

Brief Description of Trade Negotiations Case Studies (partial list)



Market Access in an Imperfect Customs Union: Harmonization of a Technical Barrier

Technical regulations have an outstanding interference on market access. Asymmetric regulations, differences in enforcement and criteria disparity on minor related operations rules, can turn a product's market access into a nightmare. For that reason, within the trading system, agreements are made in order to avoid unnecessary technical barriers. Technical barriers are discrepancies in products requirements from one country to another, and in approval and control procedures (testing, certification, etc.) for evaluating compliance with such requirements. The term "requirements", which includes the related approval and control procedures, refers to official requirements in regulated market sectors. There are both lawful and unlawful technical barriers to trade. Product requirements designed to safeguard health, the environment and safety, are lawful barriers to trade. Within customs unions, principles are adopted for the harmonization of those rules and a major part of the ongoing negotiations focus on that harmonization. The exercise scenario is the negotiation within a four-country regional integration process - an imperfect customs union -, already a free trade area, with a defined and enforced External Common Tariff. The negotiation issue is the harmonization of a technical regulation for pharmaceutical products - necessary for public health reasons - required to be complied within each one of the member countries for freely sell products in the regional market. This regulation, a trade restriction that cannot be removed due to sanitary reasons, not only inhibits the free trade flow of products within the customs union, but also distorts competition vis-à-vis the products that come from outside the sub-region. The negotiation involves the four countries' government officials from three different areas - health, commerce and foreign relations. Due to particular negotiating rules of this customs union, private sectors – divided into two to four business chambers, according to the country, also have representation, although albeit during the deliberative phase of the negotiation. The simulation exercise takes four days, covering four different negotiating rounds, during which the trainees must reach as agreement a common technical regulation. As final part of the exercise, participants must send a written report on the negotiation to their hierarchical superiors as well as take part in a press conference where they have to explain their achievements from a political and commercial point of view.

Reaching a LAFTA (Latin American Free Trade Area)

Within the American Hemisphere coexist countries with different geographies, resources and levels of economic development, that have trade regional agreements at different stages of integration (Mercosur, CARICOM, NAFTA, Andean Nations Community - CAN, among others). In turn, within the Latin American Integration Association (LAIA) there are several ongoing negotiations between member countries, between regional blocs and between regional blocs and third countries or regional blocs. The resulting agreements must be protocolized before the LAIA for their institutional legitimation. Those negotiations constantly modify trade preferences structure as well as other trade rules and regulations, and could or could not converge to a single regional free trade agreement with a sole institutional frame. In this five-days simulation exercise participants represent LAIA twelve member countries that must negotiate a Latin American Free Trade Area, the initial situation of which is the current status of regional integration processes and contemporary international context. Negotiation

takes place under the assumption that LAIA country member's governments have politically decided the negotiation of a free trade agreement. This negotiation must be structured in what refers to its agenda, methods and modalities, according to the current international context, having in mind the status, rhythm and conditionings and time-frame of the ongoing regional and multilateral trade negotiations. Participants receive a situation analysis defined as the negotiation initial conditions, including political, economic and commercial preexistent restrictions, the regional integration situation, the negotiations among the country members and the negotiations among the regional blocs and of the regional blocs with third parties, either countries or regional blocs as well as other relevant information. Under those premises and context, the negotiation goal is to achieve a LAFTA that includes formal and core elements appropriate for a trade agreement.

