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STUDY ON APEC'S NON-BINDING PRINCIPLES FOR DOMESTIC REGULATION OF THE SERVICES SECTOR

A Focus on Domestic Regulations in Trade Agreements

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
INTRODUCTION	3
LOWERING APEC TRADE COSTS THROUGH SERVICES DOMESTIC REGULATION REFORM	5
STREAMLINING DOMESTIC REGULATIONS FOR SERVICES COULD SUBSTANTIALLY LOWER TRADE COSTS FOR APEC BUSINESSES	6
APEC SMES WILL BE THE FIRST TO BENEFIT FROM MORE EFFICIENT DOMESTIC REGULATIONS FOR SERVICES	8
HOW AGREEMENTS ADDRESS THE APEC NON-BINDING PRINCIPLES FOR DOMESTIC REGULATION OF THE SERVICES SECTOR	9
THE WTO-BASED PLURILATERAL – JOINT STATEMENT INITIATIVE (JSI) ON DOMESTIC REGULATIONS	12
THE COMPREHENSIVE AND PROGRESSIVE TRANSPACIFIC PARTNERSHIP AGREEMENT (CPTPP)	15
THE REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP)	18
THE UNITED STATES-MEXICO-CANADA AGREEMENT (USMCA)	21
THE EUROPEAN UNION – UNITED KINGDOM TRADE AND COOPERATION AGREEMENT (TCA)	24
CONCLUSIONS	26
REFERENCES	28
ANNEX: HOW FIVE FREE TRADE AGREEMENTS ADDRESS THE APEC NON- BINDING PRINCIPLES FOR DOMESTIC REGULATION OF THE SERVICES SECTOR	29

ACRONYMS

APEC	Asia-Pacific Economic Cooperation
APEC NBPs	APEC Non-Binding Principles for Domestic Regulation of the Services Sector
ASCR	APEC Services Competitiveness Roadmap
ASEAN	Association of Southeast Asian Nations
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DSU	Dispute Settlement Understanding
EU	European Union
GATS	WTO General Agreement on Trade in Services
GDP	Gross domestic product
ICT	Information and communications technology
JSI	Joint Statement Initiative on Domestic Regulations
LP	Licensing Procedures
LR	Licensing Requirements
MC12	12th WTO Ministerial Conference
MRA	Mutual recognition agreement
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Cooperation and Development
QP	Qualification Procedures
QR	Qualification Requirements
RCEP	Regional Comprehensive Economic Partnership
SMEs	Small and medium-sized enterprises
STRI	Services Trade Restrictiveness Index
TCA	Trade and Cooperation Agreement
UK	United Kingdom
USMCA	United States-Mexico-Canada Agreement
WTO	World Trade Organization

EXECUTIVE SUMMARY

APEC economies are increasingly streamlining their domestic regulations for the services sector, particularly in key areas such as regulatory transparency, towards a goal of eliminating barriers to services trade. APEC economies are influenced by the 2018 APEC Non-Binding Principles for Domestic Regulations of the Services Sector (APEC NBPs), which established a set of core transparency principles to facilitate services trade in the APEC region. APEC economies are also moving towards greater convergence in domestic regulation rulemaking, and APEC's non-binding nature is influencing negotiation processes and domestic regulatory reform within and beyond the Asia-Pacific region. Notably, trade negotiations in the Asia Pacific and beyond are increasingly focusing their attention on the regulatory aspects affecting trade as a necessary complement to the traditional market access-focused approach.

Economies are also realizing the positive economic effects of streamlining domestic regulations: streamlining these regulations could reduce trade costs across APEC economies by an average of 7 percent across sectors in the medium term (after 3–5 years). Lower trade costs would have the greatest impact on highly regulated sectors where licensing, registration processes, and recognition of qualifications are prominent. Streamlining domestic regulations can also benefit small and medium-sized enterprises, which bear a heavier compliance burden than larger, better-resourced firms. On average, trade cost reductions for small and medium-sized enterprises (SMEs) could be between two and three percentage points higher compared to large companies. With an average trade cost effect of around -7 percent, SMEs could benefit from trade cost reductions of up to 9 percent.

This paper compares provisions in the APEC NBPs against a selection of advanced trade initiatives, including the World Trade Organization-based Joint Statement Initiative on Domestic Regulations (JSI); the Comprehensive and Progressive Transpacific Partnership Agreement (CPTPP); the Regional Comprehensive Economic Partnership (RCEP); the United States-Mexico-Canada Agreement (USMCA); and the European Union-United Kingdom Trade and Cooperation Agreement (TCA).

The analysis reveals a verifiable trend in the Asia-Pacific region towards convergence on domestic regulations principles and disciplines. Overall, the three largest trade initiatives in the Asia Pacific (i.e., CPTPP, RCEP, and USMCA) address most of the 19 specific topics covered by the seven APEC NBPs, and show important similarities among themselves.

The one area where APEC economies seem to diverge in terms of demonstrated levels of ambition is APEC NBPs Principle D, Transparency. While economies have been willing to agree on a more general non-binding set of principles, their approaches to transparency under regional trade initiatives do not always converge. Further development of transparency disciplines remains the most significant challenge in the Asia-Pacific region, particularly within the RCEP community.

The analysis also points to APEC's influence beyond the Asia-Pacific region. For example, there is a strong substantive correlation between the APEC NBPs, the JSI, and the EU-UK TCA initiatives. This pollination effect can be observed, *inter alia*, in the use of equivalent denominations to individualize their respective provisions. Nevertheless, the main difference remains the use of different legal standards—i.e., “should,” “should encourage,” or “should encourage to the extent practicable” under APEC NBPs, as opposed to “shall,” “shall encourage,” or “shall encourage to the extent practicable” under the JSI and the TCA.

In sum, this report demonstrates how far APEC economies have moved towards greater convergence in domestic regulation rulemaking, and how APEC's non-binding nature can influence negotiation processes and domestic regulatory reform within the Asia-Pacific region and beyond. APEC is running at the front and perhaps even leading the way. Accordingly, APEC can play an influential role in building member economies' capacity to undertake modern services domestic regulation provisions in trade agreements and in promoting awareness of good practices in domestic regulation of the services sector, which in turn can empower APEC economies to participate in ongoing and upcoming initiatives like the JSI.

INTRODUCTION

The services economy has historically proven to be a major driver of economic growth and productivity, generating over two-thirds of global gross domestic product (GDP), attracting over three-quarters of foreign direct investment in advanced economies, employing a significant share of workers, and creating the most new jobs globally.¹ For example, while facing the economic impacts of the COVID-19 pandemic, economies' uptake of information and communications technology (ICT) services played a vital role in facilitating the global shift to increased telework, telehealth, digital financial services, and e-commerce engagement that have enabled economies to operate under lockdown conditions. By liberalizing services markets and facilitating services trade, economies can leverage services markets to realize strengthened economic performance.

While there has been some liberalization in services markets in recent years, tools such as the APEC Services Index (currently being constructed) and the Organization for Economic Cooperation and Development (OECD) Services Trade Restrictiveness Index (STRI) indicate that economies established new barriers to services trade across all major sectors in 2020.² Many services trade barriers are “behind the border” barriers established through restrictive domestic regulations.

Domestic regulations for services allow economies to correct market failures, establish a level playing field, protect workers and consumers, ensure universal access to essential services, and set qualifications and licensing requirements to promote adequate service delivery consistent with important regulatory priorities relating to issues such as health, safety and the environment.³ While economies maintain an inherent right to implement domestic regulations for the services sector, misalignment of approaches can lead to regulations that limit transparency, predictability, and ease of administration, amongst other issues. Service providers seek to rely on transparent and enforceable rules to operate in foreign markets, such that barriers can be lowered or eliminated to the extent compatible with reasonable regulation. Otherwise, domestic and foreign services providers face unnecessary obstacles to enter and operate in markets. As detailed in the next section of this report, reducing restrictions by streamlining services domestic regulations could potentially reduce trade costs in the APEC region by an average of 7 percent across sectors and economies after 3–5 years.

Individual APEC economies are beginning to demonstrate their commitment to modern provisions for domestic regulation of the services sector through their involvement in regional trade agreements and multilateral trade agreements. Trade initiatives including the WTO-Based Plurilateral Joint Statement Initiative on Domestic Regulations (JSI), United States-Mexico Canada Agreement (USMCA), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and Regional Comprehensive Economic Partnership (RCEP), all of which include certain APEC economies as members, address disciplines for domestic regulation of the services sector.

¹ OECD, “Services Trade,” webpage for the STRI, <https://www.oecd.org/trade/topics/services-trade/>.

² OECD. *OECD Services Trade Restrictiveness Index: Policy Trends up to 2021*, OECD, February, 2021, <https://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-policy-trends-2021.pdf>.

³ Nathan/US-Support for Economic Growth in Asia (US-SEGA), *Study on APEC's Non-binding Principles for Domestic Regulations of the Services Sector: Transparency and Predictability in Rulemaking*, January 2020, <https://www.apec.org/Publications/2020/01/Study-on-APECs-Non-binding-Principles-for-Domestic-Regulation-of-the-Services-Sector>.

Within APEC, economies have championed, led, and catalyzed progress on modern domestic regulatory provisions for the services sector, which has allowed for a pollination effect to other trade initiatives including APEC members. APEC’s mission includes a commitment to champion free and open trade and investment in the Asia-Pacific, promoting regional economic integration, and facilitating a favorable and sustainable business environment. To facilitate trade and investment liberalization, APEC members aim to reduce tariff and non-tariff barriers to trade and investment to boost job creation, incomes, and growth.⁴ In the services space, in alignment with this objective, APEC Leaders endorsed the *APEC Services Competitiveness Roadmap (ASCR 2016-2025)*, committing to increasing APEC competitiveness in the services sector by ensuring an open and predictable environment for access to services markets by progressively reducing restrictions to services trade and investment, amongst other actions.⁵ Further, in 2018, APEC members endorsed the *APEC Non-binding Principles for Domestic Regulation of the Services Sector (APEC NBP)*, which aims to reduce the impact of regulatory diversity, making procedures simpler and more transparent, and help avoid unnecessary complexity or disguised restrictions.⁶ As demonstrated in further sections of this report, the aforementioned five trade initiatives exhibit strong levels of convergence with the APEC NBPs, portraying how APEC good practices on domestic regulation of the services sector have been accepted by and positively impacted the Asia-Pacific region and beyond.

