economic or labour market tests. Meeting licensing and/or other qualifications conditions or procedures, including nationality and residency requirements to practice, and lack of recognition of foreign qualifications, can also be significant barriers.

As an alternative to residency requirements, some observers suggest economies impose other measures that achieve the same objective – for example, a requirement for foreign professionals to disclose to clients their status as a foreign services provider, and/or requiring foreign services providers to maintain professional indemnity insurance to satisfy local insurance requirements. Both of these measures could help economies achieve their policy objectives in a less restrictive manner. Symposium participants acknowledged that the requirements for obtaining a license to practice and the activities reserved for licensed professionals largely define market access for foreign suppliers. In situations where only nationals can obtain a license and a license is required to practice, it is apparent that market access for foreign suppliers is effectively blocked.

Mutual recognition arrangements can help resolve some of the problems that limit temporary entry. Temporary licensing is also being encouraged as another solution, supporting fly-in and fly-out arrangements that allow professionals from other jurisdictions to temporarily enter another APEC economy to provide their services.

#### **Mining and energy services**

Mining and energy services are a highly diverse sector linked by core capabilities in servicing mining and energy production. Mining and energy services providers often form close symbiotic relationships with their customers, globally, regionally and within their own economies, which can be an important force for regulatory reform. Developing links with government agencies, universities, research institutions and other related industry sectors also brings strong benefits and helps underpin the competitiveness of the sector and its suppliers.

Regulation impacting on mining and energy services typically occurs at both national and sub-national levels, so scope of regulation and jurisdictional issues become particularly relevant. Also significant is that for many services (such as, engineering, consultancy, ICT), mining and energy production is just one of several end uses of the services provided. While some regulations affecting mining and energy service providers can be sector-specific (foreign ownership), other rules can be cross-cutting, impacting on all sectors of the economy (competition policy). In formulating overall policy for both sectors, the interface

<sup>27</sup> Geloso Grosso, M. *et al.* 2014 (a) & (b), and OECD, 2015, STRI Sectoral Briefs.

between sector-specific and cross-cutting or horizontal rules needs to be carefully considered by policy makers and regulators.

Measures restricting the temporary movement of business personnel across mining and energy service operations can also be problematic, particularly where professionals, specialists and technical experts need to move overseas to work temporarily in a foreign firm's subsidiary, branch, or other operation, including on a mining or energy site. As in other services sectors, licencing and authorisation procedures, nationality requirements and issues relating to transparency and enforcement of rules can also be significant barriers to trade in these services, as can be technology transfer requirements.

The current trading environment is very difficult for many mining and energy services suppliers. Enhancing their international competitiveness, developing new advanced technologies and services and seeking to supply services in overseas markets will be the path to remaining commercially viable. An accommodating regulatory environment, strong collaboration and responsiveness to fast-changing innovation in mining technology will be needed for mining and energy services suppliers to remain globally competitive.

### **Telecommunications and ICT services**

These industries possess high levels of technology and highly skilled workforces and play a critically important role in global information and data flows. Many services can now be digitised and transmitted over communication networks, with the result that services providers no longer need to meet face-to-face with clients, breaking the 'proximity burden' of supply.

With communications services underpinning so many other aspects of the economy - such as professional services, health, education, entertainment, logistics, banking and finance - regulatory oversight is now multi-jurisdictional. In particular, sectoral convergence has made communications markets much more contestable and regulation more complex, cross-sectoral and difficult. The growth of Internet-based networks and applications, access to mobile broadband networks and new technologies (e.g. smart phones and tablets and their related apps) and communications services delivered via the Internet are impacting on the way users interact and businesses operate. In this highly competitive and disruptive environment, established (former monopoly) telecommunications service providers are under immense pressure to reform.

While there has been significant trade liberalisation of telecommunications and ICT services, barriers to international trade remain. Telecommunications remains a highly capital-intensive network industry. The strategic importance of this sector has seen many economies restrict foreigners from investing and operating communications services. In many economies government ownership remains significant, which can act as a trade barrier by limiting competition. Restriction on the temporary movement of professionals cross-border (specialists and technical experts dealing with clients) can also limit market entry, particularly for providers of ICT services.

