



**Asia-Pacific
Economic Cooperation**

**FINAL REPORT
APEC Training Course on Building and
Enhancing FTA Negotiation Skills on
Sanitary and Phytosanitary**

APEC Committee on Trade and Investment

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APEC Training Course on Building and Enhancing FTA Negotiation Skills on Sanitary and Phytosanitary (SPS)

Ha Noi, Viet Nam

17th – 18th December 2012

SUMMARY REPORT

Introduction

On December 17th - 18th, 2012, the APEC Training Course on Building and Enhancing FTA Negotiation Skills on Sanitary and Phytosanitary (SPS), initiated by Viet Nam and co-sponsored by New Zealand, Peru, and the Philippines, was held in Ha Noi, Viet Nam. Representatives from 14 APEC member economies (Australia, Chile, Indonesia, Korea, Malaysia, Mexico, New Zealand, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, USA, Viet Nam) and international organizations (OECD – the Organization for Economic and Cooperation Development, FAO – Food and Agriculture Organization of the United Nations), together with 7 speakers, totalling approximately 50 government, industry, academic and international organization participants, attended the Training Course. Among 50 participants, 25 were women, accounting for 50 per cent of participants.

The Training Course was targeted to increase knowledge and capacity of negotiators and policymakers, with practical relevance, to participate in SPS negotiations. It also aimed at increasing knowledge of reference sources in SPS (academic references; feasibility studies and texts of FTAs that have been implemented). In addition, the Training Course was intended to share best practices and experiences in preparing for RTAs/FTAs negotiations and for a vision of an FTAAP in the APEC region. Last but not least, the Training Course was an opportunity to identify domestic issues to be addressed (regulations/policies), including unnecessary SPS related barriers to trade, to prepare for the participation in FTAs/FTAAP.

Background

This is the first time for APEC to conduct such a training course specifically aimed at building and enhancing capacity and understanding of SPS considerations and negotiations skills for related stakeholders despite the increasing importance of this issue in FTAs negotiations. This project is, therefore, expected to address the capacity building needs of APEC economies by providing a short training course to equip negotiators, policy makers and academics with relevant information, references, and equivalent skills to participate in SPS negotiations.

This project forms from a part of activities under the Action Plan Framework for Regional Economic Integration (REI) Capacity Building Needs Initiative (CBNI) initiated by Korea since 2010. In 2011, APEC Ministers “welcomed the decision to approach capacity building activities with strategic foresight by undertaking multi-year projects, such as supporting APEC’s work to strengthen and deepen regional economic integration, and facilitating the realization of FTAAP.” The APEC Capacity Building Needs Survey in 2010 and the REI CBNI Policy Training Course in 2011 resulted in an Action Plan Framework which is consisted of 7 fields, namely: services and investment; e-commerce; labour; environment; intellectual property; SPS and rules of origin.

Themes covered during the two-day event included: (i) the necessity of having SPS provisions/ chapter in an FTA; (ii) SPS provisions/ Chapter in FTA; (iii) experiences in coordination and stakeholder consultation; (iv) best practices in negotiating SPS provisions/ Chapter in an FTA; (v) simulation exercise; and (vi) best practices in post-negotiation implementation.

Discussion

Outcomes

The APEC Training Course on Building and Enhancing FTA Negotiation Skills on SPS included one and a half days for presentations and discussions on FTA-related SPS chapters and provisions, preparation for negotiating SPS provisions/chapters in an FTA and post-negotiation implementation issues.

The Training Course was also consisted of a mock negotiation of three Parties, where participants had good opportunities to discuss in groups for one hour and undertake the mock negotiation for another hour. The mock negotiation was overwhelmed with enthusiasm and active discussions of all speakers and participants who played the role of developed, emerged and least developed economies in the negotiation of the issue of private standards. For some participants, it was a rare chance for them to be in a position of negotiators from the other side and understand the background, positions and domestic challenges of other economies.

The Training Course also brought about the knowledge of designing negotiation strategies and inter-department policies and networking. The Training Course's speakers, with experiences in previous and current FTA-related SPS negotiations, helped participants in building basic views and developing steps and plans for group negotiations. Overall, the Training Course had achieved its main objectives as described in the project proposal in building and enhancing capacity and understanding of participants on FTA-related SPS considerations.

Key Issues Discussed

The Training Course specifically focused on capacity building and enhancing for negotiators who have participated or potentially will participate in SPS negotiations under an FTA. The Training Course's speakers and experts from OECD, Vietnam Chamber of Commerce and Industry (VCCI) and APEC economies provided participants with a broad view of the background information on FTA-related SPS chapters/provisions and experiences of economies throughout the Asia - Pacific region. Active participants from the private, public and academic sectors and the sharing of their perspectives also added to the overall success of the Training Course.

Opening remarks

In her opening remarks, Mrs. Pham Quynh Mai, Deputy Director General, Ministry of Industry and Trade of Viet Nam stressed the importance of the Training Course in the light that SPS is a complicated issue whereas developing economies has modest knowledge and experiences. She reiterated that building and enhancing FTA negotiation skills on SPS is essential and pragmatic for the benefits of all APEC economies, especially the developing ones. She hoped that with intensive presentations of speakers and active discussions of all participants, the Training Course would offer a worthwhile opportunity for negotiators, policy-makers, and scholars of Viet Nam and other APEC members to exchange and learn precious experience, as well as enhance their knowledge on negotiating SPS issues in FTAs. This would contribute to boosting the efficiency of both SPS negotiations and the implementation of SPS regulations, once the FTAs enter into force.

Training Course's sessions

Negotiators and experts provided presentations on the following topics:

1/ To better understand the necessity of having SPS provisions/ Chapter in FTAs, 2 speakers from Australia and Viet Nam reviewed the use of SPS and the impacts on fair trade. They also analysed the application of SPS measures on imported goods in developed and developing economies.

- Presentation on 'The Necessity of Having SPS Provisions/ Chapter in an FTA' by Mr Dominic Pyne (Agriculture Counsellor, the Australia Embassy in Bangkok). This comprehensive presentation included following points: the definition of SPS measures; SPS measures as non-tariff barriers; the role of an SPS chapter; the exclusion of preferential SPS measures in an FTA; types of FTAs; approach to negotiations; convergences and divergences in APEC RTAs/FTAs; SPS Chapters/provisions of APEC economies; Australia's existing FTAs; Australian FTAs under negotiation; sharing information; and cooperative activities.
- Presentation on 'The Necessity of Having SPS Chapter Under Free Trade Agreements' by Dr Le Thanh Hoa, Deputy Director of SPS Office (Viet Nam) included broad objectives for including SPS in FTAs; types of SPS measures; key provisions of SPS Agreement; the positive implications of an SPS Chapter for developing economies; the costs of SPS compliance; and the key contexts of an SPS Chapter under an FTA.

2/ Ms Linda Fulponi, Senior Economist, from the OECD provided an in-depth presentation on "SPS and Free Trade Agreements: What's Included?" She underlined the core SPS principles in terms of transparency, harmonization, equivalence, regionalization and risk assessment. She also examined the coverage of SPS provision/ Chapter in Free Trade and Regional Trade Agreements in ASIAN, Latin American and African agreements.

3/ Speakers from the United States, the Philippines and Viet Nam provided 3 presentations on the topic of experiences in coordination and stakeholder consultation:

- Mr Richard White from RDW Global Consulting (USA) shared his experiences in coordination. He stated that SPS agencies in the United States are divided into 2 groups of regulatory and economic agencies. He also highlighted the US trade policy regarding coordination process. Mr White introduced an interesting case study on the SPS negotiation between the US and country "Q" and withdrew some lessons learned from the case study, including the importance of consultation with US agricultural interests and US Congress during the FTA negotiations, long-term technical assistance programs, the importance of decision-making upon SPS market access at working level, and the role of science on SPS market access.
- Ms Carolyn Castro from the Philippine Department of Agriculture was tasked to share experiences with coordination and stakeholder consultations in FTA negotiations. She explained the reasons for the participation of the Philippines in FTA negotiations and provided a brief on the country's FTA engagement in ASEAN and ASEAN Dialogue Partners to date. Ms Castro discussed some issues in coordination within and among different government units as well as with private sector stakeholder consultations. She highlighted concerns over the various levels of development among Parties to FTAs, possible conflicts of interests among stakeholders, different interpretation and understanding about certain SPS concepts and principles, inadequate awareness of the Agreement, among others. She shared that although generally most SPS provisions in FTAs are affirmation of the WTO SPS Agreement and do not go further than the WTO SPS commitments, it is still important that stakeholders are aware and are reminded of the general principles and commitments and their implications. Ms Castro emphasized the critical role of consultations with stakeholders and stated that Government institutions should serve to balance the diverse interests of society.
- Dr Nguyen Thi Thu Trang, Director of Legal Department, VCCI (Viet Nam) approached the issues with 3 main points: She stressed the needs of consultation from the positions of both negotiators and businesses. Dr Nguyen analysed the situation of consultation in developing economies, with specifications of trade consultation in Viet Nam. She gave an overview of the proceedings of consultation in Viet Nam and the role of VCCI in that process. Dr Nguyen concluded her presentation by explaining the differences of SPS consultation among others.

4/ In the presentation on 'Best Practices in Negotiating SPS Provisions/ Chapter in an FTA', Mr Richard White outlined 4 points: the importance of preparation before the negotiation; understanding your own negotiation team; get to know and learn about other teams; the necessity of negotiating texts that can be implemented in reality.

5/ Speakers from Australia, Viet Nam and the OECD provided 3 presentations on the topic of best practices in post-negotiation implementation.

