

Ministry of Foreign Affairs,  
Republic of Korea

**FINAL REPORT**

# APEC Capacity Building Workshop on Trade Remedies

*Rules and Practices under the WTO and the FTAs/RTAs*

June. 22-23, 2017

Seoul, Korea

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# SUMMARY

The Ministry of Foreign Affairs of the Republic of Korea successfully held the "APEC Capacity Building Workshop on Trade Remedies: Rules and Practices under the WTO and FTAs/RTAs" from June 22 to 23, 2017 at the Novotel Ambassador Gangnam Seoul Hotel, in Seoul, Korea.

Trade remedy systems aim to protect domestic industries and are allowed under WTO rules. Although there have always been some disputes, it is largely accepted that the trade remedy system has provided a stable and predictable order. However, there are debates between two different views; one is that trade remedies are being used as a tool for protectionism and the other is that domestic industries are not properly protected from unfair trade.

Upon this background, as part of the 2<sup>nd</sup> Capacity Building Needs Initiative (CBNI) program, this workshop enhanced the capacity and skill set of government officials of APEC economies in dealing with unfair trade practices. The main purpose of the workshop was to create awareness on trade remedies under the WTO set of rules and chapters of FTAs/RTAs.

This workshop hosted seven experts on trade remedies from the World Trade Organization (WTO), U.S. International Trade Commission (USITC), CATO Institute, University of Tokyo, Wayne State University, Seoul National University, and Korea University, together with 28 participants from APEC members. The workshop consisted of six sessions and 10 presentations, starting with a session on "Overview of trade remedies in recent global trading environment and their limitations" (Session 1), "Trade remedies under the WTO agreement" (Session 2), "Anti-dumping" (Session 3), "Subsidies and countervailing measures" (Session 4), "Safeguard" (Session 5), and concluding with a session titled "Discussions and sharing experience of APEC members" (Session 6). The workshop was conducted in English without translation service. In each session, the participants were very active and engaged in interactive discussion on the topics.

After the workshop, a survey was conducted to evaluate the workshop program and all participants assessed the program to be generally "satisfactory." We are confident this workshop was a great opportunity for APEC member economies' government officials to

share useful information on trade remedy rules and practices.

# **PART I. The Program**

## **1.1 Background**

A Capacity Building Workshop on trade remedy rules and practices under the WTO and FTAs/RTAs was held in Seoul on June 22-23, 2017, as part of the programs under the 2nd phase of the Capacity Building Needs Initiative (CBNI). The workshop was developed to enhance the capacity and skills of government officials of APEC economies on the issue of trade remedies. The proposed subject matter was increasingly an important and argumentative issue as trade remedy measures are more frequently used by many APEC member economies. As rules and practices of trade remedy in FTAs/RTAs become more complicated and involve numerous legal issues, it is necessary for FTA negotiators to have better understanding on each component of the trade remedy system. The workshop explained the three principal trade remedies described by the WTO and provided strategic advice on how to deal with trade remedy actions.

## **1.2 Objectives**

The main objective of this workshop was to enhance the capacity and skill of government officials of APEC economies to address unfair trade practices. In order to carry out the workshop objectives, distinguished scholars and experts from APEC member economies and international organizations presented their expertise on the topic and engaged in a discussion with APEC economies' participants. The workshop is designed to help the government officials acquire the knowledge and expertise in the field of trade remedies such as anti-dumping, safeguards, and countervailing measures.

## **1.3 Overview of the Workshop (Speakers and Program)**

The workshop was attended by more than 30 delegates from 14 APEC economies (China; Chinese Taipei; Hong Kong, U.S., Indonesia; Korea; Malaysia; Mexico; Peru; Philippines; Russia; Singapore; Thailand; and Vietnam). Also, distinguished scholars and experts from international organizations presented their expertise and engaged in discussion with APEC economies' participants: Prof. Duk-geun Ahn from Seoul National University;

Mr. Michael Anderson from USITC; Ms. Judith Czako from the WTO Secretariat; Mr. Daniel Ikenson from the CATO Institute; Prof. Junji Nakagawa from the University of Tokyo; Prof. Jae-hyoung Lee from Korea University; Prof. Julia Qin from Wayne State University.

