



Asia-Pacific
Economic Cooperation

**Seminar for Sharing Experiences in APEC
Economies on
Strengthening the Economic Legal Infrastructure
CTI20/2007T**

6-7 March, 2007 Hanoi, Viet Nam

**Strengthening Economic Legal Infrastructure (SELI) Coordinating Group
May 2007**

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Abbreviation List

ABAC	APEC Business Advisory Council
ADB	Asian Development Bank
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
Asia SEED	Asia Science and Education for Economic Development
CEDI	the Center for Economic Deregulation and Innovation (Chinese Taipei)
CPDG	The Competition Policy and Deregulation Group
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
JICA	Japan International Cooperation Agency
KPPU	Komisi Pengawas Persaingan Usaha (Commission for the Supervision of Business Competition, Indonesia)
METI	Ministry of Economy, Trade and Industry
MOFCOM	Ministry of Commerce (China)
MoU	Memorandum of Understanding
SELI	Strengthening Economic Legal Infrastructure
SMEs	Small and Medium Enterprises
UNCTAD	United Nations Conference on Trade and Development
URL	Uniform Resource Locator
WTO	World Trade Organization

Overview

Background

APEC has played an important role in strengthening the economic legal infrastructure in the Asian Pacific Region since this region was faced with the Asian Economic Crisis at the end of 1990s. Viet Nam has been one of the major beneficiary economies of capacity building in the economic legal infrastructure to move forward to market-oriented economic reform and to cope with the economic crisis.

At the 17th APEC Ministerial Meeting in 2005, APEC economies agreed upon the Busan Roadmap to the Bogor Goals and emphasized the necessity of facilitating business activities through implementing many measures including structural reform under the Busan Business Agenda.

In order to further facilitate business activities and establish resilient economic systems in APEC economies, it is significant to share experiences of capacity building in Viet Nam and other economies and to seek future direction of strengthening the economic legal infrastructure in APEC.

Objectives

This seminar was aimed to promote structural reform and enhance a business-friendly environment. It had the following specific targets:

- facilitate information-sharing among APEC economies, on policy direction for market-oriented economic reform and specific policy tools such as model laws and training programs in a third economy, based upon the experience of strengthening the economic legal infrastructure in Viet Nam and other economies;
- highlight APEC economies' important programs of strengthening the economic legal infrastructure to relevant government officials and citizens in Viet Nam;
- find out needs to be further improved in strengthening the economic legal infrastructure in Viet Nam based upon the request from the private sector and to reflect them on future capacity building activities.

Program

Day 1: March 6 (Tuesday)

09:00-09:15 **Opening Remarks** by Vice Minister, Ministry of Trade of Viet Nam

09:15- **SESSION 1:**

11:30 **“Strengthening Economic Legal Infrastructure in Viet Nam”**

For Viet Nam, economic legal infrastructure, which can be consistent with the transition to a market-oriented economy, is one of the most important policy issues on development. So far maintenance of the public laws has been carried out quite well in order to clarify the assignments of roles between private and public sectors. One typical example is the privatization of government-owned or government-run companies. On the other hand, there has been a delay in improvement of private laws like commercial law which streamlines commercial contracts and business transaction among private companies. In this session, such issues will be dealt with as a central theme.

09:15-09:45 **Needs for strengthening the economic legal infrastructure in Viet Nam**

Dr. Nguyen Thi Son, President of the Institute of Judicial Science and International Business

The overall background and situation of the areas of law where strengthening of economic legal infrastructure was necessary in the wake of the Asian Economic crisis in the late 90s.

09:45-10:15 **“Commercial Law” in Viet Nam**

Dr. John R. Davis, Senior Foreign Lawyer, YKVN Lawyers

From the viewpoint of the provider of economic legal infrastructure strengthening assistance to APEC developing economies, the general background of assistance in strengthening company law in Vietnam, current problems, tasks and future challenges.

10:15-10:45 **“Competition Law” in Viet Nam**

Dr Dinh Thi My Loan, Competition Administration Department, Ministry of Trade of Viet Nam

Experiences of assistance in strengthening economic legal infrastructure of competitive law by APEC developed economies in Vietnam from the viewpoint of the recipient, and future challenges and tasks.

10:45-11:30 Panel Discussion: **“Future challenge of strengthening the economic legal infrastructure in Viet Nam”**

Moderator: Dr. Pham Duy Nghia, Professor, Faculty of Law, Viet Nam National University

11:30-12:30 Lunch Break

12:30- **SESSION 2:**

14:45 **“Comparative Analysis of Viet Nam and Other Economies”**

This session will deal with the current situations of strengthening the economic legal infrastructure in APEC economies besides Viet Nam which are in a different stage of market-oriented economic reform.