- Mr Dominic Pyne (Australia) presented on implementation process, participation of relevant agencies, monitoring and review and the evolution of FTAs world-wide. He also highlighted 2 typical examples of Thailand – Australia Free Trade Agreement (TAFTA) and Australia – United States Free Trade Agreement (AUSFTA).
- Mr Tran Viet Cuong, Program Officer, SPS Office (Viet Nam) gave an overview on Vietnam's FTA engagement, forms of commitments and levels of commitments. He explained in details SPS cooperation and developments under the Free Trade Agreements of ASEAN, ASEAN-Australia-New Zealand, ASEAN-Korea, and ASEAN-China. Moreover, Mr Tran introduced the SPS Office of Viet Nam and relevant experiences in inter-agency coordination. He emphasized the importance of coordination, finance, monitoring and review, and technical assistance in the post-negotiation implementation.
- Ms Linda Fulponi (OECD) presented on the issues that need to be addressed in post-negotiation implementation. Among factors that are required in implementing SPS commitments, she briefly introduced to the Training Course's participants the SPS management systems and their according needs of assessments. Ms Fulponi also noted the role of technical committees in the implementation process. Furthermore, she listed other crucial factors such as transparency, equivalence, harmonization and improvements of compliance.

Mock negotiation

During the mock negotiation, participants were divided into 3 groups of economies (developed, emerged, least developed ones) to prepare and negotiate the issue of private standards under an SPS Chapter in a FTA. Participants had one hour to discuss at group level, with assistance and advice of speakers, to prepare for the group's views and strategies to negotiate.

The one-hour mock negotiation took place enthusiastically with 3 leaders of 3 groups to represent their groups to negotiate. The negotiators were reserved, polite but also firm on their economies' positions. As private standards are complicated and controversial, groups were given break time to "go back" to their home economies for domestic consultation before undertaking the 2nd round of negotiation, which took place in the same morning at the Training Course.

The exercise on mock negotiation was evaluated to be useful and helped to increase the skills of negotiations.

Conclusion and Recommendations

In the Training Course's closing remarks, Mrs. Pham Quynh Mai, Deputy Director General, Ministry of Industry and Trade of Viet Nam, commended the speakers and participants on a very successful and productive Training Course. She thanked the organizers, co-sponsors and distinguished speakers and participants from government, academic and international organizations, for sharing their valuable experiences and invaluable insights.

The Training Course concluded with a discussion of possible future activities and continuing work to improve the capacities to participate in FTA-related SPS negotiations and sharing best practices.

Follow-up training course should consider the following topics:

1. In terms of theory:

The following topics can be considered to be addressed at the course:

- Skills to negotiate internally with domestic stakeholders;
- Risk and impact assessment;
- Dispute settlement;
- How to balance interests of Parties;
- Combine APEC Training Courses with trainings of WTO/ ADB/ APEC SCSC (Food Safety forum)

2. Mock negotiation:

- Participants highly recommended to include mock negotiation in future training course and more time should be allocated for this exercise, probably on daily basis after each theory session, so that participants will have chance to practice negotiation skills. Additionally, different groups may take bilateral consultation with each other.
- To prepare for the mock negotiation, there should be specific guidances/ information that can be handed out or emailed to participants prior to the training course. The organizers might also think of multiple ways of conducting the mock negotiations, including bilateral and multilateral negotiations as well as changing of partners. There should also be one session for stakeholder consultation.
- A special training on negotiation skills and techniques (eye contacts, behaviours, attack and defence) is also very important and highly recommended. It could be combined in a Training Course with a specific topic.

3. Participation of stakeholders:

- More involvement of various stakeholders, such as academia, NGOs, business (or private sectors).

Short Exercise

APEC Training Course on Building and Enhancing FTA Negotiation Skills on SPS

Ha Noi, 17 – 18 December 2012

Mock negotiation: Negotiate the issue of private standards under a SPS Chapter in a Free Trade Agreement of 3 Parties (A,B,C)

1/ Introduction

The "Private Standards" issue was raised for the first time in the framework of the SPS Committee (WTO) in June 2005. This action was supported by many developing countries who all complained about the fact that private standards imposed by food business operators were a barrier to trade. Since then, the debate has continued within the framework of SPS–WTO, in other multilateral organizations (OECD, World Bank, UNCTAD).

In the context of global sourcing, retailers and supermarkets in developed economies require private food certification of their suppliers to ensure that the products they import to the developed economies are safe. This requirement is part of a commercial agreement between two voluntary parties in a free market, and as such is not subject to regulatory intervention. However, since costs of compliance with these private standards may be high, many suppliers in developing countries met problems in satisfying these requirements.

“Private standards” is one of the pre-eminent SPS challenges in FTA the negotiation among countries A, B and C (who are all WTO members).

A (developed economy) suggested that in the SPS Chapter of the FTA should incorporate the text on “private standards”. It is of the view that standards set by the private sector can help suppliers improve the quality of their products and gain access to high-quality markets. These standards also help to protect health and the legitimate rights of consumers.

B (industrialized economy with middle class GDP) is of the view that setting standards for the products is a legitimate private sector activity, not a government one. In an informal consultation, B concerned that private standards may not meet WTO requirements such as transparency and scientific justification of food safety measures and are more trade-restrictive than necessary to protect health.

C (developing economy) suggested that the starting point of the negotiation could be the recognition of the SPS Agreement, the Codex Alimentarius Commission, the World Organization for Animal Health (OIE) and the International Plant Protection Convention (IPPC). C argued that private standards can be more restrictive and more prescriptive than official import requirements, thus raising additional barriers to trade.

2/ Cases

Country A	<p>A is the most developed economy among 3 Parties. It hopes that a specific text on private standards can be incorporated in the SPS Chapter. It is under the pressure from domestic industries on this issue.</p> <p>However, in recent 5 concluded FTA agreements, A has never been successful in incorporating private standards in the SPS Chapter.</p>
Country B	<p>B is an industrialized economy with middle class GDP, which has strengths in exporting agricultural products to countries A and C. Domestically, B also has very high standards in SPS.</p> <p>B is open-minded and negotiating the SPS Chapter in the FTAs with two partners.</p> <p>There are few voices in B on the costs of complying with private standards as well as the additional cost of certification.</p>
Country C	<p>C is the less developing economy. With limited resources in finance and human, C has many difficulties in meeting the requirements of international SPS standards.</p> <p>C concerns that private standards can rise the costs of testing, certification and approval procedures. In reality, although goods from C meet the internationally agreed food safety standards, they cannot gain access to many markets, as the private standards set requirements well in excess of those of the Codex, IPPC or OIE.</p>

3/ Methodology

Participants attending the Course will be divided into 3 groups to play the role of negotiators of A, B and C.

Country A	<p>Fernando Acuna (Chile)</p> <p>Gerald Panganiban (Philippines)</p> <p>Alexey Slepchenko (Russia)</p> <p>Walaikorn Rattanadechakul (Thailand)</p> <p>Sophia Setyawati (Indonesia)</p> <p>Phung Thi Lan Phuong (Viet Nam)</p> <p>Nguyen Thuy Linh (MOIT, Viet Nam)</p> <p>Pham Thi Phuong (Viet Nam)</p> <p>Nguyen Duc Minh (Viet Nam)</p> <p>Nguyen Phu Thai (Viet Nam)</p> <p>Nguyen Thanh Long (Viet Nam)</p>
Country B	<p>Carolyn Castro (Philippines)</p> <p>Nalintib Homvisetvongsa (Thailand)</p> <p>Warea Orapa (PNG)</p> <p>Mohamad Iqbal Djamil (Indonesia)</p> <p>Jiaying Su (Singapore)</p> <p>Wha-shin Hsu (Chinese Taipei)</p> <p>Tran Thuy Dung (Viet Nam)</p> <p>Tran Huu Cuong (Viet Nam)</p>

	Nguyen Xuan Canh (Viet Nam) Nguyen Tu Anh (Viet Nam) Le Tuan Anh (Viet Nam)
Country C	Rozilawati Azman (Malaysia) Andrew Munap (PNG) Polina Smyshlyeva (Russia) Rubisel Velazquez Lugo (Mexico) Sarah Soon (Singapore) Yi-ting Kao (Chinese Taipei) Nguyen Thuy Linh (MARD, Viet Nam) Do Tuyet Mai (Viet Nam) Nguyen Duc Bach (Viet Nam) Nguyen Man Ha Anh (Viet Nam) Tran Thi Thu Phuong (Viet Nam)

3 groups will have one hour for preparing the mock negotiation and another hour to undertake the mock negotiation.

Groups are encouraged to conduct prior research and discuss at the coffee break on the mock negotiations.

Groups are also encouraged to designate one person to be the lead of the group in the mock negotiation.

4/ Objective

The negotiation aims at the agreement of 3 Parties on the text on private standards in the SPS Chapter.

Enhancing FTA Negotiation Skills for SPS

Presented by
Richard D. White
RDW Global Consulting
December 17-18, 2012
Hanoi, Vietnam

Best Practices

- Prepare before you leave home
 - Basis of Negotiation
 - Negotiation Plan
 - Rationale for negotiating position
- Know your negotiation team
- Learn about the team from the other country
- Negotiate texts that can be implemented

Preparation

- Consider using an existing SPS text as the basis for your proposal.
- Develop a plan for the text that identifies issues to be included and issues to be avoided.
- Consult/coordinate within the government and with private sector stakeholders.
- Meet with members of your SPS negotiating team to review issues and develop strategies.

Know Your Team

- All SPS ministries and departments need to know the negotiating position.
- Team members need to know their programs and understand the implications of proposals.
- Team members need to have the authority to agree with proposals that emerge during negotiations.

Know Their Team

- Identify the ministry of the lead negotiator and the members of the team.
- Work with your embassy in their capital to gather information on the team members and negotiating positions or priorities.
- Check WTO SPS website to review recent notifications.

