



Asia-Pacific
Economic Cooperation

Advancing Free Trade
for Asia-Pacific **Prosperity**

APEC Capacity Building Workshop on RTAs/FTAs Negotiation Skills and Techniques

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I. Introduction

On 27 and 28 November 2018, the APEC Capacity Building Workshop on RTAs/FTAs Negotiation Skills and Techniques, initiated by Viet Nam and co-sponsored by Indonesia; Japan; Korea; Papua New Guinea; Peru; Russia was held in Ho Chi Minh, Viet Nam. Speakers and participants came from Australia; Canada; Chile; China; Indonesia; Philippines; Malaysia; Mexico; Peru; Philippines; Russia; Thailand; and Viet Nam. Two representatives from international organizations (Association of Southeast Asian Nations' Secretariat; the United Nations Economic and Social Commission for Asia-Pacific) also attended as speakers at the Workshop. Most of the Workshop participants were from the public sector related to trade negotiations.

The Workshop sought to equip and enhance negotiation skills and techniques of mid-level and junior government officials, who are responsible for RTA/FTA coordination, negotiation and implementation. It also aimed at sharing best practices and experiences from the perspectives of developed and developing economies in RTA/FTA negotiations. Last but not least, it is expected to narrow RTA/FTA capacity gaps among APEC member economies.

II. Background

This project is designed to put into action APEC Ministers' instructions to build capacity to strengthen and deepen regional economic integration by building and enhancing capacities of economies' human resources in RTA/FTA negotiations. In addition, it is also in line with APEC Ministers' encouragement in 2017 as APEC Ministers stated that they looked "forward to the implementation of the Action Plan Framework for the 3rd REI Capacity Building Needs Initiative (CBNI)". The Framework is an important pillar under CTI 2018 work.

Themes covered during the two-day event included: *(i) Overview on Free Trade Agreements; (ii) Negotiation Skills and Techniques; (iii) Trade in Goods Negotiation; and (iv) Workshop Wrap-up and Recommendations*. The Workshop will also include two simulation exercises on negotiation skills and techniques and trade in goods negotiations.

III. Discussion

Outcomes

The Workshop included two days for presentations, discussions and simulation exercises to train mid-level and junior government officials, who are responsible for RTAs/FTAs coordination, negotiation and implementation on general negotiation skills and techniques and particularly trade in goods negotiations. The last session (recommendations for future activities) provided an opportunity to share what participants can take away from the Workshop as well as to suggest potential APEC capacity-building activities to most benefit APEC member economies. Overall, the Workshop achieved its main objectives as described in the project proposal. Moreover, participants considered that it afforded chances for networking among trade officials.

Key Issues Discussed

Opening remarks

In her opening remarks, Ms Pham Quynh Mai (Viet Nam's Senior Official to APEC and Deputy Director General, Multilateral Trade Policy Department, Ministry of Industry and Trade, Viet Nam) highlighted that the APEC Capacity Building Needs Initiative (CBNI) aims to build and enhance capacity for FTAs negotiations from developing APEC members in the proliferation of negotiated and concluded FTAs. In her view, sharing information, knowledge and practical experience in domestic consultations, policies research and trade barriers elimination processes for FTA negotiators are useful and necessary in order to narrow the capacity gap between developed and developing APEC members.

The Senior Official remarked that the Workshop in particular and the CBNI in general are complementary activities to prepare a foundation for the realization of the Free Trade Area of the Asia-Pacific (FTAAP) in the future, after the Bogor goals have been accomplished. Ms Pham Quynh Mai believed that despite the proliferation of next generation trade and investment issues in FTAs, traditional trade issues such as trade in goods, trade in services, investment etc. are still the core and considered as the most important components of an FTA. Besides, she reiterated that it is also crucial to understand and practice FTA negotiation skills and techniques in order to most effectively negotiate an FTA. Therefore, the Workshop is expected to create favorable conditions for participants to exchange negotiating experience, preparation processes for FTA negotiation skills in general and trade-in-goods negotiations in particular.

In her conclusion, Ms Pham expressed the hope that Workshop attendants would exchange and share valuable experience and enhance their understanding and negotiation capacities.