This report builds on previous APEC initiatives championed by the United States to build economies’ understanding of modern, transparent, and enforceable domestic regulations to prepare economies to reduce “behind the border” restrictions and implement good regulatory practices in support of liberalized services markets. The *Study on APEC’s Non-binding Principles for Domestic Regulations of the Services Sector: Transparency and Predictability in Rulemaking* and accompanying workshop held in August 2019 examined the importance of transparency and predictability in rulemaking for services sectors and placed emphasis on the process of developing transparent domestic regulations.⁷ The *Next Generation Practices for Services Authorization in the Asia-Pacific Region* study and workshop subsequently highlighted case studies to develop APEC members’ awareness of innovative, effective, and emerging regulatory practices related to services authorization in the region.

⁴ APEC, “Scope of Work,” webpage, <https://www.apec.org/About-Us/How-APEC-Operates/Scope-of-Work>.

⁵ APEC. 2015. “APEC Services Competitiveness Roadmap (2016–2025),” available online at https://www.apec.org/Meeting-Papers/Leaders-Declarations/2016/2016_aelm/2016_Annex-B.

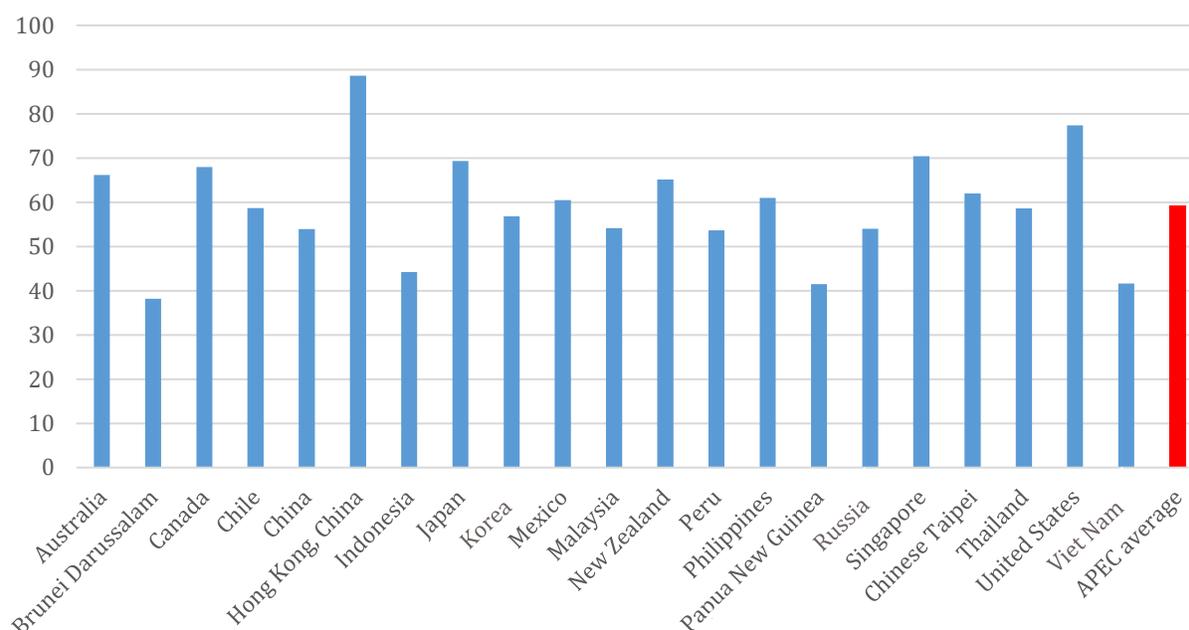
⁶ APEC, “APEC Non-binding Principles for Domestic Regulation of the Services Sector,” final draft November 13, 2018, available online as annex 13 to *2018 CTI Report to Ministers*, <https://apec.org/-/media/APEC/Publications/2018/11/2018-CTI-Report-to-Ministers/TOC/Appendix-13---APEC-Nonbinding-Principles-for-DR-Drafting-Group.pdf>.

⁷ Nathan/US-SEGA, *Study on APEC’s Non-binding Principles for Domestic Regulations of the Services Sector*.

LOWERING APEC TRADE COSTS THROUGH SERVICES DOMESTIC REGULATION REFORM

Global trade in services has been growing faster than trade in goods in recent years, including through the development of new technologies that increasingly facilitate cross-border supply of services. This is particularly visible in the Asia-Pacific region, where growth strategies across economies have placed services at the forefront of the policy agenda. Indeed, services now contribute to nearly two-thirds of the region’s GDP (Figure 1). APEC has developed forward-looking principles and policy instruments aimed at facilitating the flow of services within the region, including through the 2016 APEC Services Competitiveness Roadmap (ASCR). The development of new measures of the regulatory environments for services in the APEC region⁸ strengthens the evidence base to inform APEC-wide efforts on streamlining services trade policies.

FIGURE 1. SERVICES ARE KEY ECONOMIC DRIVERS ACROSS THE APEC REGION
SERVICES VALUE ADDED AS PERCENTAGE OF GDP, 2019



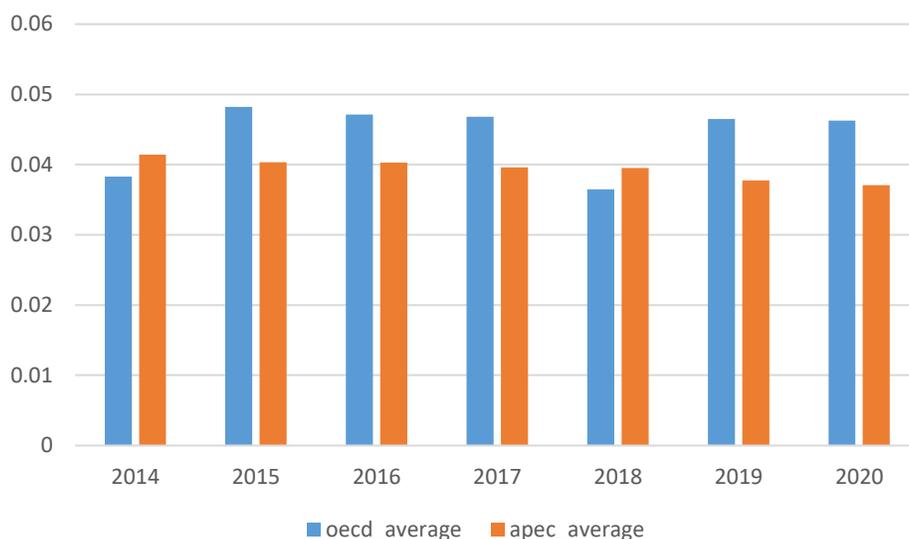
Source: World Development Indicators (2019). Data for Hong Kong, China; Japan; and Peru are for 2018. Data for New Zealand; Papua New Guinea; and Canada are for 2016. Data for Chinese Taipei are from Directorate-General of Budget, Accounting and Statistics for 2019.

Among other initiatives, the 2018 APEC Non-Binding Principles for Domestic Regulations of the Services Sector established a set of core transparency principles designed to create a regulatory environment that facilitates services trade in the APEC region. Over the past years, APEC economies have constantly streamlined their domestic services regulations, eliminating barriers to services trade particularly in key areas such as regulatory transparency (Figure 2). As a result, in 2020, APEC

⁸ See <http://apecservicesindex.org>.

economies performed 20 percent better than the OECD average with respect to regulatory transparency as measured by the OECD Services Trade Restrictiveness Index (STRI).⁹

FIGURE 2. REGULATORY TRANSPARENCY HAS IMPROVED IN THE APEC REGION IN RECENT YEARS
AVERAGE STRI FOR REGULATORY TRANSPARENCY OVER TIME IN APEC AND OECD ECONOMIES, 2014–2020



Note: Lower values on the index indicate a more open regulatory environment. APEC average is based on data for 14 APEC economies currently covered in the OECD STRI.

Source: OECD STRI, 2020.

STREAMLINING DOMESTIC REGULATIONS FOR SERVICES COULD SUBSTANTIALLY LOWER TRADE COSTS FOR APEC BUSINESSES

The OECD STRI collects information on the applied regulations affecting several disciplines included in the discussions under the Joint Initiative, such as transparency in the rule-making process, administrative and procedural hurdles related to registering companies, as well as licensing and authorization requirements across different sectors, including some professional services such as legal, accounting, architecture and engineering services.¹⁰