FTA Implementation

- Consult with SPS ministries to ensure that provisions you negotiate can be implemented.
 - Legal authority
 - Costs
 - Staff time

Thank you for your time and attention!

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APEC Training Enhancing FTA Negotiation Skills For SPS

presented by

Richard D. White
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December 17-18, 2012
Hanoi, Vietnam

Experiences in Coordination

- Coordination and consultations on SPS issues are essential for success.
- SPS programs are distributed among several ministries.
- International trade objectives are different from domestic food safety, animal health and plant health objectives.

Experiences in Coordination

- Coordination and consultations are necessary at multiple levels:
 - Within ministries (among departments);
 - Among ministries;
 - With other branches of government (e.g., legislature).
- Negotiators need to present “national” positions.

SPS Agencies in the United States

- | | |
|--|---|
| <ul style="list-style-type: none"> • Regulatory <ul style="list-style-type: none"> – FDA (DHHS) – APHIS (USDA) – FSIS (USDA) – EPA | <ul style="list-style-type: none"> • Economic <ul style="list-style-type: none"> – USTR (EOP) – FAS (USDA) – State – Commerce |
|--|---|

U.S. Trade Policy

- U.S. law mandates an interagency coordination process.
- USTR is designated as the single agency for trade negotiations with responsibility to lead interagency trade policy development.
- Three tiers: staff, policy, cabinet (minister).

U.S. Trade Policy

- USTR negotiates and administers trade agreements.
- Implementation is primarily the responsibility of other agencies (e.g., FDA, APHIS, EPA, FSIS).
- USTR does NOT have authority or resources for SPS programs; e.g., Enquiry Point, food safety, animal health, plant health.

U.S. Trade Policy

- Structured process for consultation with private sector:
 - APAC
 - ATAC
 - ITAC
- Consultations with "cleared advisors" prior to each negotiation.

Case Study

- U.S. had been negotiating with country "Q" for almost 2 years.
- Many texts were in final stages.
- USTR receives a letter signed by 52 Senators stating that they will not support passage of the FTA due to the unjustified SPS measures of "Q" that restrict U.S. food/agricultural exports.

Case Study

- Action Plan
 - Consult with Senators to determine specific exports of concern.
 - Consult with U.S. agricultural exporters.
 - Consult with U.S. SPS regulatory agencies to determine status of discussions with "Q" on export and import agreements.
 - Determine most significant U.S. exports at issue.

Case Study

- Determine time lines for possible approval of U.S. exports to "Q".
- Discuss issue at Ambassador level to secure agreement on approach and work to resolve issues at SPS negotiator level.
- Present prioritized list to "Q" at SPS negotiations.

Case Study

- "Q" identified food/agricultural products for access to the U.S. market.
- SPS negotiators agreed that the text was sufficiently advanced that the negotiations would focus on resolving mutual market access issues.
- SPS negotiators met every 6 weeks for 18 months to resolve market access issues.

Lessons Learned


- Consultations with U.S. agricultural interests and the U.S. Congress during the FTA negotiations could have identified these issues earlier.
- In some cases, market access could not be granted as "Q" could not meet U.S. SPS standards; long-term technical assistance programs were developed.

Lessons Learned

- SPS market access decisions should be resolved at the working level; avoid deferring to senior/political decision-makers.
- Although there was a *quid pro quo*, SPS market access decisions must be based on science.

Thank you for your time and attention!

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 Australian Government
Department of Agriculture, Fisheries and Forestry

The necessity of having SPS provisions in an FTA

Dom Pyne
Counsellor (Agriculture)
Australian Embassy Bangkok

Outline

1. What are Sanitary and Phytosanitary Measures?
2. SPS measures – non tariff barriers.
3. What can an SPS chapter do?
4. What a SPS chapter cannot do.
5. Why an FTA cannot include preferential SPS measures?
6. Types of FTAs.
7. Every FTA is different.
8. Approach to Negotiations
9. "Identifying Convergences and Divergences in APEC RTAs/FTAs".
10. APEC Economies SPS chapter provisions.
11. Australia's existing FTAs.
12. Australian FTAs under negotiation.
13. Information sharing.
14. Cooperative activities.

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What are Sanitary and Phytosanitary Measures?

- A detailed definition can be found in Annex A of the WTO SPS Agreement.
- In simple language:
 - SPS measures are measures applied to protect human, animal and plant life or health from risks arising from the introduction and spread of pests, diseases, additives, toxins and contaminants.
 - This includes laws, decrees, regulations, testing and inspection arrangements etc.

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SPS measures – non tariff barriers?

- According to the WTO World Trade Report 2012, technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures are the most frequently encountered non tariff barriers.
- Business surveys also list TBT and SPS issues as the most relevant impediments to exports.
- This is not to say that SPS Measures are not justifiable – but highlights the need for SPS measures and processes to be transparent and ensure the measures are justifiable and no more trade restrictive than necessary.
- SPS provisions in FTA Agreements can assist in this process.

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What can an SPS chapter do?

- Affirm commitment to WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).
- Facilitate sharing of information on SPS issues.
- Create a framework to discuss and work through bilateral SPS issues.
- Provide a framework for cooperative SPS activities.
- Create new obligations beyond the WTO SPS Agreement.

What an SPS chapter cannot do.

- Provide for preferential SPS measures for FTA Parties.
- Conflict with WTO obligations (including the SPS Agreement).
- Change a country's appropriate level of SPS protection.

Why an FTA cannot include preferential SPS measures?

- Article 2(3) of the WTO SPS Agreement obliges WTO Members to ensure that their SPS measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail
- If the biosecurity or food safety risk of products from two countries is the same, the importing country cannot discriminate between them (even if the importing country has an FTA with one of the countries).

Types of FTAs.

- An FTA may include two Parties or many Parties.
- What works in a bilateral FTA may not be appropriate in an FTA with many Parties.
 - eg. A committee to resolve bilateral SPS issues may be appropriate for an FTA involving only two parties but may not be appropriate if the FTA involves several parties.

Every FTA is different.

- The Parties involved need to determine what is important for them under the FTA being negotiated.
- The issues of importance will differ due to:
 - History of trade
 - Relationship of the Parties
 - Animal and plant health status and food safety systems
 - Infrastructure and development issues
 - Similarities or differences between regulatory approaches.

Approach to negotiations.

- Ensure the FTA obligations are clear and appropriate during the negotiation process
- Ensure all agencies for responsibility for SPS issues are consulted during the negotiation process (preferably before every round)
- Ensure stakeholders are consulted throughout the negotiation process
- Ensure the FTA is "future proof" and can deal with new issues
- Don't agree to something that can't be done.

"Identifying Convergences and Divergences in APEC RTAs/FTAs".

- Report presented to APEC Ministerial Meeting in Lima, Peru in November 2008.
- Study looked at fourteen chapters (including SPS) of 30 RTAs/FTAs within APEC.
- A number of similarities and difference between SPS chapters were identified.
 - See http://www.mincetur.gob.pe/apec_fta/

APEC Economies SPS chapter provisions.

High Degree of Similarity

- Affirmation of WTO rights and obligations.
- International standards as a basis for SPS measures.
- Rights and obligations.
- Committee on SPS – related measures.
- Technical Cooperation.
- Contact Points.

APEC Economies SPS chapter provisions.

Medium Degree of Similarity

- Scope and coverage.
- Harmonisation.
- Risk Assessments.
- Control, verification and approval.
- Information and transparency.

APEC Economies SPS chapter provisions.

Low Degree of Similarity

- Equivalence.
- Regionalism.
- Consultation process/dispute settlement.
- Committee on SPS – related measures.
- Technical Cooperation
- Contact Points.

Australia's existing FTAs.

New Zealand:	ANZCERTA (CER) – 1983
Singapore:	SAFTA – 2003
United States:	AUSFTA – 2005
Thailand:	TAFTA – 2005
Chile:	ACI-FTA – 2009
ASEAN-NZ:	AANZFTA – 2010
Malaysia	MAFTA – (2012 – negotiations concluded, but not in force)

Australian FTAs under negotiation.

China,
Japan,
Gulf Cooperation Council (GCC),
Korea,
Pacific Agreement on Closer Economic Relations (PACER) Plus,
Trans Pacific Partnership,
India,
Indonesia,
ASEAN / RCEP

Information Sharing.

- SPS Mechanisms under FTAs also provide an important opportunity to enhance the relationships between parties on SPS through improved information sharing.
- Can be a very simple level:
 - For example under some of Australia's FTAs we now provide all our WTO SPS notifications to the SPS contact point of the FTA partner.
- The information sharing can also be on more substantive issues:
 - An example of this is at the meeting of the TAFTA SPS Expert's Committee in 2012, Australia provided a briefing to the Thai delegates on Electronic Certification; and
 - Through the AANZFTA SPS Committee, a number of countries have used the Committee to share information on biosecurity developments in their countries.

Cooperative Activities.

- Another area of SPS Chapters in FTAs, which has emerged is how the FTA mechanisms can be used to identify and take forward cooperative activities in the area of SPS.
- For example under the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), One project being delivered under the Economic Cooperation work program is the development of an ASEAN Regional Network.
- The ASEAN Regional Diagnostic Network will make it possible for plant health organisations in the region to obtain identifications of plant pests or diseases which they cannot identify because of a lack of specialist expertise within their own country.
 - The project and the Network are being implemented in close cooperation with the National Plant Protection Organisations in each ASEAN country.

Cooperative Activities.

- Some further examples of Cooperative activities are projects that have emerged from the SPS Expert Group established under the Thailand Australia Free Trade Agreement.
- The following are two examples of cooperative projects under this framework:
 - Development of Animal Leptospirosis diagnostic techniques.
 - Development of electron microscopy and immunogold labelling techniques for the diagnosis of infectious diseases of livestock.