12:30-13:00 **Regional cooperation**

Mr. Shinsuke Kawazu, Counsel, Asian Development Bank

From the viewpoint of an international aid agency, case studies on the topic of secured transactions, as well as assistance in strengthening economic legal infrastructure in APEC developing economies, the common issues and solutions.

13:00-13:30 **In the case of China**

Dr. Chihiro Nunoi, Professor, Graduate School of International Corporate Strategy, Hitotsubashi University of Japan

China follows a similar path as with Viet Nam in this field. With regards to China's strengthening of economic legal infrastructure, the present process, future challenges and outlook.

13:30-14:00 **In the case of Indonesia**

Dr. Hikmahanto Juwana, Professor, Faculty of Law, University of Indonesia

Process of assistance in strengthening economic legal infrastructure in Indonesia, where market-oriented economy regime has been adopted for more than half a century, future challenges and outlook.

14:00-14:45 Panel Discussion: **“Commonality and difference between Viet Nam and other economies and lessons from experiences in other APEC economies”**

Moderator: Dr. Pham Duy Nghia, Professor, Faculty of Law, Viet Nam National University

14:45-15:00 Break

15:00 **SESSION 3:**

-17:15 **“For the Future Benefits of APEC Economies”**

Some economies are moving towards market-oriented economy and are challenging big issues, e.g. Globalization and regional economic integration. The themes to be discussed in this session are: 1) in which field is legal infrastructure preferentially needed in order to deal with the above two issues effectively? 2) by which step should we strengthen economic laws collectively?

15:00-15:30 **Creating model case of strengthening the economic legal infrastructure for market-oriented economic reform**

Dr. Yuka Kaneko, Professor, Graduate School of International Cooperation Studies, Kobe University of Japan

The outlook in strengthening economic legal infrastructure in APEC, for example formulating a model case for strengthening economic legal infrastructure when shifting to a market-oriented economy.

15:30-16:00 **Promotion of Competition Environment in the APEC Region**

Mr. Toshiyuki Nanbu, Director, Japan Fair Trade Commission

Overview of development of competition policy and law in the APEC region, technical assistance activities by APEC/CPDG and the future direction of cooperation in the area of competition policy and law in the APEC region.

16:00-16:30 **Future direction of strengthening the economic legal infrastructure to achieve a business-friendly environment in the APEC region**

Mr. Kunihiko Shinoda, SELI Chair/Director, Trade Policy Bureau, Ministry of Economy, Trade and Industry of Japan

The future direction of SELI in the APEC region including regional capacity building schemes to promote structural reform and enhance a business-friendly environment in collaboration with ABAC .

16:30-17:15 Panel Discussion:

“Future direction of strengthening the economic legal infrastructure in APEC”

Moderator: Dr. Yonosuke Hara, Chairman, Asia SEED

17:15-17:30 Closing Remarks by Mr. Kunihiko Shinoda, SELI Chair/Director, Trade Policy Bureau, Ministry of Economy, Trade and Industry of Japan

17:30-17:40 Photo Session

Day 2: March 7 (Wednesday)