The workshop, which was moderated by Dr. Chul Chung of the Korea Institute for International Economic Policy, consisted of six sessions and 10 presentations, commencing with “Overview of Trade Remedies in Recent Global Trading Environment and their Limitation” (Session 1) and “Trade Remedies under the WTO Agreement” (Session 2), moving on to each types of trade remedies such as “Anti-dumping” (Session 3), “Subsidies and Countervailing Measures” (Session 4), and “Safeguards” (Session 5), and concluding with “Discussions and sharing experiences of APEC members” (Session 6).

DAY 1 (JUNE 22)	Thursday
9:00 am – 9:30 am	Arrival/Registration/Coffee
9:30 am – 9:50 am	<b>WELCOMING REMARKS/PHOTO SESSION</b> Ambassador LEE Taeho, Deputy Minister for Economic Affairs, Ministry of Foreign Affairs, Republic of Korea
9:50 am – 10:00 am	<b>INTRODUCTION/OVERVIEW OF WORKSHOP</b> Dr. Chul CHUNG, Vice President of Korea Institute for International Economic Policy (KIEP)
10:00 am – 11:30 am (1 hour 30 mins)	<b>SESSION I : OVERVIEW OF TRADE REMEDIES IN RECENT            GLOBAL TRADING ENVIRONMENT AND THEIR            LIMITATIONS</b>  Speakers (20 mins) - Prof. Duk-geun AHN, Seoul National University - Graduate School of Int'l Studies (20 mins) - Mr. Michael ANDERSON, Director, Office of Investigations, USITC  Panel Discussants (10 mins) - Mr. Daniel IKENSON, Director, Herbert A. Stiefel Center for Trade Policy Studies, CATO Institute (10 mins) - Prof. Junji NAKAGAWA, University of Tokyo - Institute of Social Science  <i>The first session will provide an introductory framework for Day 1 and Day 2            discussions, including an overview on rising protectionism and the increasing            number of trade remedy measures over the world, and the impact of trade            remedies on current international trade flow. The speakers will touch upon the            importance of trade remedy rules in international trade law and also highlight            the distinctive features and the limitations of trade remedy provisions in            FTAs/RTAs.</i>  <b>General Discussions (Questions &amp; Answers)</b>

DAY 1 (JUNE 22)	Thursday
11:30 am – 11:45 am	Coffee Break
11:45 am – 1:00 pm (1 hour 15 mins)  (20 mins)  (10 mins) (10 mins)	<b>SESSION II : TRADE REMEDIES UNDER THE WTO AGREEMENT</b>  Speaker - Ms. Judith CZAKO, Chief Legal Officer of the Rules Division and Senior Counsellor, the WTO Secretariat  Panel Discussants - Prof. Julia QIN, Wayne State University - Law School - Prof. Jaehyoung LEE, Korea University - Law School  <i>The overall relation between relevant provisions on trade remedy in GATT 1994 and WTO Agreements on trade remedy will be presented in the second session. Subsequently, unlike the following three deep-dive sessions, a comparative analysis of the aforementioned WTO rules on trade remedy and trade remedy chapters in FTAs/RTAs will be discussed as well. Various aspects of trade remedy in the context of WTO discussions will also be explored.</i>  <b>General Discussions (Questions &amp; Answers)</b>
1:00 pm – 2:30 pm	Luncheon (Venue: Alsace & Provence Hall 2F)
2:30 pm – 4:00 pm (1 hour 30 mins)  (45 mins-1 hour)	<b>SESSION III : ANTI-DUMPING</b>  Speaker - Mr. Daniel IKENSON, Director, Herbert A. Stiefel Center for Trade Policy Studies, CATO Institute  <i>The third session will focus on the structure of the Anti-dumping Agreement, details of investigation procedures stipulated in the Agreement, contentious issues related to the Agreement which comes out from the dispute settlement cases in the WTO etc. In addition, various aspects of the anti-dumping provisions in FTAs/RTAs will be presented as well.</i>  <b>General Discussions (Questions &amp; Answers)</b>



