



**Asia-Pacific
Economic Cooperation**

**FTAAP Capacity Building Workshop
on FTA Negotiation Skills on
Competition under the 2nd REI CBNI
(CTI 02/2017T)**

Summary Report

**Ho Chi Minh City, Viet Nam
19 August 2017**

CONTENTS

	Page
I Overview	3
II Background	4
III Discussion	5
1. Opening Remarks	5
2. Introduction	7
3. Workshop's Sessions	8
1) Session 1	8
2) Session 2	9
3) Session 3	10
IV Summary and Conclusions	13
1. Summary	13
2. Conclusion	15
V Next Steps	16

FTAAP Capacity Building Workshop on FTA Negotiation Skills on Competition under the 2nd REI CBNI

**19 August 2017, Saigon Prince Hotel
Ho Chi Minh City, Vietnam**

Summary Report

I Overview

On 19 August 2017, the **FTAAP Capacity Building Workshop on FTA Negotiation Skills on Competition under the 2nd REI CBNI (CTI 02/2017T)**, initiated by Japan and co-sponsored by Chinese Taipei; Korea; Peru and Viet Nam was held in Ho Chi Minh City, Viet Nam.

This workshop was conducted as one of the activities under the Action Plan Framework for Regional Economic Integration (REI) Capacity Building Needs Initiative (CBNI) initiated by Korea since 2010, and was aimed at in-depth capacity building for negotiators and policymakers on competition area; discussion at the international organizations; historical developments of the texts in competition chapter under Free Trade Agreements (FTAs) and Economic Partnership Agreements (EPAs); overview of textual proposals of general principles, non-discrimination, procedural fairness, cooperation and transparency; and sharing best practices and experiences in preparing for negotiations.

This workshop was participated by more than 50 attendees from 16 member economies including 5 speakers, from Thailand, Japan, the Philippines, OECD and academia (Kobe University, Japan). The details of speakers are as follows;

- **Ms. Marie Sherylyn D Aquia**, CTI Chair (Supervising Trade-Industry Development Specialist, Bureau of International Trade Relations, Department of Trade and Industry, The Philippines) (Opening Remarks)
- **Mr. Hiroshi Kudo**, Senior Deputy Director for FTA/EPA Negotiations, Ministry of Foreign Affairs, Japan (Moderator)
- **Mr. Satoshi Ogawa**, Competition Lawyer, Competition Division, Directorate for Financial and Enterprise Affairs, OECD
- **Mr. Fujio Kawashima**, Professor, Graduate School of Law, Kobe University, Japan
- **Ms. Parima Damrithamanij**, Senior Trade Officer, Office of Trade Competition Commission, Department of Internal Trade, Ministry of Commerce, Thailand
- **Mr. Toru Ishiguro**, Assistant Director, International Affairs Division, Fair Trade Commission, Japan

- **Ms. Isabela Rosario G. Villamil**, Policy Research Officer, Competition Commission, The Philippines

This workshop comprised of three sessions ‘Significance of Competition Policy and the Meaning of the Establishment of the Chapter on Competition in FTAs/EPAs’, ‘Overview of the Chapter on Competition in the Existing FTAs/EPAs’, and ‘Challenges and Opportunities in Relation to Acceptance of the Chapter on Competition in FTAs/EPAs’.

Through this workshop, the following 3 points, 1) Growing significance of competition policy and the meaning of establishing competition chapters in FTAs/EPAs, 2) Concerns of discriminatory application of competitive law, jurisdiction over subsidies, and 3) the significance of ‘exchange of information’ were highlighted.

II Background

This project was designed to put into action APEC Ministers’ instructions to build capacity to strengthen and deepen the regional economic integration, and to facilitate the realization of a Free Trade Area of the Asia – Pacific (FTAAP) (APEC 2011 Ministerial Meeting statement).

