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# **APEC and Domestic Regulations: U.S. Private Sector Perspective**

APEC WORKSHOP ON DEVELOPING A SET OF NON-BINDING PRINCIPLES FOR DOMESTIC REGULATION OF THE SERVICES SECTOR

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# Who is the Coalition of Services Industries?

CSI represents the interests of all sectors of the U.S. service economy. Our members include companies, trade associations, and professional associations. CSI represents the broad array of U.S.-based entities that provide services domestically and internationally, including but not limited to, digital trade and technology, telecommunications, media and entertainment, express delivery and logistics, retail and wholesale services, banking, insurance, and other services. Our member companies are represented in almost every congressional district in the United States.

## Members

21<sup>st</sup> Century Fox

Aflac

AIG

Amazon

American Council of Life Insurers

American Insurance Association

Amway

AT&T

BSA |The Software Alliance

Chubb Corporation

CISCO

Citi

Deloitte

Direct Sellers Association

eBay

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IBM

JPMorgan Chase

King & Spalding

Liberty Mutual

MasterCard

MetLife

Microsoft

Motion Picture Association of America

Oracle

Property Casualty Insurers Association of America

Reinsurance Group of America, Inc.

Reinsurance Association of America

The Walt Disney Company

UPS

Verizon

Visa International

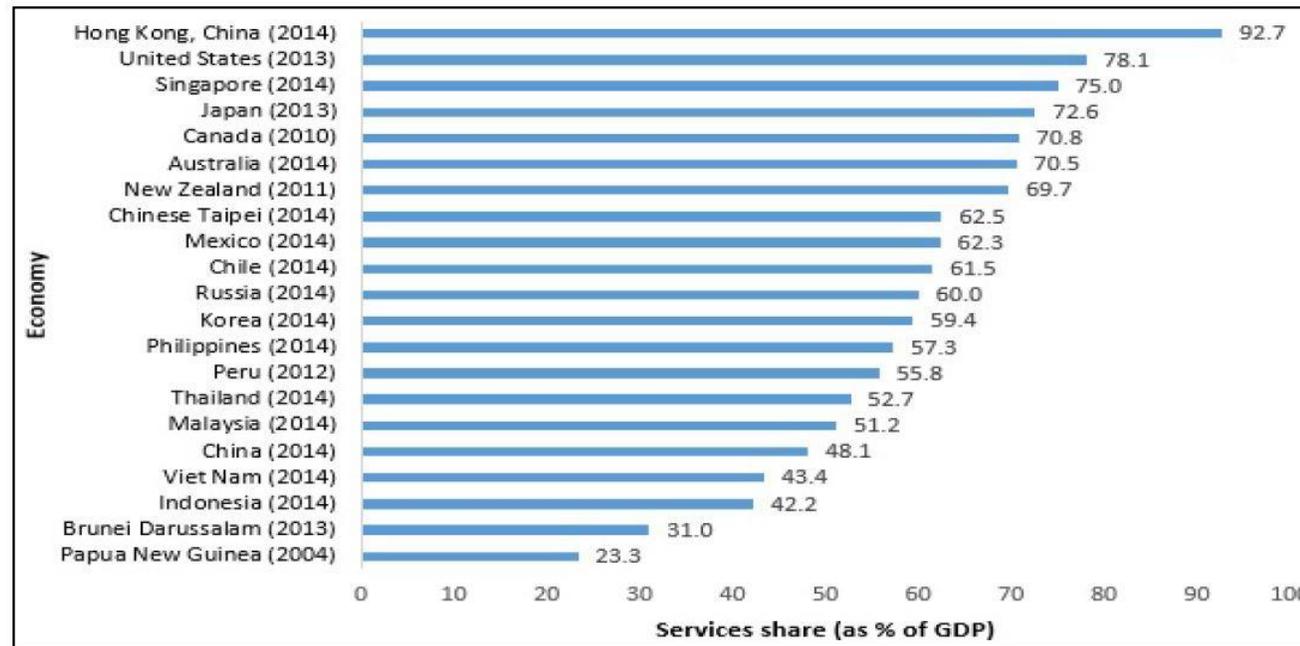
Walmart

White and Case

# Services are a majority of APEC countries' GDP

- Services account for 50+ percent of GDP in developing APEC members and 70+ percent in developed members.
- The share of employment in services across 14 APEC countries is 64 percent.

*Share of services in GDP in APEC countries*



- The trend towards “servicification” of production – a rising share of the value-added embedded in a product reflecting services – implies that services are more critical for economic development than in the past. This particularly true in manufacturing where 25 to 49 percent of the value of input is accounted for by services.