<b>DAY 1 (JUNE 22)</b>	<b>Thursday</b>
4:00 pm – 4:20 pm	<b>Coffee Break</b>
4:20 pm – 5:50 pm (1 hour 30 mins)  (45 mins-1 hour)	<p><b>SESSION IV: SUBSIDIES AND COUNTERVAILING MEASURES</b></p> <p>Speaker - Prof. Julia QIN, Wayne State University - Law School</p> <p><i>The fourth session will deal with the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The speaker will illuminate on the Agreement’s structure, investigation procedures in it, debates and controversies over the issues related to the Agreement, and dispute settlement cases of the SCM Agreement. The speaker will also touch upon variations of the SCM provisions in FTAs/RTAs, such as a sequential analysis of SCMs before and after the global financial crisis.</i></p> <p><b>General Discussions (Questions &amp; Answers)</b></p>
5:50 pm – 8:00 pm	<b>Welcome Dinner hosted by Ambassador LEE Taeho, Deputy Minister for Economic Affairs, MOFA, Republic of Korea (Venue: Entrée 1F)</b>

<b>DAY 2 (JUNE 23)</b>	<b>Friday</b>
8:30 am – 9:00 am	Arrival /Coffee
9:00 am – 10:15 am (1hour 15 mins)  (40-45 mins)	<b>SESSION V: SAFEGUARD</b>  Speaker - Prof. Junji NAKAGAWA, University of Tokyo - Institute of Social Science  <i>The fifth session will provide an overview of the Safeguard Agreement. The special characteristics of Safeguard as a provisional measure to prevent or remedy injury to domestic industry by foreign products legitimately imported without violation of any trade rules will also be emphasized. Discussions will deal with the following areas concerning the Agreement: overall structure, investigation procedures under the Agreement, controversies over issues related to safeguard measures, and dispute settlement cases of the Safeguard Agreement. The speaker will also present several distinctive features of the safeguard provisions in FTAs/RTAs by country/region.</i>  <b>General Discussions (Questions &amp; Answers)</b>
10:15 am – 10:30 am	<b>Coffee Break</b>
10:30 am – 11:30 am (1 hour)  (20 mins) (10 mins) (10 mins)  (10 mins)	<b>SESSION VI: DISCUSSIONS AND SHARING EXPERIENCE OF APEC MEMBERS</b>  APEC member economies' officials - Dr. HONG Young-ki, Director General of International Economic Affairs Bureau, Ministry of Foreign Affairs of Korea - Mr. Michael ANDERSON, Director, Office of Investigations, USITC - Mr. LUONG Kim Thanh, Deputy Director, Ministry of Industry and Trade of Vietnam - Ms. GAYATRI Kumaraveloo, Senior Principal Assistant Director, Ministry of International Trade and Industry(MITI) of Malaysia  <i>Director General HONG will present Korea's experiences and lessons learned in the area of trade remedy during its vigorous expansion of FTAs/RTAs.</i>  <i>Mr.ANDERSON, Mr.LUONG and Ms.GAYATRI will share their insights and experiences in the area of trade remedies from the US, Vietnam and Malaysia perspectives.</i>  <b>General Discussions (Questions &amp; Answers)</b>
11:30 am– 12:00 pm	<b>SESSION VII: WRAP-UP AND EVALUATION</b>
12:00 pm – 1:00 pm	<b>Luncheon (Venue: Alsace &amp; Provence Hall 2F)</b>

## PART II. Outputs and Results

### 2.1 Participants

The program received a very positive response and most of the APEC members indicated their willingness to participate. At the end, 29 participants from 13 APEC economies (excluding Korea) came to participate in the program. Participants actively posed questions and involved themselves in the discussions. The participants are listed in the table below.

	Country	Participants	Position	Affiliation
1	Malaysia	Ms. Gayatri Kumaraveloo	Senior Principal Assistant Director	Ministry of International Trade and Industry (MITI)
2	Malaysia	Ms. Darshini Subramaniam	Senior Assistant Director	Ministry of International Trade and Industry (MITI)
3	The Philippines	Mr. Lev Nikko M. Macalintal	Development Management Officer	Agriculture
4	The Philippines	Ms. Olivia T. Marasigan	Trade Industry Dept. Specialist	Department of Trades Industry
5	Vietnam	Mr. Do Duy Khanh	Official	Ministry of Industry and Trade
6	Vietnam	Mr. Luong Kim Thanh	Deputy Director	Ministry of Industry and Trade
7	Thailand	Mr. Niwat Apichartbutra	Trade Officer at Professional Level	Ministry of Commerce
8	Thailand	Ms. Tianthip Boonchokvittoon	Trade Officer at Practitioner Level	Ministry of Commerce
9	Peru	Mr. Diego Fuentes	Economist in Anti-Dumping and Subsidies Commission	National Institute for the Defense of Free Competition and the Protection of Intellectual Property
10	Peru	Ms. Jassmin Huapaya	Specialist in Anti-Dumping and Subsidies Commission	National Institute for the Defense of Free Competition and the Protection of Intellectual Property
11	Russia	Ms. Daria Karman	Consultant at Trade Remedies Unit of the Trade Negotiations Department	Ministry for Economic Development of the Russian Federation
12	Russia	Ms. Marina Baeva	researcher	Russian APEC Study Center
13	People's Republic of China	Mr. Zhan Yaxiong	Deputy Division Director	Ministry of Commerce