Accordingly, Korea as a leading economy of the CBNI initiative and other interested APEC member economies have made efforts in developing a detailed work plan to implement APEC Leaders’ instructions. The results of the CBNI survey conducted by Korea and APEC member economies’ inputs have highlighted the needs of building and enhancing preparation capacities in this field.

From 2012, under 1st CBNI by the leadership of Korea, several economies conducted the series of Capacity Building Workshop or Seminar with the variety of themes in 13 times, such as FTA Utilization (Japan), Rules of Origin (ROO) (Korea), Environment (Viet Nam), Sanitary and Phytosanitary Measures (SPS) (Viet Nam), FTA Implementation (Korea), E-commerce (China), Labor (United States), Dispute Settlement (Korea), Government Procurement (Viet Nam), Safeguard (Indonesia), Presentation of Negotiation (New Zealand), Intellectual Property Right (IPR) (Viet Nam), Service and Investment(United States).

In their 2013 Declaration, APEC Leaders insisted that “APEC has an important role to play in coordinating information sharing, transparency, and capacity building...” and “agreed to ...increase the capacity of APEC economies to engage in substantive negotiations.” Furthermore, APEC Ministers “encouraged officials to advance the Regional Economic Integration CBNI Action Plan Framework as a key delivery mechanism for the technical assistance needed to one day make the FTAAP a reality.”

APEC Economic Leaders agreed to continue the capacity building activities in pursuit of the eventual realization of the FTAAP under the Action Plan Framework of the 2nd CBNI (as appeared in Annex A of APEC Economic Leaders’ Declaration on The Beijing Roadmap for APEC’s Contribution to the Realization of the FTAAP in November 2014). They encouraged economies “to design and conduct capacity building programs for specific sectors as lead economies.”

CBNI also conforms to the instructions of APEC Ministers. At the APEC Ministerial Meeting of 2014, APEC Ministers welcomed the progress achieved under the Action Plan Framework on CBNI and endorsed the Action Plan Framework of the 2nd CBNI. They instructed Senior Officials to take steps to ensure the effective implementation of the 2nd CBNI.

Since the initiation of 2nd CBNI in 2015 until June 2017, totally 9 workshops have been conducted including this workshop, such as ROO/Trade Facilitation (Korea), Technical Barriers to Trade (TBT) (Viet Nam), International Investment Agreement (Peru), Negotiation Skill on Environment Phase 2 (Viet Nam), Scheduling in Trade in Services and Investment (Korea), Services Chapters with a Negative List Approach (Peru), Negotiation Skill on IPR Phase 2 (Viet Nam), E-commerce (Japan), Trade Remedy (Korea), (United States).

III Discussion

1. Opening Remarks

In her Opening Remarks, **Ms. Marie Sherylyn D Aquia, CTI Chair (Supervising Trade-Industry Development Specialist, Bureau of International Trade Relations, Department of Trade and Industry, The Philippines)** mentioned as follows.

Ms. Aquia discussed that in APEC, the 1995 Osaka Action Agenda included the area of competition as one of the policy discussions that economies have to undertake actions in, particularly on the development of national competition policies in all economies and cooperation among all members. Likewise, in 1999, APEC Ministers endorsed the APEC Principles to Enhance Competition and Regulatory Reform with the premise that “open and competitive markets are the key drivers of economic efficiency and consumer welfare” alongside the principles of non-discrimination, comprehensiveness, transparency, and accountability.

Ms. Aquia stated that there is a strong and complementary relationship between trade and competition policies. This is due in fact to their similarity in objectives. Both trade and competition policy seek to enhance welfare by providing for more efficient allocation of resources, whether it be in lowering trade barriers or through promoting competition.

New, comprehensive economic or trade agreements now feature specific provisions or entire chapters to competition-related matters.

It is a vast improvement and marked contrast to the failed attempts in the past to incorporate competition policy in international rule-making. Ms. Aquia mentioned the 1948 Havana Charter, which provided for the establishment of the International Trade Organization and set out basic rules for international trade, international cooperation and rules against anti-competitive business practices.