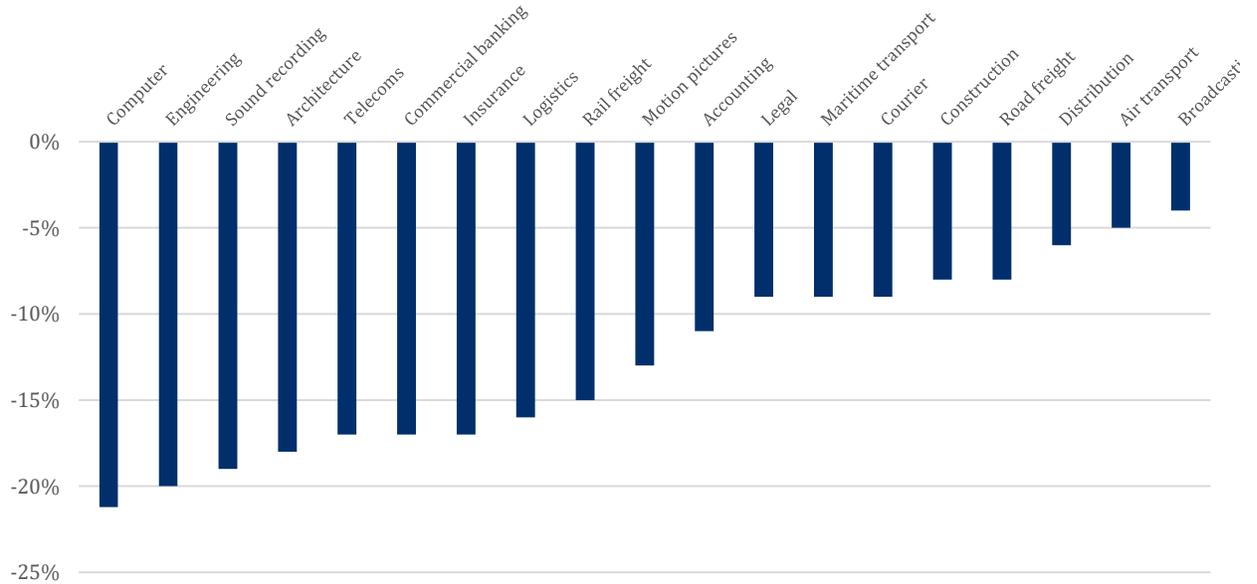
While APEC economies’ regulatory environments have become more trade-facilitating in recent years, particularly on measures affecting regulatory transparency, there is scope to further capitalize on services domestic regulation reforms to boost trade. If the current disciplines considered under the Joint Initiative were to be fully implemented in APEC economies, impediments to trade (as measured by

⁹ The OECD STRI brings together information on services trade barriers from more than 16,000 laws and regulations for 22 services sectors and 48 economies, including 14 APEC members. The STRI scale ranges from 0 to 1, where 1 represents the most restrictive regulatory environment for services trade. The policy measures in the STRI regulatory database are organized in five policy areas: (1) restrictions on foreign entry; (2) restrictions on movement of people; (3) other discriminatory measures; (4) barriers to competition; and (5) regulatory transparency. See OECD, “Services Trade,” webpage for the STRI, <http://oe.cd/stri>.

¹⁰ For further details on the STRI measures, see OECD STRI webpage at <http://oe.cd/stri>.

the STRI) could be lowered by up to 21 percent (Figure 3). Most barriers could be eliminated in sectors such as computer services, some professional services, sound recording, telecoms, and financial services.

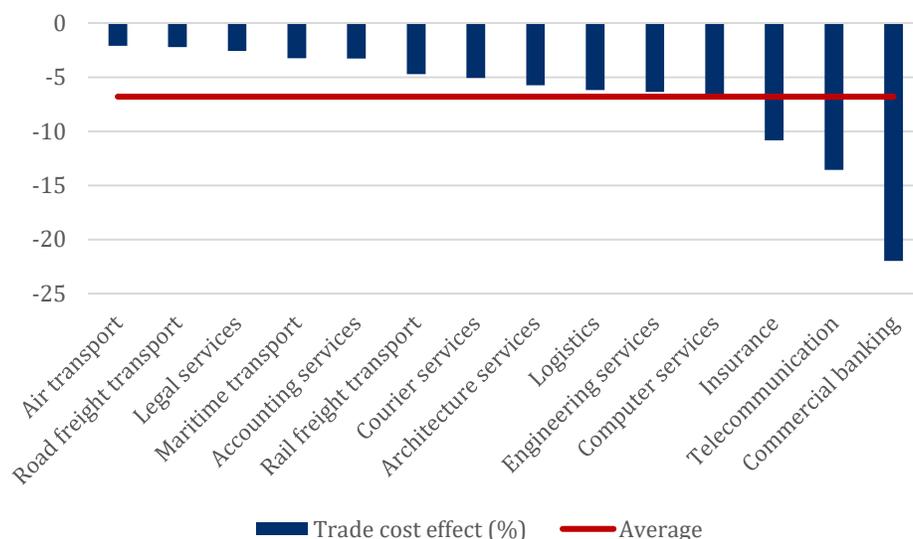
FIGURE 3. APEC ECONOMIES CAN FURTHER EASE REGULATORY HURDLES ON SERVICES
 AVERAGE PERCENTAGE OF DECREASE IN STRI VALUES IN CASE OF LIFTING EXISTING IMPEDIMENTS ON DOMESTIC REGULATIONS



Note: Calculations based on the 14 APEC economies currently covered in the OECD STRI.
 Source: OECD STRI, 2020.

Streamlining of services domestic regulations could potentially reduce trade costs in the APEC region by an average of 7 percent across sectors and economies in the medium term (after 3–5 years) (Figure 4). Lower trade costs would have the greatest impact on highly regulated sectors where licensing, registration processes, and recognition of qualifications are prominent. The highest impacts would be in commercial banking (22 percent decrease), telecommunications (14 percent), insurance (11 percent), and computer services (7 percent). Among professional services, engineering (6 percent decrease) and architecture services (6 percent) would benefit most.

FIGURE 4. POTENTIAL TRADE COSTS REDUCTIONS RELATED TO CERTAIN SERVICES DOMESTIC REGULATIONS BY SECTOR, PERCENTAGE OF EXPORT VALUES



Note: Calculations based on the 14 APEC economies currently covered in the OECD STRI.

Source: Calculations are based on the methodology in Benz, S. and A. Jaax. 2020. The Costs of Regulatory Barriers to Trade in Services: New Estimates of Ad Valorem Tariff Equivalents. OECD Trade Policy Papers, No. 238. Paris: OECD Publishing. <https://doi.org/10.1787/bae97f98-en>.

APEC SMES WILL BE THE FIRST TO BENEFIT FROM MORE EFFICIENT DOMESTIC REGULATIONS FOR SERVICES

The costs of navigating complex regulatory regimes across economies, dealing with time-consuming procedural hurdles, and documenting compliance in every new market fall more heavily on small and medium-sized enterprises (SMEs) than on larger firms with more resources. SMEs often export lower services values, while issues such as licensing, authorization, and compliance are often fixed, regardless of exported services values. Indeed, such challenges may be insurmountable obstacles for small players, which, in turn, can have prohibitive consequences for their efforts to expand to new customers in new markets. Thus, as barriers to services trade are eased and regulatory cooperation makes tangible progress, SMEs are the first to gain (Rouzet, Benz and Spinelli 2017).

On average, trade cost reductions for SMEs could be between two and three percentage points higher compared to large companies. With an average trade cost effect of around -7 percent, SMEs could benefit from trade cost reductions of up to 9 percent. The advantage for SMEs would be even larger in sectors experiencing more profound reductions of services trade costs. Improving services domestic regulation and reducing the costs of market entry would help improve the inclusiveness of services trade, allowing more SMEs to take up global opportunities.

HOW AGREEMENTS ADDRESS THE APEC NON-BINDING PRINCIPLES FOR DOMESTIC REGULATION OF THE SERVICES SECTOR

This section compares the set of non-binding principles agreed among APEC economies (APEC NBPs) against a selection of provisions in five trade initiatives dealing with domestic regulations for services: the WTO-based Joint Statement Initiative on Domestic Regulations (JSI); the Comprehensive and Progressive Transpacific Partnership Agreement (CPTPP); the Regional Comprehensive Economic Partnership (RCEP); the United States-Mexico-Canada Agreement (USMCA); and the European Union-United Kingdom Trade and Cooperation Agreement (EU-UK TCA).

The report has two goals. The first is to describe the general landscape of domestic regulatory-related efforts within the Asia Pacific, primarily in the context of trade negotiations. The second is to demonstrate how APEC can influence processes and initiatives well beyond its geographical scope, by highlighting the strong correlation between the APEC NBPs and multilateral and regional trade initiatives.

To accomplish both aims, this section includes charts considering how each initiative mentioned above includes and addresses modern provisions for domestic regulation of the services sector, using the APEC NBPs as a benchmark. The analysis will provide readers with a clear picture of the overall extent to which the initiative aligns with the APEC NBPs the benchmark, as well as specific areas where members could consider additional efforts to increase convergence.

The commentary following each set of charts is based on the structure/design of the APEC NBPs document—i.e., each referring to aspects of the seven specific APEC NBPs principles (A-G) and the 19 APEC NBPs specific paragraphs that provide additional detail concerning the principles. This methodology will allow readers and government officials to assess a particular economy's relative position with respect to the development of principles and disciplines on domestic regulations for services. Moreover, the analysis can serve as a practical tool for facilitating decision-making processes of APEC economies both domestically and internationally.

Indeed, as the analysis will show, APEC's non-binding and cooperation-based nature has become an ever more tangible asset for the international trade community. By redefining frontiers and exploring the nuances and complexities of the diverse community of economies, APEC has been able to incubate new approaches, mirrored in fora as diverse as the WTO or a post Brexit EU-UK trade deal.

As demonstrated in the following analysis, the five trade initiatives have displayed convergence with the APEC NBPs and, therefore, with each other on the majority of domestic regulatory provisions, thus signaling APEC's placement as a catalyst in this space. However, the one area where there is not clear convergence is that of transparency, in which some APEC economies seem to diverge in terms of the depth and ambition of the agreed disciplines depending on their involvement or non-involvement in the different initiatives. Future initiatives such as the WTO JSI may offer an opportunity to address that divergence.

