



TPSA Project Delivers Training to Strengthen Indonesian Officials' Skills in Negotiating Free Trade Agreements

Building the capacity of Indonesian government officials and private-sector representatives to contribute to free trade agreement (FTA) negotiations will help support Indonesia's ambitious agenda of trade talks.

Indonesia is currently conducting 22 bilateral negotiations with other countries. These include comprehensive economic partnership agreements with the European Union, Australia, Chile, and the European Free Trade Association, as well as a preferential trade agreement with Iran. In addition, Indonesia is reviewing its economic partnership agreement with Japan and its preferential trade agreement with Pakistan, and plans to launch no less than 12 additional bilateral trade talks very soon.

In this context, the Directorate of Bilateral Trade Negotiations of the Indonesian Ministry of Trade is under pressure to advise decision-makers on setting FTA negotiating objectives and "red lines."¹ The directorate must also provide sound technical inputs and trade intelligence to negotiating teams and conduct efficient coordination with other ministries to ensure coherent negotiation positions. For this reason, Ni Made Ayu Marthini, Director for Bilateral Trade Negotiations, asked the TPSA project to organize a training course on FTA negotiations.

Three days of training were delivered in Jakarta on September 5-7, 2017 to 41 representatives (20 women and 21 men) from the Ministry of Trade, other in-line ministries and agencies, and the pri-



Ambassador Brotodiningrat gives the keynote address.

vate sector, including the Indonesia Chamber of Commerce and Industry (KADIN) and the Employers' Association of Indonesia (APINDO).

Day One: Overview of FTAs

The training began with opening remarks by John Summerbell, Deputy Director and Counsellor (Development) at the Canadian Embassy in Jakarta, and by Director Made.

Ambassador Soemadi D. M. Brotodiningrat, Chief Negotiator for the EFTA-Indonesia Comprehensive Economic Partnership Agreement, gave a keynote address. He shared his extensive experience



and practical knowledge of trade agreement negotiations, and explained some of the persistent challenges faced by Indonesia and other developing countries regarding FTA negotiation and implementation.

The two first sessions focused on FTAs in Indonesia and Canada. Director Made echoed the Ambassador in her comments about the challenges and opportunities of FTAs for Indonesia and identified some particularly difficult issues. Despite these difficulties, Director Made noted that Indonesia can and should take advantage of the opportunities afforded by FTAs, including preferential treatment for goods and services, the ability to reach new markets, and the opportunity to import cheaper products for Indonesian consumers.

"The training gave me knowledge about the negotiation process, how to prepare for negotiation, what is needed in a negotiation, and negotiation techniques. All this will help me to better gather and arrange the data and materials I need to prepare for our negotiators."

—WORKSHOP PARTICIPANT

Nadia Bourély, Senior Trade Commissioner at the Canadian Embassy in Jakarta, then presented a case study of the private, public, and inter-governmental consultations for Canadian FTA negotiations. She offered an overview of Canada's trade negotiation agenda, as well as its approach to public consultations, preparation, and post-negotiation processes.

The remaining sessions covered a wide range of technical topics. TPSA senior trade and investment expert Alexandre Larouche-Maltais discussed the difference between FTAs and multilateral agreements and the trend toward the former. Participants were invited to share their views on whether FTAs actually create trade or just redistribute it, and the pros and cons of regionalism (FTAs) versus multilateralism (WTO). Mr. Larouche-Maltais explained key legal aspects of concluding FTAs, including internal, external, and transparency requirements under WTO law.



Participants learn about the FTA negotiation process.

Another TPSA senior trade and investment expert, Wenguo Cai, delivered a presentation on FTA negotiations, strategies, and tactics. He provided reasons for countries to negotiate trade agreements, tips on how to prepare for trade talks, and ways to build strong domestic political support. He also explained key principles, processes, and a framework for FTA negotiations. Mr. Cai explained the traditional topics negotiated in FTAs, such as agriculture, services, and industry, how to make requests and offers, and schedules of commitments and modalities. He covered such aspects as preferential market access for industrial products, agricultural products, and services, as well as trade rules and regulations.

Day Two: The Future of FTAs

On the second day of the workshop, Mr. Larouche-Maltais discussed the new 21st-century issues negotiated in recent trade deals. These include investment rules, government procurement, state-owned enterprises, and trade facilitation. The discussion on investment rules covered most-favoured nation (MFN) and national treatment clauses, performance requirement prohibitions, and investor-state dispute settlement mechanisms. He also provided technical details about how to negotiate government procurement access at the federal, provincial, and municipal levels.

Finally, he outlined the commitments made by WTO members under the Trade Facilitation Agreement (TFA) and discussed how future FTAs can help make the TFA requirements more stringent.