Although it was signed by 56 economies, the Havana Charter failed to be ratified by United States Congress, thus eventually abandoned. The elements of the Charter would later become part of the General Agreement on Tariffs and Trade (GATT).

Ms. Aquia highlighted the 1996 Singapore World Trade Organization (WTO) Ministerial Conference which also attempted to revive discussions for a multilateral competition framework. However, in 2004 the WTO General Council decided to exclude the interaction between trade and competition policy from the Doha Work Program.

Currently, work to negotiate competition policy happens more at regional and bilateral settings.

Ms. Aquia also highlighted a think-piece by the International Centre for Trade and Sustainable Development and the World Economic Forum which reported that 88 percent of FTAs in force in 2015 devote specific provisions or entire chapters to competition-related matters.

Ms. Aquia noted that these FTAs include a wide array of horizontal or sectorial provisions, covering market access, non-discrimination or import/export restrictions, all directly or indirectly impacting on competition policy.

There is a growing recognition that provisions on competition in trade agreements and more generally, better competition policy, foster and improve the efficiency of competition in markets including benefiting consumers and businesses.

Businesses today are increasingly engaged in conducting their activities across borders. Trade barriers are falling between economies. Yet, anti-competitive practices of businesses across borders and unnecessary regulatory barriers are also surging. Ms. Aquia acknowledged that better information sharing is needed between competition authorities and experts in APEC economies to curb such conduct. By itself, trade policy is not sufficient to deal with the tension that results from the differences in systems and practices.

Ms. Aquia also explained that provisions on competition in FTAs ensure that a more secure business environment is created. Through such provisions, the benefits of free trade are not undermined by behind-the-border public or private sector actions.

Ms. Aquia shared that it would be crucial therefore to devise ways to increase the benefits of including competition-related provisions in FTAs. She also raised that competition principles that seek to encourage flexibilities and mutually supportive reform measures are of equal importance.

Especially among economies that have less experience in enforcing competition law/policies, the approach is rarely 'one-size-fits-all' and should be complemented by market-oriented reforms appropriate for each economy. As such, FTAs can also play a role in promoting structural reform and improving competitiveness, especially among less advanced economies.

Ms. Aquia emphasized that notwithstanding the overall importance of competition policy as a tool of economic development and its relationship with trade liberalization, FTA chapters on competition policy are also a vital mechanism to ensure that mutual beneficial cooperation is promoted between competition agencies. She also offered the view that bilateral and regional arrangements can also facilitate in creating more institutional capacity and competition advocacy.

2. Introduction

Following Ms. Aquia's Opening Remarks, as the Moderator of the workshop, **Mr. Hiroshi Kudo, Senior Deputy Director for FTA/EPA Negotiations, Ministry of Foreign Affairs of Japan** welcomed attending guests and speakers by introducing 2 main issues that the workshop addressed. One is "Significance of Competition Policy and the Meaning of the Establishment of the Chapter on Competition in FTAs/EPAs", and the other is "Challenges and Opportunities in Relation to Acceptance of the Chapter on Competition in FTAs/EPAs".

Mr. Kudo is in charge of the negotiations on competition chapter and legal and institutional issues for Regional Comprehensive Economic Partnership (RCEP), competition chapter for Japan-China-Republic of Korea FTA, as well as competition chapter as well as SOE chapter for Trans-Pacific Partnership (TPP).

Mr. Kudo mentioned an introduction to the today's discussion as follows.

Looking back the history of discussions on trade and competition policy, at the WTO Ministerial Meeting in Cancun in 2003, consensus was not reached among members to address the issue of trade and competition as agenda of the Doha Round due to the fact that at that time, there were only around 55 economies which adopted competition law. From that time on, globalization and the increasing interdependence of economies have led each economies' development on competition laws and authorities.

Nowadays, more than 120 economies adopted competition law. Within International Competition Network (ICN), more than 130 competition authorities participate, communicating best practices to relatively newly born competition authorities and promoting discussions on how to formulate proposals for procedural and substantive convergence of each economy's competition laws and regulations.