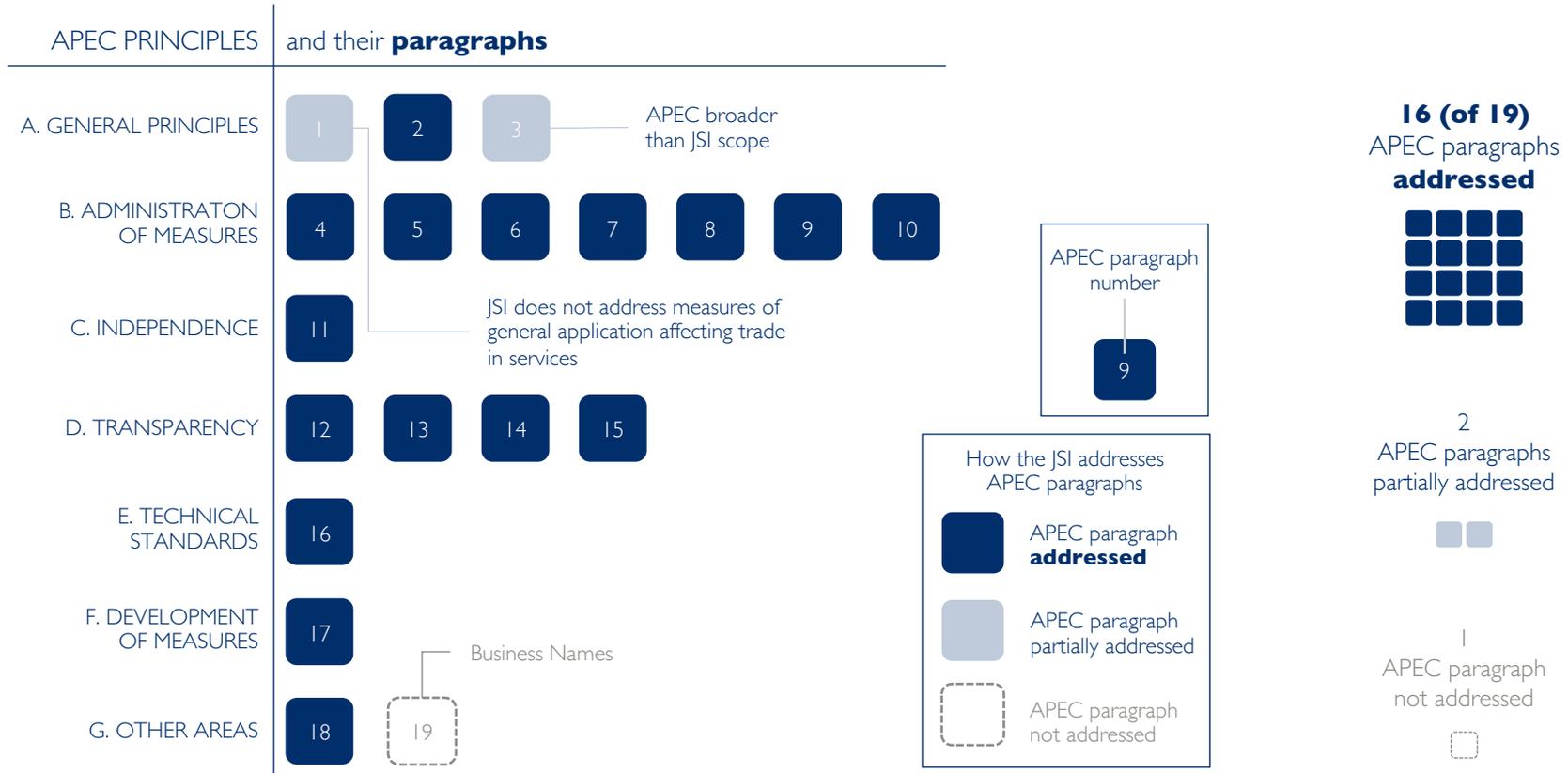
The Annex: **How five free trade agreements address the APEC Non-binding Principles for Domestic Regulation of the Services Sector** introduces a multi-agreement summary chart to complement this section. Together, these components will invite readers to reflect on a set of

conclusions to stimulate debate within and between member economy governments towards the construction of a more coherent, reasonable, transparent, and objective regulatory landscape in the Asia-Pacific region and beyond.



APEC and the JSI:

How the WTO-based plurilateral Joint Statement Initiative (“JSI”) on Services Domestic Regulation addresses the APEC Non-binding Principles for Domestic Regulation of the Services Sector



THE WTO-BASED PLURILATERAL – JOINT STATEMENT INITIATIVE (JSI) ON DOMESTIC REGULATIONS

At the World Trade Organization’s (WTO) Eleventh Ministerial Conference in December 2017, 59 members sponsored a joint Ministerial Statement on Services Domestic Regulations.¹¹ Further, in May 2019, ministers gathering on the sidelines of OECD meetings confirmed their commitment to deliver a “meaningful outcome” by the upcoming 12th WTO Ministerial Conference (MC12) in November and December 2021.¹²

Currently, 63 WTO members¹³ accounting for over 70 percent of world services trade participate in the JSI negotiations, including the APEC members of Australia; Canada; Chile; China; Hong Kong, China; Japan; Korea; Mexico; New Zealand; Peru; Russia; Chinese Taipei; and Thailand. Furthermore, 56 participants have already submitted services schedules reflecting additional commitments on domestic regulations. The goal is to reach a successful conclusion of the trade talks by the start of the MC12.

In terms of the comparative analysis between the JSI and the APEC Non-Binding Principles (APEC NBPs), the initial observations are the following:

First, they differ in scope. While the APEC NBPs apply to the entirety of the domestic regulations universe (measures of general application affecting trade in services, licensing procedures and requirements, qualification procedures and requirements, and technical standards), the JSI only applies to licensing procedures (LP), licensing requirements (LR), qualification procedures (QP), qualification requirements (QR), and technical standards. This shows how far APEC economies are willing to go in terms of developing disciplines that are broad in scope, while retaining their non-binding nature.

Likewise, since the JSI is negotiated under a plurilateral/reference paper scheme, WTO members are currently preparing and submitting revised services schedules reflecting additional commitments on domestic regulations consistent with the scope and content of the JSI. Given the non-binding nature of APEC, a similar process is not expected to take place under the APEC NBPs. Furthermore, the additional commitments inscribed in virtue of the JSI will be subject to the WTO Dispute Settlement. By

¹¹ World Trade Organization, “Joint Ministerial Statement on Services Domestic Regulation,” WTO document WT/MIN/(17)/61, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=240862,240867,240868,240870,240871,240899,240875,240874,240878,240877&CurrentCatalogueIdIndex=5&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False.

¹² World Trade Organization, “Joint Ministerial Statement on Services Domestic Regulation,” WTO document WT/L/1059, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=254425,254414,254405,254435,254436,254437,254426,254434&CurrentCatalogueIdIndex=7&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False

¹³ Albania; Argentina; Australia; Austria; Belgium; Brazil; Bulgaria; Canada; Chile; China; Colombia; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; El Salvador; Estonia; European Union; Finland; France; Germany; Greece; Hong Kong, China; Hungary; Iceland; Ireland; Israel; Italy; Japan; Kazakhstan; Korea; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Mauritius; Mexico; Moldova; Montenegro; Netherlands; New Zealand; Nigeria; North Macedonia; Norway; Paraguay; Peru; Poland; Portugal; Romania; Russia; Saudi Arabia; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Chinese Taipei; Thailand; Turkey; Ukraine; United Kingdom; and Uruguay (Source, World Trade Organization)

contrast, the APEC NBPs cannot be formally enforced. Indeed, under APEC, perception by regional peers is the main incentive for voluntary compliance.

Beyond these scope and design-related differences, the level of convergence between the JSI and the APEC NBPs is quite high. The similarity is even reflected in the naming of the paragraphs under the JSI vis à vis the APEC NBPs. This speaks clearly to the pollination effect coming from APEC into the WTO and other regional trade agreements (as the report will later illustrate). Indeed, the JSI addresses all seven of the APEC NBPs principles and 18 of 19 of the APEC NBPs specific paragraphs. The only paragraph not addressed by the JSI is APEC NBPs Paragraph 19, Business Names, which is consistent with the differences in scope between the two initiatives (the APEC NBPs are broader).

Other differences are concentrated in the characterization of the legal standard applicable to the disciplines. For instance, APEC NBPs Paragraph 7, Processing of Applications uses the expression “the competent authorities of that APEC Economy should ensure,” whereas the JSI uses the “shall ensure that its competent authorities” (referring to the WTO member). Therefore, the JSI uses a stronger legal standard. Likewise, regarding APEC NBPs Paragraph 16 on technical standards, while the APEC NBPs uses the term “should encourage,” the JSI uses “shall encourage” which is legally stronger. However, provisions under the JSI and the APEC NBPs are quite similar considering that none provides for shall or should alone but rather, softened by the term “encourage.” Likewise, under APEC NBPs Paragraph 17 on development of measures, the applicable legal standard is “should ensure,” whereas under the equivalent JSI provision is “shall ensure,” which creates a legally stronger discipline.