	Country	Participants	Position	Affiliation
14	People's Republic of China	Mr. Deng Haixiao	Attaché (commercial)	Ministry of Commerce
15	Mexico	Mr. Francisco Diego Pacheco Román	Underdirector of Legal Consultancy of International Trade	Ministry of Economy of Mexico
16	Mexico	Ms. Nam Yi Kim	Head of Department of Legal Consultancy of International Trade	Ministry of Economy of Mexico
17	Indonesia	Ms. Armi Yuniani	Assistant Deputy Director of APEC Investment, Directorate of APEC and International Organization Negotiations	Ministry of Trade
18	Indonesia	Mr. Arriaz Mosha Athar	Anti-Dumping Investigator	Indonesian Anti-Dumping Committee, Ministry of Trade
19	Hong Kong, China	Ms. Ho Pui Yue Queenie	Government Counsel	Treaties & Law Unit, International Law Division, Department of Justice
20	Singapore	Mr. Adrian Cheng	Senior Assistant Director	International Trade Cluster, Ministry of Trade and Industry
21	Singapore	Mr. Samuel Loke	Senior Assistant Director	International Trade Cluster, Ministry of Trade and Industry
22	Singapore	Mr. Khong Zi Xie	Assistant Director	International Trade Cluster, Ministry of Trade and Industry
23	Indonesia	Ms. Aska Cikos Perdini	Trade Analyst, Directorate of APEC and International Organization Negotiations	Ministry of Trade
24	Indonesia	Mr. Poetra Tegoeh Djiwa Satriya	Safeguards Investigator	Ministry of Trade
25	Chinese Taipei	Mr. Chao-Chung Chang	Auditor	Bureau of Foreign Trade, Ministry of Economic Affairs
26	Chinese Taipei	Mr. Bow-Lan Tseng	Section Chief	Bureau of Foreign Trade, Ministry of Economic Affairs
27	Chinese Taipei	Ms. I-Chieh Ho	Economic Secretary	Bureau of Foreign Trade, Ministry of Economic Affairs
28	Chinese Taipei	Ms. Pai-Fang Lin	Auditor	Bureau of Foreign Trade, Ministry of Economic Affairs
29	United States of America	Mr. Michael Anderson	Director at office of Investigation,	U.S. International Trade Commission

## **2.2 Summary of Session**

### **■ Session 1: Overview of Trade Remedies in Recent Global Trading Environment and Their Limitations**

In the first session, Prof. Duk-geun Ahn (Professor of Graduate School of International Studies at Seoul National University) showed the changing trends in trade remedies of both developed and developing economies. He expressed concern that the world is encountering worrying situations because of recent developments regarding trade remedy measures. Some developing economies are trying to use new concepts like material retardation of the establishment of a domestic industry which has been thought of as a dead language in the WTO Agreement. As for developed economies, despite maintaining transparent and detailed rules, some of them also started to use such alarming methodologies as “adverse facts available (AFA)” or “particular market situation (PMS)” in taking trade remedy measures. As a result, antidumping and countervailing duty rates tend to be unprecedentedly high. He particularly emphasized, among others, the importance of the PMS methodology introduced by some countries, given that recent global supply chains are becoming more and more complex and this change has a huge influence on the global trading environment.

Mr. Michael Anderson (Director of the USITC Office of Investigations) focused on the U.S. policy on trade remedy. He briefly touched on how the United States International Trade Commission (USITC), the administrating authority for safeguard investigations, is composed of six independent commissioners and an independent agency, not a part of the U.S. president’s cabinet. The safeguard investigation conducted by USITC consists of potentially two phases: the injury phase has 120 days and the remedy phase has 60 days.

