



**Asia-Pacific
Economic Cooperation**

2014/SOM2/CTI/WKSP1/017

Role of Legal Adviser

Submitted by: New Zealand



**Capacity Building Workshop on Preparing
for FTA Negotiations
Qingdao, China
6-7 May 2014**



APEC Capacity Building Workshop on Preparing for FTA Negotiations

Session 6: Role of Legal Adviser



Multiple Roles

1. Negotiate the Legal and Institutional chapters
2. Legal advice on other chapters
3. Strategic guidance
4. Legal verification
5. Implementation



1. Negotiate the L&I Texts

- Preamble
- Initial provisions and general definitions
- Dispute settlement
- General exceptions
- Institutional provisions
- Transparency
- General provisions
- Final provisions



2. Legal Advice

1. Understand WTO law and jurisprudence
 2. Drafting clarity
 - ordinary meaning of the terms of the treaty (in context and in light of object and purpose)
 - **only** if ambiguity, then can look at preparatory work of the treaty and the circumstances of its conclusion
 - So what you thought you agreed to not always determinative!
- Drafting solutions



Ambiguity



Ambiguity





Panda: eats shoots and leaves



“Panda. Large black and white bear-like mammal native to China. Eats, shoots and leaves.”



Ambiguity

1994 Cairo Conference on Population, clause on abortion:

1. Abortion is unthinkable. Cannot be contemplated.
2. Abortion happens. Should be safe.
 - "In those circumstances where abortion is not against the law, such abortion should be safe".



3. Strategic Guidance

Part of core team (lead negotiator, legal adviser, FTA coordinator)

Overarching view:

- See linkages, connections – not just within chapters, but between chapters
- Ensure coherence
 - rafting
 - negotiating



4. Legal Verification

- Following conclusion of the negotiations and before signing
- Final 'scrub' of the text
- Technical, non-policy issues
- Ensure consistency across the text
- Translation

“Put the book on the chair by the door in the living room”



"Put the book on the chair by the door in the living room"

Put the book onto the chair that is by the door in the living room

Living Room

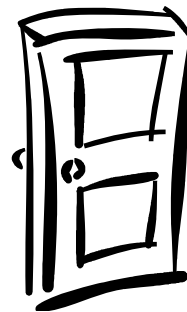



"Put the book on the chair by the door in the living room"

Take the book that is on the chair and put it by the door in the living room

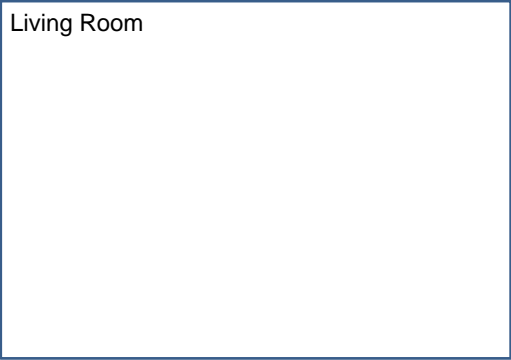

living room


Living Room



 "Put the book on the chair by the door in the living room"

Take the book off the chair that is by the door and put it in the living room



 Put the book on the chair by the door in the living room

- Put the book onto the chair that is by the door in the living room
- Take the book that is on the chair and put it by the door in the living room
- Take the book off the chair that is by the door and put it in the living room



5. Implementation

- Seeking approval to sign and preparation of the final texts to be signed
- Domestic constitutional approval process for entering into treaties
- Legislation
- Entry into force



Thank You

barney.riley@mfat.govt.nz