



**Asia-Pacific
Economic Cooperation**

SUMMARY REPORT

**APEC Workshop on Building and Enhancing FTA
Negotiation Skills on E-Commerce**

APEC Committee on Trade and Investment

November 2013

This project is one of the activities under the Action Plan Framework for Regional Economic Integration (REI) Capacity Building Needs Initiative (CBNI) initiated by Korea since 2010. In 2011, APEC Ministers “welcomed the decision to approach capacity building activities with strategic foresight by undertaking multi-year projects, such as supporting APEC’s work to strengthen and deepen regional economic integration, and facilitating the realization of FTAAP.” APEC Capacity Building Needs Survey in 2010 and REI CBNI Policy Dialogue in 2011 resulted in an Action Plan Framework which is consisted of 7 fields, namely: services and investment; e-commerce; labour; environment; intellectual property; SPS and rules of origin.

This project aims to increase capacity of negotiators and policymakers, to participate in e-commerce negotiations by: increasing their general knowledge of current situation in FTA negotiations on e-commerce; increasing their knowledge of resources related to developing e-commerce negotiating positions; and sharing best practices and experiences in preparing to negotiate e-commerce chapters.

On June 27-28, this project was implemented in the form of a capacity-building workshop in Medan, Indonesia. Speakers and active participants of more than 60 people from APEC member economies including Australia, China, Indonesia, Japan, Korea, Malaysia, New Zealand, Philippines, Chinese Taipei, Thailand, United States, Vietnam, etc. and those from private sectors such as Intel, Rakuten, Oracle as well as representative from UN/ESCAP took part in the workshop.

For the gains from this Workshop, we have made the summary from three aspects: current situation in FTA negotiations on e-commerce in APEC region, lessons learned from the previous practices of e-commerce chapters’ drafting as well as ideas and suggestions for future promotion of e-commerce chapters in FTA negotiations in APEC region from both public and private perspectives.

1. Current situation in FTA negotiations on e-commerce in APEC region

Both public and private sector have rejoiced that e-commerce in APEC region enjoys an unprecedented development, which helps not only promote the foreign trade, but also the employment of the people. Meanwhile, traditional FTA negotiations have gradually covered more topics due to the fast development of the emerging economic models in APEC region.

First of all, e-commerce development in the whole APEC region is worth to pay attention to. Generally speaking, e-commerce development in APEC has embraced huge size, rapid development and great enthusiasm. Both public and private sectors are confident in e-commerce development. Take China as an example, in 2012, the trade volume of e-commerce reached more than 8.1 trillion RMB, a growth of more than 30% year on year. Chinese government is enthusiastic about the sound and fast development of e-commerce; while companies from private sector have been engaging in e-commerce one after another.

Another vivid example is Japan, which is one of the most active economies involved in FTA negotiations in APEC region. As to the meeting of 26th APEC ECSG meetings, Japan has FTA with Switzerland in place which contains e-commerce chapters; besides, Japan has currently had discussions with Australia, Mongolia, Canada and Columbia in the e-commerce area; for future negotiation, RCEP and negotiations with Korea and China will be the new task for FTAs with e-commerce involved. Other economies like Malaysia, Mexico, New Zealand, Peru, Russia, Thailand, Viet Nam, etc. have also witnessed this process in their economies.

Against such a grand background, more and more FTA negotiations in APEC region have formulated exclusive parts on e-commerce. Take Korea as an example, there are 8 FTAs by Korea with its trade partners, half of which have e-commerce chapters in force (FTAs with Singapore, Peru, EU and the U.S.). These chapters have regulations in the aspects of tax exemption, non-discrimination, consumer protection, paperless trading, cooperation and access to the use of the Internet. Apart from Korea, the United States is another vivid example that has e-commerce commitments with 16 trade partners. The typical e-commerce elements in U.S. FTAs are electronic supply of services, digital products, electronic authentication and electronic signatures, online consumer protection, paperless trading, principles on access of the Internet for e-commerce and cross-border information flow.

Although there are signs to foretell the bright future of e-commerce development in APEC region, there do exist some difficulties. Firstly, APEC is a big family with different members who have different conditions; naturally, they have different infrastructure for e-commerce development and it will promote or stampede the pace of FTAs with e-commerce chapters; secondly, e-commerce is a new business pattern, while totally embracing e-commerce and fully taking advantage of e-commerce development is not only a heavy task for developing member economies but also for the developed ones as well; thirdly, cross-border transferring of data is very prominent and common in cross-border e-commerce, while online safety and mutual trust between trade partners is a new challenge for all APEC members. How to build a sound online environment with mutual trust is a longtime topic for all.

Apart from the above-mentioned, it should be noted that many of the e-commerce chapters are more of declaratory nature than implementation-oriented commitment. The reason for this is the e-commerce chapters in FTA negotiations are still in experimental stage and needs ceaseless effort for further improvement. To promote the e-commerce development, particularly the cross-border e-commerce in APEC region, it is necessary to sum up the past experiences and try to find a way out to the common interests of all APEC member economies.