Workshop's sessions

Experts provided presentations on the following topics:

1/ During Session 1 on *Overview on Free Trade Agreements*, **Mr Rajan Sudesh Ratna (Economic Affairs Officer, United Nations Economic and Social Commission for Asia and the Pacific – UNESCAP)** divided his presentation into 3 parts: (i) World Trade Organization (WTO) rules, (ii) Preparation for negotiations, (iii) Consultation with stakeholders. He highlighted the importance of understanding GATT (General Agreement on Tariffs and Trade) rules, WTO rules, types of trade agreements, PTA (Preferential trade agreements) negotiations, WTO plus and beyond issues. The speaker then presented on preparation for negotiations, including identifying players/ actors, examining the benefits and challenges, offensive and defensive interests, building consensus within the economy. Furthermore, Mr Ratna mentioned in details about identification and prioritization of stakeholders, pre-negotiation and negotiation steps. For the speaker, it is important and essential to conduct proper research and stakeholders consultations in the design of trade agreements and there can be several problems associated with negotiations such as

conflicting interests, domestic policies, inefficiencies, etc. In conclusion, Mr Ratna emphasized that non-tariff issues are not yet addressed in FTAs and technology transfer needs to be facilitated.

2/ During Session 2 on *Negotiation Skills and Techniques*, there were two speakers: **Mr Alex George (Consul and Senior Trade Commissioner, Consulate of Canada in Ho Chi Minh, Viet Nam) and Mr Syahril S. Ghazali (Strategic Negotiation Division, Ministry of International Trade and Industry, Malaysia)**.

- Mr Alex George commented that a good negotiator (i) establishes relative priorities and objectives before negotiations, (ii) maintains regular engagement with stakeholders, (iii) builds and manages coalitions in multilateral negotiations. According to the speaker, areas a good negotiator needs to prepare prior to negotiations are understanding the best alternatives to agreement and identifying relative interests and objectives. Consulting stakeholders requires informing them about negotiating positions, providing legitimacy for FTAs as well as managing expectations among stakeholders.
- Mr Syahril S. Ghazali divided his presentation into 4 parts: (i) Why we negotiate RTA/FTA, (ii) Strategic precepts, (iii) Process of negotiations, (iv) Conclusion. Focusing on strategic precepts, the speaker highlighted following points: (a) set a provisional goal, (b) have a plan B, (c) make learning a priority, (d) adapt when you have to, (e) think like a competitor, (f) be multilingual, (g) guard your exit option, (h) always be closing. In terms of constructing a deal, Mr Ghazali observed that it is important to identify our limitation, counterpart's baselines and be aware of outside constraints. He reiterated that a good negotiator should be calm, alert, practical and proactive during negotiation. However, at critical moments, a good negotiator should prepare tactical moment, focus on ultimate objective, be decisive and be consistent.

3/ During Session 3 on *Trade in Goods Negotiation*, there were two speakers: **Mr Djatmiko Bris Witijaksono (Director of Centre of International Trade Cooperation Policy, Ministry of Trade, Indonesia) and Ms Yen Hoang (External Economic Relations, ASEAN Economic Community Department, the ASEAN Secretariat)**.

- The comprehensive presentation of Mr Djatmiko Bris Witijaksono covered following areas: FTA/CEPA negotiation process, general landscape on trade in goods, elements of Trade in Goods (TIG) Chapter, market access issues and negotiations, rule issues and negotiations, etc. The speaker listed core elements related to TIG negotiations: definition, import/ custom duty, tariff reduction and elimination, classification of goods, non-tariff measures, exchange of data, balance of payment, import licensing, quantitative restriction, export subsidies elimination, review, etc. Mr Witijaksono also mentioned modality of market access negotiation, request and offer in market access negotiation, variables on request – offer process, schedule of commitment, challenges in market access and rules, text negotiation process etc. In conclusion, the speaker observed that

basic principles followed WTO (rules, texts, mechanisms, elements) and coverage and depths of agreement equal to WTO or WTO plus.

- Ms Yen Hoang outlined her presentation into 4 parts: (i) Context for an FTA initiative, (ii) Trade in goods and its rules of origin, (iii) Other aspects related to trade in goods, and (iv) the case of ASEAN. Regarding tariff liberalization, she talked about identification of products, inclusion list, exclusion list, base rate, staging and modality of tariff liberalization, non-preferential and preferential rules of origin. Furthermore, the speaker highlighted aspects such as custom procedures, sanitary and phytosanitary measures (SPS), standards, technical regulations and conformity assessment procedures (STRACAP), safeguard measures. Last but not least, Ms Hoang summarized the case of ASEAN regarding average of the ATIGA (ASEAN Trade in Goods Agreement) tariffs, number of tariff lines at 0% in the ATIGA Tariff Schedule of 2018, ASEAN+1 FTAs.

IV. Simulation exercises

1 / Summary of Simulation Exercise 1

In Simulation Exercise 1, participants took part in a mock bilateral free trade agreement (FTA) negotiation. The exercise was designed to help familiarise participants with how negotiators prepare for and engage in negotiations by providing them with the opportunity to try out approaches to negotiation, reflect on barriers to achieving compromise positions, and consider ways they would have done things differently.

