

APEC Training Course on Building and Enhancing FTA Negotiation Skills on Sanitary and Phytosanitary (SPS)

Ha Noi, Viet Nam

17th – 18th December 2012

SUMMARY REPORT

Introduction

On December 17th - 18th, 2012, the APEC Training Course on Building and Enhancing FTA Negotiation Skills on Sanitary and Phytosanitary (SPS), initiated by Viet Nam and co-sponsored by New Zealand, Peru, and the Philippines, was held in Ha Noi, Viet Nam. Representatives from 14 APEC member economies (Australia, Chile, Indonesia, Korea, Malaysia, Mexico, New Zealand, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, USA, Viet Nam) and international organizations (OECD – the Organization for Economic and Cooperation Development, FAO – Food and Agriculture Organization of the United Nations), together with 7 speakers, totalling approximately 50 government, industry, academic and international organization participants, attended the Training Course. Among 50 participants, 25 were women, accounting for 50 per cent of participants.

The Training Course was targeted to increase knowledge and capacity of negotiators and policymakers, with practical relevance, to participate in SPS negotiations. It also aimed at increasing knowledge of reference sources in SPS (academic references; feasibility studies and texts of FTAs that have been implemented). In addition, the Training Course was intended to share best practices and experiences in preparing for RTAs/FTAs negotiations and for a vision of an FTAAP in the APEC region. Last but not least, the Training Course was an opportunity to identify domestic issues to be addressed (regulations/policies), including unnecessary SPS related barriers to trade, to prepare for the participation in FTAs/FTAAP.

Background

This is the first time for APEC to conduct such a training course specifically aimed at building and enhancing capacity and understanding of SPS considerations and negotiations skills for related stakeholders despite the increasing importance of this issue in FTAs negotiations. This project is, therefore, expected to address the capacity building needs of APEC economies by providing a short training course to equip negotiators, policy makers and academics with relevant information, references, and equivalent skills to participate in SPS negotiations.

This project forms from a part of 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.” The APEC Capacity Building Needs Survey in 2010 and the REI CBNI Policy Training Course 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.

Themes covered during the two-day event included: (i) the necessity of having SPS provisions/ chapter in an FTA; (ii) SPS provisions/ Chapter in FTA; (iii) experiences in coordination and stakeholder consultation; (iv) best practices in negotiating SPS provisions/ Chapter in an FTA; (v) simulation exercise; and (vi) best practices in post-negotiation implementation.

Discussion

Outcomes

The APEC Training Course on Building and Enhancing FTA Negotiation Skills on SPS included one and a half days for presentations and discussions on FTA-related SPS chapters and provisions, preparation for negotiating SPS provisions/chapters in an FTA and post-negotiation implementation issues.

The Training Course was also consisted of a mock negotiation of 3 Parties, where participants had good opportunities to discuss in groups for one hour and undertake the mock negotiation for another hour. The mock negotiation was overwhelmed with enthusiasm and active discussions of all speakers and participants who played the role of developed, emerged and least developed countries in the negotiation of the issue of private standards. For some participants, it was a rare chance for them to be in a position of negotiators from the other side and understand the background, positions and domestic challenges of other countries.

The Training Course also brought about the knowledge of designing negotiation strategies and inter-department policies and networking. The Training Course's speakers, with experiences in previous and current FTA-related SPS negotiations, helped participants in building basic views and developing steps and plans for group negotiations. Overall, the Training Course had achieved its main objectives as described in the project proposal in building and enhancing capacity and understanding of participants on FTA-related SPS considerations.

Key Issues Discussed

The Training Course specifically focused on capacity building and enhancing for negotiators who have participated or potentially will participate in SPS negotiations under an FTA. The Training Course's speakers and experts from OECD, Vietnam Chamber of Commerce and Industry (VCCI) and APEC economies provided participants with a broad view of the background information on FTA-related SPS chapters/provisions and experiences of economies throughout the Asia - Pacific region. Active participants from the private, public and academic sectors and the sharing of their perspectives also added to the overall success of the Training Course.