Negotiating within the FTAA: An experience for future negotiations

The Free Trade Area of the Americas (FTAA) negotiation process, launched in 1994 at the Miami Summit of the Americas and with substantial negotiations taking place between 1998, after the Santiago de Chile Summit, and 2004 - when it came to a deadlock -, has presented along its history various turning points that have determined its negotiation methods and modalities. The insight of each one of those turning points helps with the comprehension of the nature and significance of this integration initiative and enables to perceive its future trend as well as to better understand the negotiating positions of the different Hemispheric countries, being thus useful as experience for any negotiation process to be undertaken between or with them. Using three different role-playing exercises variations - based on different FTAA process momentums -, participants have the chance to approach the FTAA process by "living" the significant moments as players in the discussions. Two days simulation exercises where the issues to be negotiated are identified according to process status condition at chosen moment of the negotiation. The purpose of the exercise is to foster the understanding of the FTAA process by delivering the complete trade multilateral negotiation dimension and by giving the opportunity of applying the negotiating tools learned. Participants are the countries representatives in the chosen Ministerial Declarations. They receive a contextual situation of the negotiation at the time, and the issues to be tackled. The outcome of each exercise is a Ministerial Declaration that has to be in accordance with the FTAA negotiation rules. Participants have to reach consensus on said issues, and also to adapt themselves to the goals and position changes that the country they represent might have had in the different negotiation stages as well as to elucidate the influence that the trade context has had on the process.

Impact Analysis: Its application to the International Trade Negotiation Processes

Within the context of a multilateral trade negotiation process, intra and intersectorial and intergovernmental negotiations of sensitive or priority sectors and issues, based on real information on the sectorial and national economy and their position within the negotiating country frame, the exercise has the final goal of developing a national trade strategy and the consequent negotiating positions. Participants receive a report of the concerned Trade Negotiation process status and of Commercial Openness as well as relevant information on sectors and products considered sensitive and that are the object of the negotiation. The workshop deepens the knowledge on alternative methods for impact analysis of trade negotiations, in order to outline the pursued trade negotiation goals and develop the strategies to be implemented in consequence. Various techniques of impact analysis are

taught to participants, from the intuitive to the more sophisticated ones - based upon econometrical models. Additional teaching is done on the adequate gathering and processing of national and international statistics and their interpretation, as well as on the positioning of the country within the international and regional context. A special emphasis is put on the status of trade preferences of the country within the different trade arrangements which have been subscribed, as well as on the status of implementation of its trade commitments. Addressed to governmental and business officers, gives an analytical and practitioner training about the trade negotiations impact analysis, focused in the priorities to be considered for negotiating within the trade negotiation process. Train assistants to identify priority and sensitive products within the negotiation as well as to sensitive elements on the final balance of concessions and definition within the different Negotiation Groups. Develops the impact analysis methods specifically oriented to the development of arguments and negotiating positions. Of eight-days duration, encompasses identification of the existing international and regional framework, identification of sensitive and priority products, analysis of the impact of liberalization according to country's development situation and eventual trade-offs within different scenarios, with description of alternative models and the elements necessary for the development of a negotiation strategy within the free trade agreements. The workshop consists of two parts: the first one (three days) covers the principal theories and methods of preparing impact analyses in the trade negotiation context and their application. The important information to consider, how to balance the different economic interests, which are the most favorable alliances and how to sum up consensus, are all the analyzed issues. The second part (four days) is a role-playing exercise aimed at developing a national negotiation strategy between three or more national trade sensitive sectors which have to negotiate inside out in order to arrive to consensus on trade strategy, negotiating position and tactics to implement them. Participants are divided in several groups, representing official and private sectors delegations. Their first task is to build their negotiating positions, given the background information they have received at the beginning of the workshop. These negotiating positions are discussed and agreed with the corresponding official area, to arrive to a general debate within an imaginary Coordination Committee, to reach to a national negotiating position based upon consensus. The final day sees the presentation of the results by the participants, the evaluation thereof by the training team, and an open discussion of the main points of the exercise. This role-playing exercise enables participants to develop a trade global national strategy by applying the results of impact analysis and taking in consideration the interrelation of the different issues that are at stake.

