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APEC Capacity Building Workshop on Domestic Consultation in RTAs/FTAs Negotiation

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Summary Report

I. Introduction

On 21 and 22 March 2019, the APEC Capacity Building Workshop Domestic Consultation in RTAs/FTAs Negotiation, initiated by Viet Nam and co-sponsored by Malaysia; Peru; and Chinese Taipei was held in Ha Noi, Viet Nam. Speakers and participants came from representatives from the private sector, business associations; international organizations and research institutions and APEC member economies' relevant Ministries and governments' agencies.

The APEC Capacity Building Workshop Domestic Consultation in RTAs/FTAs Negotiation aims at the following objectives: (i) Identifying issues, difficulties, and challenges in conducting domestic consultation in RTAs/FTAs negotiation; (ii) Providing policy-makers, negotiators and stakeholders (businesses, NGOs and academics) in various sectors/areas with knowledge and methods on conducting effective stakeholder consultation for FTA negotiation and implementation and other regional integration efforts; (iii) Sharing experiences and best practices on conducting stakeholder consultation and how to take advantage of such activity to facilitate domestic growth through FTA negotiation and implementation and other regional integration efforts through sharing from the member economies; (iv) Increasing transparency in RTAs/FTAs negotiations to enhance certainty and minimize public dispute; and (v) Making recommendations to APEC/economies on domestic consultation in RTAs/FTAs negotiation.

II. Background

International trade has become an integral part of countries all over the world and significantly contributes to facilitating domestic development, economic growth and employment. FTAs have proliferated in every region of the global, as currently 619 trade agreements have been notified to the WTO. While FTAs are more commonly negotiated between government representatives bilaterally or multilaterally, the need for greater in-depth and relevant information on the state of the economy and absorb recommendations, particularly concerning sectors most affected by trade liberalization, is increasingly important. One of the key sources of such vital information is stakeholders such as businesses, academics, investors, non-profit organizations (NGOs), etc. However, most stakeholders, especially vulnerable groups such as women-owned enterprises, small and medium-sized enterprises (SMEs), small-scale farmers, and workers, etc., find it complicated to contribute their information and opinions to the process of negotiating as well as

implementing FTAs. On the other hand, government agencies including policy-makers and FTA negotiators also demonstrate difficulties in conducting consultation with stakeholders including businesses and business associations, academics and NGOs as consultation requests are often ignored.

Thus, all parties involved in the process of FTA negotiation and implementation need to acknowledge the importance of stakeholder consultation and undertake such activity. Some of the reasons for its importance are as followed: (i) providing valuable source of information: In certain cases, special sectors are identified as trading interests while negotiating an FTA. Thus, stakeholders can assist in narrowing the sector-specific focus of negotiations; (ii) Increasing transparency in FTA negotiations: By creating an inclusive and participatory negotiation process for FTAs through stakeholder consultations, it allows for an open and more predictable discussion with a reduced threat of pushback from the public and mitigation of other risks. A less transparent trade negotiation has the potential to cause uncertainty and public dispute.

In the 2017 APEC Leaders' Declaration, the Leaders stressed that “We reaffirm our commitment to advance in a comprehensive and systematic manner the process toward the eventual realization of an FTAAP to further APEC’s regional economic integration agenda. We commend the efforts of economies to advance work related to the eventual realization of an FTAAP, including capacity building initiatives and information sharing mechanism.”

APEC Ministers affirm their commitments to enhance capacity building for the member economies by stating in the 2017 AMM Statement that “We look forward to the implementation of the Action Plan Framework for the 3rd REI Capacity Building Needs Initiative (CBNI) and the RTAs/FTAs Information Sharing Mechanism.”

The project is in line with CTI’s work to advance regional economic integration (REI), including one among efforts to explore an FTAAP through providing capacity building to reach high quality and inclusive RTAs/FTAs which reflect and balance interests of all relevant stakeholders while meeting the objectives of trade facilitation.

It is also in line with the Action Framework Plan for the 3rd REI Capacity Building Needs Initiatives (CBNI), which aims to “building up APEC member economies’ FTA negotiation capacity by providing a platform to share current practices and hands-on experience and exchange views on the emerging issues of FTA negotiations”.

