Preparing Negotiating Briefs – Legal Issues

Submitted by: New Zealand
APEC Capacity Building Workshop on Preparing for FTA Negotiations

Session 5: Preparing Negotiating Briefs – Legal Issues

What Issues?

‘Legal and Institutional’ chapters include:
- Preamble
- Initial provisions
- Dispute settlement
- General exceptions
- Institutional provisions
- Transparency
- General provisions
- Final provisions
Consult

- business
- civil society
- government agencies
  - economic
  - central bank
  - revenue
  - justice
  - cultural
  - environment

Define your objectives

Dispute Settlement Objectives

- third party impartial arbitration empowered to resolve the dispute
- compulsory with binding outcomes
- simple, effective, efficient, and practical processes
- broad coverage across the FTA (though may not need to cover all Chapters)
- flexibility in choice of forum
- transparency, *amicus curiae*
Analyse precedent: ours ...
Strategy

• Prioritise objectives
• Identify/draft key textual elements
• Identify fall-backs
• Consider whether to propose text
• Consider timing
  – text based negotiation
  – concessions
  – compromise proposals

Obtain Mandate

• Cabinet paper
• Precision vs flexibility
• Updates
  – Streamlined process (e.g. delegated Ministers)
Thank You

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