

## **Summary of the Trade Policy Dialogue on WTO-Plus Aspects of Recently Concluded RTAs/FTAs, 14 May 2015, Boracay, Philippines**

The Trade Policy Dialogue on WTO-Plus Aspects of Recently Concluded RTAs/FTAs was held in Boracay, Philippines on 14 May 2015. The TPD brought together presenters with extensive experience in trade policy and negotiations in different Regional Trade Agreements and Free Trade Agreements across the APEC region.

The primary objective of the TPD was to build momentum towards a high-quality, comprehensive FTAAP. It was intended to 'operationalise' an important element of the information sharing mechanism (ISM) under the Beijing Roadmap endorsed by Leaders in November 2014. The TPD will be held in the margins of CTI2 each year.

The first half of the TPD program focussed on WTO-plus aspects of three FTAs involving APEC partners. TPD participants heard that the Korea-Australia FTA reflects a high level of complementarity in the two economies. In respect of WTO-plus issues, although Australia is a non-member of GPA, both sides have opened their respective procurement markets. On investment, compared to TRIMs, there is a broader scope and higher protection commitments. Intellectual property protection rules generally seek to ensure higher level of protection than that of TRIPs. The FTA includes Competition, E-Commerce, Labor and Environment rules not stipulated in the WTO.

A presentation by Hong Kong, China and Chile focussed on the Chile-Hong Kong, China FTA. The Agreement has resulted in substantial trade growth in the three years since its signing in 2012. The FTA covers a comprehensive range of modern disciplines, including WTO-plus chapters such as services, government procurement, environment, dispute settlement, transparency and a MoU on labour. Commitments to liberalise sectors of interest to both parties were made following a WTO-plus approach. Both Parties commitments extended beyond the WTO with respect to sanitary and phytosanitary measures. A robust dispute settlement mechanism allows the Parties to resort to international arbitration. In order to tackle problems of differential treatment and legal uncertainty both parties included commitments on transparency of domestic regulations and elimination of unnecessary barriers on trade in services. The FTA's services chapter provides for non-restrictive national treatment for services providers. Sectors include financial, telecommunications, IT and consulting services. There are commitments on movement of natural persons covering the temporary and stay of business visitors and 'intra-corporate transferees' in a wide range of sectors. In terms of investment the FTA provides for an investment agreement after the FTA's entry into force and negotiations commenced in February 2015.

The TPD heard that WTO-plus elements in the Peru-Japan Economic Partnership Agreement (EPCA) were in services (especially financial and telecommunications), entry and temporary stay of nationals for business purposes, government procurement and competition policy. The EPA's financial services provisions cover such issues as payment and clearing systems, self-regulatory bodies, transparency and expeditious application procedures. It adopts a liberalising negative list approach, including a local presence provision. Investment in financial services similarly follow a negative list approach. Entry and temporary stay of nationals provisions are GATs-plus, specifying categories of nationals for business purposes and provision of information on the requirements for entry and temporary stay in both parties. The CEPA establishes obligations, including the commitment to implement appropriate measures against anti-competitive practices.

WTO-plus approaches in specific chapters of RTAs/FTAs were discussed in the second half of the TPD program. Participants heard that the Services Chapter of the Chile-Peru FTA applies to all services sectors at all levels of government in modes 1, 2 and 4 but with some notable exceptions, such as: air transport services, subsidies to service providers and government procurement of services. Specific obligations prevent either Party from requiring a service supplier of the other Party to establish or maintain a representative office or to be resident in its territory as a condition for the cross-border supply of a service. The chapter also allows each Party to maintain appropriate mechanisms for responding to inquiries from interested persons regarding their services regulations. Amongst other features, the FTA follows a negative list approach, listing existing measures, e.g. only a Peruvian national by birth may supply notary services, and future measures: e.g. Chile reserves the right to adopt or maintain any measure granting rights or preferences to minorities.

The Electrical and Electronic Equipment and their Components Annex (EEE MRA) of the New Zealand-China FTA deals with the testing and certification of electrical and electronic componentry across both Parties. EEE MRA sits within the framework established by the TBT chapter of the FTA which is 'WTO-plus' and builds on the obligations in the WTO TBT Agreement. The Annex provides for exporting Party conformity assessment bodies to test products in conformity with importing Party requirements. Regulators in both Parties cooperate in enforcing standards. This arrangement benefits both partners by ensuring safety of imported products, facilitating market access and improving the international image of domestically-produced products.

The dispute settlement provisions of the KORUS investment chapter allows investors the right to file for international arbitration against the host country of the investment if a loss is incurred as a result of the country's violation of an investment agreement. In order to file a claim to arbitration, an investor must submit a written waiver of any right to initiate or continue any proceedings before a court of the other party. In the event of a breach of an obligation by the other party, an investor of the U.S. may file a claim with either a Korean court or an international tribunal. In terms of arbitral awards, they are confined to monetary damages, any applicable interest and restitution of property, and any given award may not be annulled by a Party.

The competition policy chapter of the Hong Kong, China-New Zealand CEP does not provide for setting up a competition law or enforcement agency. Commitments are taken up by governments of both parties to promote competition and economic efficiency. Authorities responsible for competition law are encouraged to cooperate on policy development. Another provision includes consultation between the Parties on anti-competitive actions affecting trade and investment. Non-/application of dispute settlement applies to the whole chapter and there is no provision covering state-owned enterprises.

The final presentation at the TPD covered the e-commerce chapter of ASTEP, both Chinese Taipei and Singapore had agreed to adopt a negative list approach and avoid custom duties on electronic products. This would strengthen the legal and commercial basis for electronic commerce business in both Parties.

The outcome of the TPD will be considered at the SOM-level Dialogue on RTAs/FTAs to be held in the margins of SOM3 in Cebu.