Also, many FTAs/EPAs include competition provisions. Japan included competition-related provisions in EPAs with Singapore, Mexico, Malaysia, the Philippines, Chile, Thailand, Indonesia, ASEAN, Viet Nam, Switzerland, India, Peru, Australia and Mongolia. Economic benefits of introducing competition laws etc. will be presented by Mr. Ogawa from OECD later.

On the other hand, competition chapter is facing also challenges and opportunities. One of the emerging issues is introducing SOEs' disciplines in FTAs/EPAs. We will have a chance to discuss those issues with Mr. Kawashima as well as with other economies' negotiators for competition chapter later.

APEC is playing an important role in advocacy, capacity building and cooperation in the competition field. APEC adopted "APEC Principles to Enhance Competition and Regulatory Reform, 1999", which endorse non-discrimination as well as transparency which are considered as "core principles" for competition chapter in WTO Ministerial Declaration in Doha. Also, APEC set up "APEC Competition Policy and Law Database" which provides information on each economy's competition laws and policies. Both principles and database are referred to in the competition chapter of TPP. So it is

appropriate and useful to have this kind of competition related workshop in the framework of APEC.

This workshop is expected contribute to further advocate the importance of competition chapter as well as to discuss challenges and opportunities in the competition field.

3. Workshop's Sessions

Experts provided presentations using the attached documents on the following topics:

1) Session 1

In Session 1 about "Significance of Competition Policy and the Meaning of the Establishment of the Chapter on Competition in FTAs/EPAs", **Mr. Satoshi Ogawa, Competition Lawyer, Competition Division, Directorate for Financial and Enterprise Affairs, OECD** divided his speech into 2 parts: 1) Significance of competition policy and 2) the meaning of establishing competition chapter in FTAs/EPAs.

For the first part, he discussed the benefits brought along by competition policies in three respects 1) aggregate economic benefits, 2) distributional benefits and 3) social benefits, and pointed out as follows.

- Competitive practices help to save overcharges induced by cartels.
- The overcharges saved range from basic commodities bought by consumers to public procurement.
- Competitive markets gave momentum to innovation and productivity enhancement leading to great economic growth.
- Regulatory barriers are proven to hold back growth in both developed and developing economies.
- Socially, competitive markets alleviate inequality in wealth share and create more jobs, thus reducing poverty, inequality and unemployment.
- Competition also contributes to make politics less corruptive.

For the second part, competition chapters, when established in FTAs/EPAs, can preserve benefits of trade agreements, demonstrate transparency in law enforcement, display strong commitment for foreign investors and business community, promote common understanding and mutual trust between signatories of FTAs/EPAs and establish formal framework for international cooperation and coordination on competition law enforcement.

Q&A

Mr. Kudo: I understand that OECD tried to draw a model agreement in the competition field in the past. But since there were only around 55 economies at the time when OECD tried to draw a model agreement in the competition field, it didn't work well. Now that there are around 120 economies which adopted competition law, which was also described by Mr. Ogawa's presentation, do you think it is a right time to reconsider to draw a new multilateral framework in the competition field?

Mr. Ogawa: In the union, competition is very much high but at the rest of the world competition is not what we expected but thoroughly I think the negotiations for competition is proceeding and as I said OECD has reviewed cooperation agreements and they are very practical. I'd say half of the competition agreements are not so detailed, just describe that they understand the importance of competition. In term of more stern cooperation and in order to establish more formal cooperation, the competition chapters are necessary.

2) Session 2

In Session 2 about "Overview of the Chapter on Competition in the Existing FTAs/EPAs", **Mr. Fujio Kawashima, Professor, Graduate School of Law, Kobe University, Japan** started his session by citing reasons for the introduction of competition chapters to 1) combat private barriers replacing public barriers and 2) strategic use of competition law as a substitute for trade restrictions, 3) uphold cooperation in integrated markets, 4) presumably employed by competition authorities themselves (esp. Young enforcing agencies in developing economies) to elevate their mission to "an international commitment" or to promote domestic reforms.