Ngo Chung Khanh, Deputy Director General of Multilateral Trade Policy at the Ministry of Trade



and Industry of Vietnam, shared his experience as practitioner and trade negotiator. He began by providing an overview of Vietnam's FTA negotiation initiatives—16 agreements have been concluded or are currently in the process of being negotiated. He then described Vietnam's commitments and how they have been implemented.

“As a Deputy Director for American Affairs, my daily work closely relates to developing the ministry’s position during some negotiations, including those related to the trade agreement negotiations. Hence, my knowledge and skills were improved by participating in the training and will be used in my daily work. And by doing so, I believe it will strengthen the substance of the materials I develop.”

—RORO YANIE ANGGRAINI NUGROHO

Mr. Larouche-Maltais delivered the final session of day two on how to draft free trade agreements. He covered the nature of international agreements, the interpretation of FTA provisions, and the scope of parties’ international obligations. He gave examples of how the phrasing of particular provisions may affect how liberalization disciplines are implemented domestically, and offered some hints for trade negotiators. Finally, he described the steps to be taken between the time an FTA is concluded and its entry into force.

Day Three: Case Studies

The final day of the workshop was dedicated to case studies and non-economic considerations in FTA negotiations. Mr. Khanh provided a case study from Vietnam. He covered the country's FTA negotiation process and how it negotiated WTO accession as well as the EU-Vietnam Free Trade Agreement (EVFTA) and the Trans-Pacific Partnership (TPP). He also explained how those initiatives have benefited the Vietnamese economy.

Kristelle Audet, a senior economist at The Conference Board of Canada, provided detailed



Ngo Chung Khanh sharing his experience as trade negotiator for Vietnam.

information on the historical and political context leading to the Canada–US Free Trade Agreement (CUSFTA) and the North American Free Trade Agreement (NAFTA). She delivered a comprehensive analysis of the current issues regarding renegotiation and shared recommendations on market access, movement of persons, investment, SMEs, and new technologies for Canadian trade negotiators. Ms. Audet concluded by identifying lessons that Indonesia can take away from the Canadian experience.

The last presentation was jointly delivered by TPSA principal gender expert Lota Bertulfo and senior environmental expert Rita Lindayati. Ms. Bertulfo provided an introduction to gender issues and outlined how women face additional obstacles that men may not face in their professional and personal lives. She also explained how gender can and should be a consideration in FTA negotiations, offering examples and best practices in promoting women's access to market opportunities. Ms. Lindayati provided an overview of environmental provisions and considerations in FTAs.

“The knowledge I gained from the training opened my horizons regarding FTAs, particularly the elements of gender and trade, which were new to me.”

—WORKSHOP PARTICIPANT



Nadia Bourély presenting a case study of the Canadian consultations for FTA negotiations.

Participant Feedback

Overall satisfaction with the training activity was good: 7 per cent of respondents indicated the training was “excellent,” 45 per cent reported “very good,” 45 per cent called it “good,” and the remaining 3 per cent reported “fair.” All participants reported that their knowledge had increased as a result of their participation in the training, including 39 per cent who reported it had “increased significantly,” with the remaining 61 per cent reporting it had “increased to some extent.”

Participant feedback also indicated that the skills learned during the seminar were directly applicable to their day-to-day duties as policy-makers and researchers. Seventy-six per cent reported that they expect to use their new knowledge and skills “very frequently” or “frequently,” 17 per cent suggesting they would use them “occasionally,” and only 7 per cent said “rarely.” Furthermore, 92 per cent of seminar participants indicated that their new level of confidence in applying the skills learned was at least “good.”

Key Takeaways and Conclusions

- **Trade agreements are powerful development tools.** Indonesia, like other developing countries, faces persistent challenges in FTA negotiations. Some relate to inter-agency cooperation, complex internal laws and regulations, lack of staff or capacity (or both) within the ministry and other government agencies, and reluctance of stakeholders to open the domestic market to foreign competition. Additional difficulties may also appear at the agreement implementation

phase, especially when it comes to ensuring net job creation, contributing to poverty alleviation, and considering the environmental aspects of trade. These concerns are legitimate and widespread among developing countries in the region. In fact, other difficulties may present great challenges for low-income countries, including meeting the high standards of ambitious agreements, overcoming trade negotiators’ lack of experience, dealing with politically sensitive issues, and ensuring domestic support from political leaders and vulnerable economic sectors.

Nonetheless, these difficulties should not overshadow the benefits of FTAs as powerful development tools. Trade agreements can provide unique opportunities to increase the competitiveness of domestic industries by opening national markets to international competition and regulatory reforms. For instance, Vietnam’s experience shows that reforms executed while acceding to WTO membership and implementing FTAs have brought significant benefits to the Vietnamese economy. Businesses improved their competitiveness and expanded foreign market access, more favourable conditions have been set out for start-ups, and public infrastructure has been modernized.