He also showed that safeguard investigations are very rarely initiated when compared to other types of trade remedy measures. He emphasized that since the establishment of the WTO in 1995, the U.S. initiated 10 safeguard investigations and the USITC has made six affirmative and three negative determinations (one case withdrawn). He also reviewed overall statistics of other types of trade remedy measures. AD and CVD measures have accounted for

77% and 23% respectively of all trade remedy measures taken by the U.S. in the last twenty years (1984-2016). He noted that the U.S. trade remedy investigations have historically fluctuated due to various economic and industrial factors and situations.

Mr. Anderson finally touched upon certain proposed changes to trade remedy rules which were introduced in the TPP negotiations: regarding AD/CVD measures, TPP countries should provide transparent and due process notifications, maintenance and accessibility of public files on the record, and disclosure of key facts for basis of AD/CVD measure; TPP also introduced a provision to prohibit multiple safeguards on the same products from being adopted simultaneously when a member country considers global safeguard measures; and TPP parties can elect to apply transitional safeguard measure to one, some, or all other TPP parties during tariff phase-out period.

### **Discussion and Q&As**

During the panel discussion, Mr. Daniel Ikenson, Director of the Herbert A. Stiefel Center for Trade Policy Studies in CATO Institute, shared his concern on the impact of AD and CVD measures that if U.S. imposes tariffs on steel products, this would have adverse effects extending all the way down to supply chain.

The second panel discussant, Professor Junji Nakagawa from the University of Tokyo, raised the issue of abuse of trade remedy by a few economies and suggested that trade remedy measures should be distinguished from bad protective measures that are restricting the free flow of goods.

### **■ Session 2: Trade Remedy under the WTO Agreement**

In the second session, Ms. Judith Czako (Chief Legal Officer of the Rules Division at the WTO Secretariat) discussed RTA provisions on trade remedy systems. She introduced various types of RTA provisions on trade remedy. The majority of RTAs, such as between Australia-U.S., Japan-Singapore, Mexico-Chile, do not contain any specific provisions on

trade remedy. Among RTAs which have trade remedy provisions, three different approaches were found: reaffirming the RTA parties' rights and obligations under the WTO Agreement, prohibiting trade remedy measures, and modifying procedural or substantive elements of WTO trade remedy rules. She dealt with the issue of whether trade remedy actions against non-RTA partners have increased with provisions on trade remedy being introduced in the RTAs/FTAs. Although some studies found evidence to support this view, she mentioned that it is difficult to draw consensus on this issue because many different variables must be considered in the initiation of the investigation. She also raised an issue of whether exclusion of FTA partners from global safeguard measures might result in protection of FTA partners with less efficient production systems.

### **Discussion and Q&As**

Prof. Julia Qin at the Wayne State University Law School commented on an approach that some of the FTA partners such as Australia and New Zealand are not going to use trade remedy against each other because their competition laws are sufficient in achieving the same purpose of trade remedies.

Prof. Jaehyoung Lee from the Korea University Law School noted that the number of the trade remedy measures has increased sharply since the launch of the WTO in 1995. He assumed that countries are trying to make full use of available measures to the extent permitted under the WTO agreements while promoting free trade through FTAs. He raised another issue by asking Ms. Czako whether AD and CVD are categorized as other restrictive regulations of commerce (ORRC) in Article 25 paragraph 8 of the GATT. Ms. Czako responded that the question cannot be answered since there has not been any official view expressed by the membership of the WTO, but she added that this question needs to be addressed sooner or later. Prof. Lee viewed them as "other regulations of commerce (ORC)," not ORRC.

### **■ Session 3: Anti-Dumping**

In the third session, Mr. Daniel Ikenson (Director, Herbert A. Stiefel Center for Trade

Policy Studies, CATO Institute) defined dumping as the sale of a product in an export market at a price less than normal value, and explained that normal value is usually based on a producer's home market price but can be third country price or cost of production plus profit. He also overviewed backgrounds of the Anti-dumping Agreement, by introducing the fact that the U.S. Antidumping Act of 1921, which shifted emphasis from predatory pricing to injurious price discrimination, provided the textual basis for GATT 1947. Then, he elaborated on various dumping and anti-dumping-related issues, such as anti-dumping laws which routinely punish normal business practices and the issue of huge discretion given to anti-dumping officials. He also presented WTO jurisprudence on "zeroing" practice.