Provisions in competition chapters incorporated 1) obligation to adopt competition law; 2) cooperation, notification and exchange of information, negative and positive comity; 3) enforcement principles of transparency, non-discrimination, procedural fairness and rights of defense; 4) scope of application endeavoring to include all businesses; 5) non-application of dispute settlement; 6) designated monopoly and SOEs; 7) subsidies.

The speech also touched upon trends and challenges facing competition chapters including the concern of discriminatory application of competitive law and the concerns of SOEs

Q&A

Mr. Kudo: What will be the ideal or effective SOEs' disciplines to be introduced in FTAs/EPAs?

Mr. Kawashima: As TPP suggested economies are very conscious about the importance of public mandate or public functions of SOEs. They try to exempt SOEs from SOE disciplines even if you introduce very stringent rules on SOEs. On the other hand, they try to remove many SOEs from disciplines. So, one of the ideas to strike a balance is defining the scope of the public mandate exemption. Based on the definition of public mandate or public policy mandate, they may help to reduce the scope of exemption of SOEs. Of course, it is a difficult task to define the scope of public mandate. But I think the core issue exists there.

Mr. Nicholas Klissas, Senior APEC Coordinator, United States Agency for International Development (USAID): Some time ago, at the economic committee, we had a workshop with OECD on OECD's competition assessment tool and it is noticed in Mr. Ogawa's presentation. We looked particularly at regulations or laws that were passed by economies themselves that will hamper or cause restrictions. So it's not competition policy issues about cartels or companies that we are looking at. So Mr.

Ogawa did cover competition assessment in his slides about the enormous impact changes in regulation would make. But will competition assessment tool someday appear in FTAs or do you see that they are basically implicitly embodied provision of FTAs?

Mr. Kawashima: As far as I examined 80 FTAs with competition chapters, I didn't find any FTAs with specific regulations about competitive assessment recommended by OECD. But there's general obligation to promote competition; maybe this general regulation covers introduction of competition toolkit recommended by OECD. I found one example of European Union-Vietnam FTA (EVFTA) which incorporated not explicitly OECD but recognized the importance of SOE's governance principles, maybe recommended by OECD.

Ms. Cristina Bas, Advisor, Ministry of Foreign Affairs of Chile: As you may know that SOE chapters are subject to discipline governments. I'm very interested in the session you spoke that competition policy chapter is not subject to discipline governments. What are your views regarding why it is possible that SOE chapter is subject to discipline government and competition policy is not? How could that be agreed in TPP?

Mr. Kawashima: Already in original North American Free Trade Agreement (NAFTA), provisions for SOEs are subject to disciplines maybe because it also covers anti circumvention provisions targeting the price. They may have authority just like the government and if they're not part of the government, these companies should comply with FTA obligations just like Article XVII of GATT. United States' main objective in the TPP is making SOEs' subject to very effective disciplines. United States made a hard effort to persuade many other economies. I don't know the inside story but I can imagine, without effective disciplines over SOEs, they never agreed upon TPP.

3) Session 3

Session 3 shows challenges facing each economy in negotiating the chapter on competition and effects are expected by the acceptance of the chapter on competition. During Session 3, there are three speakers to talk about 'Challenges and Opportunities in Relation to Acceptance of the Chapter on Competition in FTAs/EPAs' from Thailand, Japan and the Philippines

(1) Ms. Parima Damrithamanij, Senior Trade Officer, Office of Trade Competition Commission, Department of Internal Trade, Ministry of Commerce, Thailand presented about challenges and opportunities in relation to acceptance of the chapter on competition in FTAs/EPAs base on the Thailand authority's experience since her working research with laws and policy since 1999.

On development of FTAs/EPAs negotiation, after noting some typical issues of market access and issues from smaller tariff to non-tariff measures, Ms. Damrithamanij also pointed that there were new issues relating to international trade including intellectual property, competitions policy and law, environment, labor, government procurement to improve the international standards.

