

## **Trade Policy Dialogue on WTO-Plus Aspects of Recently Concluded RTAs/FTAs 7 May 2016, Arequipa, Peru**

The Trade Policy Dialogue on WTO-Plus Aspects of Recently Concluded RTAs/FTAs was held in Arequipa, Peru on 7 May 2016. 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 contribute to momentum towards a high-quality, comprehensive FTAAP by exchanging information on WTO-plus elements and approaches of recently-concluded FTAs/RTAs of APEC economies. It was intended to 'operationalise' an important element of the information sharing mechanism (ISM) under the Beijing Roadmap on APEC's contribution to the realisation of the FTAAP which was endorsed by Leaders in November 2014.

The first half of the TPD program focussed on various WTO-plus aspects of three FTAs involving various APEC partners. TPD participants heard that the Canada-Korea agreement (CKFTA) has been in existence for just one year and already stands at USD 10.1 billion in bilateral merchandise trade. In respect of WTO-plus issues, a 'negative list' approach in the cross-border trade in services chapter allows GATS-plus commitments to be secured. In terms of temporary entry, the CKFTA chapter on this goes well beyond both economies' GATS obligations with broad occupational coverage. The Technical Barriers to Trade (TBT) provisions covering standards-related measures build on the WTO TBT agreement. Compared to the TRIMs, there is broader scope and higher protection for investment, especially concerning investors in the other party and covered investments in goods and services. The Government Procurement chapter builds on WTO's revised GPA to which both economies are members. The Intellectual Property provisions build upon TRIPS ensuring a higher level of protection, e.g. trademark registration may not require that signs are visually perceptible. The CKFTA includes Competition Policy, E-Commerce, Labour and Environment provisions not stipulated in the WTO.

The TPD heard that the ASEAN-Australia-New Zealand FTA (AANZFTA), signed in 2009, has often been called the highest quality of ASEAN's trade agreements with its FTA partners. Tariff eliminations are ongoing. Over 90% of all tariff lines will eventually be eliminated across the AANZFTA region. As well as including upfront commitments on Services, there is provision for a review of the agreement's Services Chapter. There is similar provision for ongoing work and discussion on Investment and non-tariff measures in goods trade.

The agreement has been implemented with the assistance of a very successful economic cooperation programme, jointly funded by Australia and New Zealand. The support programme has developed technical expertise among ASEAN officials in several specific areas. It is a "demand driven" programme, meaning that projects have largely been prompted by ASEAN requests for capacity-building support.

There are WTO-plus outcomes in TBT and SPS. The SPS Chapter provides a range of tools (such as equivalence and cooperation) that can be used by the Parties to enhance practical implementation of the principles and disciplines contained within the WTO SPS Agreement. A major benefit of the SPS Chapter is that it has provided

a mechanism for progressing bilateral SPS agreements to work with relevant competent authorities to identify areas for discussion or cooperation activities to implement SPS measures to facilitate trade between the two parties where there are no other bilateral agreements.

The TBT Chapter recognises different options for different circumstances based on an understanding of the supporting architecture of risk management. Like SPS, the TBT Chapter encourages the exchange of information and cooperation in the preparation, adoption and application of standards. It asks Parties to give “positive consideration” to accepting technical regulations from other Parties as equivalent.

AANZFTA establishes a framework of disciplines, processes and procedures for addressing technical barriers to trade (“STRACAP” – standards, technical regulations, and conformity assessment procedures). The diversity across the regulatory regimes amongst AANZFTA Parties has made it hard to build momentum in the implementation agenda. There is also considerable diversity across the different standards and conformance regimes. Realising the benefits of the STRACAP Chapter needs a combination of a trade focus, a standards and conformance policy focus, and a technical focus at the conformity or standards level. This is being discussed with ASEAN in the context of the ASEAN Consultative Committee on Standards and Quality (ACCSQ).

A presentation by Chile focussed on the Chile-Australia FTA. The Agreement has resulted in substantial trade growth in the seven years since its entry into force in 2009. The longer period of tariff reduction makes it one of the most ambitious Chile has signed in terms of market access. The FTA addresses matters related to trade in goods, services, investment, public procurement and intellectual property. It covers technical barriers to trade, e.g. deeper transparency obligations, sanitary and phytosanitary measures, government procurement, competition policy, investment and services where a negative list approach is pursued. The agreement includes an innovative approach to trademarks in the chapter on intellectual property, e.g. allowing notorious and famous trademarks.