08:00 Gather at Hanoi Hotel Lobby, leave Hotel for field trip

08:30 Arrive at Supreme Court

09:30 Leave Supreme Court

10:00 Arrive at Vietnam Judicial Academy

11:00 Leave Vietnam Judicial Academy

11:30 Arrive at Hotel

Participants List

International Participant and Speaker, Secretariat from Vie Nam

No	Name	Position	Organization	Economy
1	Dr. John Gillespie	Professor	Monash University, Melbourne, The Faculty of Business and Economics	Australia
2	Mr Jiang, Tao	Deputy Section Chief	Dept. of Laws and Treaties in MOFCOM	China
3	Dr Hikmahanto Juwana	Professor & Dean	University of Indonesia, Faculty of Law	Indonesia
4	Mr Bastian	Head of Sub-Division for Contract	Ministry of Finance, Legal Bureau	Indonesia
5	Ms Fitri Sulistyarningsih	Deputy Director for Economic Law and International Institution	Ministry of Law and Human rights	Indonesia
6	Mr. Farid Fauzi Nasution	Investigator	KPPU (Commission for the Supervision of Business Competition)	Indonesia
7	Mr Ismed Fadillah	Director of Law Enforcement	KPPU (Commission for the Supervision of Business Competition)	Indonesia
8	Mr Shinsuke Kawazu	Counsel	Asian Development Bank	Japan
9	Dr Chihiro Nunoi	Professor	Hitotsubashi University, Graduate School of International Corporate Strategy	Japan
10	Dr Yuka Kaneko	Professor	Kobe University, Graduate School of International Cooperation Studies	Japan
11	Mr Toshiyuki Nanbu	Director, International Affairs Division	Japan Fair Trade Commission	Japan
12	Mr Kunihiko Shinoda	Director (APEC & FTA)	APEC Office, METI	Japan
13	Mr Naoya Abe	Assistant Director	APEC Office, METI	Japan
14	Dr Yonosuke Hara	Chairman	Asia SEED	Japan
15	Ms Rumi Kondo	Chief	Asia SEED	Japan
16	Ms Sayaka Fukuda	Associate	Asia SEED, Bangkok	Japan
17	Mr Peter Cheah Hee Keong	Assistant Director	Ministry of International Trade and Industry, Strategic Planning Division	Malaysia
18	Dr Mohd Mokhtar Tahar		Ministry of Domestic Trade and Consumer Affairs	Malaysia
19	Ms Mariella Kazuko Amemiya Siu	Analyst	Ministry of Foreign Trade and Tourism, Office of Economic Studies	Peru
20	Mr Ernesto Lopez Mareovich	Technical Secretary - Free Competition Commission	National Institute of the Defence of Competition and the Protection of Intellectual Property	Peru
21	Atty. Susan T. Villanueva	State counsel	Department of Justice	Philippines
22	Ms Charina J. Villarino	Trade and Industry Development Specialist	Department of Trade and Industry, Bureau of International Trade Relations	Philippines
23	Mr Adam Sisino Doribae	Senior Companies Examiner	Investment Promotion Authority	PNG
24	Mr Cedric Patrick	Business Information Officer	Investment Promotion Authority	PNG
25	Ms Chang, Hsin-Yi	Officer	Fair Trade Commission	Chinese Taipei
26	Mr Chang, Hsi-Hsien	Officer	CEDI Services, Council for Economic Planning and Development, Executive Yuan	Chinese Taipei
27	Ms Parima Damrithamanij	Trade Officer	Ministry of Commerce, Department of Trade Negotiations	Thailand
28	Mr. Seree Nonthasoot	Legal Counsel	State Enterprise Policy Office, Ministry of Finance	Thailand

29	Mr Kitirat Panupong	First Secretary	Ministry of Foreign Affairs, Department of International Economic Affairs	Thailand
30	Ms. Apiradee Chitprarop		State Enterprise Policy Office, Ministry of Finance	Thailand
31	Dr John R. Davis	Senior Foreign Lawyer	YKVN Lawyers	USA
32	Mr Tran Quoc Khanh	Director General	Ministry of Trade of Vietnam	Vietnam
33	Dr Nguyen Thi Son	President	International Business and Law Academy	Vietnam
34	Dr Dinh Thi My Loan	Director General	Ministry of Trade, Competition Administration Dept	Vietnam
35	Dr Nghia Duy Pham	Professor	Vietnam National University Hanoi, Faculty of Law	Vietnam
36	Ms Pham Quynh Mai	Deputy Head	Ministry of Trade, Multilateral Trade Policy Department	Vietnam

Local Participant from Viet Nam

	Name	Organization
1	Pham Thanh Long	Gia Pham Law Firm
2	Le Minh Hoai	Domestic Trade Policy Department, Ministry of Trade
3	Do Trong Hieu	Domestic Trade Policy Department, Ministry of Trade
4	Do Truong Giang	Domestic Trade Policy Department, Ministry of Trade
5	Vũ Hải Sơn	Asia-Pacific Department, Ministry of Trade
6	Pham Anh Tuan	Asia-Pacific Department, Ministry of Trade
7	Nguyen Viet Chi	Asia-Pacific Department, Ministry of Trade
8	Le Thai Hoa	West Asia and Africa Department, Ministry of Trade
9	Mark Enojo	Kevin Chia Partnership
10	Nguyen Anh Tuan	Biz Consult
11	Le Hong Phong	Nguyen & Associates
12	Le Lan Chi	Judicial Academy
13	Dong thi Kim Chi	Judicial Academy
14	Lai Thi Minh Ha	Judicial Academy
15	Nguyen Thi Hang Nga	Judicial Academy
16	Nguyen Canh Cuong	Europe Department, Ministry of Trade
17	Tran Ngoc Quan	Europe Department, Ministry of Trade
18	Pham Thu Ha	Europe Department, Ministry of Trade
19	Tran Thi Ngoc Quyen	Foreign Trade University
20	Le Thanh Thuy	Foreign Trade University
21	Pham Duy Hung	Foreign Trade University
22	Hoang Thi Doan Trang	Foreign Trade University
23	Le Minh Tram	Foreign Trade University
24	Nguyen Viet Hung	Trade Research Institute, Ministry of Trade
25	Phung Thi Van Kieu	Trade Research Institute, Ministry of Trade
26	Dang Cong Hien	Trade Research Institute, Ministry of Trade
27	Luong Thi Minh Anh	Central Insitute for Economic Management
28	Dr. Tran Van Hoa	National Economics University, Trade Department
29	Dinh Le Hai Ha	National Economics University, Trade Department
30	Ngo Thi My Hanh	National Economics University, Trade Department
31	Ngo Thi Tuyet Mai	National Economics University, International Economics Department
32	Nguyen Thi Thuy Hong	National Economics University, International Economics Department
33	Mai Ngoc Lan	National Economics University, Economics Department
34	Tran Thanh Binh	Export – Import Department, Ministry of Trade
35	Nguyen Thi Thu Hang	Export – Import Department, Ministry of Trade
36	Pham Tuan Long	Export – Import Department, Ministry of Trade
37	Le Phuong Hoa	Institute of South East Asia Studies
38	Nguyen Ngoc Lan	Institute of South East Asia Studies
39	Dinh Thi My Loan	Director General, Competition Administration Agency
40	Trinh Anh Tuan	Official, Competition Administration Agency