Ms. Damrithamanij mentioned that the law should be on market views when talking about competition policy and laws.

Furthermore, Ms. Damrithamanij mentioned on the Thailand side, negotiations were influenced by a lot of interests from economy to economies, areas to economies.

Ms. Damrithamanij showed the interesting fact for developing economies that some laws from the past could not be applied, while some laws need to be amended or reformed. For her, she realized the level of the language using from the law and policy becoming more concrete with more details, not too broad and general like the legal system in the past.

Ms. Damrithamanij said Thailand had been in the process of reforming its competition law and policy to be more up to date.

To summarize, Ms. Damrithamanij emphasized there were two important parts: positions and interests; when negotiating, the economy had to take care of the interests of both sides which developed from time to time and special position of their government's policy to be put into the past and presents as well as facts and process.

(2) Mr. Toru Ishiguro, Assistant Director, International Affairs Division, Fair Trade Commission, Japan started off the benefits and issues of the competition chapter of EPA from the experience of Japan.

Mr. Ishiguro divided his speech into three parts: 1) overview of Japan's EPAs, 2) benefits of the competition chapter and 3) issues on the competition chapter.

Mr. Ishiguro stated that there are basic elements of EPA that the competition chapter follows, referring to “the appropriate measures against anticompetitive practices” and “cooperation on issues relating to competition law enforcement” as the central elements.

Mr. Ishiguro also listed out the benefits of the competition chapter: 1) Contribution to the enforcement cooperation between competition agencies, 2) Building mutual understanding of enforcement activities and 3) Improvement of the predictability for foreign enterprises. Beside the benefits, Mr. Ishiguro mentioned that the first issue on his presentation could be raised: the matrix of the contents of cooperation that are contained in the competition chapters of EPA.

Mr. Ishiguro remarked three economy types with different competition laws and experiences of policy. In his presentation, economy type 1 had comprehensive competition law and enough experience of competition policy, while type 2 had comprehensive competition law but less experience of competition policy and the cooperation with this economy may be reviewed and enhanced in the future. Then Type 3 had no comprehensive competition law currently so the cooperation should be approached as tailor-made for counterparties.

The second issue to be concerned about was exchanging information processes in appropriate cases. Mr. Ishiguro described the article 43-2 of Japanese Anti-Monopoly Act (AMA) which works as a legal gateway for the exchange of information.

Lastly, Mr. Ishiguro then covered Japan's experience about TPP and national law amendment.

There were relevant law amendments regarding this multilateral EPA which puts high emphasis on the procedural fairness of competition law enforcement, and the commitment procedure is going to be implemented in Japanese AMA when TPP is put into force.

(3) Ms. Isabela Rosario G. Villamil, Policy Research Officers, Competition Commission, The Philippines introduced the opportunities and challenges in the acceptance of a chapter on competition in FTAs from the Philippines.

Ms. Villamil presented about four free trade agreements of the Philippines, opportunities from a chapter on competition and the challenges in the acceptance. The most remarked part from disciplines on SOEs.

Ms. Villamil shared cases of the FTAs of the Philippines and FTAs with competition provisions, she mentioned benefits of incorporating competition provisions such as reinforcing internal reform and advocacy that could be practiced in reality and in the future.

Ms. Villamil also pointed out that the transparency should be solved and pushed. She especially emphasized concerns related to SOEs designated as receiving privileged treatment from competition authority's policy, which should be applied in a competitive neutrality framework.

In Ms. Villamil's opinion, challenge from differences in competition laws and policies, in different in capacity and level of development between economies could influence for APEC community in enforcement, conceptual and political negotiations.

Q&A

(Mr. Kudo to Ms. Damrithamanij)

Mr. Kudo: In the process of reforming its competition law and policy, especially SOEs will be subject to the competition law except for conducts undertaken for the purposes of national securities, public policy or public interest, with these amendments, will your economy's position towards including SOE's disciplines to competition chapter of FTAs/EPAs change?