Opening remarks

In her opening remarks, Mrs. Pham Quynh Mai, Deputy Director General, Ministry of Industry and Trade of Viet Nam stressed the importance of the Training Course in the light that SPS is a complicated issue whereas developing economies has modest knowledge and experiences. She reiterated that building and enhancing FTA negotiation skills on SPS is essential and pragmatic for the benefits of all APEC economies, especially the developing ones. She hoped that with intensive presentations of speakers and active discussions of all participants, the Training Course would offer a worthwhile opportunity for negotiators, policy-makers, and scholars of Viet Nam and other APEC members to exchange and learn precious experience, as well as enhance their knowledge on negotiating SPS issues in FTAs. This would contribute to boosting the efficiency of both SPS negotiations and the implementation of SPS regulations, once the FTAs enter into force.

Training Course's sessions

Negotiators and experts provided presentations on the following topics:

1/ To better understand the necessity of having SPS provisions/ Chapter in FTAs, 2 speakers from Australia and Viet Nam reviewed the use of SPS and the impacts on fair trade. They also analysed the application of SPS measures on imported goods in developed and developing countries.

- Presentation on 'The Necessity of Having SPS Provisions/ Chapter in an FTA' by Mr Dominic Pyne (Agriculture Counsellor, the Australia Embassy in Bangkok). This comprehensive presentation included following points: the definition of SPS measures; SPS measures as non-tariff barriers; the role of an SPS chapter; the exclusion of preferential SPS measures in an FTA; types of FTAs; approach to negotiations; convergences and divergences in APEC RTAs/FTAs; SPS Chapters/provisions of APEC economies; Australia's existing FTAs; Australian FTAs under negotiation; sharing information; and cooperative activities.
- Presentation on 'The Necessity of Having SPS Chapter Under Free Trade Agreements' by Dr Le Thanh Hoa, Deputy Director of SPS Office (Viet Nam) included broad objectives for including SPS in FTAs; types of SPS measures; key provisions of SPS Agreement; the positive implications of an SPS Chapter for developing countries; the costs of SPS compliance; and the key contexts of an SPS Chapter under an FTA.

2/ Ms Linda Fulponi, Senior Economist, from the OECD provided an in-depth presentation on "SPS and Free Trade Agreements: What's Included?" She underlined the core SPS principles in terms of transparency, harmonization, equivalence, regionalization and risk assessment. She also examined the coverage of SPS provision/ Chapter in Free Trade and Regional Trade Agreements in ASIAN, Latin American and African agreements.

3/ Speakers from the United States, the Philippines and Viet Nam provided 3 presentations on the topic of experiences in coordination and stakeholder consultation:

- Mr Richard White from RDW Global Consulting (USA) shared his experiences in coordination. He stated that SPS agencies in the United States are divided into 2 groups of regulatory and economic agencies. He also highlighted the US trade policy regarding coordination process. Mr White introduced an interesting case study on the SPS negotiation between the US and country "Q" and withdrew some lessons learned from the case study, including the importance of consultation with US agricultural interests and US Congress during the FTA negotiations, long-term technical assistance programs, the importance of decision-making upon SPS market access at working level, and the role of science on SPS market access.
- Ms Carolyn Castro from the Philippine Department of Agriculture was tasked to share experiences with coordination and stakeholder consultations in FTA negotiations. She explained the reasons for the participation of the Philippines in FTA negotiations and provided a brief on the country's FTA engagement in ASEAN and ASEAN Dialogue Partners to date. Ms Castro discussed some issues in coordination within and among different government units as well as with private sector stakeholder consultations. She highlighted concerns over the various levels of development among Parties to FTAs, possible conflicts of interests among stakeholders, different interpretation and understanding about certain SPS concepts and principles, inadequate awareness of the Agreement, among others. She shared that although generally most SPS provisions in FTAs are affirmation of the WTO SPS Agreement and do not go further than the WTO SPS commitments, it is still important that stakeholders are aware and are reminded of the general principles and commitments and their implications. Ms Castro emphasized the critical role of consultations with stakeholders and stated that Government institutions should serve to balance the diverse interests of society.

- Dr Nguyen Thi Thu Trang, Director of Legal Department, VCCI (Viet Nam) approached the issues with 3 main points: She stressed the needs of consultation from the positions of both negotiators and businesses. Dr Nguyen analysed the situation of consultation in developing countries, with specifications of trade consultation in Viet Nam. She gave an overview of the proceedings of consultation in Viet Nam and the role of VCCI in that process. Dr Nguyen concluded her presentation by explaining the differences of SPS consultation among others.