In addition, it would help continue efforts of the CBNI² in Transparency that led by Chile since through enhancing domestic consultation, it will help improve the transparency in RTAs/FTAs negotiation.

III. Key Issues

Opening remarks

In the opening speech given by Ms Pham Quynh Mai, Deputy Director General of the Multilateral Trade Policy Department, Ministry of Industry and Trade (MOIT) Viet Nam, she

stresses that free trade agreements (FTAs) have proliferated in every region of the global and up to date, 681 trade agreements have been notified to the WTO. While FTAs are more commonly negotiated between government representatives bilaterally or multilaterally, the need for greater, in-depth and relevant information on the state of negotiations, implementation and absorbing recommendations, particularly concerning sectors most affected by trade liberalization, is increasingly important. One of the key sources of such vital information is through consulting stakeholders such as businesses, academics, investors, non-governmental organizations (NGOs), etc. The fact is that government policy-makers, negotiators and stakeholders, in some cases, do not have adequate opportunities to conduct thorough consultations on various FTA-related issues. The workshop, therefore, is expected to help government agencies and groups of stakeholders can obtain useful information, as well as find out more appropriate and effective ways to conduct consultations towards successful negotiation and implementation of FTAs.

1. Introduction to FTAs/RTAs and Ongoing Negotiations in the APEC region

The APEC member economies have made great efforts in promoting regional economic integration in the past time with the fact that all 21 APEC member economies have undertaken a total of 385 FTAs until 2019, 219 of which have come into force. It is strongly believed that stakeholder consultation - “process through which the Government collects opinions and views from citizens and stakeholders about its policies or proposed policies/commitments in line with the domestic interest” remains an integral part of trade negotiation and conclusion. The stakeholders might include Affected Central Government Ministries and sub-central authorities; affected enterprises and industry Associations; labor unions; non-governmental organizations (NGO) with a policy stake; and academic experts, etc. Stakeholder consultation can be implemented in various forms and methods (open public, targeted etc.) and tools (documents, questionnaires, surveys, hearings etc.); however, it is important to note that it needs to be distinguished from data collection and collection of expertise since its main objective is to give stakeholders the possibility to express their views. It is important because specific experiences of stakeholders pertaining to trade remedies, investment situations, or non-tariff barriers play essential roles in outlining priorities for negotiations as well as ensuring the greatest benefits from an agreement. In certain cases, special sectors are identified as trading interests while negotiating an FTA. Thus, stakeholders can assist in narrowing the sector-specific focus of negotiations. In addition, stakeholder consultation will help increase transparency in FTAs negotiation, and gain support from stakeholders (advice, knowledge, or to gain support when facing certain groups’ suffers, etc.). In the end, stakeholder consultation aims to supporting negotiators to yield critical information on commercial, policy and legal issues at home and abroad; serve to identify their interests and to manage their involvement in the domestic political process related to trade negotiating decisions; and offer insights into the interests and views of their counterparts abroad, and informal communication channels with their counterparts abroad as well.

In the case of China, it is highlighted that during FTA negotiation, industries’ participation is important both for government and industries and Chinese business associations’ participation is active in the domestic consultation. Chinese enterprises’ participation has

been enhanced in recent years since they are more increasingly aware of the benefits. It is believed that there remains much to be done to improve stakeholder consultation of enterprises, individuals and organizations and the Government should conduct more efficient stakeholder consultation to identify FTA's impacts on certain industries and take measures to mitigate the negative impacts.

2. Challenges in Conducting Stakeholder Consultations

From the perspective of a government official/ trade negotiator, stakeholders can be divided into three groups: government / regulators; civil society interests; and business interests. The business community might be one of the most affected by FTAs since they can both have benefits and/or face competition as a result of FTAs. While the business community and especially SMEs which account for over 97% of all businesses, employing over half of the workforce across APEC, are encouraged to be involved in the domestic stakeholder consultation, the fact is that it is very hard to get feedback from SMEs. Not many of them fully understand how to utilize FTAs, rules of origin, how to check tariff rates. Moreover, they also often do not want to share their difficulties and solutions with fear that their competitors will learn.