# Services & the Digital Economy

- The digital economy is a major force behind the growth and innovation of services trade across APEC economies and globally. Cross-border e-commerce is estimated to represent between 10 to 15 % of total global e-commerce and is forecast to grow from about \$80 billion in 2014 to as high as \$350 billion by 2025.  
(source: ITC)
- With continuing innovation in digital technologies and the rise of emerging economies, global services trade flows could nearly triple by 2025. Economies that have more connections to the digital economy are likely to enjoy up to 40% more benefit from participation than economies that are less connected.  
(source: McKinsey Global Institute, *Global flows in a digital age, How trade, finance, people, and data connect the world economy*, 2014)
- Digitally enabled services are at the heart of the digitization of trade through:
  - Creation of purely digital goods and services that are either transformations of physical flows of trade or are entirely new products,
  - Development of “digital wrappers”, typically a combination of technology that is embedded in products that generates data that is analyzed and sent back to users/ consumers,
  - Development of digital platforms, software and digitally enabled services (eg cloud services) that facilitate cross-border production and exchange.  
(source: McKinsey Global Institute, *Global flows in a digital age, How trade, finance, people, and data connect the world economy*, 2014)

# Government Right to regulate is firmly established

- The right to regulate is well recognized in the GATS and in trade agreements whether purpose is to promote public welfare objectives, prevent market failure, ensure commercial stability.
- Rules and principles regarding domestic regulation in trade agreements are consistent with and do not undermine the right to regulate.

# Why Principles on Domestic Regulations Matter

- Need to ensure that regulations are developed and implemented in transparent manner.
- Need to set limits on potential for discrimination, unnecessarily restrictive regulation.
- Inefficient, restrictive domestic regulation remains a significant barrier to expanding services trade and promoting competitiveness and contributes to trade costs for services that are higher than for goods. (2016 APEC Policy Report: Structural Reform and Services)
- That is why the APEC Services Competitiveness Roadmap identifies promoting good regulatory practices and ensuring that regulations do not act as disguised restrictions on trade as key enabling factors in developing competitive services sectors.
- One of biggest contributors to services trade costs are overly restrictive data flow and data localization laws and regulations.

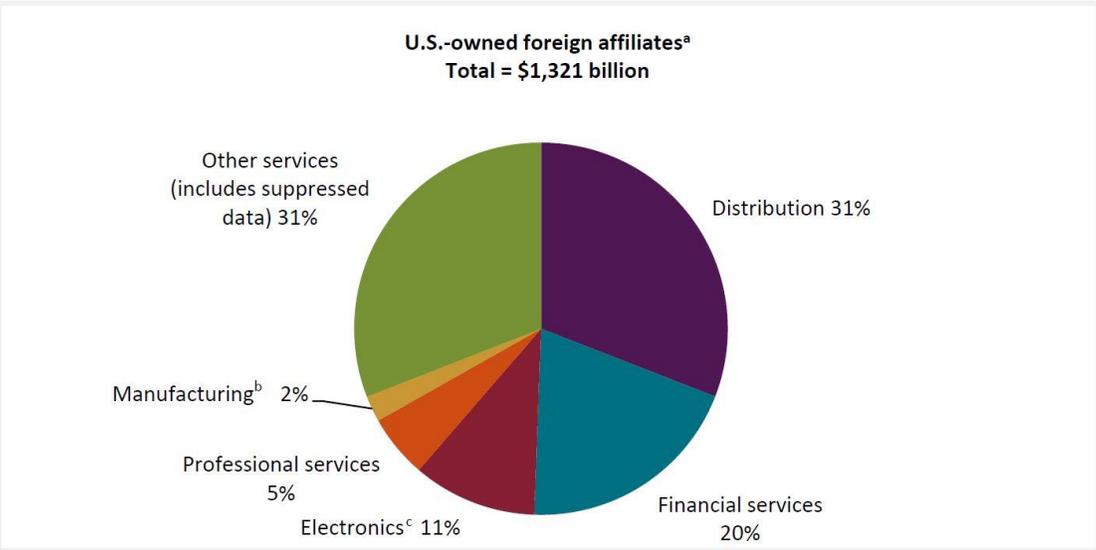
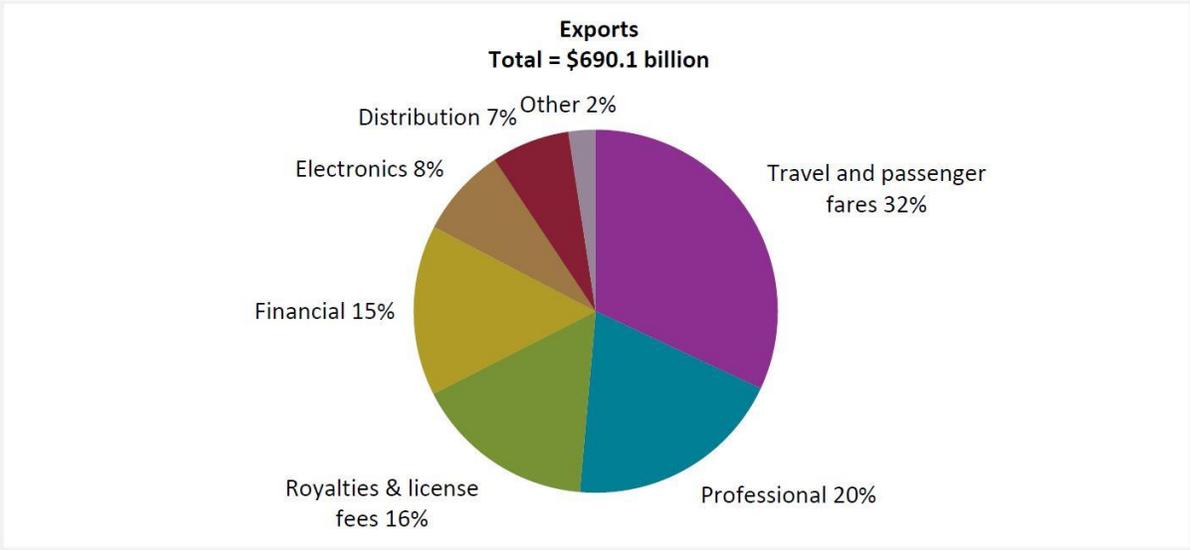
# Data Flows and Costs of Regulations