Market Access within Trade Hemispheric Negotiations: Tariff Liberalization, Origin Rules, Custom Procedures and Safeguards

Within the Hemispheric trade negotiation scenario, this exercise is oriented to train participants in the discussion of some specific topics developed during four consecutive sessions of a Market Access Negotiating Group. Addressed to governmental officers and private sector representatives, its aim is to give an analytical and practical training on a multilateral trade negotiation on market access issues, putting emphasis on the definition of priorities for the chosen trade negotiation process, taking into account their national interests and objectives as well as the current status of the whole negotiation and the negotiating positions of their counterparts. A complete dossier on the evolution and present status of the negotiation is provided to participants at the beginning of the workshop, together with a series of presentations about the main conflictive issues of the negotiation, not only in the market access sphere but also in the other issues under negotiation. The first task of participants is to evaluate these documents and elaborate their negotiating positions based upon the determination of priority objectives and interests, but taking into

consideration that the exercise will cover only one phase of the ongoing negotiation. In other words, they have to consider that they will have other negotiation rounds to reach their objectives. From this perspective, they can look for alliances or coalitions with their counterparts and learn how to better use the advantages of the consensus rule and of their relative negotiation power - i.e., being small economies or developed countries. The role playing exercise is designed to be developed in three or four days - equivalent to three or four negotiation rounds -. Participants are divided in groups representing the countries' official delegations. The round is developed as it would happen in an official negotiation, with debate taking place over a specially prepared version of the draft text of the Market Access chapter and according to a defined agenda for the negotiations. In one day the documents must be studied and based on them the negotiating positions within each national delegation have to be elaborated. Participants must reach a new version of the draft text, either eliminating the brackets of modifying them. The draft text is referred to the Rules of Origin, Custom Procedures and Safeguards, in order that participants get trained in evaluating how a certain wording on this topic can impact on tariff reductions schedule or in effective regional markets openness, and how to negotiate the issue pursuing their pre-defined objectives. During the final session a presentation is made by participants about their conclusions on the exercise outcome, followed by the evaluation thereof by the training team as well as an open discussion of the main points arose from it. In an alternative version, the exercise also includes the negotiation of a list of offers of products for tariff reduction, enabling not only to practice this specific issue but also to learn the interaction and forms in which the sectorial interests are articulated with the national interest within a Market Access negotiation.

Services Chapter within Trade Negotiations: Crafting an agreement

Due to the increasing relevance of the trade in services - from the national and international point of view -, the negotiation of the Chapter on Services is a key issue, both from the developed countries and developing countries point of view - taking in account that in certain cases it can be a deal breaker. By giving a deep insight of services main conceptual elements and the trade significance of their practical application, the way their variables can articulate themselves in order to gain a favorable market access, as well as the negotiating trends inferred from the latest bilateral and regional trade agreements signed, combined with the learning of negotiating strategy, tactics and techniques, participants are given the tools to successfully participate in a negotiating simulation exercise of a Trade Negotiation on the Services Chapter, within a bilateral or regional context, where they have to develop and agree on a list of offers - commitments or non-conforming measures in Services, according to the chosen negotiation modality -. The role playing exercise, which takes three days, is based in a case study dossier that includes all relevant information regarding Services in the parties defined and from where participants have to develop their negotiating positions and goals. As outcome, participants not only achieve a greater knowledge of the complex issues involved in the Chapter of Services and of their relation with issues of other chapters also subject of negotiations as well as with other commitments taken bilaterally or plurilaterally, such as existing investment agreements, but also get a precise idea of the most sensible issues and the different possible ways to reach a balanced agreement according to the predefined asymmetries of the countries represented.