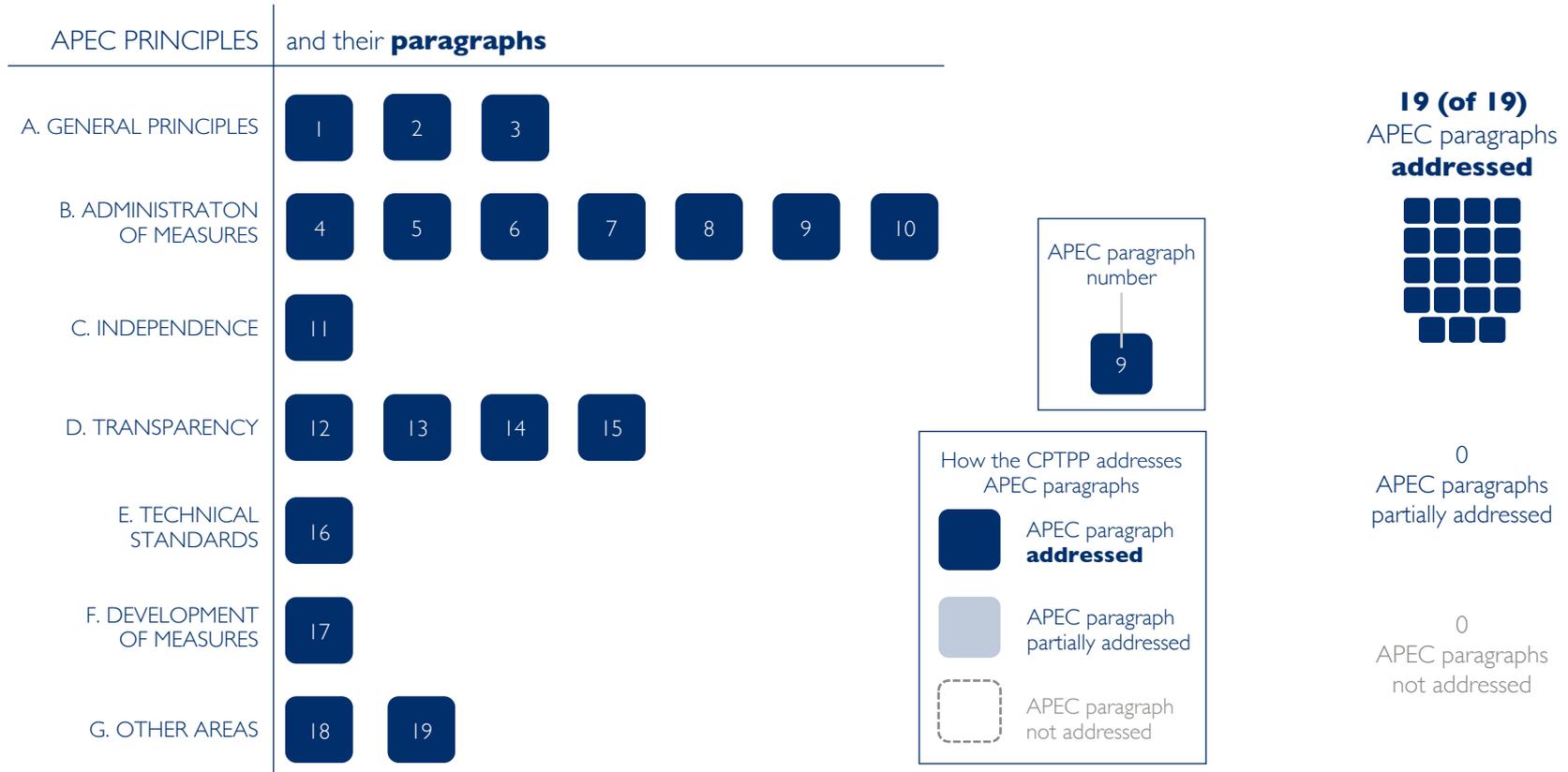
Section III of the JSI on financial services provides for a specific set of domestic regulations rules applicable to these services, excluding technical standards, and adopting a legal standard of “to the extent practicable,” which introduces additional flexibilities to the disciplines described therein. As we will see later in the report, this is consistent with practice under regional trade agreements. On the other hand, the APEC NBPs do not include a dedicated section on financial services, but, overall, it uses softer legal standards, and thus, a specific section is not needed.

In sum, the APEC NBPs and the JSI show a high degree of convergence within a similar scope of application (LP, LR, QP, QR, and technical standards), although the APEC NBPs are broader in scope. In terms of the strength of the legal obligations, although there are differences (the JSI contains stronger language for at least three provisions), the “gap” between the initiatives is relatively small—in no case involving a move from purely soft to hard language. Finally, because the JSI is a WTO based initiative, it allows members to enhance their schedules of commitments under the WTO General Agreement on Trade in Services (GATS), which are enforceable under the Dispute Settlement Understanding (DSU)



APEC and the CPTPP:

How the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”) addresses the APEC Non-binding Principles for Domestic Regulation of the Services Sector



THE COMPREHENSIVE AND PROGRESSIVE TRANSPACIFIC PARTNERSHIP AGREEMENT (CPTPP)

The CPTPP is a free trade agreement comprising eleven economies (Australia; Brunei Darussalam; Canada; Chile; Japan; Malaysia; Mexico; New Zealand; Peru; Singapore; and Viet Nam) all of which are also members of APEC. The CPTPP was signed on March 8, 2018 and entered into force among the first six parties to have ratified it (Australia; Canada; Japan; Mexico; New Zealand; and Singapore) on December 30, 2018. On January 14, 2019, the CPTPP entered into force for Viet Nam, and on February 1, 2021, the United Kingdom formally applied for membership.

The 11 signatories have combined economies representing 13.5 percent of global GDP, at approximately US\$13.5 trillion, making the CPTPP one of the world's largest free-trade areas by GDP, along with the United States–Mexico–Canada Agreement, the European Single Market, and the Regional Comprehensive Economic Partnership.¹⁴

In terms of the comparison between CPTPP and the APEC NBPs, our initial observations are the following:

Overall, the CPTPP addresses all seven principles in the APEC NBPs as well as all 19 of the APEC NBPs paragraphs. Indeed, regarding the topics addressed in APEC NBPs Principle A, General Principles, paragraphs 1–3, the CPTPP covers the full range of domestic regulations related measures (administration of measures of general application affecting trade in services; licensing requirements and procedures; qualification requirements and procedures; and technical standards).

Moreover, there are some specific areas, most notably, APEC NBPs Principle D, Transparency, where CPTPP coverage is more expansive than its APEC NBPs counterpart provision.¹⁵ However, with respect to the specific transparency rules concerning financial services, the CPTPP relaxes the legal standard applicable to the rest of the agreement from “to the extent possible” to “to the extent practicable.”

Regarding APEC NBPs Principle B, Administration of Measures, paragraphs 4–10, CPTPP uses stronger legal language to characterize the disciplines, mainly by using “shall” instead of “should” as well as “shall, to the extent practicable” instead of “should, to the extent practicable.” Such references can be found in at least three different chapters in the CPTPP (covering cross-border trade in services, financial services, and telecommunications).

On APEC NBPs Principle E, Technical Standards, paragraph 16, the CPTPP addresses the subject matter under the chapters on cross-border trade in services and telecommunications. The legal standard uses the expression “shall endeavor to ensure” which is stronger than the “should encourage” wording used in APEC NBPs Principle E.

¹⁴ Government of Canada, “Benefits of the CPTPP for Nunavut”, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/regions/NU.aspx?lang=eng>

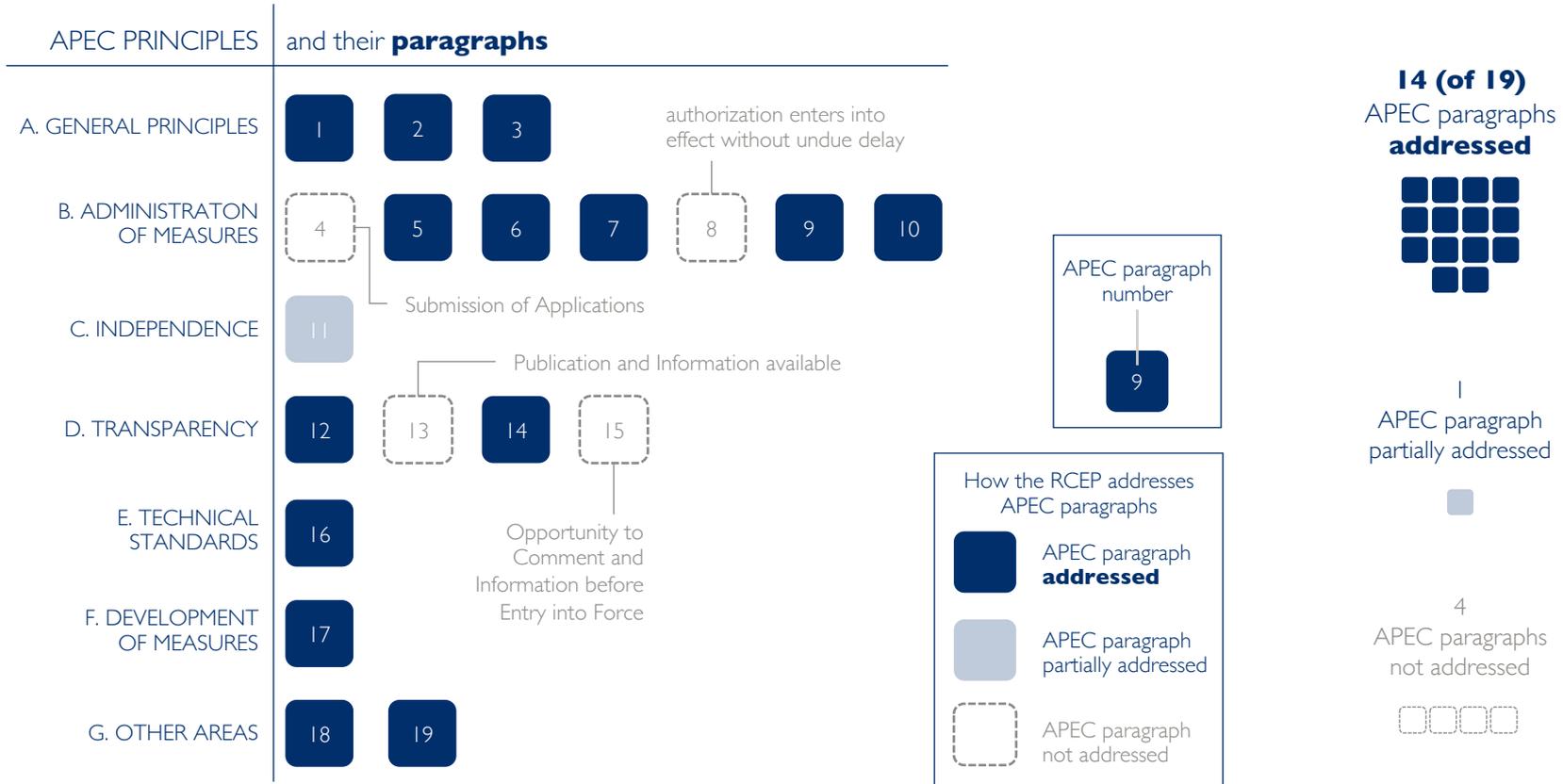
¹⁵ For more information, see *Study on APEC's Non-binding Principles for Domestic Regulation of the Services Sector. Transparency and Predictability in Rulemaking*, APEC, January 2020, <https://www.apec.org/Publications/2020/01/Study-on-APECs-Non-binding-Principles-for-Domestic-Regulation-of-the-Services-Sector..>

Finally, with regard to APEC NBPs Principle G, Other Areas, Paragraph 18 on recognition, the CPTPP addresses the subject matter under its chapter on cross-border trade in services, in both the main text (Art. 10.9, Recognition), and more specifically in Annex 10.A on professional services. Indeed, under Annex 10.A, the CPTPP provides details on recognition efforts in the areas of engineering, architectural, and legal services, and establishes a dedicated working group.



