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Strengthening capacity building for RTA/ FTA negotiations in APEC

*Erlinda M. Medalla
and Francis Mark A. Quimba*

Capacity building is crucial and necessary in cooperation and integration efforts between two or among several country partners. In the negotiation process, the countries need to build a strong confidence shared among partners that what is being established will be generally fair, equitable, and beneficial to all concerned.

Although forging trade agreements is not a simple zero-sum game, mutual benefits must still be evident to all parties and, hopefully, deemed to be enhanced to the satisfaction of all those involved. This requires capacity building at many levels – from the level of negotiators, to institutions and government bureaucracy, to the private sector that will eventually reap the benefits and/or deal with adjustments. However, this endeavor is easier said than done. At the very least, country partners should ensure the existence of a degree of transparency, a shared set of objectives,

and a common effort to truly learn from and understand the perspectives of each other.

Regional and free trade agreements

Regional trade agreements (RTAs) and free trade agreements (FTAs) throughout the world have evolved into the formation of megablocs. In our region, the most notable of these blocs are the Regional Comprehensive Economic Partnership (RCEP) and the Trans-Pacific Partnership (TPP). RCEP has the Association of Southeast Asian Nations (ASEAN) at the center. It consolidates the existing ASEAN+1 FTAs that ASEAN currently has with its dialogue partners, such as China, Japan, Korea, Australia-New Zealand, and India, effectively building a 16-nation cooperation. The TPP, on the other hand, was supposed to be a 12-nation deal led by the United States (US), until the Trump administration withdrew, as part of

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The authors are senior research fellow and research fellow, respectively, at PIDS. The views expressed are those of the authors and do not necessarily reflect those of the PIDS or any of the study's sponsors.

its campaign promise. The TPP appears to be proceeding nonetheless as TPP 11.

Both of these trade agreements are considered to be possible pathways to the Free Trade Area of the Asia-Pacific (FTAAP) and are explicit in the commitment to the World Trade Organization (WTO) principles and the adoption of open access principles for future members. They are new-age FTAs covering not only trade in goods and services but also a wider agenda for cooperation including services, investments, and intellectual property rights (IPR).

While TPP is considered to have a higher ambition in terms of the breadth and depth of the coverage of the agreement, both TPP and RCEP are seen as helpful steps that could improve the readiness of the Asia-Pacific Economic Cooperation (APEC) economies in forging FTAs/RTAs, and eventually the FTAAP.

With the megabloc formation in the region, APEC has a unique position and advantage to provide a platform as an incubator of ideas and forum for dialogue and cooperation, and thus effective to steer the region toward convergence in partnerships. In particular, this can advance the exchange of information and capacity building for FTAs that would benefit especially the developing member-economies in attaining better use and realization of benefits from joining economic partnerships. This would also help ensure sustainable gains not only for the member-economies and the APEC region but also for the globe in general, as it provides order,

consistency, and coherence in the process and regulatory and policy environment.

Trade agreements in the APEC

With 21 member-economies involving both developed and emerging economies, APEC holds a significant influence in the global trade. Currently, APEC economies maintain an average of 12 RTAs in force with almost all of them having both goods and services agreements in effect (Table 1). Additionally, only five APEC economies, including the US, are not involved in either the TPP or the RCEP.

These RTAs, however, vary in timing, nature, coverage, breadth, and depth of the commitments established. For instance, the TPP includes 30 chapters covering trade and trade-related issues, beginning with trade in goods, covering not only tariffs but also customs and trade facilitation, sanitary and phytosanitary (SPS) measures, technical barriers to trade, and trade remedies. It also includes discussions on investment, services, electronic commerce, government procurement, intellectual property, labor, and the environment. It also has horizontal chapters meant to ensure that the TPP would establish the ground rules including dispute settlement, exceptions, and institutional provisions.

Meanwhile, RCEP has not concluded the negotiation process. However, based on the elements and provisions of the ASEAN+1 FTAs, it is likely to be less encompassing and strict in dealing with many issues covered in TPP

such as electronic commerce, government procurement, and IPR.

The bottom line is that, while one can observe significant variance in the quality and character of FTAs, all APEC economies have had some experiences in the negotiation process. However, because of the more complex coverage of newer partnership agreements, particularly the TPP, some economies are more disadvantaged in terms of capacity and capability for FTA/RTA engagements mainly arising from their level of development.