More broadly, promoting a competitive environment that enables new market entrants to compete effectively and fairly with established service providers is critical. APEC economies already promote competitive disciplines in telecommunications services on issues such as competitive safeguards, interconnection guarantees and transparency, but in a converging global environment for communications services this work needs to be reviewed and kept up-to-date. Newer regulatory issues concerning localisation requirements, cloud computing and limitations on cross-border data flows are posing challenges for regulators. APEC's Electronic Commerce Steering Group (ECSG) and the Ad-Hoc Steering Group on the Internet Economy are examining some of these issues in collaboration with other relevant APEC fora.

### **Transport and logistics services**

Transport and logistics services span a wide range of activities such as cargo handling and freight forwarding services, maritime, air, road and rail transport services, courier/express delivery and a range of what are termed non-core logistics services (such as leasing services, equipment repair services, technical

testing services). All these services are subject to multiple restrictions and regulations under the responsibility of many different regulatory authorities with varying domestic regulatory objectives (such as, economic development, safety, security, protecting customs revenue).

In all economies, efficient supply chain management is a key determinant of a firm's ability to participate successfully in the trading sector, and global freight logistics management has become a significant driver in shaping the structure of the global trading system. The development of an economy's logistics sector and improved logistics performance promotes greater integration into international production networks and Global Value Chains (GVCs). Strong and efficient logistics and transport services lead to improved trade expansion, export diversification and, importantly, the ability to attract foreign investment.

Many logistics and transport services providers remain concerned at the lack of transparency and the poor awareness among stakeholders of the full scope of regulatory issues impacting on their sector. In many economies, institutional fragmentation and lack of policy coordination is standing in the way of formulating coherent logistics and transport policies. Across this sector, many firms do not own or control their supply chains. The typical transport and logistics supplier relies on other firms in the sector for inputs and/or connection to the final consumer. That is, their business success depends on the performance of others along the logistics supply chain. Trade barriers or inefficient processes in one link of a supply chain can result in missed market opportunities. This is particularly of concern to small and medium sized enterprises that are the backbone of many developing APEC economies. Many SMEs bemoan the lack of a single contact point in government or a champion agency on logistics services.

### **Higher education services**

International trade in education services, particularly at the tertiary level, has grown strongly in recent decades. Within the APEC region there is wide interest in the internationalisation of education systems as this can facilitate the aim of many governments, educational institutions and professional associations to further enhance the flow of students, researchers and curricula across borders. A key challenge for policy makers is to ensure that regulation of the sector fosters and supports greater international engagement, consistent with APEC's cross-border education co-operation agenda.

Providers of international higher education services face many barriers. These include restrictions on the electronic transmission of course material, non-recognition of qualifications obtained through distance learning; restrictions on the types of courses that may be offered; and measures requiring the use of a local partner, or the physical presence of the foreign institution.

Education services providers wishing to establish a commercial presence face measures common to many other service sectors. For example, limitations on the numbers of permitted suppliers, restrictions on location, foreign equity capital limits and discriminatory tax/fiscal measures. Other problematic measures include difficulties in gaining national accreditation, non-recognition of qualifications awarded, nationality requirements on staff, restrictions on the recruitment of foreign academic personnel, and enrolment limits.

Lack of recognition and quality assurance is a key barrier affecting online and pure 'distance learning'. In response, for many education services providers, cross-border supply through twinning arrangements between local and foreign education institutions has become a more viable way of addressing quality assurance and consumer protection issues. More generally, various initiatives have been taken at the national and international level in response to these challenges. Within the APEC region, the Asia-Pacific Quality Network (APQN), a regional association of quality assurance professionals, has prepared 'Higher Education Quality Assurance Principles' for the Asia Pacific Region.<sup>28</sup>

<sup>28</sup> See: [http://www.apqn.org/files/virtual\\_library/good\\_practices/quality\\_assurance\\_chibal\\_principles.pdf](http://www.apqn.org/files/virtual_library/good_practices/quality_assurance_chibal_principles.pdf)

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## Financial services

The global financial services industry has undergone rapid changes over past decades. Progressive liberalisation, globalisation, prudential regulatory policy reforms, sectoral convergence (blurring of traditional distinctions between banks, insurance companies, and brokerage/investment firms), and technological advances have together played a major part in the transformation of the sector. The global financial crisis of 2007-2008 has also impacted on the way financial services firms and markets operate, the delivery of new products to consumers, as well as new prudential regulatory requirements.

While trade in financial services has been liberalised in many economies, the financial sector still remains heavily regulated. This reflects the priority governments attach to maintaining the stability and soundness of the financial system, with risk and regulatory reforms spanning international and national jurisdictions. While G20 processes play an important role in high-level assessment and international agreement, supervisory international standards are set by various global committees, including the Basel Committee on Banking Supervision. National implementation is undertaken by domestic regulatory bodies. Regulatory reform priorities include managing systemic risk, strengthening capital requirements, improving financial sector liquidity and ensuring market integrity.