41	Nguyen Thuong Lang	National Economics University, Economics and International Business Department
42	Tran Tien Dzung	Ministry of Justice, International Cooperation Department
43	Nguyen Xuan Anh	Viet Nam Bar Association
44	Luu Binh Nhuong	Hanoi University of Law
45	Cao Dang Vinh	Ministry of Justice
46	Bui Ngoc Son	Economics and Political Institute
47	Nguyen Anh Tuan	Viet Nam Bar Association
48	Khuc Thi Ngoc Ha	Viet Nam Bar Association

Day 1: 6 March, 2007 (Tuesday)



Opening Remarks by Dr Dinh Thi My Loan, Director General, Competition Administration Department, Ministry of Trade



SESSION 1: “Strengthening Economic Legal Infrastructure in Viet Nam”

For Viet Nam, economic legal infrastructure, which can be consistent with the transition to a market-oriented economy, is one of the most important policy issues on development. So far maintenance of the public laws has been carried out quite well in order to clarify the assignments of roles between private and public sectors. One typical example is the privatization of government-owned or government-run companies. On the other hand, there has been a delay in improvement of private laws like commercial law which streamlines commercial contracts and business transaction among private companies. In this session, such issues were dealt with as a central theme.



Speakers

- **Dr. Nguyen Thi Son**, President of the Institute of Judicial Science and International Business
- **Dr. John R. Davis**, Senior Foreign Lawyer, YKVN Lawyers
- **Dr Dinh Thi My Loan**, Competition Administration Department, Ministry of Trade of Viet Nam

Moderator

- **Dr. Pham Duy Nghia**, Professor, Faculty of Law, Viet Nam National University



Dr. Son



Dr. Davis



Dr. Loan



Dr. Nghia

Session 1: Panel Discussion

The Moderator for this session, Dr. Pham Duy Nghia, Professor, Faculty of Law, Viet Nam National University summarized the presentations of the three speakers as follows:

- **Dr. Son** explained the impact of WTO assessment to Viet Nam and showed best practices to APEC economies. She explained how the Viet Nam government can set up a well-balanced legal framework to meet WTO requirements and to take account of lessons from Asian Currency Crisis.
- **Dr. Davis** described the legal reform in Viet Nam. Though Viet Nam legal reform has almost been completed, how to built law enforcement system is the current issue.
- **Dr. Loan** discussed competition law. Not just making new institutions, rather, raising public awareness on “Competition Law” is the key. It is important to let people understand the concept of antimonopoly, competitiveness and transparency.

Question 1:

How shall we overcome difficulties in economic legal infrastructure development?

Dr. Son replied that it was important to learn lessons more from experiences of Asian Currency Crisis in 1997. ASEAN economies were hit by the crisis and their currencies crashed. From the crisis, ASEAN economies realized that to overcome the crisis, it is crucial to develop legal framework and infrastructure.

Question 2:

Is there any similarity between domestic businesses and foreign investors?

Dr. Davis explained that there was a particular history in enterprise law development. Though interests of domestic enterprises and foreign investors were in different stages, simplification of laws benefits both domestic and foreign enterprises.

Dr. Loan also added her comment that in terms of competition law, there were no differences among domestic and international enterprises, generally and theoretically. But in reality, some differences were observed. Sometimes domestic enterprises complain to the Viet Nam government that better conditions are given to Foreign Direct Investment.