### **Discussion and Q&As**

In the discussion session, a participant questioned about whether there is discrimination between FTA partners and non-FTA partners on the injury determination. Mr. Ikenson and Ms. Czako replied that there is no discrimination in the way injuries are determined.

### **■ Session 4: Subsidies and Countervailing Measures**

In the fourth session, Prof. Julia Qin (Wayne State University) scrutinized requirements and types of subsidy, available remedies, and conditions for levying CVDs (countervailing duties). For the purpose of the Agreement on Subsidies and Countervailing Measures (SCM), a subsidy is deemed to exist if two requirements are fulfilled: 1) there must be a financial contribution by a government or any public body or there must be any form of income or price support, and 2) a benefit must be thereby conferred. Although a subsidy exists, there is one more requirement must be met. Only "specific subsidies" are regulated. There used to be three types of subsidies: 1) prohibited subsidies, 2) actionable subsidies, and 3) non-actionable subsidies. However, currently only two types exist, because non-actionable subsidies were expired in 2000. There are two remedies available: multilateral and unilateral action. Multilateral action is to bring a case to the WTO. Unilateral action by importing member is to levy CVD. Any CVD shall be terminated on a date not later than five years from its imposition, unless the authorities determine otherwise in a review.



On this basis she analyzed some major issues such as the scope of “public body” and market benchmarks in benefit determination. In SCM there is no definition of the term “public body,” which first appeared in the Tokyo subsidy code in 1979. The Appellate Body in *US-AD/CVD (China)* noted that public body “must be an entity that possesses, exercises or is vested with governmental authority” to exercise governmental functions. As for market benchmarks in benefit determination in Art 14(d) of the SCM, she explained the concept of benefit as follows. The provision of goods or services or purchase of goods by a government will be considered as conferring a benefit if the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration.

She finally presented some new aspects of subsidies and CVDs introduced in TPP negotiation such as the definition of SOEs (State-Owned Enterprises) and prohibition of non-commercial assistance. According to her evaluation, TPP set a higher standard in SOE rules compared to WTO SCM Agreement in terms of definitions and/or coverage: (1) “SOEs” are covered by the definition of “subsidy provider” and (2) “subsidies to cross-border services provided by SOEs” and “subsidies to SOE’s FDI” are also covered by the coverage of subsidy.

### **Discussion and Q&As**

Ms. Karman from Russia questioned whether an RTA supranational regional body which is not a WTO member is prohibited from providing subsidies to a certain country under Article 1.1 of the SCM. Ms. Czako replied the WTO agreement only disciplines the action of WTO members. She gave an example that APEC is a supranational regional body and not a WTO member itself. Thus, the WTO agreement does not cover APEC providing subsidies to a WTO member country. She added the EU is unique because the EU itself is a member of the WTO while each member state of EU is a member of WTO as well.

### **■ Session 5: Safeguard**

In Session 5, Prof. Junji Nakagawa (Professor of the Institute of Social Science at Tokyo University) discussed special characteristics of the Safeguard Agreement (SGA) and

explained several distinctive features of the safeguard provisions in FTAs/RTAs. He defined safeguard measures as temporary import restrictions to ensure that domestic industries do not suffer serious injury or be threatened with injury caused by imports or trade concessions. He emphasized that requirements of safeguard measures are stricter than those of AD or CVD because safeguard measures are allowed to restrict fairly traded imports. He pointed out that although safeguard measures share the three common requirements of involving a certain kind of import, injury and causation with AD or CVD, GATT Article 19 on safeguard measures added more: as a result of “unforeseen developments,” and of the effect of the “obligations incurred.” Noting that safeguard measures were infrequently applied under the GATT 1947 and that infrequency of safeguard measures has persisted under the WTO, he analyzed that one of the reasons behind this trend may be the more strict conditions of safeguard measures. He added few safeguard measures could survive WTO Dispute Settlement Procedures.