Thank you

 Australian Government
Department of Agriculture, Fisheries and Forestry

FTAs – SPS Provisions: Best practices in post- negotiation implementation.

Dom Pyne
Counsellor (Agriculture)
Australian Embassy Bangkok

Outline

1. Getting it right.
2. Initial implementation.
3. Ongoing implementation.
4. Participation by relevant agencies.
5. Monitoring and Review
6. A busy FTA agenda around the world.
7. Example 1. Thailand Australia Free Trade Agreement (TAFTA).
8. Example 2. Australia United States Free Trade Agreement (AUSFTA).

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Getting it Right!

- In the same way that in negotiating FTAs, where SPS chapters have to be designed to meet the particular needs – the same applies to implementation.
- There is no single model, but as countries have more experience in implementation, some best practise principles have emerged.

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Initial implementation

- Starting point (note this can occur prior to entry into force):
 - Understand the SPS Chapter and its implications.
 - Discuss with FTA partner what needs to be done to give effect to the commitments.
 - If new institutional arrangements are required, ensure they are adequately resourced.
 - What processes can be put in place to simplify implementation.

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Ongoing implementation.

- Ensure all agencies responsible for implementation remain aware of their obligations
- Ensure SPS Contact point keeps an updated list of contacts (both domestic and other Parties)
- Ensure SPS Contact point email is regularly monitored and works!
- Ensure the Parties continue to communicate to resolve issues as they arise.

Participation by relevant agencies.

- In implementation of SPS provisions, it is important that all relevant agencies are involved in the process.
- This may include agencies responsible for:
 - Trade
 - Agriculture
 - Health
 - Environment
 - Border clearance activities

Monitoring and Review

- Even if the FTA does not mandate a formal review of the SPS provisions, there should a process in place to monitor the provisions and review if necessary.
 - Sometimes this can be undertaken as part of the broader reviews of the FTA
- However, the success/failure of the SPS provisions should not be looked at in isolation from the overall FTA
- Cannot undertake an economic evaluation of the SPS chapter's success as all "goods" related chapters and provisions have an impact on trade.

A busy FTA agenda around the world.

- Rapid rise and intensification of FTAs over past 20 years
- As of 15 January 2012, 319 FTAs in force world wide as notified to the WTO
 - 70 in 1990
 - over 200 in 2000
 - all WTO Members (except Mongolia) are members of at least one FTA.

A busy FTA agenda around the world.

- What does this mean for implementation?
- All countries have limited resources for these activities.
- Often the same agencies and individual in agencies will be responsible for implementing FTA SPS provisions as well as other responsibilities such as WTO SPS Committee and notifications.
- Need to ensure to avoid duplication with other fora.
- Avoid unnecessary meetings and processes.

Example 1. Thailand Australia Free Trade Agreement (TAFTA).

- Separate Chapter on SPS and Food Standards.
- Affirmation of WTO rights and obligations.
- Separate article on harmonisation and equivalence that restated WTO provisions.
- Established contact points.
- Notification of exporting party of non-compliance.
- Undertake to provide copies of WTO notifications direct to FTA contact points.
- Established an Expert Group on SPS and Food Standards.
 - Detailed mandate for this group outlined in the chapter.

Example 1. Thailand Australia Free Trade Agreement (TAFTA).

Implementation

- The key focus has been on the Expert Group.
 - This group met twice in the first year of implementation and has met annually in every year except 2011 (due to flooding in Thailand).
- SPS notification are now automatically sent direct to Thailand's SS contact point.
- Range of cooperative projects have been undertaken under this group including:
 - Project on seafood safety.
 - Development of Animal Leptospirosis diagnostic techniques.
 - Development of electron microscopy and immunogold labelling techniques for the diagnosis of infectious diseases of livestock.

Example 2. Australia United States Free Trade Agreement (AUSFTA).

- Separate Chapter on SPS Measures.
- Affirmation of WTO rights and obligations.
- Established an Expert Group on SPS and Food Standards.
 - Detailed mandate for this group outlined in the chapter.
- Also established a Standing Technical Working Group on Animal and Plant Health Measures.
 - Separate annex with the mandate for this Standing Technical Working Group.

Example 2. Australia United States Free Trade Agreement (AUSFTA).

Implementation

- Meetings of the SPS Committee have been held face to face every year since entry into force in 2005.
 - sometimes the face to face meetings are held in conjunction with other events or meetings eg in 2012 the SPS Committee meeting was held in Australia just before the Melbourne round of TPP negotiations.
- The Standing Technical Working Group (STWG) meetings were held from 2005 and continued until 2008 on the basis of four meetings a year (one face to face meeting and three teleconferences).
- For 2008 and 2009 this was changed to two meetings a year (one face to face and one teleconference).
- Now only one meeting a year either face to face or by teleconference.

Thank you

Best Practices in Post-negotiation Implementation : SPS commitments

APEC Training Course on Building and Enhancing FTA Negotiation
Skills on Sanitary and Phytosanitary (SPS)
Hanoi, Vietnam December 17-18 2012

Linda Fulponi ,
Senior Economist, Trade and Agriculture Directorate, OECD, Paris

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Best Practices for SPS FTA implementation : Issues addressed

- Trade related SPS Management functions
- Building effective SPS compliance

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Implementing SPS commitments in RTAs:

- SPS – FTA commitments require fulfillment of WTO-SPS requirements and agreement specific requirements:
 - Is there a generic reference to WTO-SPS agreement requirements and/or in addition specific SPS issues.
- Identify SPS requirements that are WTO -plus. Where and how are these additional commitments defined? in the annexes? In ad-hoc agreements? In Memorandums of Understanding?
 - Are these product or process specific?
- Assess needs to specifically fulfill each specific commitment
 - Do these differ from WTO-SPS requirements?

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Implementing SPS requirements : SPS management systems

- Awareness and recognition: public and private actors recognize value of SPS compliance for competitiveness and their specific role
- Application of basic good practices for hygiene and safety: Good agricultural practices (GAP), Good manufacturing practices (GMP) and Hazard Analysis and Critical Control Point (HACCP)–
- Suitable and applied regulation for operators
 - Are market incentives sufficient or are regulations needed to meet GAP/GMP/HACCP

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Implementing SPS requirements: SPS management systems

- Institutional Structures and clarifying of roles:
 - Dealing with systemic risks not confined to specific production or processing structures requires broader oversight or collective actions
 - Need to identify tasks, responsibility and accountability
- Technically demanding risk management functions
 - Tasks of surveillance, Quarantine systems ,Emergency management
 - Require specialized equipment, personnel, organizational structures and funding
- Development of a effective regulatory framework and transparent institutional structures with well defined roles and responsibilities

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Implementing SPS requirements: SPS management systems

- SPS diplomacy: engagement with WTO, Codex Alimentarius, OIE and IPPC as well as FTA partners
- Public Sector role: effective legal and regulatory framework as well as technical risk management functions (surveillance and quarantine, emergency management) and engage with trade partners and international standards bodies
- Private Sector: apply HACCP to production and processes/
 - May develop testing services-complementary or parallel to government if meet standards

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Best Practices: Assessing needs for implementing for SPS management systems

- Institutional Arrangements :
 - Do institutions provide adequate support and guidance for effective implementation of the agreement?
 - Can required changes in institutional framework and agencies be identified and undertaken?
- Capacity Building
 - What are financial and technical needs to upgrade to meet SPS requirements?
 - Are there constraints to laboratories? Technicians? ICT?
 - What are the priorities to relaxing constraints in meeting requirements
- Cooperation
 - What are the cooperative /collaborative activities for meeting SPS requirements among partners?

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Best Practices: Assessing needs for implementing for SPS management systems : private sector

- Are there specific provisions for private sector information and training programmes
- Are there specific institutional arrangements to include private sector in the SPS standards setting and implementation discussions?

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Best Practices; Assessing needs for implementing for SPS management - Monitoring and Assessment

- Is there a procedure to assess the country's capacity to meet SPS requirements and identify critical areas that need resolution?
- Is there a periodic procedure to monitor outcomes?
 - Similar to WTO-SPS recording of complaints or border rejections
- Are arrangements in place to use monitoring information to diagnose specific SPS constraints and how to resolve them?.

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Best Practices: Establishment of Technical Committees

- Technical committees set up under the SPS chapter of the FTA.
 - Negotiate specific product regulations and procedures with respect to SPS
 - Permit resolving differences which arise on requirements
 - Negotiation space for SPS procedures and certifications
- RTA partner participation in discussions of SPS regulations before enactment
 - Allows for information flows and understanding of regulations
 - Permits discussion of how minimise trade flow constraints while ensuring plant, animal and human health
 - Australia- Chile/ Australia-USA

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Best Practices in implementation of SPS RTAs

- Effective compliance of WTO-SPS commitments :
 - Transparency
 - Equivalence
 - Harmonization
 - Regionalisation
 - Risk Assessment procedures
- Implementation differences across RTAs
 - North-South
 - South - South

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Transparency : assessments and remedies

- Transparency capabilities: provide information to partners on new or revised regulations that affect partners
 - Notification of SPS measures: allowing time for comment and consultation with partners
 - Establish national inquiry point
 - Notifications and Publications
- May require changes in institutional set up and training of personnel

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Equivalence : national and international regulations

- Capacity of inspection and certification systems to meet the same objectives or level of protection or control system deemed appropriate by member establishing an SPS measure to protect human, animal and plant health
 - North- South/South-South/North-North
 - Meeting equivalence of specific testing procedures
- Challenges related to SPS equivalence
 - Standards constantly being upgraded
 - Lack of scientific and technical infrastructure
 - Strengthen conformity assessment procedures
 - Need to participate in international standards setting ongoing basis
 - Move to greater harmonization
- Difficult when partners at different levels of economic development

Harmonization: international standards as reference standards

- Harmonize national standards with international standards, so that food safety and animal and plant health protection can be achieved without unduly restricting international trade.
- Ensure local authorities are willing and capable to move towards the international setting

Improving compliance with SPS to meet international standards facilitates RTA compliance

- Strengthening the Food, plant and animal health agencies
 - Funding
 - Equipment
 - Training
- Strengthening rapid surveillance procedures for outbreaks
- Strengthen international communications with respect to outbreaks in importing and exporting countries

Thank you

**APEC TRAINING COURSE ON
BUILDING AND ENHANCING FTA
NEGOTIATION SKILLS ON SANITARY
AND PHYTOSANITARY MEASURES
(SPS)**

17-18 DECEMBER 2012

HANOI, VIET NAM



**Carolyn C. Castro
Planning Officer IV
Philippine Department of Agriculture**



TO BEGIN WITH, WHY DOES THE
PHILIPPINES PARTICIPATE IN FTA
NEGOTIATIONS?