Comment 1 (From Dr. John Gillespie, Australia):

Enterprise law in Viet Nam is too complicated. Now is the time to revisit enterprise law to meet globalization era. It requires a very long time to change



society system, like the Malaysian case. Malaysia joined the global network 30-40 years ago, but they are still struggling for law enforcement. Legal education to SMEs and harmonization between supply-side and receiving-side are quite important.

Dr. Davis replied that he would agree to Dr. Gillespie's comment that the current enterprise law was too complicated. In Viet Nam, many security firms complained poor transparency of provision on small business registration. Provision of small businesses registration was not working well. Though there were many SME related project, no support had been provided to this problem.

Question 3:

From the three speakers' presentations, I understood that Viet Nam's legal system was reformed to meet WTO standard. But I do not understand how to apply its new laws. Even when a full-legal system is established, applying the system to actual economic activities is difficult.

Dr. Davis said that he was not sure which system the questioner meant, but he could say there were many trials to improve legal infrastructure even in Mid 1980s, just before Doi Moi movement. There were many approaches for capability development, but no magic answer.

Dr. Loan pointed out that in terms of law enforcement, there was a same problem in Competitive law. Two years ago, more than 70% of enterprises knew nothing about competitive law. She was shocked by this survey and her organization tried to publicize Competitive Law concept to local enterprises as best they could. According to last year's survey in Ha Noi, Da Nang and Ho Chi Minh City, about 70% of enterprises knew about Competitive law and her agency. However, full-implementation was still on-going. For effective enforcement of Competitive law, it is important for the Vietnamese people to raise awareness on fair and competitive environment. If the Competitive law was implemented effectively, it would be beneficial both for consumers and enterprises.

Dr. Son added her comment that annual meeting to discuss Economic Legal Infrastructure might be helpful. Not only the legal system but the lawyers' knowledge level was a problem. She would like to cooperate with professors and specialists who joined the seminar on how to implement laws, change laws and educate lawyers.

Question 4 (from Dr. Tahar, Malaysia):



To Dr. Loan, (1) is there any influence from other country on Competitive Law development? (2) Is there any law exemption for state enterprise? (3) How is the Competition council of Viet Nam independent? Is there any regulation to secure its independency?

To Dr. Davis, (4) in bilateral agreement between United States and Viet Nam, why is there no chapter about competition? In other US bilateral agreements, there is one.

To Dr. Son, (5) for Foreign Direct Investment, is there any regulation? 100% foreign fund is allowed?

Dr. Loan replied to the 1st question that it was reasonable to reflect other countries' case to Viet Nam law development. It was very practical to learn best practice from other countries such as Japan, United States, Australia and Canada and to modify it for Viet Nam culture. For the 2nd question, she answered that there was no exemption for government enterprise, even for public services. She thought that it was the right decision of her government. Competition council was established with 11 members last year as an independent government body. It was under the Ministry of Trade, but independent. After the Competition council was established, unfair cases were treated more seriously in Viet Nam. She also replied to the 4th question that maybe United States did not require to include a competition related chapter. It was not a special case only for Viet Nam, but same for Lao-US agreement etc.

Dr. Son answered the 5th question that in architecture and high-tech field, Viet Nam government allows 100% foreign funded company establishment. In other industries, foreign investor is allowed to hold share for only 30-50 %. It would be increased to 70- 100% in about next 3 years, but grace for enforcement would be required. Viet Nam was still in lower development stage and all business would be taken over by foreign investors if they fully opened their market.

Prof. Nghia added his comment that direct investment could be 100%, but buying share of existing companies should be limited to like 49%. Lessons learnt from the Asian Crisis shows us high risk of a fully open economy.

Question 5 (Mr. Lopez from Peru):

To Dr. Loan, how was the attitude of the public sector towards Competitive Law development?



Dr. Loan answered that enforcement and implementation of competitive law was not good enough for a long time, but public involvement was defined by law and government agencies could not involve the manufacturing industry. She said that she wanted to know if there was any lacking point in Viet Nam competitive law.

Mr. Seree Nonthasoot from Thailand commented that in Thailand, there were some exemptions for public enterprises in telecommunication & energy from competitive law execution, and that the Thai government establishes regulations sector by sector.



Dr. Loan added that weakness of competitive agency comes from sector regulations like communication or energy. Regulations by sectors were so complicated and powerful, creating big problems. To solve this issue, her agency was trying not to fight directly but to cooperate together. For example, in the energy sector, two government agencies agreed on MoU to cooperate in competition spirit. They tried to make an open discussion on sector regulators. There was one principle that if any conflict between sector regulations and competitive law was found, competitive law would take priority.

Question 6 (Ms. Parima from Thailand)

To Dr. Davis, was there any conflict between Viet Nam domestic law/ legal system and International law commitment/implementation?