APEC and the RCEP:

How the Regional Comprehensive Economic Partnership (“RCEP”) addresses the APEC Non-binding Principles for Domestic Regulation of the Services Sector



THE REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP)

The Regional Comprehensive Economic Partnership (RCEP) is a free trade agreement between the APEC member economies of Australia; Brunei Darussalam; China; Indonesia; Japan; Malaysia; New Zealand; the Philippines; Singapore; Korea; Thailand; and Viet Nam, as well as non-APEC members Cambodia; Laos; and Myanmar. It unifies the pre-existing bilateral agreements between the 10-member Association of Southeast Asian Nations (ASEAN)¹⁶ and five of its major trade partners.¹⁷ The RCEP was signed on November 15, 2020 at a virtual ASEAN summit hosted by Viet Nam.

The 15 member economies in RCEP account for about 30 percent of the world's population (2.2 billion people) and 30 percent of global GDP (\$26.2 trillion) as of 2020, making it the biggest trade bloc in history.¹⁸

In terms of the comparison between RCEP and the APEC NBPs, our initial observations are the following:

First, we can find elements pertaining to the APEC NBPs in at least three different chapters of the RCEP: Trade in Services (including the annexes on financial services, telecommunications, and professional services); Small and Medium Enterprises; and Institutional Provisions. Second, the RCEP addresses or partially addresses 15 of the 19 the APEC NBPs specific paragraphs, while not referring to four APEC NBPs specific paragraphs (Paragraphs 4, 8, 13 and 15).

In particular, regarding APEC NBPs, Principle B, Administration of Measures, Paragraph 4 on submission of applications, RCEP does not include an equivalent provision referring to the avoidance of requiring an applicant to approach more than one competent authority for each application for authorization. Although the absence of this provision does not impose a limitation on the ability of RCEP members to implement such trade facilitating measures, it does diminish RCEP's ability to provide its members with further certainty and predictability.

Likewise, while APEC NBPs, Principle B, Administration of Measures, Paragraph 8 refers to "authorisations entering into effect without undue delay," the RCEP is silent on that point. This does not necessarily mean that under the RCEP authorizations will not enter into effect without undue delay, but it waives the duty of the competent authority to ensure that it happens.

Additionally, regarding APEC NBPs, Principle D, Transparency, Paragraphs 13 and 15, RCEP does not explicitly include them. Paragraph 13 refers to a type of transparency that is specific to authorizations and provides a list of relevant information that should be included. While the absence in the RCEP of this specific reference does not automatically mean that the said relevant information will not be promptly published, it does imply less transparency and predictability than if such provision was included.

¹⁶ The ASEAN members are Brunei Darussalam; Cambodia; Indonesia; Laos; Malaysia; Myanmar; the Philippines; Singapore; Thailand; and Viet Nam.

¹⁷ Australia; China; Japan; New Zealand; and Korea.

¹⁸ P. Petri and M. Plummer, "RECP: A New Trade Agreement that Will Shape Global Economics and Politics," *Southeast Asia Insights* (blog), Brookings Institution, November 16. <https://www.brookings.edu/blog/order-from-chaos/2020/11/16/rcep-a-new-trade-agreement-that-will-shape-global-economics-and-politics/>.

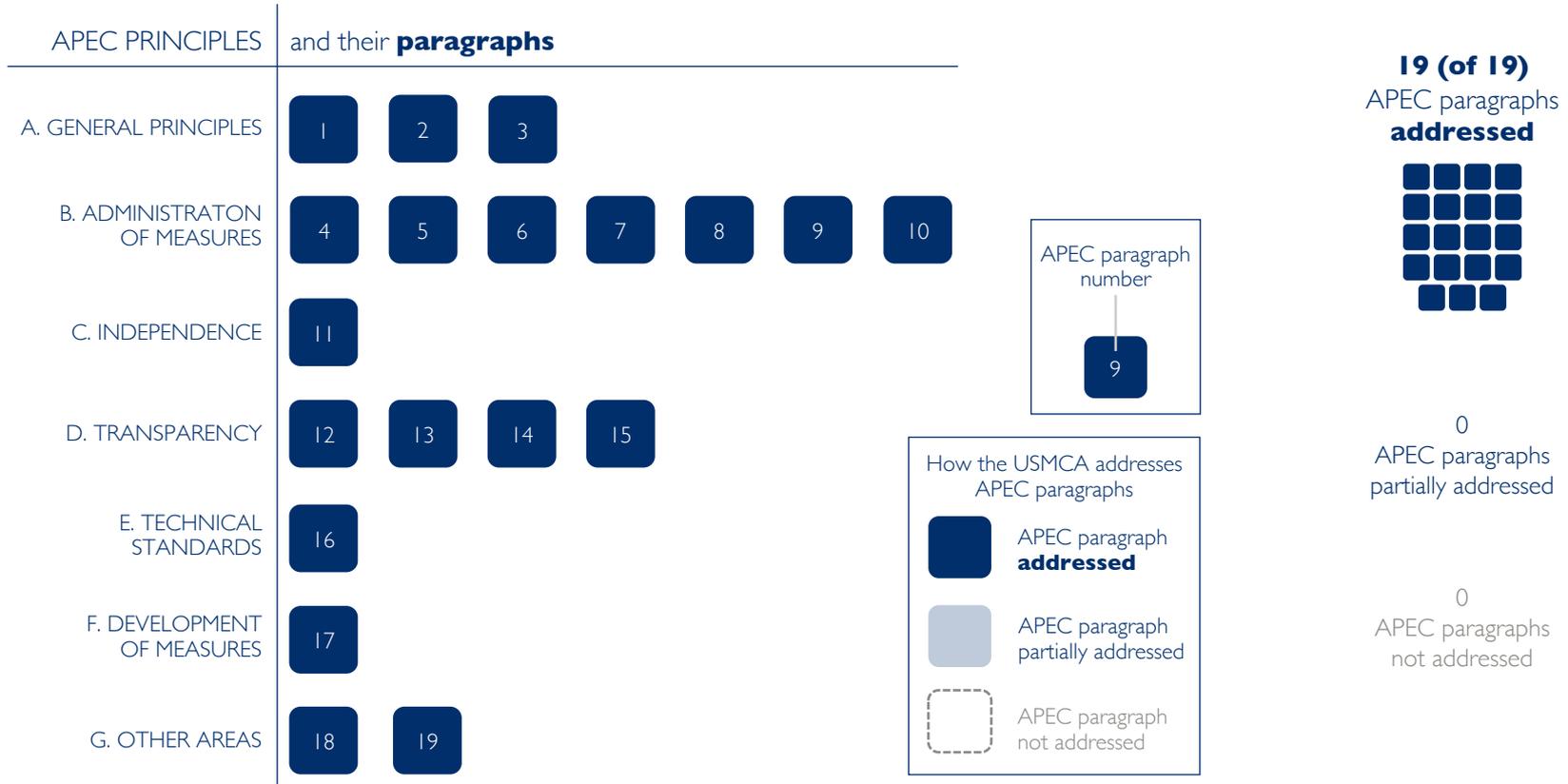
In the case of APEC NBPs Paragraph 15, which addresses opportunity to comment and information before entry into force, the absence of an equivalent provision under the RCEP is significant in terms of the overall level of participation of interested persons (mostly nongovernmental actors and members of the business community) which is severely limited. Moreover, the absence of such provision leaves RCEP behind the developments not just under APEC, but also compared to other relevant trade initiatives included in this report.

Finally, regarding the partially addressed APEC NBPs, Principle C, Independence, Paragraph 11, while RCEP does not include an equivalent provision under the main section of the chapter on trade in services, it does include a provision under Annex B, Telecommunications (art. 12). By doing this, RCEP members have limited the application of the principle to a subset of services-related measures.



APEC and the USMCA:

How the United States–Mexico–Canada Agreement (“USMCA”) addresses the APEC Non-binding Principles for Domestic Regulation of the Services Sector



Sources:
Study on APEC's Non-binding Principles for Domestic Regulation of the Services Sector (January 2020);
United States–Mexico–Canada Agreement; (design by Nathan)

THE UNITED STATES-MEXICO-CANADA AGREEMENT (USMCA)

The USMCA, signed on November 30, 2018 and which entered into force on July 1, 2020, reflects the updated trade policy approach adopted by the United States and its North American trade partners, Canada and Mexico. Indeed, the USMCA replaced the original North American Free Trade Agreement (NAFTA) which entered into force in 1994.

Our initial observations from comparing the USMCA and the APEC Non-Binding Principles for Domestic Regulation of the Services Sector are as follows:

The USMCA includes provisions dealing with domestic regulations in at least seven chapters of the agreement (i.e., the chapters on cross border trade in services, financial services, telecommunications, small and medium-sized enterprises, good regulatory practices, publication and administration, and administrative and institutional provisions). Furthermore, the USMCA addresses all 19 of the APEC NBPs specific paragraphs under the seven APEC NBPs Principles.

For instance, in terms of scope, the USMCA is equivalent to all three items covered under APEC NBPs Principle A, General Principles, as the USMCA applies to the whole universe of domestic regulations (administration of measures of general application affecting trade in services; licensing requirements and procedures; qualifications requirements and procedures; and technical standards).