Restrictions on foreign entry to establish commercial presence continues to be the key barrier. Market entry can be restricted by limiting the foreign equity share in local banks, restricting the establishment of foreign bank branches, or imposing more stringent requirements to grant a license to foreign-owned banks compared to domestic banks. In many economies foreign banks must to be locally established in order to provide a full range of services.<sup>29</sup>

It is significant that international trade agreements including the GATS and many FTAs typically contain a separate annex on the regulation of financial services with specific prudential carve-outs or prudential exceptions, as a well as addressing specific commitments and non-conforming measures.<sup>30</sup>

<sup>29</sup> See WTO 2010 for a good discussion of the financial crisis, impacts and trade barriers and reforms.

<sup>30</sup> For example, the Trans Pacific Partnership Agreement contains a separate chapter on financial services (55 pages) covering obligations on cross-border trade, specific commitments and non-conforming measures and ratchet mechanism.

### **Annex 3.6: APEC's work on services trade and investment**

Over recent decades, APEC has been at the forefront of regional and international endeavours to develop, and implement good principles and regulatory practices that promote economic growth and support prosperity across the region.

With the services sector accounting for 66 per cent of the combined GDP of APEC economies and over half the region's employment, the sector is large and diverse, even in the less developed APEC economies. Governance and regulation of the sector is dispersed among many different government ministries and regulatory bodies. In many sectors, domestic regulation is seen as complex, opaque and burdensome. Reflecting the diversity of the services sector, APEC's work on services is also scattered across a range of committees and working groups.

Given the increasing importance of the services sector in many economies, services regulatory reform and regulatory coherence has become a major issue within APEC. Regulatory reform has become particularly important as members seek to further enhance free trade and investment by addressing trade impediments faced by local businesses across the region.<sup>31</sup> The business community is fully supportive, with efforts by ABAC and PECC over recent years to raise the priority of services issues. APEC Public/Private Dialogues on Services are also taking place, pressing the need for regulatory reform and greater regulatory cooperation.

Over the past two years, APEC Leaders have agreed to devote more attention to services through agreement to a Services Cooperation Framework in 2015 and the development of an APEC Services Competitiveness Roadmap in 2016. These efforts are further supported by work on services initiated in 2015 by APEC Structural Reform Ministers and pursued through APEC's Economic Committee.

#### **APEC's Economic Committee (EC)**

At the Structural Reform Ministerial Meeting (SRMM) held in Cebu, the Philippines in September 2015, the EC was instructed to raise the importance of services under the Renewed APEC Agenda for Structural Reform (RAASR). The aim is to encourage economies to implement unilateral reforms within their services sectors as part of their structural reform action plans. The SRMM also called on the Committee to support the initiative to develop an APEC Services Cooperation Framework (ASCF), and to closely collaborate with the Committee on Trade and Investment (CTI), the Group on Services (GOS) and other fora to:

- conduct public-private dialogues;
- conduct dialogues with sectoral regulators, policy makers, and business; and
- consider developing a joint work program with GOS, which may include producing a set of recommendations for domestic regulation of the services sectors.<sup>32</sup>

Preparation of the Economic Committee's 2016 APEC Economic Policy Report is also underway, which will focus on the link between structural reform and services. A joint meeting with the Committee on Trade and Investment will be held in the margins of SOM3 in Lima in September to consider a first draft of this report.

#### **APEC Services Cooperation Framework**

As noted above, to drive the work forward on services, APEC members have collectively agreed on the APEC Services Cooperation Framework. The Framework was agreed in 2015 by APEC Leaders in Manila. The overarching aim of the Framework is to provide a common strategic direction and promote coherence in APEC's work on services. The Framework is forward leaning, ambitious, commercially relevant and emphasises the importance of market opening reforms as a spur to growth. It provides a good basis on which to take action so that services trade and investment can do more of the heavy lifting to help support regional prosperity.

<sup>31</sup> For example, see Drake-Brockman, 2015.

<sup>32</sup> This discussion is drawn from <http://www.apec.org/Groups/Economic-> which presents more detailed information about the work of the Economic Committee on services regulatory reform and structural change issues.