Dr. Davis said that legal reform in Viet Nam had been enforced based on international commitments first and domestic factors and policies were considered later on.

SESSION 2: “Comparative Analysis of Viet Nam and Other Economies”

This session dealt with the current situations of strengthening the economic legal infrastructure in APEC economies besides Viet Nam which were in a different stage of market-oriented economic reform.



Speakers

- **Mr. Shinsuke Kawazu**, Counsel, Asian Development Bank
- **Dr. Chihiro Nuno**i, Professor, Graduate School of International Corporate Strategy, Hitotsubashi University of Japan
- **Dr. Hikmahanto Juwana**, Professor, Faculty of Law, University of Indonesia

Moderator

- **Dr. Pham Duy Nghia**, Professor, Faculty of Law, Viet Nam National University



Mr. Kawazu



Dr. Nuno



Dr. Juwana



Dr. Nghia

Session 2: Panel Discussion

Question 1 (Dr. Kaneko, Japan):

To Mr. Kawazu, I think that there are serious conflicts between ADB policy on secured transaction and Japanese support in some economies like Cambodia or Viet Nam. In Japan, there is no secured transaction system. In ADB, is there any possibility to use Japanese experience?



Mr. Kawazu said that he himself felt some gap between his past project under JICA by the Japanese way and the current project under ADB. From an academic point of view, Viet Nam's Civil Code was based on continental law system, not common law system, so secured transactions based on common law system might not be matched with the Civil Code. However, from a practical point of view, so long as total system is consistent and workable, it does not seem to matter. ADB is providing models for secured transactions, but we know that such models are not absolute ones, but just alternatives, among which the recipient can choose the best fit one. It was important to raise developing economies' awareness.

Dr. Juwana added his comment that the issue of “Common Law” versus “Civil Law” caused problem in Indonesia. In Indonesia, there was a discipline that a decision was decided by the Judge. However, reliability of the Indonesian court was not high.

Question 2 (Ms. Son, Viet Nam)

To Dr. Juwana, there is the principle of “separation of the powers”. But actually, making court independent is not an easy task in Viet Nam. How is the situation in Indonesia?



Dr. Juwana answered that Indonesia was still struggling for it. Supreme Court related law was revised and it was written that the “Court should be independent”. But in fact it has not become a reality yet. The mindset of judges, especially for the older generation, even though the law has been revised, did not change quickly. In the past, judges were appointed by the President. It was revised so that judges were appointed by the Parliament, but the Parliament having the right to appoint judges meant that their policy might affect the Judges' behavior, and lawyers can also be a member of the Parliament, who would expect a give-and-take. Now, it has been changed so that the judicial committee selects judges and parliament would approve its decision. Even so, reducing the influence to zero would be quite difficult, not only for Indonesia, but all over the world. In United States, the President appoints judges. Therefore, it was difficult to reduce influence completely, but some independence would be required for law enforcement.

SESSION 3: “For the Future Benefits of APEC Economies”

Some economies are moving towards market-oriented economy and are challenging big issues, e.g. globalization and regional economic integration. The themes to be discussed in this session are: 1) in which field is legal infrastructure preferentially needed in order to deal with the above two issues effectively? 2) by which step should we strengthen economic laws collectively?



Speakers

- Dr. Yuka Kaneko, Professor, Graduate School of International Cooperation Studies, Kobe University of Japan
- Mr. Toshiyuki Nanbu, Director, Japan Fair Trade Commission
- Mr. Kunihiro Shinoda, SELI Chair/Director, Trade Policy Bureau, Ministry of Economy, Trade and Industry of Japan

Moderator

- Prof. Dr. Yonosuke Hara, Chairman of Board, Asia SEED, Japan



Dr. Kaneko



Mr. Nambu



Mr. Shinoda



Dr. Hara

Session 3: Panel Discussion

Question 1 (Dr. Davis, USA):

To Dr. Kaneko, I generally agree with your presentation. However, regarding your explanation on “Gray Area” of competitive law in Indonesia, I have some argument. Even if their law has a “Gray Area”, it is never used. Therefore, it is equal to having “No Gray Area”.

Dr. Kaneko replied that she was not a specialist on Indonesia and she has categorized based on written law. Currently, she has interest in Singapore and Vietnam case. Even with the same UNCTAD model adopted, they differed significantly in actual implementation.



Question 2 (Mr Jiang, Tao, China)

To Mr. Nanbu, nowadays, “Competitive Law” is becoming more and more a key issue for FTA and/or RTA negotiation. Currently, China has no anti-monopoly law. Will it be an obstacle for China’s FTA negotiation with other economies?