WTO-plus approaches in specific chapters of RTAs/FTAs were discussed in the second half of the TPD program. Participants heard that there are different conformity assessment procedures in RTAs/FTAs according to the assessed level of risk from suppliers’ declarations to government conformity assessment bodies (CABs). There are also different approaches to acceptance of the results of conformity assessment, ranging from Mutual Recognition Arrangements to specific regulations for conformity assessment. Voluntary arrangements also existed between domestic and foreign conformity assessment bodies. For manufacturer/exporters, the objective is to reduce repetition and undertake conformity assessments locally. MRA approaches often took time and are costly. They could also be rigid and limited in scope, with the list of products covered subject to change as the interest of exporters shifted. Supplier declaration approaches were generally product and area-specific. They required a robust post-entry surveillance regime. The ANZTEC agreement provided for national treatment in accreditation, designation, approval, and licensing for foreign CABs. In order to ensure that it accords such treatment, each Party is entitled to obtain from conformity assessment bodies located in the other Party the same or equivalent procedures, criteria and other conditions it may apply in its own

jurisdiction. ANZTEC also permitted the involvement of CABS from trading partners provided the CAB is technically competent and holds appropriate accreditation. ANZTEC offers the advantage of requiring less compatibility matching and thus provided a time and cost effective approach.

The Government Procurement Chapter of the Korea-Peru FTA reflects the agreement of both Parties on a high-quality undertaking with respect to GP. Most provisions contain obligations drawing from revised Government Procurement Agreement texts that were being negotiated in the WTO. Korea and Peru also made market access commitments comparable to or higher than their previous commitments. The main elements of the text included national treatment and non-discrimination, use of electronic means where procurement is conducted using IT systems and software, and prohibition of offsets. Conditions for participation shall be limited to those that a supplier has the legal, financial, commercial, and technical abilities and shall not be that the supplier has previously been awarded one or more contracts by a procuring entity of the Party. Procedural Rules covered information on intended procurement, time-periods (deadlines for the submission of tenders), and tendering procedures (open, selective, limited tendering). Specific exceptions have been built in to the agreement. For example, Korea included single tendering procurement and set-asides in accordance with the specified domestic legislation for SMEs; while for Peru, procurement programs focused on micro SMEs.

Looking at WTO-plus elements of the Trans Pacific Partnership, participants heard that the Intellectual Property chapter of the agreement includes elements that are TRIPS Plus. The chapter includes provisions on procedural, substantive and enforcement aspects of trademarks, patents, geographical indications and copyright and related rights, among others. Those provisions have the objective of establishing common standards among TPP members that ensure effective protection of IP and to promote innovation. The IP chapter also includes specific provisions on cooperation on issues of mutual interest, including genetic resources and traditional knowledge. The IP chapter's procedural aspects provided minimum requirement of formalities for the registration and enforcement of IPRs and to provide transparency and predictability. In the area of health, there are measures related to the commercialisation of certain pharmaceutical products, the relationship between patent and sanitary systems and data protection for pharmaceutical products. The chapter contained enforcement provisions which regulated illegal use of IP rights such as trademark labelling, ex-officio actions and damages, and border measures.

The TPP's approach to regulatory coherence was discussed in the final presentation at the TPD. Regulatory coherence, participants learned, is not about less regulation nor is it about more regulation. It is about improving the process by which parties develop regulations, generate best practices, and find common acceptable standards and timings in which to implement them. In this it reflects the goal of reducing regulatory barriers to trade and investment created by differing laws in different countries through direct cooperation. The TPP Regulatory Coherence chapter provides for each Party to determine and make publicly available the scope of its covered regulatory measures no later than one year after TPP comes into force; each Party should aim to achieve "significant coverage". Amongst other requirements, the Chapter obliges Parties to establish processes or mechanisms to facilitate effective interagency coordination and review of covered measures; and encourage relevant regulatory

agencies to conduct regulatory impact assessments. The chapter is a living document because it establishes a Committee on Regulatory Coherence to work on implementation and future priorities (including potential sectoral initiatives and cooperation activities).

The outcomes of the TPD will be considered at the SOM-level Dialogue on RTAs/FTAs to be held in the margins of SOM3 in Lima. It will also be placed on the APEC Collaboration System of the APEC website as a resource under the information sharing mechanism.