Likewise, regarding APEC NBPs Principle D, Transparency, Paragraphs 12–15, and Principle C, Independence, Paragraph 11, the USMCA builds on the APEC NBPs. Indeed, the USMCA addresses this topic under Cross Border Trade in Services (art. 15.8), the Annex on 15.A on Delivery Services, and Telecommunications (art. 18.17). Further, in the case of telecommunications, the USMCA provision also refers to the Parties' obligation to ensure that the "telecommunications regulatory body is separate from, and not accountable to, a supplier of public telecommunications services."

Further on the APEC NBPs Principle D, Transparency, in addition to addressing the content of APEC NBPs Paragraphs 12–15 across the seven USMCA chapters mentioned above, the USMCA also includes a relevant chapter on good regulatory practices. That chapter represents the most advanced set of rules reflecting a comprehensive approach to procedural transparency and rulemaking. Indeed, the USMCA, the EU-UK TCA, and the CPTPP address the subject matter of APEC NBPs paragraphs 12–15 using a similar approach. However, the USMCA raises the standard through its chapter on good regulatory practices.¹⁹

The USMCA addresses APEC NBPs Principle B, Administration of Measures, Paragraphs 4–7, across five chapters in the agreement (Cross Border Trade in Services, Financial Services, Telecommunications, Small and Medium-Sized Enterprises, and Publication and Administration). In particular, Article 15.8, (Development and Administration of Measures) of the USMCA chapter on cross border trade in

¹⁹ The USMCA chapter on regulatory coherence provides a comprehensive approach to transparency and predictability in rulemaking that goes beyond the content of APEC NBPs Principle, D, Transparency. For further information see *Study on APEC's Non-binding Principles for Domestic Regulation of the Services Sector. Transparency and Predictability in Rulemaking*, APEC, January 2020, <https://www.apec.org/Publications/2020/01/Study-on-APECs-Non-binding-Principles-for-Domestic-Regulation-of-the-Services-Sector>.

services uses language that creates stronger legal standards by replacing “should” with “shall”; “should encourage” with “shall encourage”; and “should, to the extent practicable” with “shall to the extent practicable.” By doing this, as shown in previous analyses, the USMCA introduces a stronger legal standard and, thus, establishes a more binding principle.

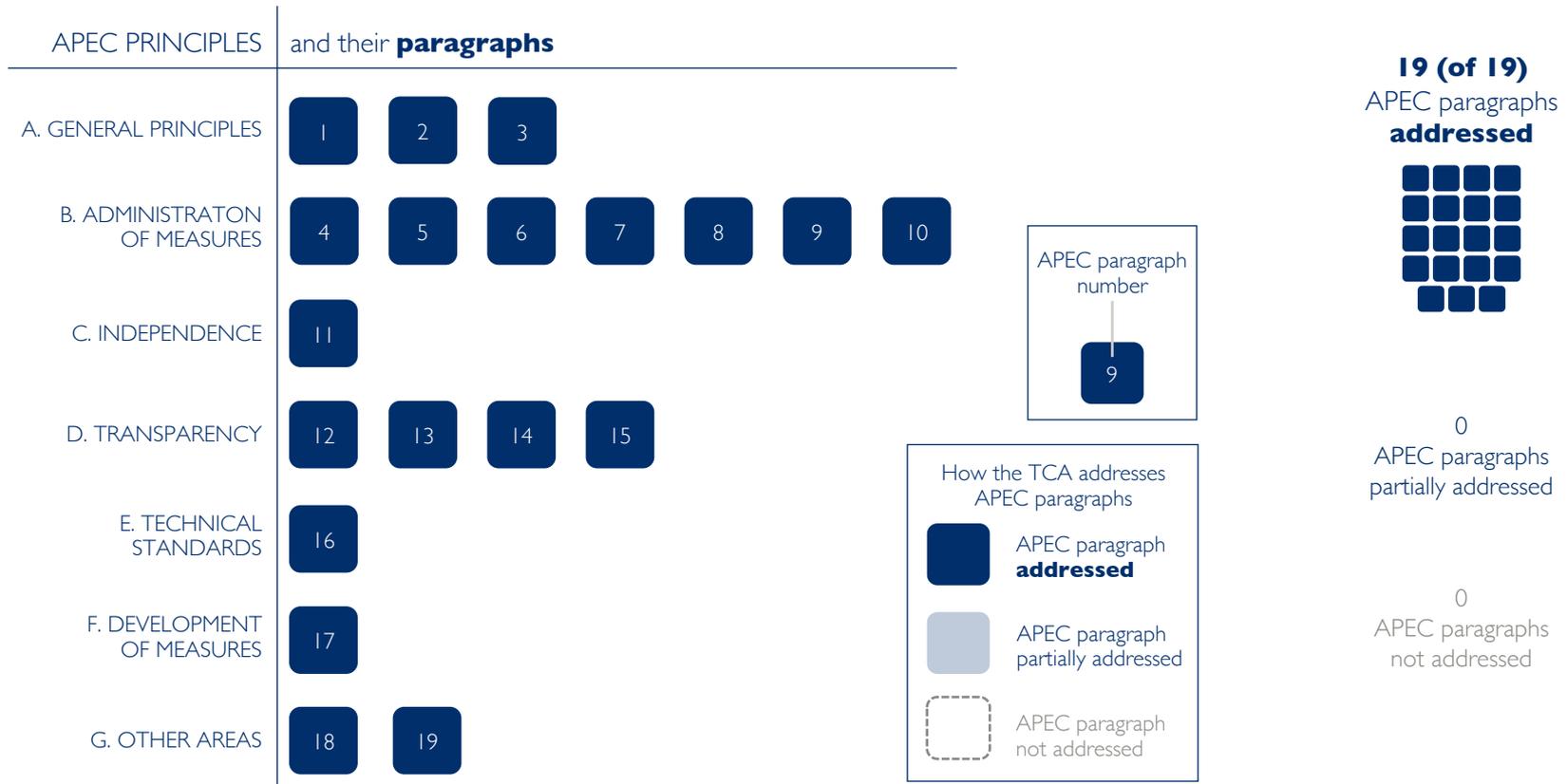
The content of APEC NBPs Principle E, Technical Standards, Paragraph 16, is addressed in Article 18.8 of the USMCA chapter on cross-border trade in services. Article 15.8, Development and Administration of Measures, uses “shall” instead of the “should” wording included in the APEC NBPs. By doing so, the USMCA introduces a stronger legal standard to the principle/discipline.

Finally, regarding APEC NBPs Principle G, Other Areas, Paragraph 18 on recognition, the USMCA addresses this topic in Article 15.9, Annex 15-C on professional services, and Appendix I (Guidelines for Mutual Recognition Agreements or Arrangements for the Professional Services Sector). Moreover, Appendix I provides detailed step-by-step guidelines for conducting negotiations of mutual recognition agreements, including institutional arrangements, form and content of the agreements, scope, provisions, eligibility for recognition and qualification, and implementation mechanisms.



APEC and the TCA:

How the EU-UK Trade and Cooperation Agreement (“TCA”) addresses the APEC Non-binding Principles for Domestic Regulation of the Services Sector



THE EUROPEAN UNION – UNITED KINGDOM TRADE AND COOPERATION AGREEMENT (TCA)

The EU–UK Trade and Cooperation Agreement (TCA) is a free trade agreement signed on 30 December 2020, between the European Union (EU), the European Atomic Energy Community (Euratom), and the United Kingdom (UK). It applied provisionally from January 1, 2021, when the Brexit transition period ended, and formally entered into force on May 1, 2021.²⁰

The comparative analysis between the TCA and the APEC NBP has yielded the following initial observations:

Relevant provisions relating to domestic regulations can be found in at least seven titles or chapters across the TCA, namely: Cross Border Trade in Services; Financial Services; Telecommunication Services; Small and Medium Sized Enterprises; Good Regulatory Practices and Regulatory Cooperation; and Transparency.

Overall, the EU-UK TCA addresses all 19 APEC NBPs specific paragraphs across all seven APEC NBPs principles. At a first glance, however, it would appear that the TCA would only partially cover APEC NBPs Principle A, General Principles, Paragraphs 1 and 3, given the limited scope of TCA Chapter 5, Regulatory Framework, Section 1, on domestic regulation (which refers only to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards). However, the topics covered in APEC NBPs paragraphs 3, 12, 14, and 15 are otherwise addressed under the TCA Title IX, Transparency, and Title X, Good Regulatory Practices and Regulatory Cooperation.

Furthermore, Titles IX and X of the TCA, when read in conjunction with TCA Title II, Chapter 5, Regulatory Framework, Section 1 on domestic regulation is a significant enhancement to APEC NBPs Principle D, Transparency—especially considering that Title X of the TCA on good regulatory practices and regulatory cooperation is clearly inspired in the CPTPP chapter on regulatory coherence.²¹

Likewise, the TCA goes beyond the APEC NBPs with respect to APEC NBPs Principle C, Independence, paragraph 11. Indeed, the TCA goes further by addressing both the way in which the competent authority reaches and administers its decisions, and by describing the competent authority as being “legally distinct from and functionally independent from any supplier of services” for both Delivery Services and Telecommunications Services as defined in the TCA. However, there is no equivalent APEC NBPs provision to TCA Title II, Chapter 5, Regulatory Framework, Section 1, Domestic Regulation.

²⁰ EU-UK Trade and Cooperation Agreement, homepage at https://ec.europa.eu/info/relations-United-Kingdom/eu-uk-trade-and-cooperation-agreement_en, and full text available for download at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2020.444.01.0014.01.ENG.

²¹ The chapter on regulatory coherence provides a comprehensive approach to transparency and predictability in rulemaking, beyond the content of APEC NBPs, Principle D, Transparency. For further information see *Study on APEC's Non-binding Principles for Domestic Regulation of the Services Sector. Transparency and Predictability in Rulemaking*, APEC, January 2020, <https://www.apec.org/Publications/2020/01/Study-on-APECs-Non-binding-Principles-for-Domestic-Regulation-of-the-Services-Sector>.