As the various symposia have demonstrated, the removal of barriers to services trade and investment, including the opening of markets, will also strengthen the competitiveness of all domestic suppliers and will have flow on effects to many other sectors of member economies. Under the broad Framework, APEC members are working to develop an APEC Services Competitiveness Roadmap.

### **APEC Services Competitiveness Roadmap**

The Roadmap is a commitment under the APEC Services Cooperation Framework and is to be considered by Leaders in 2016. The process of drafting the Roadmap has begun with discussion of its elements to be followed by deliberations on actions and mutually agreed targets. The FOTC on Connectivity will lead on the roadmap development process.

The development and implementation of the Roadmap will be guided by the principles of:

- delivering on Leaders commitments made under the APEC Services Cooperation Framework;
- building on the existing APEC work on services;
- recognition of differences in economic and social circumstances across APEC economies that will necessitate economy-specific approaches to improving the competitiveness of services sectors;
- emphasis on the APEC culture of cooperation through demand-driven assistance to member economies interested in implementing specific reforms. This includes capacity building support for developing member economies and sharing of good practices and lessons learned across all economies; and
- measurement and regular reporting of progress with commitments made under the Roadmap.

### **APEC's earlier work on services trade and regulatory reform**

Within services, APEC's Committee on Trade and Investment (CTI) has overseen most of the projects in this sector along with the subgroups that directly report this body. Of particular importance is the Group on Services (GOS), which coordinates APEC's work on services trade facilitation and liberalisation. Other relevant groups reporting to the CTI that have a services angle include the Investment Experts' Group (IEG), the Business Mobility Group (BMG), and the Electronic Commerce Steering Group (ECSG). Beyond the work of the ECSG, APEC Ministers have committed to promoting the internet economy, including through the establishment of an Ad Hoc Steering Group to discuss the digital economy and internet issues.

In addition, under the SOM Steering Committee on Economic and Technical Cooperation (SCE), a number of sectoral groups also undertake work related on services. For example, the Telecommunications and Information Working Group (TEL), the Transportation Working Group (TPTWG), and the Energy Working Group (EWG) have participated in past symposia. The Human Resources Development Working Group (HRDWG) has projects on professional services related to the APEC Architect and APEC Engineer projects, as well as activities related to cross-border education, which touches on international trade in higher education services. A broad body of work is also being undertaken on supply chain connectivity highlighting the benefits of regulatory reform across the logistics and transport services sectors. There is also ongoing work to facilitate trade and investment opportunities for small and medium enterprises (SMEs).

More broadly as noted above, services have developed as a key component on the agenda of the APEC Economic Committee as well as the APEC Structural Reform Agenda. Investment in services is also relevant to APEC's Investment Facilitation Action Plan, developed by the Investment Experts' Group.

### **APEC Collaboration with the OECD**

APEC members are also working with the business community, industry bodies, academia, and other international and regional organisations to develop appropriate policy frameworks for services. For

example, APEC has previously sought to improve regulatory coherence in the region across all sectors through initiatives such as the APEC-OECD Integrated Checklist on Regulatory Reform in 2005.<sup>33</sup>

The preparation of the Checklist represented close co-operation between the APEC Competition Policy and Deregulation Group, and the OECD Horizontal Programme on Regulatory Reform. It is a voluntary tool that member economies can use to evaluate their respective regulatory reform efforts. The checklist highlights key issues that should be considered during the process of development and implementation of regulatory policy. Given the diversity of economic, social, and political environments and values of member economies the checklist recognises that flexibility will be required in ways the checklist could be applied, and in the uses from the resulting processes and information.

### **APEC Public/Private Dialogues on Services**

Senior Officials Meeting (SOM) level APEC Public/Private Dialogues on Services commenced in 2013 with World Bank presentations on regulatory reform and the need for regulatory cooperation. In 2015, APEC's Economic Committee, the APEC Group on Services (GOS) and PECC held a seminar on the *Role of Regulatory Reform/Good Practices in Promoting Services Growth*. As noted above, in 2015, APEC Structural Reform Ministers also initiated work on services.

### **APEC Policy Support Unit (PSU)**

The PSU was established in 2007 as the research and analysis arm for APEC. It is attached to the APEC Secretariat and funded by voluntary contributions and overseen by a governance board. Since its establishment, the PSU has undertaken a large number of projects related to trade in services. Listed below are a number of useful reports drawn from the PSU's website at: <http://www.apec.org/About-Us/Policy-Support-Unit/PSU-Publications.aspx>.