Mr. Nanbu said that with regard to Japan’s FTA with other economies, a successful conclusion of negotiations is regardless of whether the economy has competitive law or not. For example, Japan concluded FTA with Malaysia and Philippines, and both economies had no competition law. In that case, we put a chapter addressing Competition issues. It might be useful to promote transparency in each economy.



Comment 1 (Mr Jiang, Tao, China)

Regarding the JICA project in China, Dr. Nunoi mentioned that the project team was weak comparing to other donors’ project in China. But I think that the Japanese project worked efficiently. In the project, about 100 Chinese officials visited Japan and that short training course was very effective. Dr. Nunoi said that it was difficult to get information about Chinese laws. But if you visit Ministry of Commerce web site, you can see regulation in China, though you may not understand the meaning due to the language barrier.

Comment 2 (Dr Nguyen Thuong Lang, Viet Nam)

Economic structure and Legal structure should be changed under the collaboration with international agencies or other economies when one economy tries to convert to a market economy, like Viet Nam or China. When we re-construct legal infrastructure, firstly we should take account of its



economy's current structure. Once it is changed, we can think about higher level structure later on.

Comment 3 (Mr. Shinoda, Japan)

In Japan, we had 10 years of economic recession after the collapse of the bubble economy. We had to change our economic structure and we revised corporation laws in the late 1990s. This structural reform made possible the revival of the Japanese Economy.

Comment 4 (Dr. Kaneko, Japan)

I am a bit worried that many Viet Nam officials talk about "International Standard" too much. What is the "International Standard"? Even in WTO framework, "Global Standard" is not fixed yet. Each economy interprets the standard to suit its own economy's convenience. No fixed answer exists yet.

Comment 5 (Dr. Kaneko, Japan)

We should think logically. In many economies, it is required to promote FDI. To promote FDI, that economy's market should be sophisticated. For short-term investors, they do not have time to think about differences among economies, cultural background, regulations etc. System should be harmonized and seamless among economies. Based on today's discussion, we understand that each economy's economic legal infrastructure varies. If we see the reality, it is different. However, it is quite important to improve the investment environment with a longer time frame and to provide transparency. To think about such improvement, workshop like today would be very effective. Many seminars are held by the World Bank, ADB and many other international organizations. But, comparing to those workshops, I feel that APEC workshop like today has "Equal dialogue atmosphere" not "Teacher and Pupils". If we have such a semi-formal discussion frequently, it may have a positive impact on strengthening APEC economies' economic legal infrastructure.

Comment 6 (Dr John Gillespie, Australia)

Informal exchange and policy harmonization will be important. I agree that the recipient economy needs to learn best practices from other economies and also the importance of long term harmonization in each economy.



Group Photo



Day 2: 7 March, 2007 (Wednesday)

Field Trip to Supreme People's Court of Viet Nam



Question and Answer in Supreme Court

Question 1 (Dr. Nunoi, Japan)

I would like to know about the court system in Viet Nam. Today's visiting party consists of specialists in Commercial Law, and I also specialize in Commercial Law.

In Viet Nam, you explained that there is a Criminal Court and a Civil Court in the Supreme Court. How about commercial law and cases? Do you have an individual court, or will you judge commercial cases in the Supreme Court? How about the Anti-trust suits?

Answer from Supreme Court

I will explain briefly the Structure of the Viet Nam court system. Firstly, the person who wants to take legal action should go to people's court in her/his own district. There are 650 districts in Viet Nam. If that person is dissatisfied with the judgment of the court, she/he will appeal to the provincial court. There are 64 provinces in Viet Nam. If she/he wants to appeal against a decision of Provincial Court, she/he will make an appeal to the Supreme Court. The Supreme Court is the highest body in the Viet Nam legal system and it consists of Judicial Council. There si

also a military court, as well as other tribunals under the Constitution, for when the circumstance necessitates. Now a tribunal on marriage and Family is being proposed.

The Supreme Court consists of various courts, including the Criminal Court, Civil Court, Economic Court, Labour Court etc.

Commercial cases are also judged by Supreme Court, but they are still relatively new for us, the Court for such cases having been established in 1994. Before Doi Moi- started in 1986, there was no authority taking care of economic cases. Each economic case was settled by arbitration under the government, taken care of by the supervisory authority: Maritime case by Ministry of Transport, Economy and Trade case by Ministry of Trade etc.

In the state-controlled economy era, everything was controlled by the government- even the contract signing process.

Renovation started in 1990s and individuals were allowed to make a contract. The Economic Court was established on 1st of July, 1994, as economic relationship with foreign countries expanded and there were urgent needs for an Economic Court. The authority of the economic court was to deal with cases between persons and legal persons, including individuals. For example a dispute of a member in a company regarding the selling of sales, equity, liquidity, bankruptcy etc, as well as dealings of economic cases involving foreigners.