Implementation of Trade Agreements and Institutional Issues: Dispute Settlement

Within the context of trade agreements implementation, the way in which national trade policies are applied is subject to multilateral or regional trade rules (World Trade Organization - WTO or regional trade agreements, respectively). Non compliance or deviation from such rules give place for parties to challenge the taken measures, by using the Dispute Settlement System defined in the trade agreement. The course describes and analyses the contents of a negotiation over the dispute settlement chapter within a free trade agreement negotiations. An overall presentation regarding dispute settlement relevance and its insertion within free trade agreements is followed by more specific lectures regarding the WTO Dispute Settlement System main aspects as well as those of the most relevant regional or bilateral trade agreements and their negotiations. Additionally, trade agreements institutional issues are explained, including how institutionalism must be dealt with and its legal hierarchy within the different juridical arrangements and their legal hierarchies. The course presents applied trade negotiation techniques with emphasis in negotiation practice under power asymmetry, and concludes with a negotiation simulation using role playing methodology, of a hypothetical WTO Dispute Settlement Panel referred to safeguard measures between four parties: the Panel (constituted by teachers and participants), demanding country member delegation, country demanded against delegation and interested third parties delegation. The role playing exercise takes three discontinuous days, in order to have time to elaborate each subsequent phases: case presentation by demanding and demanded parties; elaboration and presentation of the Panel consultation and final presentation and conclusions. Participants receive reading material on the course and the necessary information for the simulation exercise. At the end of the exercise participants learn by doing how to inform each party's private sectors the outcome of the dispute settlement.

The Chapter on Intellectual Property Rights within Trade Negotiations

Intellectual Property Rights (IPR) protection is one of the subjects included in last generation trade agreements and therefore in their trade negotiations agendas. In a globalized context, in which border protection measures progressively recede to give place to negotiation and implementation of trade rules and trade related disciplines in order to provide a uniform legal and institutional frame for business development at international scale, the establishment of homogeneous enforcement standards and effective compliance with Intellectual Property Rights is an issue both complex and conflictive due to the multiplicity of juxtaposed interests. This nine-day course deals with the explanation of IPR main concepts, their interpretation within trade agreements and their implementation according to the commitments undertaken. Additionally, negotiation techniques and tactics are explained, preparing participants for a simulation exercise of a bilateral free trade agreement negotiation between a developed and a developing economy, in which an intellectual property rights chapter text must be decided upon. Participants receive the elements for identification, analysis and understanding of IPR main concepts and their implementation within international trade agreements, as well as to discern and comprehend the commitments to be assumed in national trade policies formulation and their projection over trade and investment.

Intellectual Property Rights, Trade and Economic Development: from Negotiation to Implementation

Variant of the traditional negotiation of the intellectual property rights chapter within a free trade agreement, this course presents a national legislation implementation case, based in the WTO TRIPS that is challenged by a country member of that organization in a WTO Dispute Settlement Panel. Several years after the 1994 World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) - the fundamental multilateral agreement on the subject - many issues are still heatedly debated within civil society, the trade policy formulations processes and significantly within trade negotiations agendas -. Those issues include whether to have "strong" or "weak" legal regimes on Intellectual Property Rights, their relation to economic development through foreign investment attraction and technology transfer, patents for pharmaceutical products, vegetal species, biotechnology, and the relation between Intellectual Property Rights protection and emergence of monopolistic behavior within markets. Simultaneously, conflicts appear at the implementation level regarding commitments on Intellectual Property Rights protection in trade agreements, which are potential sources for disputes. Participants in this course learn how to analyze and assess these variables in combination with the application of negotiating techniques in a three day simulation exercise, providing a solid base for further work on the field. The course consists in three interrelated parts. The first is a series of presentations that deal with the fundamentals of Intellectual Property Rights within the context of trade policy formulation and international trade agreements. The second one covers the learning of trade negotiations techniques and its use at every stage in the negotiation processes. The third part moves from lectures to a practical level, presenting a simulation exercise on a WTO Dispute Settlement Panel, in which one member country demands another, alleging that the national legislation of the second country does not comply with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The simulation exercise is specifically designed so participants can practice their understanding and interpretation of the Intellectual Property Rights significance and their implementation within national trade policy framework, by developing their respective arguments and by the negotiation of compromised formulas, if any, in order to settle the dispute.

Other Activities

Tailor made activities, according to the needs and interests can be prepared, not only those that include negotiation simulation exercises, but also those related to the update and follow up of the trade negotiation processes as well as those dealing with trade negotiation and trade policy specific topics, such as Competition Policy, Subsidies, Antidumping and Countervailing Duties, and so forth.