- Report on APEC Work on Services and Baseline Indicators, 2015
- Assessing the APEC New Strategy for Structural Reform (ANSSR) and Advancing the APEC Structural Reform Agenda Beyond 2015, 2015
- Trends and Developments in Provisions and Outcomes of RTA/FTAs Implemented in 2014 by APEC Economies, 2015
- Services in Global Value Chains: Manufacturing-Related Services, 2015
- Services, Manufacturing and Productivity (Issues Paper No. 9), 2015
- Regulatory Reform: Case Studies on Improving the Business Environment for SMEs, 2015
- The APEC Women and The Economy Dashboard, 2015
- Services and Manufacturing: Patterns of Linkages (Policy Brief No.10), 2014
- APEC, Services, & Supply Chains: Taking Stock of Services-Related Activities in APEC (Policy Brief 9), 2014
- Trends in Trade Finance across the APEC Region (Issues Paper No. 4), 2013
- Enabling Electronic Commerce: The Contribution of APEC's Data Privacy Framework, 2011
- Reducing Business Travel Costs: The Success of APEC's Business Mobility Initiatives, 2011
- The Impacts and Benefits of Structural Reforms in the Transport, Energy and Telecommunications Sectors, 2011
- Trade in Services in the APEC Region: Patterns, Determinants, and Policy Implications, 2010
- Cross-Border Investment Linkages among APEC Economies: The Case of Foreign Direct Investment, 2009

<sup>33</sup> OECD-APEC, 2005. The checklist is a voluntary tool that member economies may use to evaluate their respective regulatory reform efforts. There are four parts to the checklist; a horizontal questionnaire followed by three specific policy areas; (i) regulatory policies; (ii) competition policies; and (iii) market openness policies.



### **APEC Business Advisory Council (ABAC)**

In 2011, ABAC called for the launch of a new and dedicated initiative specifically aimed at liberalising and facilitating regional services trade and investment. The new initiative calls for greater priority to be given to regulatory reform which should cover all services markets and all modes of delivery. ABAC also calls for the drafting of joint APEC principles for all-of-services best practice regulation, including with a view to generating global interest in development of such principles.<sup>34</sup> This initiative is also supported by the Pacific Economic Cooperation Council (PECC). In 2011, PECC called for APEC governments to develop a set of regulatory principles for the services sector. One specific suggestion was for development of a generic cross-sectoral 'Services Reference Paper', setting out pro-competitive principles that might have application to all services.<sup>35</sup>

### **APEC STAR database<sup>36</sup>**

APEC has been working to improve its Services Trade Access Requirements (STAR) database of measures affecting trade and investment in services. The STAR database is a business-friendly, online tool designed to help service providers from APEC economies take advantage of new export opportunities. It provides information on market access regulatory requirements affecting services trade and investment across all APEC economies and eight industry sectors: computer-related services, distribution services, education services, financial services, professional services, telecommunication services and transportation and logistics services. The database is designed as a single, easily accessible destination for information that will to assist businesses in:

- establishing a commercial presence (such as a wholly-owned enterprise, joint-venture, affiliate or branch) to provide services in foreign markets;
- delivering services across borders; and
- delivering services through the temporary movement of business people across borders.

The STAR database is an Australian Government Department of Foreign Affairs and Trade (DFAT) initiative. The site has been designed with the assistance of the Australian APEC Study Centre at RMIT. The STAR database can be accessed at: <http://www.servicestradeforum.org/>.

### **Compendium's links to APEC services work**

This Compendium of good regulatory practice principles is an initial contribution from the APEC Group on Services (GOS) designed to inform and progress further work proposed in the Economic Committee, on Structural Reform and Services, as well as in the Committee on Trade and Investment. As such, the Compendium will support the various strands of APEC's work on services in 2016 and beyond. It will be a valuable contribution to APEC's knowledge base and a key resource for individual economies, regulators, policy makers and trade negotiators.

Importantly, the principles in the Compendium recognise the right of APEC economies to regulate and introduce new regulations on the supply of services in order to meet policy objectives, and the particular need of developing economies to exercise this right. As such, the regulatory principles and good practices set out in this Compendium are non-binding and voluntary in nature, presented as a basis for good policy, without prejudice to an economy's policy making or its positions in the WTO or regional and bilateral free trade agreement (FTA) negotiations.

<sup>34</sup> ABAC, 2011.

<sup>35</sup> PECC/ADBI, 2011.

<sup>36</sup> See: <http://servicestradeforum.org/>

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