In 2004, article 29/30 defined the role of the Economic Court, though the definition of “economic” was not used, but rather “business & commercial activities” so as to include signing of contracts.

Now, economic situation in Viet Nam has changed a lot, but legal system is not enough changed. To extend application of emergency measures, Economic Court cooperates with People’s Court. Supreme Court has an Economic Court, and also City Provincial Courts have their own economic court. In lower level- district level courts, some of them have Economic Court, depending on their economic and social conditions. Economic Court is separated from Criminal and Civil Courts.

Question 2 (Mr. Lopez, Peru)

I would like to know how cases are selected to be judged by Supreme Court. Or will it receive all cases that are appealed?

Answer from Supreme Court

How to proceed on each case depends on related laws, and we follow the legal procedure. Firstly, go to district and provincial court and after the first hearing, if disagreeable, go to the provincial court, and then to the Supreme Court. The Supreme Court will not select certain cases, but handle cases appealed from the lower courts.

Question 3 (a delegate from Thailand)

1. How about the cases of state owned enterprises? If a state owned enterprise makes a contract with a foreign company?
2. Are you obliged to publish your decisions, or is publication at your discretion?

Answer from Supreme Court

1. In principle, the Economic Court will handle the review of the contract. Regarding Business under contract, we will see whether two parties are doing business in Viet Nam or not, and whether two parties locate their head office in Viet Nam or not. If yes for both questions, the authority deals with the case.

2. After 2000, there were a number of projects regarding publication of cases, and international organizations were very interested in helping us, such as JICA. In 2004, 2 volumes of cases were published, but there is no policy regarding publication, and not all is published. We are making manuals and constructing a web site to open each case result. Due to WTO commitment, the Supreme Court needs to open cases to public. The Web site is now accessible and will be fully completed within next 6 months. It will include cases handled by the Supreme Court in 2005 and 2006.

Field Trip to the Vietnam Judicial Academy



Explanation from the Judicial Academy

Judicial Academy was established by the Prime Minister's decision on 25th of February, 2004. It is a training school for lawyers. In addition to the skill training; it also has a research function. We have a branch in Ho Chi Minh City. We trained about 10,000 persons since establishment, and currently about 2,000 professionals a year, the largest being for judges and prosecutors. We have 52 lecturers, of which 15 has a Ph.D. and 30 a Master's Degree.

We are trying to publish books for professional training with JICA's support.

Question and Answer in Judicial Academy

Question 1 (Mr. Lopez, Peru)

What kind of technical assistance do you receive for your HRD programs?

Answer from Judicial Academy

Many international funds supported our activities. JICA experts train Vietnamese professors and Japan provides resources to combine text books. Now this project completed 3rd stage and now goes to 4th stage.

From France, they provide programs to train officials and lawyers. The French Government dispatches experts. Canada also implements training justices.

Question 2 (Mr. Keong, Malaysia)

What is the difference between faculty of law in a university and the Judicial Academy?

Answer from Judicial Academy

Faculty of law in a university provides skill and knowledge to students so that they can perform their tasks. The Judicial Academy train graduates of a law faculty so that they can carry out tasks as professionals, such as judges, lawyers, but does not deliver knowledge on law.

Question 3 (Dr. Nunoi, Japan)

In Viet Nam, many new laws come into force every year. Do you provide re-current training to professionals?

Answer from Judicial Academy

In our 6 regular courses, if any new law comes into force, we will revise text books to the most updated information. We also have evening courses. Program and contents are the same.

Question 4 (a delegate from the Philippines)

In Viet Nam, how do you become a lawyer? After 4 years education in Law Faculty, taking a bar exam and if you pass, you can become a lawyer?

Answer from Judicial Academy

In Viet Nam, there is a law association in every province. To be registered to the association, should meet the criteria, like citizenship of Viet Nam, graduation from law faculty, obtaining course in Judicial Academy, practice certain period etc. You need to pass a national exam to receive a certificate by the Ministry of Justice.

Question 5 (a delegate from Thai)

For the curriculum development of the Judicial Academy, is there any involvement from the government? How about the national exam?

Answer from Judicial Academy

Council members make the exam. Members are from the Ministry of Justice, the bar association members, etc, which also includes the Judicial Academy.

Question 6

How long the training period in Judicial Academy?

Answer from Judicial Academy

In the Judicial Academy law, training period is 6 months. But in fact, it takes 12 months.

Question 7

How many judges are there in Viet Nam?

Answer from Judicial Academy

3,500 judges are in the district level. 1,000 are in the Supreme Court.

Seminar Official Website URL

<http://www.asiaseed.org/seli>

All presentation files and group photos are available for download.

