

INTERNATIONAL
TRADE NEGOTIATION AND ECONOMIC COOPERATION
A Contextual Backdrop

By

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INTRODUCTION

1. Distinguished participants
Ladies and Gentlemen
Colleagues and Friends.

I am really pleased to join you this morning and truly feel honored to be asked to participate in this important workshop. I would therefore like to thank the convener and organizer for the kind invitation. Actually this invitation brings me back to a similar workshop that I participated as a keynote speaker early last year. And I find, with a bit of up-dating, what I said then is still relevant to share with you now. It consists of the following two major-points namely: (1) Evolving FTA/EPA; (2) Persisting Challenges.

May I also underline that the views expressed in my presentation are entirely my own. I don't dare to involve the Indonesian government in any responsibility.

The organizer is very generous to allocate forty-five minutes for me, well beyond what I need. So, perhaps we shall have time to also listening to your comments after my presentation.

I. EVOLVING FTA/ EPA

1. Let me start with my first point: Evolving FTAs/EPAs, especially their enormously increasing numbers. I still remember some 55 years ago, as an international relations

student to study international trade negotiations and agreements, what I learned were mainly the GATT Rounds, (Dillon, Kennedy, and Tokyo) and a bit of the early process of the European Common Market. Looking at the present situation, I realize that the trading world has really come a very long way. According to the WTO data, by March 2015 as many as 406 FTAs have been notified. The fact that there are sizeable amount of un-notified FTA, plus many others that are still under negotiations, make the actual number of FTAs and EPAs truly staggering. As we all know, the continuing existence and applicability of GATT Article XXIV on Regional Trade Agreements and the so-called “Enabling Clause” for developing countries actually allows this FTA / EPA proliferation and overlaps to happen. In such a situation, if we talk about the world trading system, in reality, we are not only talking about WTO but the whole global system, meaning WTO plus all the FTA’s/EPA’s at the regional and bilateral levels. More than that, it has already been quite some time that people feels worried about the so-called “Spaghetti Bowl” phenomenon, which is feared could lead to significantly added complications and substantially increase the cost of trading.

2. What are the reasons why countries engage in entering into FTA/EPA? Firstly, is the impact of external environment, both technology driven i.e. progress in ICT and other technical connectivity elements, and business driven, i.e. the development of cross-border production networks and value-chains. Even more importantly is internal motivations that could consist of securing and improving market access, attracting investment, preserving competitive edge, and fostering strategic linkages. Many countries even use international commitment to self-enforce difficult but necessary domestic policy reform. It is also interesting to observe on how regional and bilateral FTAs/EPAs have been used as alternatives to obstructed global undertaking during the long-stalled Uruguay Round Negotiations in the late 1980s

and early 1990s. Curiously after Marrakesh 1994, the strong appetite for FTA/ EPA continued to prevail seemingly for a different reason, namely to seek more preferential benefit that have been considered somewhat neutralized by Uruguay Round MFN. Now we are watching to what extent history will repeat itself with the Doha Development Round still dragging on. It seems that repeating signs are imminent.

3. Apart from proliferating numbers, we have also been witnessing the enlargement of the scope and coverage of FTAs. I still remember the time when free trade agreement meant agreement on trade in goods, and when the categorization of the goods was still relatively simple. Then people started to pay attention to services. But until 1970s, trade in services was still being discussed at the conceptual stage. In UNCTAD it was initially called “intangibles”. It was in the Uruguay Round negotiations that the trade coverage was being officially enlarged. Trade in services, Trade Related Aspects of Intellectual Property Rights and Trade Related Investment Measures became part of UR package agreements. And although failed to reach consensus on the substance, the UR procedurally agreed to continue working on the so-called “Singapore” issues, namely Government Procurement and Competition Policy. In addition, an array of items pertaining to trade facilitations and trade remedies, as well as mayor issues of trade and environment and trade and development have also become established features in trade negotiations. In fact currently comprehensive coverage or comprehensiveness has become a principle of choice in many trade negotiations.
4. Along with the enlarging coverage, practices and techniques of trade negotiations have also undergone a significant transformation. The long-standing exercise of concession exchanges and tariff reductions through scheduling, creating formula, as well as request and offer processes now is being complemented with complex rule making exercises on various

areas, some are only remotely related to trade. Lately, joint projects development has also become part of the game. All these complications have also impacted on the way trade-offs and bargaining are conducted in the negotiation where hereafter are done in stages. Micro trade-offs are conducted within the same chapter, and macro trade-off are made between different chapters and finally the grand bargain to secure the final package. It is for this reason that usually the choice of 'comprehensiveness principle' is paired with the principle of 'single undertaking: nothing is agreed until everything is agreed.'

