

PIFS E-commerce Training

E-commerce Negotiations

Context

E-commerce negotiations are increasingly occurring in the regional/bilateral context, in addition to the global/WTO discussions. It is only a matter of time until e-commerce disciplines will be formally included in FTA negotiations involving the Pacific region.

Broad Themes

To ensure your country is ready for e-commerce negotiations, you may wish to consider three broad themes – many of these apply outside of the e-commerce technical area:

- **Modality**: how e-commerce negotiations are organised
- **Strategy**: how to prepare for e-commerce negotiations
- **Tactics**: how to promote your country's position in e-commerce negotiations

On Modalities, consider how the various FTA negotiation groups are organised, and where e-commerce negotiations will take place. Under the 'services' working group? Under a specialist e-commerce group? Which Ministries would form part of the e-commerce specialist team? The negotiations may be organised in 'rounds' where an initial text is developed, exchanged and improved through a process called 'redlining' until all parties are agreed – at which point the lawyers will conduct a 'legal scrub' to ensure consistency and accuracy.

On Strategy, it is important to recognise that there are actually two negotiations taking place to reach an agreement. One is the domestic negotiations – what are the interests of your domestic industry and Government? The second is the negotiation with the foreign partner. To achieve a satisfactory outcome for both, substantial preparations will be required. You should consider: stakeholder consultations before negotiations, development of a confidential brief for Government to take to the negotiations, review and submission of text proposals before the next negotiation round – to ensure no surprises!

On Tactics, negotiators can avoid stalled negotiations through endless creativity. Can 'final positions' be exchanged to achieve agreement? Can sweeteners be offered to shift your partner's final position? Can hard positions be softened through 'wiggle room'?

Key Questions

Modalities: How will e-commerce negotiations be organised? Who will lead and contribute?

Strategies: What is your broad vision for e-commerce negotiations? How will you prepare for negotiations? Who will conduct stakeholder consultations and prepare the brief?

Tactics: How will you achieve your vision through negotiating tactics? What flexibilities, sweeteners or exchanges can you prepare for?