REASONS FOR PARTICIPATION IN FTA NEGOTIATIONS



- Means to promote trade and investment flows
- Ensure continued and enhanced market access for ASEAN's exports
- Draw greater and sustained inflows of foreign direct investments (FDI)
- Mutual support on issues of common interest in international fora
- Maintain competitiveness
- Portfolio diversification
- Cross-border industrial complementation
- Advantages of geographic proximity
- Leverage in FTAs





PHILIPPINE FTA ENGAGEMENT

- ASEAN
- ASEAN Dialogue Partners
 - China
 - Korea
 - Japan
 - Australia & New Zealand
 - India
- Others

* As a member of ASEAN





COMMON ELEMENTS

- Flexibility utilizing the principle of Special and Differential Treatment (S&D)
- Recognition of domestic concerns and interests
- **Private sector consultations**
- Transparency
- WTO consistency
- Comprehensiveness





LEAD NEGOTIATORS

- Department of Trade and Industry (DTI) has mandate and takes lead in trade negotiations, in consultation with other government entities (e.g., **Department of Agriculture** for agriculture and fisheries concerns)
- Inter-agency committees (IAC) for discussing negotiating strategies and preparing Philippine positions
 - Department of Agriculture (DA) as one member for agriculture and fishery concerns
 - IAC of various levels : technical and sectoral, Cabinet, etc.



EXPERIENCES IN COORDINATION AND STAKEHOLDER CONSULTATIONS





UNDERSTANDING THE LEGAL BASIS...

- The WTO Agreements
- Framework Agreement/ *Trade in Goods* Agreement contains provisions **reaffirming** Parties' commitments to abide by WTO disciplines, rights and obligations under the Agreement, which include, among others, non-tariff measures (NTMs)
- Thus, the question: Why have a separate Chapter on SPS Measures?



RECOGNIZING KEY WTO PROVISIONS ON NTMs



While tariff liberalization is the main core of FTAs, NTMs are being applied and in some cases “disguised” as barriers and restrictions to trade.

- Thus, benefits and gains under the FTAs are not maximized.



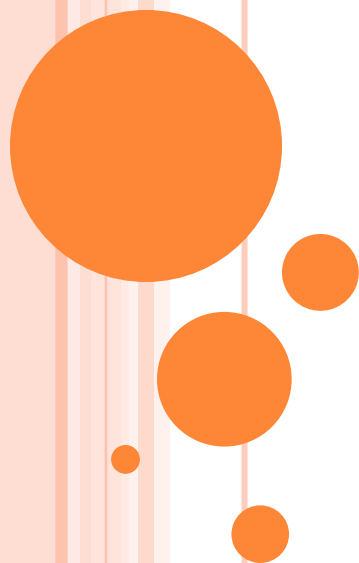


WHY SPS MEASURES MATTER...

- In particular, there is need to reiterate SPS provisions to highlight important role in trade facilitation and market access improvements while safeguarding health and safety of human, animal, and plant life.
- SPS measures is only a subset of a bigger universe of NTMs which needs careful assessment as tariff protection falls.



**AS A MATTER OF POLICY, THE
PHILIPPINES DEPARTMENT OF
AGRICULTURE (DA) ADOPTS THE
GUIDELINES PROVIDED FOR IN
THE WTO AGREEMENT ON THE
APPLICATION OF SANITARY AND
PHYTOSANITARY MEASURES
(SPS)**





DA SPS FUNCTIONS

- Development
 - Product Standards
 - Process Standards
 - Protocols/Codes of Practice

- Enforcement
 - Registration, licensing, accreditation
 - Quarantine and Inspection

- Information Dissemination

- Technical Assistance/Capability Development

** through Specialized Commodity/Regulatory Agencies



SPS AGREEMENT KEY PRINCIPLES- THE NEED TO HAVE COMMON UNDERSTANDING



1. Non-discrimination
2. Scientific justification
 - harmonization
 - risk assessment
 - consistency
 - least trade-restrictiveness
3. Equivalence
4. Regionalization
5. Transparency
6. **Technical assistance**/special treatment
7. Control, inspection and approval procedures
8. **Consultations** and dispute settlement



WHAT WE DO ...COORDINATION WITHIN AND AMONG GOVERNMENT UNITS AND WITH PRIVATE STAKEHOLDERS



- Review of SPS Agreement Provisions for Consistency with FTAs
- Conduct of consultations with relevant agencies and bureaus under the Department of Agriculture, esp. with major regulatory bodies, and creation of DA SPS Focal Group
- Conduct of regular meetings with private sector and industry players on status of FTAs, particularly relating to *Trade in Goods*, including relevant trade facilitation measures such as SPS, ROO, etc.





WHAT WE DO ...

- Continuing advocacy and trade policy seminars and lectures through technical assistance provided to DA





CONCERNS...

- Varying levels of development among Parties to FTAs
 - differing interests and priorities
- Competing/conflicting interests among stakeholders
- Differing interpretation and understanding about certain SPS concepts and principles
- Inadequate awareness of the Agreement itself
- Technical cooperation and assistance – hard infrastructure and other support services
 - Technical experts, facilities and equipment





CONCERNS...

- Coordination and monitoring system – processes
- Inadequate information from stakeholders on actual cases encountered and lack of attention by concerned units
- Venue for consultations and resolution of cases – contact points vs. technical experts
 - Other considerations/factors





SOME CONCLUDING REMARKS...

- Consultations with stakeholders, among others, are needed and play a critical role in implementing and complying with commitments under various trade agreements.
- Stakeholders have to know their rights and obligations and understand constraints as well and the need for some reforms and adjustments.
- Government institutions serve to balance the diverse interests of society. As such, they should be ready to recast their role with the changing demands of the times.





**THANK YOU FOR YOUR
ATTENTION. MABUHAY.**

Allen C. Castro
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Policy Research Service
DA

EXPERIENCES IN COORDINATION AND STAKEHOLDER CONSULTATIONS

QUESTIONS?



SPS and Free Trade Agreements: What's included?

**APEC Training Course on Building and Enhancing FTA Negotiation
Skills on Sanitary and Phyto-sanitary measures (SPS)**
Hanoi, Vietnam

Linda Fulponi
Senior Economist, Trade and Agriculture Directorate, OECD, Paris.

OECD  OCDE

Free Trade and Regional Trade Agreements

- ASIAN agreements
- Latin American agreements
- African agreements

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CORE- SPS principles

- Transparency: establish national enquiry points and notification of creation or change in SPS regulation prior to adoption.
- Harmonization: harmonize national measures to international ones developed by
 - International Plant Protection convention (IPPC) Office of International – plant health
 - Codex Alimentarius - food safety
 - Office International des Epizooties (OIE) - animal health

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Core SPS principles

- Equivalence- accept SPS measures of others as equivalent even if these measures differ from their own if they all achieve appropriate levels of SPS protection
- Regionalisation- ensure SPS measures are adapted to the sanitary or phyto-sanitary characteristics of the area from the product originated and to which the product is destined. Countries should accept the imports from pest- or disease free areas and areas of low or disease prevalence

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Core- SPS principles

- Risk assessment - SPS measures must be based on an assessment of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations. All SPS measures should be based on available scientific evidence

Agreements examined

LATIN AMERICAN AGREEMENTS

NAFTA
 United States-Colombia
 United States-Peru
 Canada-Costa Rica
 CAFTA
 Chile-United States
 Chile-Canada
 Chile-Japan /
 Chile-China
 Chile-Korea
 Chile-Mexico
 Chile-Peru
 Chile-EU
 Chile-New Zealand-Singapore-
 Brunei (P4)
 Mercosur-Chile
 Mercosur-Bolivia
 Mexico-EU
 Mexico-Bolivia
 Mexico-Costa Rica
 Mexico-Nicaragua
 Mexico-Northern Triangle
 Mexico-Uruguay
 Mexico-Peru
 Mexico-EFTA
 Mexico-Japan
 Mexico-Israel
 Mexico-Colombia
 Mercosur-Peru (ACE 58)
 Mercosur-Andean Community
 (ACE 59)
 Panama-Singapore
 Peru-Thailand
 Cent. Amer-DR
 Cent Amer-Chile
TOTAL: 33

ASIAN AGREEMENTS

Australia - Thailand
 Australia- United States
 Australia-Chile
 Australia-Singapore
 New Zealand- China
 New Zealand-Thailand
 New Zealand-Singapore
 Korea- Singapore
 United States-Singapore
 Japan-Thailand
 China-Hong Kong, China

AFRICAN AGREEMENTS

Egypt-Turkey
 EFTA-Turkey
 EC-Egypt
 EC-South Africa
 United States - Morocco
 SADC
 EAC
 COMESA
 ECOWAS