- Data restrictions inhibit trade and undermine national competitiveness.
- Examples include limits on cross-border data flows, forced data localization requirements, and overly prescriptive data privacy and protection requirements.
- A number of recent studies have estimated the costs of data flow and localization barriers.
  - USITC (2014) said that removing foreign barriers to U.S. digital trade would:
    - increase U.S. real GDP up to 0.3% (\$41 billion)
    - increase U.S. employment by 0.3%
  - European Centre for International Political Economy (ECIPE) (2014) study assessed proposed and enacted legislation regarding data localization, privacy and security in 7 countries (Brazil, China, EU, India, Indonesia, Korea, and Vietnam), and concluded it would:
    - Decrease GDP by average of 0.6%
    - Reduce domestic investment by 2.5%
    - Result in huge welfare losses (\$63 billion in China & \$193 billion in EU)
  - Forthcoming OECD Study examines emerging data flow restrictions and localization measures in the U.S., EU, Japan, and India, showing that such restrictions will result in:
    - Decreases across the board in exports, imports, overall GDP, production, and household income. Specific sectors also fared poorly, especially manufacturing

# U.S. Services Sectors Where Impact of Foreign Domestic Regulation is Greatest

2014 U.S. services exports & 2013 U.S.-owned foreign affiliate sales (most recent data)

Tables below reflect US services sectors most engaged in cross border services trade and investment.



Source: USITC, *Recent Trends in Services Trade: 2016 Annual Report*

# Major categories of services market access and regulatory trade barriers of concern to U.S. services firms

- Lack of transparency:
  - Opportunity for notice and comment on development of regulations.
  - Public availability of regulations.
  - Consistency in application/predictability.
- Licensing restrictions: lack of timelines for decisions regarding licensing/ approvals, statement of reasons for denial and possibility of appeal, Imposition of fees.
- Data Flow restrictions: treatment of personal data privacy requirements, cybersecurity.
- Localization requirements: data storage and server requirements, content, technology, required use of local standards.
- Technology transfer requirements.
- Foreign Equity Limits and screening of foreign investment.
- Limits on Foreign Operations: juridical form limits, limit on number of licenses or approvals granted.
- Difficulty in obtaining Visas.
- Qualification Requirements and Limits on foreign operations.

## Potential Sources for Non-Binding Principles on Domestic regulations

1. GATS: limited scope and provisions.
2. TPP: rules apply on negative list basis and are more comprehensive.
3. TiSA: builds on TPP and WTO Doha Services negotiations.
4. APEC Principles for Cross-Border Trade in Services: are non-binding, limited to cross-border supply.
5. APEC-OECD Integrated Checklist on Regulatory Reform.

# Recommendations

- APEC Cross-Border Services Principles provide useful foundation.
- Extend Application to all 4 modes of supply.
- Consider use of additional useful provisions from TiSA text.
- Draw from discussions in WTO.

Thank You!