5. It could also be easily understood that the enlargement of FTA coverage has entailed the expansion of stakeholders. In my younger years, during the GATT Tokyo Round, with the single-course menu: Trade in Goods, for many developing countries the players of the game were economic diplomats from MOFA and trade negotiators from MOT; from time to time there were one or two officials from line ministries and business representatives acting as technical expert supporters. Now that trade negotiation menus are enlarged to become like those of Chinese banquettes, no single ministry can claim the sole ownership of the undertaking. In each of the two EPA negotiations that I had the privilege to lead, we had more than 20 different institutions involved, with total delegations of more than 60 persons, and all are players not only cheerleading supporters. Internal coordination is thus critically important, yet for many countries coordination is a luxury. In my two experiences as leader of our delegations for bilateral trade negotiations, 40% I faced the front and 60% I kept looking to my right and left. Active involvement of the business community has also been significantly called for. And since in terms of substance and impact trade agreements have gone beyond economics and penetrated social and environmental realm, we can no longer ignore the voices and

noises of relevant CSOs/NGOs. At the end, the parliament will assert its final say. In short, in a democratic governance, with the enlargement of FTA coverage and expanding stakeholders, establishing a free trade or economic partnership agreement is no longer merely an economic decision making but an actual political process. So much so for my first point: Evolving FTA/EPA.

II. PERSISTING CHALLENGES

6. I would like now to move to my second point: “persisting challenges.” In spite of its importance and benefits, and because of its impact on national economies and people’s livelihood, trade liberalization inherently carries with its challenges, even controversies. The wider it expands to various aspects of life the more complicated it bounds to be. Let’s just for the moment forget the specific and trivial problems, and focus only on major issues. But even major issues such as Singapore issues, anti-dumping, NTMs, et cetera, are already too many to be discussed in this short presentation, Therefore, with your permission, I would like to select four fundamental subjects to address, briefly and in general terms. The first subject is trade and environment. Trade liberalization and environmental protection are among the most fundamental subjects in the international (and also national) agenda. Both of them have their respective noble objectives supported by the international community. The main problem lies in their interrelatedness, or to be more exact the still unbalanced interrelatedness. While the development of trade rules and regulations are getting more and more serious in addressing environmental protection, environmental rules making still seems to pay less attention to the advancement of trade interests. This unbalanced interrelatedness only reinforces the existing suspicions that mixing environmental protection with trade interests is prone to be manipulated as disguised trade barriers.

7. It has already almost 25 years that WTO through its Committee on Trade and Environment (CTE) has been dealing with its subject. A comprehensive Work Program has been long in place, among other to ensure synergy between WTO provisions and Multilateral Environment Agreements (MEAs). Some progress has indeed been achieved: But the basic problem of abuse and suspicion seems still far from being resolved. My note in this regard is that in WTO-CTE the cardinal principle that underpin all MEAs, namely “Common but Differentiated Responsibility” seems to be conveniently forgotten. It has even been for quite some time that countries brought their interests that could not be satisfactorily met in WTO to other forums where they thought that their leverages were stronger, including regional and bilateral FTAs/ EPAs. On the other hand, it is not easy for a negotiator to rally support from suspicious business community when they believe to have evidence to support their suspicion. For me personally, a case in point is the deep-seated suspicion of our palm oil community. For them, measures against palm-oil are motivated not out of environmental concern but by business interest. And they have a study that support the suspicion. All things considered, I still believe in the merit of linking trade and environment. However, as a negotiator it would be naive on my part to consider that all environmental conditionalities in trade are well meant and free from vested trade interest.
8. Another fundamentally important subject that has become the concern of the international community is trade and development. The seriousness in which the world dealt with this subject was clearly manifested in the establishment of UNCTAD in the 1960s. Those were the days when, after successfully obtained political liberation many former colonies followed up their struggle to achieve economic emancipation. In that context, international economic cooperation, including trade, was geared to redress the imbalances between

developed and developing countries through development. The preferred basic approach was biased, non-reciprocal, affirmative actions in favor of developing countries. Absolute reciprocity between unequal parties was considered unjust and would only exacerbate imbalances. Official Development Assistance (ODA) in financial cooperation, and Generalized System of Preferences (GSP) in international trade are among the surviving offsprings of that approach. This is undoubtedly running counter the very basic GATT principles of reciprocity and non-discriminatory that have mustered their resurgence with the creation of WTO. The clash and accommodation between those two approaches and principles continue to color international trade relations up to this time. They become a deep-seated source of contention in any trade negotiation, at the global, regional and bilateral levels.