Prof. Nakagawa went on to discuss several distinctive features of the safeguard provisions in FTA/RTAs. As for global safeguards, based on the treatment applied to the RTA partner, he classified FTA/RTA provisions into four categories: 1) no reference to global safeguards, 2) retention of rights under Art. XIX and the SGA, 3) mandatory exclusion of imports from the RTA partner from global safeguards, and 4) possible exclusion of imports from the RTA partner. As for global safeguards, he classified FTA/RTA provisions into three categories: 1) explicitly prohibit bilateral safeguard measures, 2) no specific safeguard provisions, and 3) permit the use of bilateral safeguard measures.

Examining various safeguard provisions, he found that there was little homogeneity in the design of safeguard provisions for any given economy, which means that safeguard provisions are carefully negotiated and crafted depending on the RTA partners. His presentation also covered “grey-area” measures and “sunset clause” in details.

### **Discussion and Q&As**

A participant asked why developing economies used safeguards more frequently than developed economies. Prof. Nakagawa provided some factors that may explain why this is so.

Developing countries often have many infant industries. Although developed economies have some infant industries as well as aging industries, in case of the U.S., they would rather use AD measures to protect their industries because it is politically easier. Also, this could last longer than just allowing the weak industry to survive. However, Prof. Nakagawa addressed another point that just copying and pasting the global safeguard measure may hurt other promising domestic industries. In response, he suggested that developing economies should carefully think of an appropriate combination to protect their own specific industries.

## ■ Session 6: Discussions and Sharing Experience of APEC Members

In the last session, APEC member economies discussed and shared their own experiences. Deputy Director Choe presented Korea's experiences in the area of trade remedy during its vigorous expansion of FTAs/RTAs network. Reaffirming the rights and obligations under the WTO Agreements, Korea's FTAs have complemented relevant WTO rules on trade remedy, mainly procedural rules, including consultation, initiation of investigation, adoption of measures, etc. In addition, some of Korea's FTAs, such as with Chile, Singapore, the EU, US, Turkey, Colombia, and Canada, excluded FTA Dispute Settlement Procedures from application on trade remedy measures.

Mr. Michael Anderson (Director of the USITC Office of Investigations) shared US' experiences. AD and CVD orders on U.S. exports are have steadily increased over the past several years possibly reflecting, among others, the fact that trading partners, particularly emerging economies have lowered applied tariffs during periods of trade liberalization and that the capacity and knowledge of trade remedy laws by trade partners have deepened. In contrast, data suggest steady or slightly declining action via global safeguards. He noted that more research would be instructive on the factors behind decisions to pursue these trade measures.

Mr. Luong Kim Thanh (Deputy Director, Ministry of Industry and Trade of Vietnam) shared Vietnam's experiences. Vietnam acceded to ASEAN in 1995 and to WTO in 2007. Vietnam has signed and implemented 10 FTAs, among which Vietnam joined negotiation as a

member of ASEAN in six FTAs. The other four FTAs are with Chile, Japan, Korea, and EAEU. Trade remedy provisions in Vietnam's FTAs vary in size, degree of integration, geographic scope, and economies' level of economic development. That means there is no same template for trade remedy provisions in FTAs, but the basis is WTO rules.

Ms. Gayatri Kumaraveloo (Senior Principal Assistant Director, Ministry of International Trade and Industry (MITI) of Malaysia) shared Malaysia's experiences. Malaysia has signed 12 FTAs, among which Malaysia joined negotiation as a member of ASEAN in five FTAs. The other seven FTAs are with Australia, Chile, India, Japan, New Zealand, Pakistan and Turkey. He explained that current challenges involve the Investigation Authority (IA)'s capacity to defend the domestic industry, especially in cases taken against Malaysia, and the lack of resources for capacity building for the IA.

### **Discussion and Q&As**

A Mexican participant asked whether the provision on consultation in Korean FTAs prevented the initiation of AD investigation or not. Korean delegates replied that in principle the main purpose of the provision is to promote consultation. Prof. Nakagawa added that the so-called WTO Plus provision of FTAs requires a party to consult with the other party when imposing AD measures, but not in the WTO agreement. However, it is up to each economy's negotiating strategy or bargaining power whether to accept the results of consultations or not.

## **PART III. Evaluation and Feedbacks**

### **3.1 Survey Results**

The survey was conducted at the end of a one and a half day seminar program, with the goal of gathering feedback and suggestions for future work. A total of 13 questions were asked and 29 participants (excluding Korean participants) submitted their answers, largely finding that the seminar was satisfactory in terms of its overall format, content, speakers and hosting process.