Participants were divided into groups of 3-4 people, each of which was allocated an economy that they were to represent in the first round of a bilateral FTA negotiation. Each group was paired with a counterpart economy. Participants were provided with common information and facts for the exercise, and each group was also given information confidential specific to their economy that they used to formulate their negotiating positions (this included information that was deliberately inconsistent with what was provided to the other economy). The exercise consisted of three stages.

In the **first stage**, participants prepared for and conducted a ‘telephone call’ with their counterpart. During this stage, participants were encouraged to consider their material closely to understand their economy’s interests in the negotiations and plan for the call (including what messages they need to communicate, what they needed to learn, and what their objectives were for the call). They then conducted a ‘telephone call’ by sitting back-to-back during a discussion with their counterparts.

In the **second stage**, participants were given time to prepare their strategy for the first round of FTA negotiations. For this stage, participants had to:

- Decide what outcomes they needed from the first round – considering where they could be flexible, what they thought their counterparty would seek, and deciding on ‘red lines’;

- Work out how they would argue for their position – considering their confidential information and what they had learned during stage one; and
- Have ‘informal’ discussions with their counterparts to help prepare for the negotiations.

Finally, in the **third stage**, the participants undertook a mock first round of bilateral FTA negotiations. This allowed participants to put into practice the strategies they developed in stage two and attempt to come to a compromise agreement with their counterparts. This stage also enabled participants to compare the experience of the ‘teleconference’ to in-person negotiation.

After completing all three stages, participants then had a group discussion. During the group discussion, participants provided feedback on the exercise and lessons learned, including on:

- the difficulties associated with the ‘telephone call’ and ways these were addressed;
- how they prepared for negotiations, including the value of ‘scripts’ or ‘talking points’ but the need to be flexible as negotiations progressed;
- when they shared confidential information as part of their negotiation strategy;
- the need to double-check information and assumptions to inform their negotiation;
- whether their counterparts had taken a hard approach to the negotiations;
- whether one side had an easier position to prosecute in the negotiation; and
- the importance of coming up with creative solutions to enable a compromise outcome.

Participants were highly engaged in the simulation exercise and enthusiastically took part in the mock negotiation. The exercise helped participants to consider how negotiations are prepared for and conducted, the issues negotiators face, and the skills and techniques they could use to improve their approaches to negotiations.

2/ Summary of Simulation Exercise 2

2. 1. Participants undertook a simulation exercise on trade in goods negotiations in an FTA between two parties, using provided information and list of goods. Delegates studied economy profiles, prepared negotiating positions and engaged in FTA negotiations.
2. 2. Participants were exposed to how RTA rules intersect with WTO rules, and agreed to "substantially all trade" as covering 90 per cent of total trade in terms of tariff lines.
2. 3. Lessons learned:

Importance of adequate consultations and preparation before entering into negotiations; technical expertise in a negotiating team is indispensable; importance of empirical evidence.

2. 4. Recommendations:

- Research your objectives and prepare adequately before entering into a negotiation;
- Need to know and understand the profile of economies with which you negotiate;
- Need to have full mandate;
- Need to be tactical;
- Be confident. Never show to your negotiating partner that you are confused;
- Hold some concessions in your sleeves to use to break deadlocks at an appropriate moment;
- Consult domestic stakeholders (manufacturers, farmers, academics, etc.) to define your objectives as well as to harmonize views/ interests;
- Never show to your partner that you are confused;
- Need to keep your information confidential;
- Need to respect the red lines of your negotiating partner.

V/ Conclusions and Recommendations

1/ Participants considered the Workshop be good for APEC to continue to share and discuss in-depth and various knowledge and skills on RTA/FTA negotiations as well as on trade in goods negotiations in particular. They commented that the Workshop had provided a great networking opportunity for current and potential negotiators in APEC member economies.

2/ The Workshop's participants suggested that future activities/ topics should be:

- Prepare a good APEC database on RTA/FTA negotiations;
- Continue sharing best practices through capacity building and APEC conferences;
- More intensive training programs for negotiators and policy-makers: with the focus on rules of origin, SPS, technical regulations, new areas of FTA model such as government procurement, intellectual property, small and medium enterprises, labour etc.
- Engage and enhance private sector consultation;
- Distribute CBNI Workshops' outcomes among APEC members (through handbooks, brochures etc.);

- Maintain on-going network for further discussions;
- Conduct a series of similar Workshops in different economies.