OTHERS

EFTA-Chile
 Canada-Peru
TOTAL: 22

Coverage of SPS chapter in FTAs

- Most FTAs limit the SPS chapter to 1-2 paras instructing parties to observe the right and obligations set forth in the SPS agreement.
- Most of the agreements go no further than the WTO SPS commitments.
- About 40% are WTO-plus, including additional provisions such as specific commitments and procedures to be applied in the implementation of the agreement in a well defined frame of time

Annexes, Ad Hoc Agreements and Memorandums of Understanding

- AD-HOC agreements examples
 - P-4 agreement –establish process to determine equivalence, but not a timeframe
 - Columbia-US and Peru-US recognize the USA inspection system for meat and poultry as equivalent and accept USDA-FSIS export certificates
 - Not reciprocal by the USA
- MOU USA –Chile

Sanitary and Phyto-Sanitary measures in FTAs/RTAs

- 40% Go beyond WTO agreement requirements with respect to one or more requirements
 - transparency-Mexico, Chile
 - mutual recognition provided in New Zealand -Singapore RTA
- SPS commitments in RTAs do not generally provide for greater trade facilitation
- MOUs, Annexes and Ad-hoc agreements provide product specific details on commitments

Agreement	SPS principles					Other commitments	
	Harmonization	Equivalence	Regionalization	Assessment of risk	Transparency	Joint Committee	Mutual Recognition
RTA							
NAFTA	√	√(+)	√	√	√(+)	Instr.	*
United States - Colombia /a	√	√	√	√	√	Instr.	*
United States - Peru /a	√	√	√	√	√	Instr.	*
Canada - Costa Rica /a	√	√	√	√	√	Instr.	*
CAPTA /a	√	√	√	√	√	Instr.	*
Chile - United States /a	√	√	√	√	√	Instr.	*
Chile - Canada	*	*	*	*	*	*	*
Chile - Japan /a	√	√	√	√	√	Instr.	*
Chile - China	√	√	√	√	√(+)	Instr.	*
Chile - Korea	√	√	√(+)	√	√(+)	Instr.	*
Chile - Mexico	√(+)	√	√(+)	√	√(+)	Instr.	*
Chile - Peru	√(+)	√	√(+)	√	√(+)	Instr.	*
Chile - EU	√(+)	√(+)	√(+)	√	√(+)	Instr.	*
Chile - New Zealand - Singapore - Brunei (P4) /a	√	√(+)	√	√	√(+)	Instr.	*
Mercosur - Chile /a	√	√	√	√	√	*	√
Mercosur - Bolivia /a	√	√	√	√	√	*	√
Mexico - EU /a	√	√	√	√	√	Instr.	*
Mexico - Bolivia	√	√	√	√	√(+)	Instr.	*

Mexico - Costa Rica	√	√	√	√	√(+)	Instr.	*
Mexico - Nicaragua	√(+)	√	√(+)	√	√(+)	Instr.	*
Mexico - Northern Triangle	√(+)	√	√(+)	√(+)	√(+)	Instr.	√
Mexico - Uruguay	√	√	√(+)	√(+)	√(+)	Instr.	*
Mexico - Peru	*	*	*	*	*	*	*
Mexico - EFTA /a	√	√	√	√	√	*	*
Mexico - Japan /a	√	√	√	√	√	Instr.	*
Mexico - Israel /a	√	√	√	√	√	*	*
Mexico - Colombia	√	√	√	√	√	Instr.	*
Mexico - Peru (ACE S8)	√(+)	√(+)	√	√(+)	√(+)	√	*
Mexico - Andean Community (ACE S9)	√(+)	√(+)	√(+)	√(+)	√(+)	√	*
Peru - Singapore /a	√	√	√	√	√	√	*
Peru - Thailand	√	√	√	√	√(+)	Instr.	*
Cent. Amer. - DR	√	√	√	√	√	Instr.	√
Cent. Amer. - Chile	√	√	√	√	√(+)	Instr.	*
Canada - Peru	√	√	√	√	√	Instr.	*
EFTA - Chile /a	√	√	√	√	√	*	*
Australia - Thailand	√	√(+)	√	√	√	Instr.	*
New Zealand - Thailand	√	√	√	√	√(+)	Instr.	*
Australia - Singapore	√	√(+)	√	√	√(+)	√	√
Japan - Thailand	*	*	*	*	*	*	*
China - New Zealand	√	√(+)	√(+)	√(+)	√(+)	Instr.	*
Australia - United States	√	√	√	√	√	Instr.	*
Australia - Chile /a	√	√	√	√	√	*	*
United States - Singapore	*	*	*	*	*	*	*
New Zealand - Singapore	√	√	√	√	√	*	√(+)
Korea - Singapore /a	√	√	√	√	√	*	*
China - Hong Kong	*	*	*	*	*	*	*
EFTA - Turkey	*	*	*	*	*	*	*
EU - South Africa	*	*	*	*	*	*	*
EU - Egypt	*	*	*	*	*	*	*
Turkey - Egypt /a	√	√	√	√	√	Instr.	*
United States - Morocco /a	√	√	√	√	√	Instr.	*

Legend to table of FTA/RTA agreements

- /a : Single provision stating that the Parties should respect the WTO SPS Agreement;
- √: commitment on the subject identified in the related column, does not go beyond the WTO-SPS Agreement;
- √(+): When the commitment go beyond the WTO SPS Agreement by specifying the steps and/or timeframe to apply the related subject;
- + No SPS chapter
- Mutual Recognition key : "√" means that the parties establish a generic commitment to work toward the identification of areas for mutual recognition agreements;
- √(+): "√(+)" means that the parties already specify their scope (i.e. standards relating to packaging and labelling)

WTO plus characteristics: Transparency

- Most the WTO plus agreements are due to the commitments on “transparency”.
 - Inclusion of specific time frames for notifications of regulatory changes
 - Consensus is generally easy as all benefit from sharing knowledge particularly in emergency situations.
 - Chile and Mexico account for a large share of WTO-plus under this heading
 - They have many FTAs and thus an interest in being notified about changes in rules or procedures.
 - Thailand –New Zealand, New Zealand-China and Australia-Singapore also have transparency requirements

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Harmonization

- Few agreements are WTO plus with respect to harmonization requirements.
 - Efforts towards harmonization of SPS requirements through use of international standards
- Commitment to implement harmonized systems to specific aspects
- Stipulation of supplemental application of standards, guidelines and recommendations of regional organizations of which signatory parties are members.
- Could stimulate trade flows if with mutual recognition
-

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Assessment of Risk Determination

- Very few include measures that are not present in the WTO-SPS. These would normally include
 - Procedures for interim risk assessment measures or deadlines in their use
 - Mandatory commitment not to interrupt trade when a Party decides to conduct risk assessment for which there is smooth and regular trade
 - Obligation to notify the scientific basis of the decision in writing if the result of risk assessment involves the non-acceptance of the import

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Regionalisation

- Regionalisation allows the flow of agricultural and livestock products even in case of pest or animal outbreaks by circumscribing disease-free areas.
 - lends flexibility to implementation of SPS measures while guaranteeing a given level of protection to importing nations
 - Tool for liberalisation
 - Chile-Peru, -Mexico, -EU, Korea, and Mexico agreements with Uruguay and Nicaragua, Northern Triangle as well as Mercosur-Andean community and China-New Zealand

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Technical Cooperation and Joint Committees

- Mandates for the creation of a special committee or working group to address SPS issues
 - 33 out of 35 that address technical cooperation establish an institutional framework to do so
 - Related provisions specify
 - Committee composition
 - Functions
 - Mode of Operation
- Foster greater transparency and harmonisation among partners

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Equivalence and Mutual Recognition

- Mutual recognition of SPS certificates, inspection or control systems are rare. Examples :
 - Central America-Dominican Republic, Mercosur-Chile, Mercosur-Bolivia, Mexico-Northern Triangle, Chile-Eu, New Zealand-Singapore and Australia-Singapore
 - Mutual recognition not binding
 - Encourages parties to make efforts to identify areas that allow for mutual recognition of SPS inspection, control and certification procedures
 - Missed opportunity to stimulate trade

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Characterizing SPS provisions in FTAs

- Depth of SPS provisions related to sensitivity of the agricultural sector and degree of integration sought
 - North-South agreements-commitments are limited to reference to SPS Agreement categories
 - Latin American countries- frequently go beyond the WTO-SPS
 - Chile has negotiated deeper commitments on key SPS issues with developed countries

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Latin American Agreements

- Of 31 agreements , 16 are WTO-plus with additional commitments to transparency
 - Agreements involving Latin American countries with non – regional countries specify that parties shall respect the rights and obligations set forth in the WTO-SPS Agreement
 - Mexico-EU/JAPAN/EFTA
 - Depth of SPS provisions and specific time-frames for their application have increased over time—Mercosur-Chile/Mercosur-Bolivia,
 - Chile-US agreement in SPS terms stands out in Chile's ability to negotiate deeper commitments

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Latin American Agreements

- Negotiations appear facilitated among those with similar levels of economic development countries
- Text generic but specific commitments in Annex/Ad-Hoc agreements and Memorandum of understanding
 - Annex-Chile-US regulates the grading of beef systems
 - Annex –Chile-Peru regulates cooperation on sanitary issues
 - Ad-Hoc agreements- P-4 agreement to establish a process to determine equivalence.
 - Ad-hoc agreements : US Columbia commit to recognise the US inspection system for meat and poultry equivalent to the Columbian one but not reciprocal
 - Regionalisation: Peru-US livestock