9. At the global level, although UNCTAD as a stalwart of the affirmative action concept is no longer strongly influential, the approach has managed to find some accommodation in WTO. The adoption of the Special and Differential Treatment principle, the application of the Enabling Clause, the establishment of the Committee on Trade and Development (CTD), and most lately the inclusion of development agenda in the Doha Round, do represent a significant progress. At the regional and bilateral levels as well. Pioneered by APEC which based its cooperation on the triad components of trade liberalization, trade facilitation, and Ecotech, now many other trade cooperation schemes, both regional and bilateral, also adopt the same triad structure to include capacity building or development cooperation component. It is the inclusion of the capacity building component that actually differentiate Economic Partnership Agreement from Free Trade Agreement. In spite of this recognition of being a component, the real integration of development aspect into trade agreements or arrangements is still not fully materialized. In APEC, for instance, while liberalization and facilitation are already

integrated, the Ecotech component is still left detached. By experience I notice that, unlike trade and environment, to integrate capacity building requirement to market access, or to link transfer of technology with investment protection and facilitation, are still facing strong opposition, and stiff resistance.

10. Talking about trade and employment should remind us of the core tenet of the Classical economic theory on the positive interrelationship between free trade and full employment. As practitioner of international trade negotiation, up to now my poor mind still fail to grasp its vindication. Instead, current FTAs are more driven by economic efficiency rather than employment creation. In this context people always talk about free flow of goods, services, and investment but not, or very rarely, labor and employment. Ironically, provisions that are being introduced in trade negotiation tend to restrict rather than facilitate labor free movement. Some are even clearly designed as trade barriers under the guise of protecting labor standard and avoiding exploitation, when the disguised intention is eroding the competitive edge of low-wage economies. Of course, uplifting labor standard is itself a noble cause recognized by everybody. But isn't that already well taken care of by the ILO? Efforts to counter restrictive provisions in movement of labor are being made by low-wage economies through the combination of mode IV of Trade in Services and capacity building cooperation. Economic need in labor deficit countries is real, supply in labor surplus economies is abundant. What is required is to manage the movement properly, to overcome political obstacles, and to neutralize security threats. Now, with the increasingly chaotic and explosive illegal economic migration, and security threatening refugees, the urgency to do that, including through FTA/EP, is called for.

11. Closely related with trade and employment is the interrelationship between international trade and poverty. As I mentioned earlier, generally speaking internal trade liberalization does bring benefits to economic growth. This fact is statistically proven. But here we are speaking in aggregate or average terms. If we go into detailed breakdown the pictures become somewhat different. The aggregate benefits obviously do not widely and equitably distribute. Non-discriminatory in the process does not lead to fair distribution in the benefit. Indeed, as often been said FTAs tend to produce winners and losers, both between parties and within parties, often resulted in marginalization. As such, FTA negotiation could appear as more of a zero-sum competition rather than cooperation in a positive-sum game. Admittedly the downside of FTAs has been widely recognized. But solutions that have been prescribed so far are usually outside the ambit of, and detached from, the relevant FTAs themselves. Some even place the entire responsibility to the losers themselves to redress their lost. A critical question that is still hanging for people like me is whether it is really impossible to devise built-in schemes within FTAs themselves to prevent, or at least to mitigate, this unjust downside? Cooperation to develop and to internationalize SME's as well as to create social safety-nets could help realizing the concept of inclusivity that people are increasingly demanding. Everybody recognize that, important and desirable as it should be, free trade is not an end in itself. Environmental protection, development advancement, employment creation, and poverty alleviation, are certainly among the most prominent objectives that any FTA/EPA must pursue. In this context it should be most appropriate for us to refer to the new UN development agenda, called "Transforming Our World: The 2030 Agenda for Sustainable Development", which was very recently adopted at the highest level and committed by the entire international community. If FTAs /EPAs find it convenient to cross-refer to MEAs or ILO conventions, then

using this high-level consensus declaration as a guidance should be even more relevant.

CLOSING.

So, those are some reflection and observations that I could share with you this time. As you realize, being intended as backdrop, most are of general nature. But I hope you can still find in them some contextual relevance with your more important exercises in the next two days.

In closing, let me share with you a well-known saying that is not to be taken too seriously, and that is that: “Free trade is like heaven. Everybody believes it is excellent. Everybody ultimately wants to be there. But if you ask them to go, chances are the answer would be: Oh no, not now”.

Thank you very much for your kind attention.