Increasing coverage of FTA provisions

Following Horn et al. (2010), provisions in FTAs can be categorized as either WTO+ or WTO-K. As a baseline, these provisions, introduced by the WTO, are part of the WTO agreements ratified by member-countries and represent the basic WTO provisions mainly covering trade in goods and services. WTO+ (or WTO plus) provisions refer to those relatively new areas being discussed in the WTO but are still generally unregulated and mainly found in FTAs/RTAs. Meanwhile, those provisions which are even newer and not in the WTO negotiations table are categorized as WTO-K, usually found in FTAs involving the European Union (EU).

Horn et al. (2010) further delineated provisions that are legally and nonlegally enforceable. They found that although the areas that RTAs/FTAs cover have grown, many are not yet legally enforceable, especially the WTO-K provisions. For instance, provisions

Table 1. List of APEC economies' RTAs and TPP/RCEP partnerships

APEC Economies	Number of RTAs in Force	With TPP	With RCEP
Australia	12	✓	✓
Brunei Darussalam	8	✓	✓
Canada	11	✓	
Chile	25	✓	
People's Republic of China	15		✓
Hong Kong, China	4		
Indonesia	7		✓
Japan	15	✓	✓
Republic of Korea	17		✓
Malaysia	12	✓	✓
Mexico	14	✓	
New Zealand	11	✓	✓
Papua New Guinea	5		
Peru	15	✓	
The Philippines	7		✓
Russia	13		
Singapore	20	✓	✓
Chinese Taipei	6		
Thailand	10		✓
United States	14		
Viet Nam	11	✓	✓

APEC = Asia-Pacific Economic Cooperation; RTA = regional trade agreement; TPP = Trans-Pacific Partnership; RCEP = Regional Comprehensive Economic Partnership
Source of basic data: Regional trade agreement database, World Trade Organization (n.d.)

covering the environment, anticorruption, terrorism, antimoney laundering, and labor rights, among many others, are not yet legally enforceable. They are included in the text of the agreements mainly as aspirations, worded as encouragement and desirable policy agendas.

In brief, Horn et al. (2010) found that of the total 14 EU bilateral FTAs at the time, a

large majority (82%) cover WTO+ provisions, but only 80 percent of these areas covered are legally enforceable. Meanwhile, around 58 percent of the 14 EU bilateral agreements cover WTO-K provisions. However, only a meager 26 percent of these WTO-K areas covered are legally enforceable. Clearly, legal enforcement of WTO-K is still very weak.

In APEC FTAs, WTO-K provisions usually include competition policy, anticorruption, environment, and other cooperation areas. In particular, the TPP includes new and emerging trade issues that span across those related to the internet, the digital economy, and the participation of state-owned enterprises in international trade and investment. The RCEP, on the other hand, is less ambitious in its coverage and has less WTO-K provisions than the TPP. WTO-K provisions in these APEC FTAs are likely even less legally enforceable as in the EU bilateral FTAs.

Nonetheless, while the expanded coverage may not be as daunting as it appears, being largely nonlegally enforceable in cases of WTO-K provisions, parties in the FTA/RTA negotiations still need to examine and understand it and its potential impacts. Capacity building for negotiations in these areas are as essential.

Clearly, major obstacles to regional economic integrations and FTAAP remain. In sum, these include (1) the wide disparity in levels of development, (2) the wide variations in depth and breadth of multiple FTAs and/or RTAs (i.e., different levels of ambition), and (3)

the changing global and trading environment under the rise of global value chains. Therefore, this paper cannot overemphasize the need for an effective approach in capacity building.

APEC Capacity Building Needs Initiative

In 2010, the Republic of Korea, in cooperation with Chile, Peru, and the Philippines, conducted a comprehensive survey, Capacity Building Needs Initiative (CBNI), to identify the most challenging areas in trade agreements.

The survey revealed that the sectors of (1) e-commerce, (2) labor and environment, (3) intellectual property, (4) investment, (5) SPS measures, and (6) rules of origin (ROO) pose the greatest difficulty in terms of dealing with the issues, usually because of lack of research and reaching some level of consensus. Meanwhile, the most challenging areas relevant to negotiation were lack of human resources with necessary experience and/or financial resources to beef up capacity. When it comes to implementation, however, consensus building, lack of domestic institutions, structural reform, and outreach of FTA and RTA benefits came out on top in the survey as key areas for capacity building.