- **A “triple C” approach (consultation, communication, and coordination) is key to success.** As Ambassador Brotodiningrat pointed out during his speech, “As chief trade negotiator, you spend 40 per cent of your time looking ahead—negotiating with your trading partners—and 60 per cent of your time looking to your right and your left—communicating with your own government agencies to make adequate and coherent commitments.” The experiences of Canada and Vietnam in recent FTA negotiations highlight the importance of public-private sector consultation and efficient, well-coordinated intergovernmental communications. Consulting with a broad range of stakeholders allows national authorities to inform about objectives and key interests as well as to address potential concerns related to FTAs, shape parameters for a negotiation that reflect interests and values,



and improve understanding of FTA negotiations among stakeholders and the general public. Establishing an institutional mechanism to facilitate consultation among all affected groups can also help build domestic support for international negotiations.

For a greater chance of success, Indonesia should ensure strong political commitment by top decision-makers prior to undertaking FTA negotiations. In addition, trade negotiators must work in close collaboration with other government officials from such ministries as finance, trade, industry, fisheries, agriculture, and natural resources. Integrating representatives from other ministries on the negotiating team is a good strategy to ensure commitments can be domestically implemented.

- **Words have meaning.** Making commitments under free trade agreements can be a very technical process, and must reflect both the will of countries and their implementation capacities. For this reason, trade negotiators must pay extra attention to the terms used to express the nature and scope of obligations when drafting FTA provisions. This is true for trade liberalization disciplines—for example, MFN and national treatment—but also for articulating gender and environmental considerations. Generally, the use of “shall” in a treaty provision means that signatories agreed to be legally bound to fulfill the obligation under this provision. In contrast, phrases such as “parties should” or “are encouraged to” express a non-binding recommendation that countries have no legal obligation to fulfill. The use of “may” or “preserving the right to” usually provides a country with a discretionary option to adopt a certain policy.

Trade negotiators must make the most of these terms to either ensure the other party's commitments or to preserve their own country's public policy space. To do so, they must be familiar with the Vienna Convention on the Law of Treaties (VCLT), which stipulates the rules on conclusion, entry into force, and interpretation of treaties, including free trade agreements.

- **Be ambitious.** Developing countries may fear that negotiating new-generation FTAs with more ambitious scope and coverage may not be suitable for achieving their economic and social development objectives. This is a particular fear of low-income countries that have low capacities and fewer human and financial resources. Nevertheless, Indonesia should avoid adopting a fearful position and move ahead with its own trade-negotiating agenda, taking the lead from a country like Mexico, whose ambitious commitments in the North American Free Trade Agreement (NAFTA) negotiation translated into outstanding economic benefits—even greater than those realized by the United States and Canada.

The same logic applies to non-economic considerations in FTAs. Indonesia can play a leadership role in the region when it comes to making ambitious commitments on gender equality and women's empowerment as well as environmental protection.

About the TPSA Project

TPSA is a five-year C\$12-million project funded by the Government of Canada through Global Affairs Canada. The project is executed by The Conference Board of Canada, and the primary implementation partner is the Directorate General for National Export Development, Ministry of Trade.

TPSA is designed to provide training, research, and technical assistance to Indonesian government agencies, the private sector—particularly small and medium-sized enterprises (SMEs)—academics, and civil society organizations on trade-related information, trade policy analysis, regulatory reforms, and trade and investment promotion by Canadian, Indonesian, and other experts from public and private organizations.

The overall objective of TPSA is to support higher sustainable economic growth and reduce poverty in Indonesia through increased trade and trade-enabling investment between Indonesia and Canada. TPSA is intended to increase sustainable and gender-responsive trade and investment opportunities, particularly for Indonesian SMEs, and to increase the use of trade and investment



Participants gather at the end of the workshop.

analysis by Indonesian stakeholders for expanded trade and investment partnerships between Indonesia and Canada.

The expected immediate outcomes of TPSA are:

- improved trade and investment information flows between Indonesia and Canada, particularly for the private sector, SMEs, and women entrepreneurs, including trade-related environmental risks and opportunities;
- enhanced private sector business links between Indonesia and Canada, particularly for SMEs;
- strengthened analytical skills and knowledge of Indonesian stakeholders on how to increase trade and investment between Indonesia and Canada;
- improved understanding of regulatory rules and best practices for trade and investment.

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ENDNOTE

¹ A red line is a limit beyond which a trade negotiator's mandate does not extend.