The 13 questions surveyed were as follow; all questions except Q11 and Q12 were multiple choice, asking respondents to indicate a level of agreement.

- Q1. The objectives of the training were clearly defined.
- Q2. The project achieved its intended objectives.
- Q3. The agenda items and topics covered were relevant.
- Q4. The content was well organized and easy to follow.
- Q5. The trainers/experts or facilitators were well prepared and knowledgeable about the topic.
- Q6. The materials distributed were useful.
- Q7. The time allotted for the training was sufficient.
- Q8. How relevant was this project to you and your economy?
- Q9. Rate your level of knowledge and skills in the topic prior to participating in the event.
- Q10. Rate your level of knowledge and skills in the topic after participating in the event.
- Q11. What topics would you suggest for next year's workshop under the CBNI program?
- Q12. How could this project have been improved? Please check all that apply and/or provide comments on how to improve the project, if relevant. Any comments?
- Q13. Would you recommend this workshop to a colleague?

The aggregate results of the survey on Q1 through Q7 are summarized in the following table:

	Questions		Strongly Agree	Agree	Disagree
1	The objectives of the training were clearly defined	Frequency	15	14	0
		Percent	52%	48%	0%
2	The project achieved its intended objectives	Frequency	14	15	0
		Percent	48%	52%	0%
3	The agenda items and topics covered were relevant	Frequency	20	9	0
		Percent	68%	32%	0%
4	The content was well organized and easy to follow	Frequency	18	11	0
		Percent	64%	36%	0%
5	The trainers/experts or facilitators were well prepared and knowledgeable about the topic	Frequency	19	10	0
		Percent	67%	33%	0%
6	The materials distributed were useful	Frequency	17	11	1
		Percent	58%	37%	5%
7	The time allotted for the training was sufficient	Frequency	8	16	5
		Percent	27%	55%	18%

**□ Survey result of Q1 through Q7 - Assessment on the overall seminar**

All 29 participants agreed that the objective of workshop was clearly defined, the workshop achieved its intended goal, the topics covered in workshop was relevant to its main topic, and the speakers or facilitators were well prepared and knowledgeable about the topic. Also, they agreed the contents were well organized and easy to understand. However, some respondents commented that a 2 full day workshop would have been much better for more discussion and involvement.

**□ Survey result of Q8 - Assessment on the content relevance to daily work**

All respondents assessed the trade remedy issue is directly related to their work and the program was informative and comprehensive. Most of the participants said that the workshop provided a good opportunity for government officials of APEC member economies with useful information on trade remedy rules and practices. In addition, they mentioned that the valuable experience of the speakers will improve their daily work.

**□ Survey result of Q9 and Q10 - A comparison of level of knowledge and skills in the topic before and after participating in the event**

Most respondents assessed that by participating in event, the level of knowledge and skills in the topic had been upgraded. And some respondents said the level of knowledge was unchanged but generally they were satisfied with the speakers and commented that the Q&A sessions with speakers were very fruitful.

□ **Survey result of Q11 - Topic suggestions for the next year's program**

As for the next year's workshop topic, the most talked about one was digital trade. A few respondents suggested enforcement of intellectual property rights as a new topic of future program.

□ **Survey result of Q12 and Q13 - Comments for future activities**

Despite the generally positive response and satisfaction, the participants were also asked to make suggestions about improvements in the future. Among 29 respondents, 14 respondents suggested to increase the content covered in the workshop and the idea of a longer workshop was highly recommended. Some participants commented that the overall proceeding was rather too fast for beginners and that future activities should involve providing the presentation materials before participating in the seminar. Regarding the session format, given the limited time some said general contents were unnecessary and more useful interactions with experts would be necessary for practical perspectives.

Overall, participants were quite satisfied with the structure, expertise of speakers, interactive discussions as well as the logistical preparations. Most participants showed appreciation for the relevance of the topic to their daily works and for valuable materials on various trade remedy issues provided throughout the workshop. As a result, the workshop achieved its intended goal by allowing participants to enhance their understanding, to share experiences and to exchange views on how to better negotiate FTAs/RTAs in the area of trade remedy and to implement such measures effectively without abusing. In addition, some experts suggested that the organizers should develop a follow-up policy symposium on this topic given its growing importance in recent trade policy.