Additionally, regarding APEC NBPs, Principle E, Paragraph 16 (technical standards), the TCA addresses the topic using language that is legally stronger than the approach in the APEC NBPs. Indeed, while the APEC NBPs uses the expression “should encourage its competent authorities,” the TCA uses “shall encourage its competent authorities.” Likewise, under the APEC NBPs, Principle F, Development of Measures, Paragraph 17, economies have used the expression “should ensure that”; while under the TCA, Parties have used the expression “shall ensure that.” By using the term “shall” the TCA introduces a stronger legal standard (more binding) than the equivalent provisions under the APEC NBPs.

A comparable analysis yields similar results with respect to APEC NBPs Principle B, Administration of Measures, Paragraphs 4, 5, and 6. Under those provisions, economies have used the expression “should, to the extent practicable” (concerning Paragraph 4 (submission of applications) and Paragraph 5 (application timeframes)), and have used “should endeavor” or “should” concerning paragraph 6 on electronic applications and acceptance of copies). In contrast, the TCA replaces the use of the voice “should” with “shall”, thus, introducing a stronger legal standard (more legally binding provision) than the comparable paragraphs under the APEC NBPs.

Finally, regarding APEC NBPs Principle G, Other Areas, Supporting Recognition, the TCA introduces a comprehensive and innovative approach to the negotiation and implementation of mutual recognition arrangements in its Annex Servin-6: Guidelines for Arrangements on the Recognition of Professional Qualifications.

CONCLUSIONS

Global trade in services has been growing faster than trade in goods in recent years, including through the development of new technologies that increasingly facilitate cross-border supply of services. This is particularly apparent in the Asia-Pacific region, where growth strategies across economies have placed services at the forefront of the policy agenda, and where the COVID-19 pandemic has augmented such strategies with the acceptance, adoption, and greater reliance on emerging technologies. Streamlining of services domestic regulations could potentially reduce trade costs in the APEC region by an average of 7 percent across sectors and economies in the medium term (after 3–5 years). Lower trade costs would have the greatest impact on highly regulated sectors where licensing, registration processes, and recognition of qualifications are prominent.²²

Accordingly, trade negotiations involving services have increasingly focused their attention on the regulatory aspects affecting services and service providers, as a necessary complement to the traditional market access-focused approach. In this regard, APEC has made a significant contribution by developing the APEC Non-Binding Principles for Domestic Regulation of the Services Sector (APEC NBP), a set of seven principles discussed in 19 specific paragraphs.

There seems to be a verifiable trend in the Asia-Pacific region towards convergence on domestic regulations principles and disciplines. As shown in Annex I: Summary Visualization, the CPTPP, RCEP, and USMCA score 19/19; 15/19; and 19/19 respectively on addressing the topics covered in the paragraphs of the APEC NBPs. Likewise, the visualization reveals the pending challenges under some of the APEC NBPs, particularly regarding Principle D, Transparency. Indeed, this is one area in which some APEC economies seem to diverge in terms of the depth and ambition of the agreed principles/disciplines.

The work of APEC has influenced trade initiatives beyond the Asia-Pacific region. Indeed, there is strong substantive correlation between the APEC NBPs the JSI, and the EU-UK TCA initiatives. Such pollination effect can be observed, *inter alia*, in the use of equivalent denominations to individualize their respective provisions. Likewise, regarding content, the main difference remains the use of different legal standards—i.e., “should,” “should encourage,” or “should encourage to the extent practicable” under APEC NBPs, as opposed to “shall,” “shall encourage,” or “shall encourage to the extent practicable” under the JSI and the EU-UK TCA. Moreover, in terms of coverage, the JSI addresses 18 of the 19 APEC NBPs paragraphs and the EU-UK TCA addresses all 19 (see **Annex: How five free trade agreements address the APEC Non-binding Principles for Domestic Regulation of the Services Sector**).

Therefore—and particularly in the comparison between the APEC NBPs and the JSI—the existing challenges do not seem to be of a nature that would impede the remaining seven APEC economies that are not currently participating in the WTO-based discussions to consider joining discussions before the finalization of the process and the next WTO Ministerial Conference.

²² OECD, *OECD Services Trade Restrictiveness Index: Policy Trends up to 2021*. Paris: OECD. February. <https://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-policy-trends-2021.pdf>

In some areas, some APEC economies have advanced their efforts well beyond the APEC NBPs. For instance, regarding APEC NBPs Paragraph 18 on supporting recognition efforts, the USMCA and the EU-UK TCA include specific annex material dealing with recognition efforts for professional services, followed by a set of guidelines for mutual recognition agreements or arrangements for the professional services sector. Such instruments provide step-by-step guidelines for negotiating mutual recognition agreements (MRAs). Likewise, the CPTPP, while not including a set of specific guidelines, does have an annex on professional services with a specific focus on engineering, architectural, and legal services.

The one area where APEC economies seem to diverge in terms of demonstrated levels of ambition is APEC NBPs Principle D, Transparency. While economies have been willing to agree on a more general non-binding set of principles, their approaches to transparency under regional trade initiatives do not always converge. For instance, while under the RCEP members do not address APEC NBPs paragraphs 13 (on publication and information available) and 15 (on opportunity to comment and information before entry into force), under the CPTPP and the USMCA, some APEC economies have included a strong set of additional procedural transparency disciplines through chapters on transparency, good regulatory practices, and/or regulatory coherence. Indeed, while these additional efforts do not diminish the intrinsic and practical value of APEC's work, they do highlight the areas in which further efforts may be required to deepen the overall trend towards regulatory convergence in the Asia-Pacific region.

In sum, this report demonstrates how far APEC economies have moved towards greater convergence in domestic regulation rulemaking, and how APEC's non-binding nature can influence negotiation processes and domestic regulatory reform within the Asia-Pacific region and beyond. APEC is running at the front and perhaps even leading the way. As a leader in this space, APEC can play an influential role in building members' capacity to undertake modern services domestic regulation provisions in trade agreements and in promoting awareness of good practices in domestic regulation of the services sector, which in turn can empower APEC economies to participate in ongoing and upcoming initiatives like the JSI.

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How five free trade agreements address the APEC Non-binding Principles for Domestic Regulation of the Services Sector

APEC NON-BINDING PRINCIPLES and their 19 paragraphs

A. GENERAL PRINCIPLES

1. General Principles
2. General Principles
3. General Principles

B. ADMINISTRATION OF MEASURES

4. Submission of Applications
5. Application Timeframes
6. Electronic Applications and Acceptance of Copies
7. Processing of Applications
8. Processing of Applications
9. Fees
10. Examinations

C. INDEPENDENCE

11. Independence

D. TRANSPARENCY

12. Publication and Information available
13. Publication and Information available
14. Enquiry Points
15. Opportunity to Comment and Information before Entry into Force

E. TECHNICAL STANDARDS

16. Technical Standards

F. DEVELOPMENT OF MEASURES

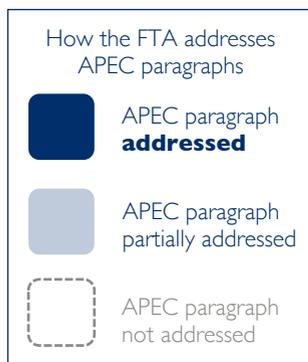
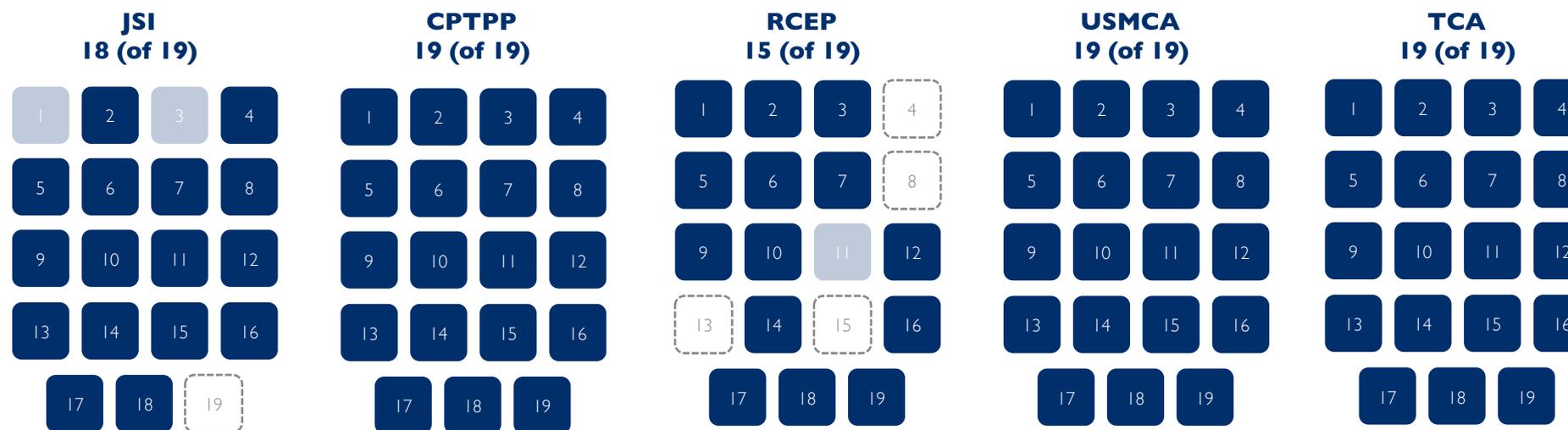
17. Development of Measures

G. OTHER AREAS

18. Supporting recognition efforts
19. Business Names



How many of the **19 APEC NBP paragraphs** does the **FTA** address or partially address?



NBP	APEC's Non-binding Principles for Domestic Regulation of the Services Sector
FTA	Free Trade Agreement
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
JSI	WTO-based plurilateral Joint Statement Initiative on Services Domestic Regulation
RCEP	Regional Comprehensive Economic Partnership
TCA	EU-UK Trade and Cooperation Agreement
USMCA	United States–Mexico–Canada Agreement