4/ In the presentation on 'Best Practices in Negotiating SPS Provisions/ Chapter in an FTA', Mr Richard White outlined 4 points: the importance of preparation before the negotiation; understanding your own negotiation team; get to know and learn about other teams; the necessity of negotiating texts that can be implemented in reality.

5/ Speakers from Australia, Viet Nam and the OECD provided 3 presentations on the topic of best practices in post-negotiation implementation.

- Mr Dominic Pyne (Australia) presented on implementation process, participation of relevant agencies, monitoring and review and the evolution of FTAs world-wide. He also highlighted 2 typical examples of Thailand – Australia Free Trade Agreement (TAFTA) and Australia – United States Free Trade Agreement (AUSFTA).
- Mr Tran Viet Cuong, Program Officer, SPS Office (Viet Nam) gave an overview on Vietnam's FTA engagement, forms of commitments and levels of commitments. He explained in details SPS cooperation and developments under the Free Trade Agreements of ASEAN, ASEAN-Australia-New Zealand, ASEAN-Korea, and ASEAN-China. Moreover, Mr Tran introduced the SPS Office of Viet Nam and relevant experiences in inter-agency coordination. He emphasized the importance of coordination, finance, monitoring and review, and technical assistance in the post-negotiation implementation.
- Ms Linda Fulponi (OECD) presented on the issues that need to be addressed in post-negotiation implementation. Among factors that are required in implementing SPS commitments, she briefly introduced to the Training Course's participants the SPS management systems and their according needs of assessments. Ms Fulponi also noted the role of technical committees in the implementation process. Furthermore, she listed other crucial factors such as transparency, equivalence, harmonization and improvements of compliance.

Mock negotiation

During the mock negotiation, participants were divided into 3 groups of countries (developed, emerged, least developed ones) to prepare and negotiate the issue of private standards under an SPS Chapter in a FTA. Participants had one hour to discuss at group level, with assistance and advice of speakers, to prepare for the group's views and strategies to negotiate.

The one-hour mock negotiation took place enthusiastically with 3 leaders of 3 groups to represent their groups to negotiate. The negotiators were reserved, polite but also firm on their countries' positions. As private standards are complicated and controversial, groups were given break time to "go back" to their home countries for domestic consultation before undertaking the 2nd round of negotiation, which took place in the same morning at the Training Course.

The exercise on mock negotiation was evaluated to be useful and helped to increase the skills of negotiations.

Conclusion and Recommendations

In the Training Course's closing remarks, Mrs. Pham Quynh Mai, Deputy Director General, Ministry of Industry and Trade of Viet Nam, commended the speakers and participants on a very successful and productive Training Course. She thanked the organizers, co-sponsors and distinguished speakers and participants from government, academic and international organizations, for sharing their valuable experiences and invaluable insights.

The Training Course concluded with a discussion of possible future activities and continuing work to improve the capacities to participate in FTA-related SPS negotiations and sharing best practices.

Follow-up training course should consider the following topics:

1. In terms of theory:

The following topics can be considered to be addressed at the course:

- Skills to negotiate internally with domestic stakeholders;
- Risk and impact assessment;
- Dispute settlement;
- How to balance interests of Parties;
- Combine APEC Training Courses with trainings of WTO/ ADB/ APEC SCSC (Food Safety forum)

2. Mock negotiation:

- Participants highly recommended to include mock negotiation in future training course and more time should be allocated for this exercise, probably on daily basis after each theory session, so that participants will have chance to practice negotiation skills. Additionally, different groups may take bilateral consultation with each other.
- To prepare for the mock negotiation, there should be specific guidances/ information that can be handed out or emailed to participants prior to the training course. The organizers might also think of multiple ways of conducting the mock negotiations, including bilateral and multilateral negotiations as well as changing of partners. There should also be one session for stakeholder consultation.
- A special training on negotiation skills and techniques (eye contacts, behaviours, attack and defence) is also very important and highly recommended. It could be combined in a Training Course with a specific topic.

3. Participation of stakeholders:

- More involvement of various stakeholders, such as academia, NGOs, business (or private sectors).