With the experiences taken from the 2010 CBNI, the 2012 CBNI had improved with the objective of narrowing FTA capacity among member-economies, enhancing trade policy capacity by sharing best practices, and

Table 2. 2012 CBNI Action Plan Framework

Pillar	Area	Leading Economy(ies)	Participating Economy(ies)
Preparation	Scheduling nonconforming measures on services and investment	United States (New Zealand, Chile, and Australia)	Chinese Taipei, Philippines, and Thailand
	E-commerce	China (United States)	Thailand
	Labor	United States	Peru and Thailand
	Environment	Viet Nam (United States)	Papua New Guinea, Peru, and Thailand
	Intellectual property	(Peru)	Peru
	Sanitary and phytosanitary measures	Viet Nam (Peru)	Papua New Guinea
	Rules of origin	Republic of Korea	Chinese Taipei, Philippines, and Papua New Guinea
Implementation and outreach	Consensus building, institutional framework, and the promotion of FTA/RTA benefits	Republic of Korea (Chile)	Thailand
	Enhancement of FTA/RTA utilization	Japan	Thailand
Research/Analysis	Research/analysis		Philippines
Other sectors	Legal issue and other areas		Papua New Guinea, Peru, and Philippines

CBNI = Capacity Building Needs Initiative; FTA = free trade agreement; RTA = regional trade agreement

Note: Economies in parentheses are co-proponents of the initiatives.

Source: Asia-Pacific Economic Cooperation (2012)

identifying challenges to the FTAAP with the exploration of possible ways to overcome them.

Table 2 shows a summary of areas covered by these initiatives and the economies involved, whether leading or just participating.

While participating APEC economies already deemed both the 2010 and the 2012 CBNI helpful, more are needed to ensure sufficient capacity building that the APEC economies envision. More areas are needed to be covered, as well as more economies.

With this, the 2014 CBNI action plan shifted the focus to the services sector given the high demand for capacity building in its newly developed areas. The plan also included

small group discussions that facilitated an interactive sharing of experiences and best practices among the participating economies. It also focused on where APEC can add value in terms of sharing best practices, deciding the future direction of the FTAAP, and addressing specific challenges that may arise in the process of its implementation.

Recommendations

To ensure the continuous strengthening of capacity building, this study recommends the following:

1. On its website, APEC should consider providing a direct link to corresponding materials on the APEC Information Management Portal website related to the


RTAs and FTAs and training resources offered by other international organizations. Lead economies should also consider organizing capacity-building activities on directly related topics such as FTA implementation issues and ROO provisions.

2. The CBNI should cover sectors requiring further discussion and clarification on negotiation techniques, e-commerce, labor, SPS, ROO, government procurement, and FTA implementation. It should likewise discuss sectors left uncovered in previous CBNIs and newly emerging sectors in mega RTAs and FTAs. Furthermore, it would do well to build a website for e-learning, and in making the current database of presentations and reports more accessible to users.

3. Capacity building for FTAs and RTAs should cover not only negotiation skills (as all countries have some experience in FTAs although the least developed countries are left behind) but also the strengthening of the foundation in negotiating FTAs and RTAs. The APEC should also strengthen capacity building that would effectively enhance the readiness of economies on the ground. At the first level, this is in terms

of coping or complying with reforms arising from FTAs (e.g., adjusting to increased competition, or implementing required reforms). At another level, APEC should gear capacity building toward taking advantage of opportunities opened up by the FTA/RTA. This is especially with respect to making the FTAs/RTAs not just commercially viable but as inclusive as possible.

4. Capacity building should also include sectoral/issues-based approach such as liberalizing traditionally closed sectors (e.g., some services sectors) or formulating appropriate human resource development policies that would lead to enhanced benefits in general.

5. Finally, research and databases are crucial. Database and research capacity building should not just be confined within domestic borders. It will also be very useful to conduct collaborative research and the exchange of information. Analytical tools, such as the APEC online regulatory learning tool, and the Computable General Equilibrium/Global Trade Analysis Project gravity models can be helpful as well. 

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For further information, please contact

The Research Information Staff
Philippine Institute for Development Studies
18th Floor, Three Cyberpod Centris – North Tower
EDSA corner Quezon Avenue, Quezon City
Telephone Nos: (63-2) 372-1291 to 92
E-mail: ravirola@yahoo.com; publications@mail.pids.gov.ph

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