From the perspective of the business association (Federation of Malaysian Manufacturers – FMM), these are the five challenges in conducting stakeholder consultation: (i) lack of institutional arrangement for implementation and stakeholder consultations such as a committee, technical committee or working committees; (ii) there is a need for secrecy – Governments are not allowed to expose negotiating documents; (iii) business difficulties in giving inputs to the government: Short lead time, bureaucracy and late responses; (iv) learn from existing best practices; and (v) lack of good Regulatory Practice .

Recommendations to address the above challenges are:

- (i) Lack of institutional arrangement for implementation and stakeholder consultations such as a committee, technical committee or working committees: Conduct consultation constantly in 3 stages: pre, during and post negotiations; Have an Institutionalised Focus Group with the Negotiators and Stakeholders that are affected by the FTA; Document activities that the government has undertaken with regards to FTA negotiations and stakeholder engagement with a view towards developing best practices or models in stakeholder engagement; Prior to the stakeholder consultation, to compile an inventory of feedback from all stakeholders, to ensure that the relevant; Government/ agencies are present and able to respond to the stakeholders; Conduct the Cost Benefit Analysis with all relevant stakeholders and measure the positivity/negativity of the feedback before considering the feedback in the negotiations; and Conduct an impact assessment (including surveys) post FTA implementation on the benefits of the FTA (for example benefits based on the tariff liberalisation, reduction of NTMs, trade facilitation, market access, enhance investment and etc) and also survey on the utilisation of the FTA.
- (ii) There is a need for secrecy – Governments are not allowed to expose negotiating documents: Seek as much transparency as possible in the FTA negotiations

- (iii) **Business difficulties in giving inputs to the government:** Short lead time, bureaucracy and late responses: Have an online platform on all inputs from stakeholders-opportunity for all stakeholders to submit their inputs; Ensure continuity of knowledge among negotiators of the negotiations/ inputs from stakeholders; Provide enough time and opportunity for the NGOs/ Trade Associations/ CSOs to consult their members/ stakeholders.
- (iv) **Learn from existing best practices:** Emulate the CPTPP chapter on Committee on Competitiveness and Business Facilitation that advocates the establishment of appropriate mechanisms to engagement with stakeholders in all FTAs.
- (v) **Lack of good Regulatory Practice:** Supports the move to mandate Good Regulatory Practice (GPR) as part of the Domestic Policy on Development and Implementation of Regulations (NPDIR) prior to introducing new policy; Conduct & publish Regulatory Impact Analysis (RIA); Early & genuine consultation with stakeholders; and Defer & review actions increasing regulatory compliance costs.

3. Good Practices in Conducting Stakeholder Consultations

According to a study by the ADB 2018, the choice of the system should take into account the political, economic, and institutional circumstances of the economy as well as the time and resources available. In any case, the design of the consultation mechanism should be systematic, continuous, and transparent. The amount and quality of information provided by the negotiators will determine and sustain the stakeholders' active participation in the consultation.

In practice, there are likely to be two types of stakeholder consultations:

- Formal consultations are institutionalized & involve the participation of public & private stakeholders as well as in the interagency meetings. Some economies convene public hearings before the official negotiation.
- Informal consultation is done through sectoral public hearings, opinion surveys, outreach and regional seminars, and other means (e.g., through invitations for comments on government websites).

In Singapore, relevant Ministries such as Ministry of Trade and Industry cooperate with the Singapore Business Federation (SBF) & Enterprise Singapore (ESG) to organize outreach sessions to the business community to introduce their FTAs. Other economies have other practices which include open outreach such as online submissions to government websites; public hearings; organizing "stakeholder event" on the sidelines of negotiations . Other practices can also include one-on-one meetings such as with interested companies, regulators, special interests groups, etc. The APEC Business Advisory Council (ABAC)'s annual reports to Leaders are also considered as an important inputs to the governments since they contains broad recommendations such as improving SMEs access to financing; broadening access to internet, etc.