2. Lessons learned in the FTA negotiations on e-commerce in APEC

In recent years, there are more and more economies involved in the FTA negotiations on e-commerce in APEC region. Participants at the workshop shared a lot on the lessons learned from the past negotiations in the FTAs on e-commerce. They are:

- a. Extensive consultations with stakeholders across sectors are necessary. There is no doubt that both public and private sectors should play a role in the negotiation process. Besides, professors and experts from universities, research institutes and industries are always trouble-shooters for some difficulties arising in the negotiations, their roles and contributions need to be rounded up, too. Besides, NGOs and civil society as well as common consumers which are very important part in e-commerce activities should also be taken into consideration when consultations occur, for they are the indispensable links for a sound e-commerce environment. In general, negotiations are comprehensive activities requiring inputs of much wisdom to ensure its success.
- b. In-depth and careful study beforehand is a must. For any negotiation to be successful, from the perspective of negotiation itself, negotiators should master all the information related to the negotiation, such as the theme, timing, venue, the negotiation opponent, etc., and above all, the willingness of both parties to reach an agreement. In addition, the general conditions of the partners involved should be sought in advance, including the policies and regulations concerned,

the technological level, human resources, current government's willingness, industrial strength, etc. Only in this way can the two sides realize the similarities and differences of each other and pave the way for an agreement in the field of e-commerce.

- c. Efficient cooperation from different sides is also very important. Like the above-mentioned, negotiations are comprehensive activities; it requires knowledge of different realm. For example, e-commerce negotiations requires knowledge of government policies, laws and regulations, telecommunications technologies, commercial services, the products, cross-border logistics, etc. To reach an e-commerce chapter in a FTA, it requires firstly the close cooperation between different government departments; while for a successful FTA, it will be an empty talk without the full participation of e-commerce industries who know deeply where the problems are and how to resolve them. Therefore, cooperation between the public and the private sectors can not be ignored during the negotiations.
- d. International coordination and harmonization is critical to the final consensus to be reached. E-commerce across borders requires not only cooperation from customs, taxes authorities, logistics, insurance and after-sale services, but also touches upon e-commerce policies and regulations, inter-connectivity of the websites from economies, which calls for close and smooth technology and policies coordination. It has already been stated that domestic cooperation across departments and sectors is very difficult but important, while it is more difficult but important to do a good job when it comes to international coordination and harmonization. Because it involves not only the issues stated above, but also lingual, cultural and religious matters when cross-border nature is concerned.

To sum up, it is necessary to point out that problems and difficulties in reaching a consensus in e-commerce negotiation in FTAs are also the reasons why we need to overcome them to benefit all. FTAs do bring much benefit to trade partners, for which they are concluded. As an important part of future FTAs, exclusive e-commerce discussions arise because they can further benefit the trade partners and the common consumers at last. Solutions are always found out more than current difficulties. With multi-participation in consultations, comprehensive study before negotiations, efficient cooperation between stakeholders as well as smooth international coordination and harmonization, e-commerce negotiations in FTAs will be bound to bear abundant fruits.

3. Suggestions for future promotion of e-commerce chapters in FTA negotiations

Based on the lessons learned from the past, participants of the Workshop from both public and private sectors have put forward many ideas and suggestions to promote the realization of e-commerce chapters in FTA negotiations. All these suggestions are based on their past experiences, which deserve our attention.

- 1) Efficient cooperation between public and private sectors, effective coordination across regions and universal rules and standards formulation for e-commerce across borders are of equal importance to the success of FTAs and the formulation of chapters on e-commerce.

Considering the important roles played by public and private sectors, cooperation between the two is a must in promoting the e-commerce chapters in FTA negotiations. Usually, government departments should give full play to the policy-making and market-supervising function, and private sectors should While participants in the workshop further indicated that efficient cooperation between public and private sides are needed instead of lip service. Apart from this, rules

- and standards concerning e-commerce in negotiations should be consolidated to accommodate as much difference as it can for the final conclusion of FTA.
- 2) Reference to works of other national/regional/international bodies should also be attached much importance to pave the way forward. The whole world is exploring the same issue, achievements and findings from other organizations/governments/agencies are of great reference to the further improvement of current e-commerce chapters in FTAs. Admittedly, different stakeholders have different perspectives. Apart from the government and industry, many other stakeholders have also paid much attention to the issue in question. In most cases, they can provide objective and complementary views to the uttermost which can be beneficial to all players involved.
 - 3) With rich e-commerce negotiation experience, APEC economies should also cast their eyes on the opportunities and challenges brought about by mobile devices and keep a keen sense with the newly emerged opportunities and challenges at any time. As we all see that mobile devices have brought both convenience and misgivings to people, meanwhile, there are huge business opportunities in it. To deal with the new pattern of work and life well, we need to make use of the experiences got from the fast development of e-commerce, cross-border e-commerce in particular, and the existed rules and regulations in FTAs in effective. There are already mobile e-commerce existed and it is regarded as the upgraded type of e-commerce based on laptops and desktops. Therefore, learning from the existed e-commerce negotiations is needed.
 - 4) More activities across the APEC region for negotiation skills training, capacity building, experience-sharing and awareness-raising in FTA negotiations on e-commerce are strongly encouraged to promote the e-commerce negotiation in the future. E-commerce activities are new things, and we have been in the process of learning. For further understand the features, underlying problems and possible solutions in the operation of e-commerce, capacity-building activities are very necessary. In fact, these activities can not only improve the level of e-commerce development for a single economy, but also can promote the formulation of e-commerce chapters in FTAs between economies.

APEC should and can lead the way in enhancing capacity building of e-commerce chapters in FTAs between its economies, which will bring great impetus to promote cross-border trade in APEC region.

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