Ms. Damrithamanij: FTAs negotiation, the agreement from more than one economy and under that the governments will come together to negotiate and to design which topics to have, which economy to come to participate. My answer is that I could not state, in particular, in changing positions of my economy policy or laws in the future. But, we now approach new laws and implement the currently laws. Negotiating FTAs/EPAs, currently, it will need the direction from government in the check in, in term of implementation the laws. I cannot answer exactly which specific topics will be raised in the competition laws. But, of course I think we are more ready to develop and to combine more the pictures of obligations and provisions.

(Mr. Kudo to Mr. Ishiguro)

Mr. Kudo: About the issue of “Procedural fairness in competition law enforcement”, what is the significance of having this article in the competition chapter of FTAs/EPAs?

Mr. Ishiguro: The fair procedures realize benefits for enterprise’s business by improving the predictability as I have explained in the presentation, while they might possibly involve some domestic measures on competition policy just like Japan has been implementing commitment procedure as a result of signing TPP.

(Mr. Kudo to Ms. Villamil)

Mr. Kudo: You clarified the benefits and challenges of the inclusion of competition related provisions in FTA, convergence/divergence in competition policy and law. You although made a thorough analysis on SOEs, including importance of SOEs, concerns related to SOEs, addressing concerns through competition policy and law, benefits and challenges to address the SOEs issues in FTA and in competition chapter. You also emphasized that an FTA can discipline policies that give SOEs an unfair advantage over private firms. You also referred to challenges, such as enforcement/institutional challenges, conceptual/substantive challenges, political/practical challenges. You said that it might be better to have SOEs chapter separately rather than to have SOEs provisions in competition chapter. Is that your position?

Ms. Villamil: I think to be much more contribution to chapter about SOE would spend as much time in specific SOEs or entire in the chapter. So I think to frame on the provisions also take as much time as so. And you know it could be effect on the government authority, example the Philippines and they need to able to speak more and you know. So I think there should be here to be on the chapter of SOE in the competition provisions.

(Attendee to Ms. Villamil)

Mr. Nicholas Klissas, Senior APEC Coordinator, USAID: You said that it might be better to have SOEs chapter separately rather than to have SOEs provisions in competition chapter. Is that your position?

Ms. Villamil: Yes, it should be in chapter as a complement of the competition chapter. Chapter of competition could cover it, deepen but need more time to investigate, maybe to commit more disciplines to SOEs

IV. Summary and Conclusions

1. Summary

Moderator, **Mr. Hiroshi Kudo, Senior Deputy Director for FTA/EPA Negotiations, Ministry of Foreign Affairs of Japan** made a brief with the presentations and sharing from speakers.

1) Growing significance of competition policy and the meaning of establishing Competition chapter in FTAs/EPAs are emphasized.

Mr. Ogawa summarized significance of competition policy as aggregate economic benefits such as short term consumer benefits and long term innovation and growth, distributional benefits such as addressing inequality, poverty reduction and employment, social benefits such as fighting corruption.

Mr. Ogawa also emphasized that the meaning of establishing competition chapter in FTAs/EPAs is to show strong commitment to fair competition, effective and transparent enforcement of competition laws and market economy, therefore now as never before, it is important to include competition provisions in FTAs/EPAs.

Ms. Villamil also emphasized that a chapter on competition is now recognized as an important element to ensure that the potential benefits of an FTA can be fully realized. She also emphasized challenges such as differences in competition laws and policies and differences in capacity and level of development in the area of competition policy and law.

Ms. Damrithamanij emphasized that from the start, competition policy has domestic nature in itself, but with “market” has expanded beyond borders, international business operations/foreign business people’s conducts can affect domestic business environment.

Mr. Ishiguro mentioned the benefits of competition chapter, e.g., cooperation articles in EPA make enforcement cooperation between competition authorities easier, or through the dialogue in the negotiation for the competition chapter, each agency builds mutual understanding and trust, which leads to a shared awareness of sound enforcement activities.