ASIAN FTAs

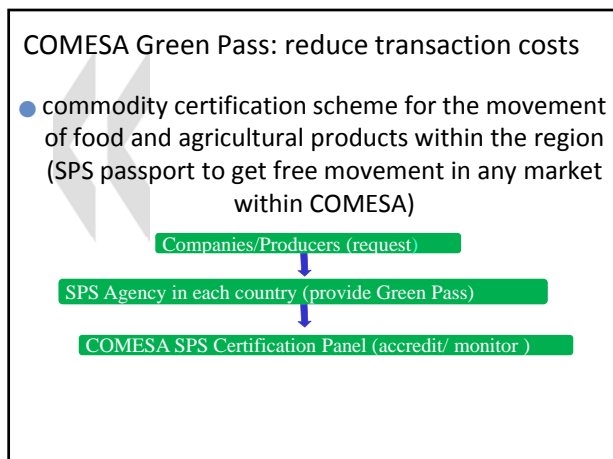
- Main objective is cooperation in order to achieve simplicity of SPS procedures
 - SPS Joint Committee: composition and form of operation
 - Most detailed SPS commitments: China-New Zealand
- **The way forward**
 - Implementation of cooperation commitments established in the RTAs.
 - The improvements on SPS will be influenced by those undertaken within APEC

AFRICAN RTAs

- Main objectives: achievement of food security and rural development,
 - not competitiveness or trade
 - “trade approach” to SPS apparent in EAC and COMESA
 - No commitments on SPS (guideline language)
- Need to create specific SPS protocols
 - COMESA Agreement on the Application
 - COMESA GREEN PASS

African RTAs: agricultural cooperation chapter with SPS provisions

RTAs	SPS Chapter	Agriculture Chapter main	Main aspects	Key regulation further created	Key regulation under discussion (draft stage)
SADC	NO	YES (Food security, Rural development)	Cooperation Harmonization	- SPS Annex to the SADC Protocol (approved in 2008)	x
ECOWAS	NO	YES (Food security, Rural development)	Cooperation Harmonization	- ECOWAS Agricultural Policy (adopted in 2005)	- Harmonized SPS Protocol (draft) - Regulation on the Harmonization of the Structural Framework and Operational rules pertaining to the Health Safety of Plants, Animals and Foods (draft)
EAC	NO	YES (Food security Rural development + slight provisions to foster trade)	Cooperation Harmonization	- EAC Agriculture and Rural Development Policy (2006) - Agriculture and Rural Development Strategy 2005-2030	- EAC Protocol on SPS (draft) WTO Plus
COMESA	NO	YES (Rural development, Export of commodities)	Cooperation Harmonization	x	- Agreement on the Application of SPS Measures (draft) WTO Plus



Thank you

Sources:

- The Treatment of agriculture in Regional Trade Agreements in the Americas, IDB, October 2009. Matthew Shearer, Juliana Salles Almeida and Carlos M. Gutierrez,
- Regional Trade Agreements - treatment agriculture, OECD, 2010, Juliana Salles Almeida, Linda Fulponi, Matthew Shearer

OECD  OCDE

Post-
implementation
a SPS Chapter

Tran Viet Cuong
Vietnam SPS Office

Hanoi, November 2012

Role of Implementation?

- Bring provisions in to real life
- Evaluation SPS clauses and identify areas where the provisions can be further improved.

Vietnam's FTA

- ASEAN Free Trade Area
- ASEAN-Japan/China/Korea/India
- Vietnam - Japan
- Vietnam - Chile

Form of SPS Provisions

- Because of the sensitivity of agricultural and food safety issues, many FTAs contain few SPS provisions and leave it up to the parties to apply the SPS Agreement.
- Final form could be:
 - Articles: ASEAN-Korea/India
 - A MOU: ASEAN - China
 - A Chapter: Vietnam-Japan EPA

Level of commitments

- No WTO/SPS plus so far
- Frameworks are setup to encourage cooperation activities, consultations, and study of SPS problem include:
 - Establish technical working groups
 - Establish Sub-committee on SPS
 - Contact points

Common elements

- Reaffirm rights and obligations of WTO
- Establish of SC-SPS
- Technical working groups
- Enquiry Points and Notification
- Consultation
- Cooperation
- Equivalence, Harmonization

Pre-implementation

- Ratification/Approval
- Vietnam:
 - Report and Submission from Ministry of Industry and Trade
 - Approval from Prime Minister
 - Minister of Foreign Affairs signed official letters to announce and depository

ASEAN FTA

- ASEAN Committee on SPS (AC-SPS) under ATIGA (Chapter 8) has been formed
- Completed TOR and Work Programme 2011-2015.
- Conduct meeting annually.
- 2nd Meeting was conducted in Singapore, late June 2012

ASEAN-Australia-New Zealand

- Update on SPS Developments (changes in institutional frameworks and SPS legislations)
- Review implementation of Work Programme
- 2nd AANZFTA SC-SPS Meeting, 7-9 May 2012, Brunei

ASEAN-Korea FTA

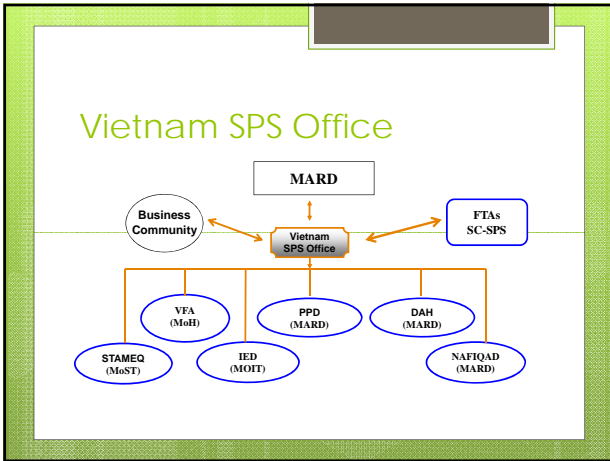
- SPS Working Group Formed
- 1st Meeting held

ASEAN-China SPS Cooperation

- 3 Technical Working Groups (Food Safety, Animal Quarantine and Inspection, Plant Quarantine and Inspection)
- 3rd Ministerial meeting September 2012, Nanning, China

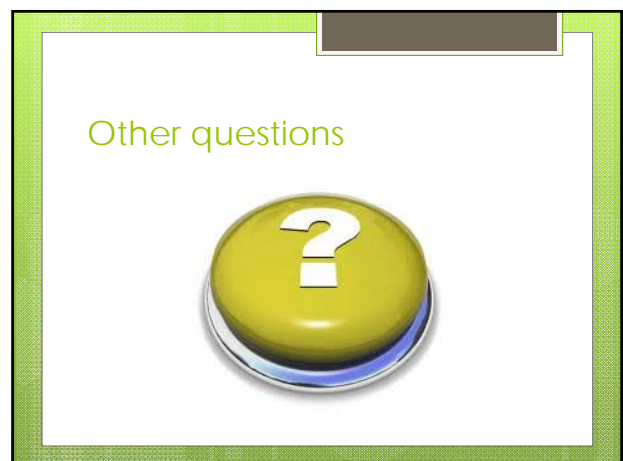
Vietnam's Experience

- Interagency Coordinator is required
- Roles:
 - Enables the consolidation of all the sectoral consultations of the different departments or agencies.
 - provides the necessary link in FTA enforcement and monitoring.



- ### Vietnam SPS Office
- Assist the Minister of Agriculture and Rural Development in:
 - Taking lead in SPS negotiation
 - Ensure the transparency
 - Oversee the implementation of SPS in all FTA
 - Providing information dissemination

- ### Some lesson learnts
- Interagency coordination should be assigned before FTA implementation with appropriate mechanism of working
 - Budget constraint is common issues for developing countries
 - Negotiation and Monitoring implementation agency should be the same
 - Technical assistance to strengthen SPS capacity in implementation an FTA should not limited within SPS provision



APEC Training Course on Building and Enhancing FTA
Negotiation Skills on Sanitary and Phytosanitary (SPS)

THE NECESSITY OF HAVING SPS CHAPTER UNDER FREE TRADE AGREEMENTS

Hanoi, December 17th, 2012

Dr. LE, THANH HOA
VIETNAM SPS OFFICE
MINISTRY OF AGRICULTURAL AND RURAL DEVELOPMENT

Why is SPS Agreement

Is regulated for about 980 billion \$US
of agro-foods trade in the world and
55-57% of those among APECs

1947 2012

What is the purposes of SPS Agreement

The right to protect
human, animal or
plant life or health

Avoiding
unnecessary
barriers to trade

All types of measures with these purposes, including:

1. Product criteria
2. Quarantine measures
3. Processing requirements
4. Certification
5. Inspection
6. Testing
7. Health-related labelling

What is the key provisions of SPS Agreement

1. Non-discrimination
2. Scientific justification
 - harmonization
 - risk assessment
 - consistency
 - least trade-restrictiveness
3. Equivalence
4. Regionalization
5. Transparency
6. Technical assistance/special and differential treatment
7. Control, inspection and approval procedures



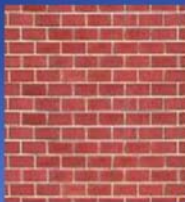
SPS Chapter and SPS Agreement under FTA/TA

FTA /TA (announced)	SPS Chapter	Affirm to SPS Chapter WTO/SPS	SPS Chapter WTO/SPS plus	SPS Cooperation	SPS compliance	Total
Without SPS text						170
With SPS text	36	3	5	6	1	51
Total						221




SPS Measures: Catalyst or Barrier


SPS as Barrier



...Or...

SPS as Catalyst





SPS Measures: Catalyst or Barrier


SPS as Barrier

- Non-transparent protective tool
- Information unclear
- High, unattainable
- High costs of compliance
- Marginalize least and developing countries (traders and producers)
- Contraction of Trade

SPS as Catalyst

...Or...