In Australia, the Government conducts stakeholder consultation regularly, before and during negotiations and in the implementation phase to inform interested stakeholders, which will in turn inform policy development and highlight the benefits of the Government's agenda on

trade and investment liberalisation. They focus on informing relevant stakeholders (business, civil society, parliament, State and Territory Governments) about their approach to trade negotiations, including to prioritise products/sectors; understand sensitivities and market access barriers, as well as to gain market insights. Stakeholders will be briefed on negotiating priorities, receive regular updates and discuss expectations for the negotiations in a two-way flow of information. In the pre-negotiation phase, stakeholders are invited to make public submission; while during the negotiations stakeholders are consulted in a number of ways, including: targeted stakeholder meetings with industry and other interested groups; public stakeholder meetings between negotiations and at negotiating rounds, and; ongoing day-to-day contact with industry and civil society groups throughout the negotiations.

4. Experience Sharing of Business Associations

Malaysia shares their experiences of business associations' (Federation of Malaysia Manufacturers – FMM in particular) involvement in domestic stakeholder consultation during Malaysia's FTA negotiation process. Participating in six regional FTAs and seven bilateral FTAs concluded, four under negotiation, the FMM have been very active and experienced in stakeholder consultation. So far, they have joined in meetings and routable discussion (more than 16 consultations), including ad hoc dialogue - recommendations prior to FTA implementation; FMM Export & International Business Committee – trade related matters; different chapters – MITI (market access, ROO), MoHR (labour chapters). They also have been proactive in jointly organizing outreach seminars (more than 10 seminars so far) which FMM invited speakers from MITI to share on benefits of FTAs and issues; and/or made recommendations on utilizing FTAs directly with MITI. Not only the FMM as a whole, they create opportunities for individual company to be deeply involved in the consultation by raising their FTA related issues with the MITI through open days with stakeholders.

Viet Nam Chamber of Commerce and Industry (VCCI) is a representative of the whole Viet Nam business community and remains a focal point for business voices in Viet Nam's domestic and international trade policy. Their rights and obligation to provide consultation to the Government is officially stated in the Decision 06/2012/QD-TTg. They are often consulted in 3 phases: pre-negotiation, negotiation and internal approval. So far, it is believed that the business community's voice has been taken into account during FTAs negotiation since their opinion collected through 2 side meetings, is seriously considered and included in the negotiation plans by the negotiating delegations. Although in Viet Nam, it is agreed that negotiations scenarios/plans should be confidential, it is still highlighted that transparency is the key to promote efficient stakeholder consultation, eg: opportunities for negotiators to be provided with vivid inputs from public and business; opportunities for negotiators to share their concerns with public and business; opportunities for the Government to get sympathy from public and business; crucial chances for public and business to be better prepared for future implementation.

IV. Recommendations and Conclusions

Through the sharing of information and experiences among APEC member economies at the Workshop, speakers and participants have shared views on what individual government and APEC should do to promote efficient stakeholder consultation. Recommendations are as follows:

1. How to successfully conduct stakeholder consultation:

- Identify stakeholders and their roles: it is important to involve stakeholders such as government (Ministries, parliament, local governments, etc.); interest groups (including universities, research centres/institutions, civil society); business groups; etc.;
- Set specific strategies for different stakeholder consultation;
- Gather as many views as possible from stakeholders;
- Maximize the range of channels to conduct consultations: public hearing/town hall; permanent committees, online service, media printing, face-to-face (public hearing, one to one meeting, etc.);
- Use best practices/ previous practices as a reference;

2. APEC's roles in promoting capacity building on domestic consultation in RTAs/FTAs Negotiation

- More specific capacity building activities: training, forum, workshops, etc. on specific topics: skills, process to conduct consultation, CBA, stakeholder profiling, working with parliament, new generation of FTAs;
- Best practice sharing and documentation, access to member economies' research papers, APEC online training resources on FTAs consultation;
- Booklets, handbook, guidelines on recommended consultation process(es);
- Working closer with ABAC and APEC SME WG.

Here are some recommendations for further thoughts and discussion at the upcoming CTI Meetings.