2) Concerns of discriminatory application of competitive law, jurisdiction over subsidies are shared

Mr. Kawashima gave reasons for the introduction of competition chapters and introduced Provisions included in competition chapters incorporated. He touched upon trends and challenges facing competition chapters, including the concerns of discriminatory application of competitive law and the and SOEs as the challenges and opportunities in relation to acceptance of competition chapter in FTAs/EPAs

Ms. Damrithamanij explained that Thailand has been in the process of reforming its competition law and policy and one of the amendments to the Trade Competition Act P.E. 2542 (1999) is that under the new law, SOEs will be subject to the law except for conducts undertaken for the purposes of national securities, public policy or public interest. She also explained that the efficiency and effectiveness as well as independence of Thailand’s competition authority are pursued through this reform.

Ms. Villamil made a thorough analysis on challenges and opportunities in relation to acceptance of the competition chapter in FTAs/EPAs, including convergence or divergence in competition policy and law, confidentiality and jurisdiction over subsidies and SOEs etc.

3) “Exchange of Information” is highlighted

That is emphasized by Mr. Ishiguro which is a key activity on cooperation between agencies as one of the challenges on the competition chapter.

Ms. Villamil also mentioned the significance of “Exchange of Information” in her presentation.

2. Conclusions

Before concluding, **Mr. Kudo** emphasized the following 4 points from today’s discussions.

1) All shared the view that the importance of Competition chapter in FTAs/EPAs is growing

As Mr. Kawashima presented, around 88% of the FTAs/EPAs currently in force devote specific provisions or even entire chapters to competitive related matters, compared to around 60% before 1990.

Furthermore, 71.4% FTA signed after 2000, have competition chapter. Also, Mr. Ogawa emphasized that promoting competition leads to increasing economic benefits, productivity and growth etc. Furthermore, Mr. Ogawa emphasized that one of the meaning of establishing competition chapter in FTAs/EPAs is to show strong commitment to fair competition, effective and transparent enforcement of Competition laws and market economy.

Ms. Villamil also emphasized that a chapter on competition is now recognized as an important element to ensure that the potential benefits of an FTA can be fully realized.

Therefore, as Mr. Ogawa concluded in his presentation now as never before, it is important to include competition provisions in FTAs/EPAs.

2) Challenges and opportunities in relation to acceptance of the chapter in competition in FTAs/EPAs are shared

Participants highlighted the recent trend and challenges of competition chapter, including the concerns of discriminatory application of competitive law and the concerns of SOEs, exchange of information and confidentiality, Thailand’s reforming process in competition law and policy, differences in capacity and level of development in the area of competition policy and law, institutional/substantive/practical challenges etc.

3) APEC is playing an important role in advocacy, capacity building and cooperation in the competition field continuously

Taking into consideration the process in a comprehensive and systematic manner towards the eventual realization of the FTAAP to which APEC is committed, it is worth discussing the future competition chapter as well as SOE chapter in the framework of APEC.

We also reaffirm our commitment that the FTAAP should be built upon ongoing regional undertakings, and through possible pathways including the TPP and RCEP.

4) The possibility of pursuing new multilateral framework in the competition field as a food for thought

Situation has been developing for competition related laws and regulations. It might be a right time to reconsider a new multilateral framework in the competition field.

The key elements which should be included in the possible future multilateral framework in the competition field might be transparency, non-discrimination and procedural fairness as included in Ministerial declaration of DOHA WTO Ministerial Conference 2001 as core principles.

IV. Next Steps

Mr. Kudo hinted to continue dialogues on the matter related to competition policy, based on the results of this workshop including challenges and issues which were raised in this workshop. He suggested that Japan identify key areas in competition policy on which APEC will need to focus, in order to realize a potential FTAAP.

Japan intends to hold a workshop of the relevant theme next year again under 3rd CBNI, following the necessary procedures of APEC.