- Harmonized procedures & rules build confidence
- Spur investment, modernization & public/private collaboration
- Stimulate improved practices & stronger technical support
- Foster new forms of competitive advantage
- Maintain/expand income opportunities



How SPS Chapter can support developing countries

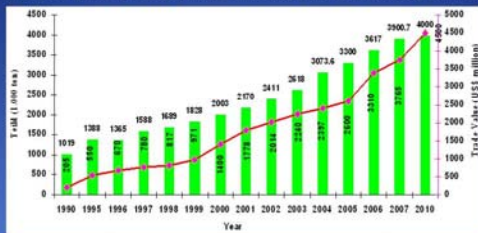
- Minimizing negative effects on trade
- Supporting developing countries in building their capacity (infrastructures for food safety for animal and plant health, risk assessment, training e.g)
- Diplomatic channel for Technical consultation instead of dispute settlement.

What is the key contexts of SPS Chapter should be built under FTA

- Re-affirm the rights and obligation of WTO/SPS Agreement
- Science and scientific justification
- Equivalence (Most developed countries don't likes)
- Regionalization
- Transparency
- Cooperation include technical assistance
- Certification, control and inspection procedures
- Implementation (Sub- committee on SPS under TFA)
- Technical consultation

What is the Costs of SPS compliance

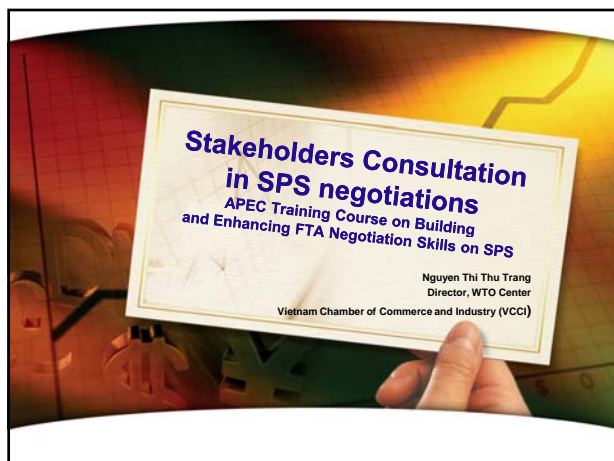
Total of Grant and loan for Vietnam's Fisheries sector about 500 million \$US



Aquacultural Production and Trade value of Vietnam's Fish and Fishery Products
Source: NAFTIQAQ



Thank you very much for your cooperation



Presentation Structure


1. Why consultation with stakeholders in FTA negotiations?
2. How to consult?
3. SPS consultation, how different?

Why consultation?

- ❖ **A need for negotiator**
 - Food for deep thoughts
 - Inputs for practical negotiation
 - Preparation for smooth implementation
- ❖ **A need for businesses**
 - To make their needs/positions/benefits known to the authorities
 - To get information/lights on coming trade policies


Why consultation?

- ❖ **Situation of consultation in developing countries**
 - **Perception of decision-makers:**
 - + Inadequate attention paid to rights of biz
 - + Underestimate benefits of consultation
 - **Low interest of biz:**
 - + Lack of awareness on benefits that consultation could bring in to biz
 - + Short-sightedness
 - + High cost/benefit ratio (especially for SMEs)




Why consultations?

- ❖ **Situation of trade consultation in Vietnam:**
 - **Same situation as other developing countries**
 - + Negotiation and related issues are confidential and Government monopoly
 - + Consultation happens sometimes but of low effectiveness, due to:
 - Instable mechanism (depending on willing of negotiators)*
 - Unreliable information (non-prepared information from biz)*
 - Non-representative opinion(who speak out?)*



Why consultations?

- ❖ **Situation of trade consultation in Vietnam (cont.)**
 - **Worse:**
 - + Suspicions from both sides on the real effectiveness of consultation (transition from planned economies)
 - + Low capacity of consultation from both sides (skills and perception)
 - **Good news:**
 - Decision of Prime Minister 06/2012/QĐ-TTg
 - + imposing consultation as mandatory step in negotiations
 - + stipulating specific obligation on consultation in each stage of negotiation




How to consult?

- ❖ **Condition to have effective consultation? (1)**


INFORMATION is crucial

 - **From negotiators:** *information on the development of negotiation*
 - + agenda
 - + direction
 - + position of partners
 - + drafts
 - **From biz:** *information supporting their positions or recommendations*
 - + information on why "this" and not "that"
 - + information on how "this" could affect others and the economy in general
 - + information on why FTA partners would accept "this"



How to consult?

- ❖ **Condition to have effective consultation? (1-cont.)**
 - **What VCCI has been doing:**
 - Ex 1: Advocacy campaigns on TPP negotiations, including:
 - + Desk-studying
 - + Consulting with experts and keys stakeholders
 - + Elaborating recommendation drafts
 - + Discussing among stakeholders
 - + Finalizing and making known Recommendation<http://wtocenter.vn/infocus/tpp>
 - Ex 2: Other recommendation relating to coming FTAs, Doha negotiations
 - <http://wtocenter.vn/publications/other-publications>



How to consult?

- ❖ **Condition to have effective consultation? (1-cont.)**
- Our "Done":
 - First recommendations qualified enough to draw attention of negotiators



The screenshot shows the VCCI website with a navigation menu including Home, News, WTO, Other Trade Agreements, In Focus, Publications, Events, Forum, Services, and Help. The main content area features several publications:

- WTO World Trade Organization**
 - Introduction
 - Legal Documents
 - Dispute Settlement
 - Ongoing Negotiations
 - WTO & Vietnam
 - Commentaries
- Other TRADE AGREEMENTS**
 - Bilateral Trade Agreements
 - Multilateral Trade Agreements
 - Commentaries
- GOODS**
 - Trade Remedies
 - Vienna Convention 1988
 - TRF negotiations
 - VN-EU FTA negotiations
- COMMERCE**
- SUBJECTS**


Other publications listed include:

- Recommendation on negotiations strategy for Vietnam in the Investment Chapter of the TPP**
- Recommendation on negotiations strategy for Vietnam in the Trans-Pacific Partnership**
- Policy Recommendation "European Union - Vietnam Free Trade Agreement"**
- Study Report on "Proposal for Vietnam participation into Vienna Convention on Contract on International Sales of Goods"**




The image displays three VCCI publications:

- CÔNG ƯỚC VIÊN** (Vienna Convention): A book with a cover featuring colorful umbrellas.
- thương mại tự do Việt Nam - Liên minh châu Á** (Vietnam - ASEAN Free Trade Area): A book with a cover featuring a stylized 'A' logo.
- THƯƠNG MẠI QUỐC TẾ** (International Trade): A book with a cover featuring a globe.



How to consult?

- Our "Pending":
 - ❖ Recommendations on market access
 - ❖ Recommendations on issues where no information leaked




How to consult?

- ❖ Condition to have effective consultation? (2)

CHANNEL is important

- From the negotiator: No mechanism, no action
 - + because negotiator always have hands bound
 - + because negotiator is lazy sometimes
 - + because negotiator sometimes enjoy monopole power
- From the biz: No mechanism, no way to reach
 - + risks of speaking in the middle of nowhere
 - + risk of unexpected reactions




How to consult?

- ❖ Condition to have effective consultation? (2-cont.)

- **What VCCI has been doing:**
 - Paving the way:*
Advocating for an official mechanism
 - Walking on the way:*
Establishing forums for consultation and making piloting recommendations
<http://wtocenter.vn/citp>




The screenshot shows the website for the Vietnam Chamber of Commerce and Industry (VCCI) International Trade section. The main heading is 'WTO INTERNATIONAL TRADE'. Below this, there are several navigation tabs: HOME, NEWS, WTO, OTHER TRADE AGREEMENTS, IN FOCUS, PUBLICATIONS, EVENTS, FORUM, and Taking Out. The main content area is titled 'Committee on International Trade Policies' and includes an introduction, a list of activities (Fourth Meeting, Third Meeting, Second Meeting, First Meeting), and a research result section. The right sidebar contains sections for 'EVENTS & TRAINING' (Workshop on Negotiating and Signing Free Trade Agreements), 'PUBLICATIONS' (Newsletter on Entrepreneurs and International Trade Policies), and 'CITP COMMITTEE'.



How to consult?


- ❖ Condition to have effective consultation? (2-cont.)

- **Our "Done"**:
Here is the way – Decision 06/2012/QĐ-TTg
- **Our "Pending"**:
Persuading people going that way
+ old shortcomings: Perception and belief
+ new burden: Enthusiasm to go




How to consult?

- ❖ **Condition to have effective consultation? (3)**
SKILLS are indispensable
- *From negotiators:*
 - + Skill to open
 - + Skill to listen
 - + Skill to aggregate and translate
- *From biz:*
 - + Skill to care about
 - + Skill to figure out
 - + Skill to speak loud




How to consult?

- ❖ **Condition to have effective consultation? (3-cont.)**
- *What VCCI has been doing:*
 - + "Learning by doing": Piloting by cross-sector recommendations
 - + "Learning by training": Building materials for reference




How to consult?

- ❖ **Condition to have effective consultation? (3-cont.)**
- *Our "Done":*
Get to know
- *Our "Pending":*
 - + For biz: How to manage and master
 - + For negotiator: beyond our reach



SPS consultation, how different?


- ❖ **Core:**
In contrast with other FTA chapters, high-standard and unified SPS provisions might be welcomed by developing countries, not developed partners
- ❖ **Consequence:**
If Yes, consultation should be detailed in content
- ❖ **Challenge:**
Consulter and consultee need to be very keen on the details



SPS consultation, how different?

❖ **What VCCI has done:**

- Very modest:
Reviewing SPS provisions in domestic laws and regulations
- Why:
 - + SPS negotiations are mainly general: low interest as to biz
 - + SPS negotiations are confidential: no information to biz
 - + SPS if detailed: big challenge for biz, piloting from cross-sector institutions like VCCI is difficult



**Challenges - there always...
Your suggestions - now welcomed!**

THANK YOU