



**Pacific**  
E-commerce  
Initiative

# E-Commerce Negotiations

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E-Commerce Training Programme  
for Pacific Negotiators  
March 28 – April 21, 2022



**PACIFIC ISLANDS FORUM**

# Trade Negotiations: Regionals/Bilateral



## Modality

How e-commerce negotiations are organised

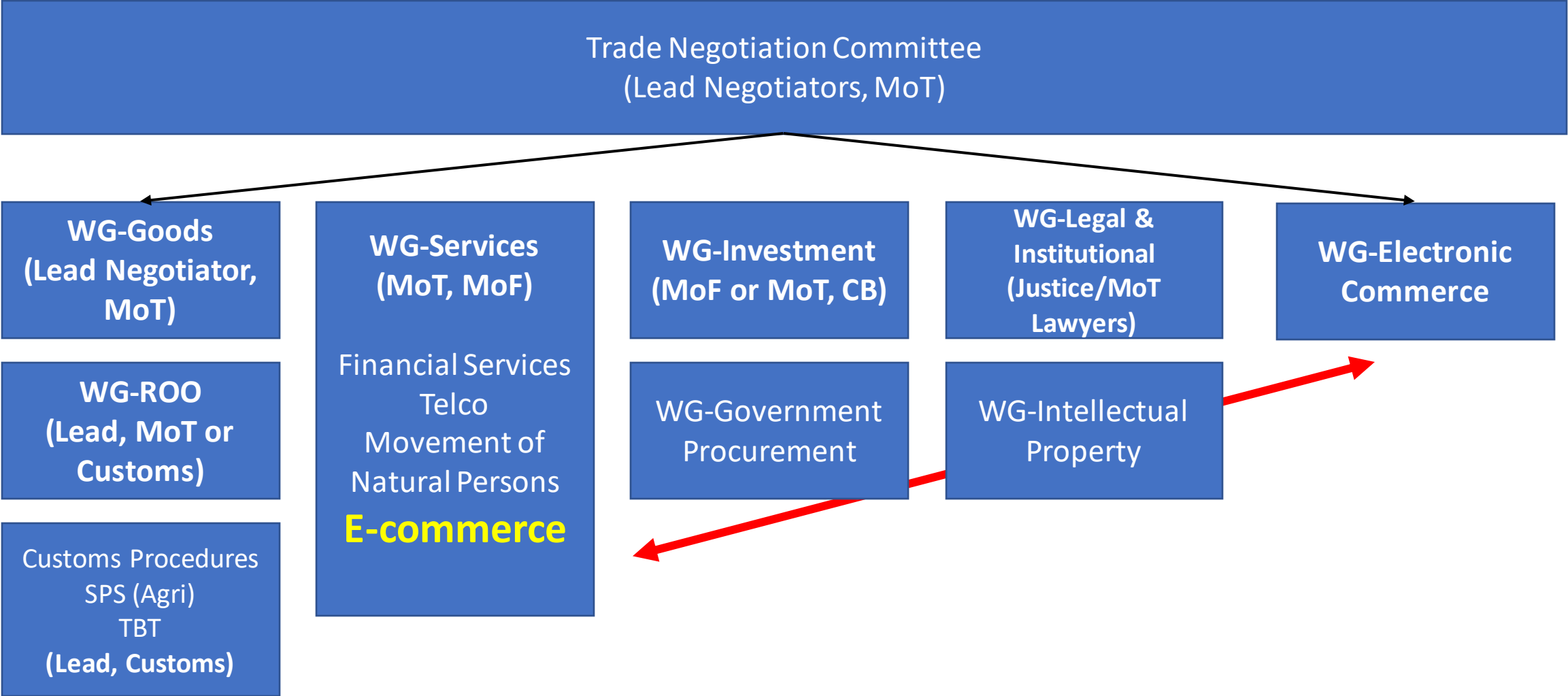
## Strategy

How to prepare for e-commerce negotiations

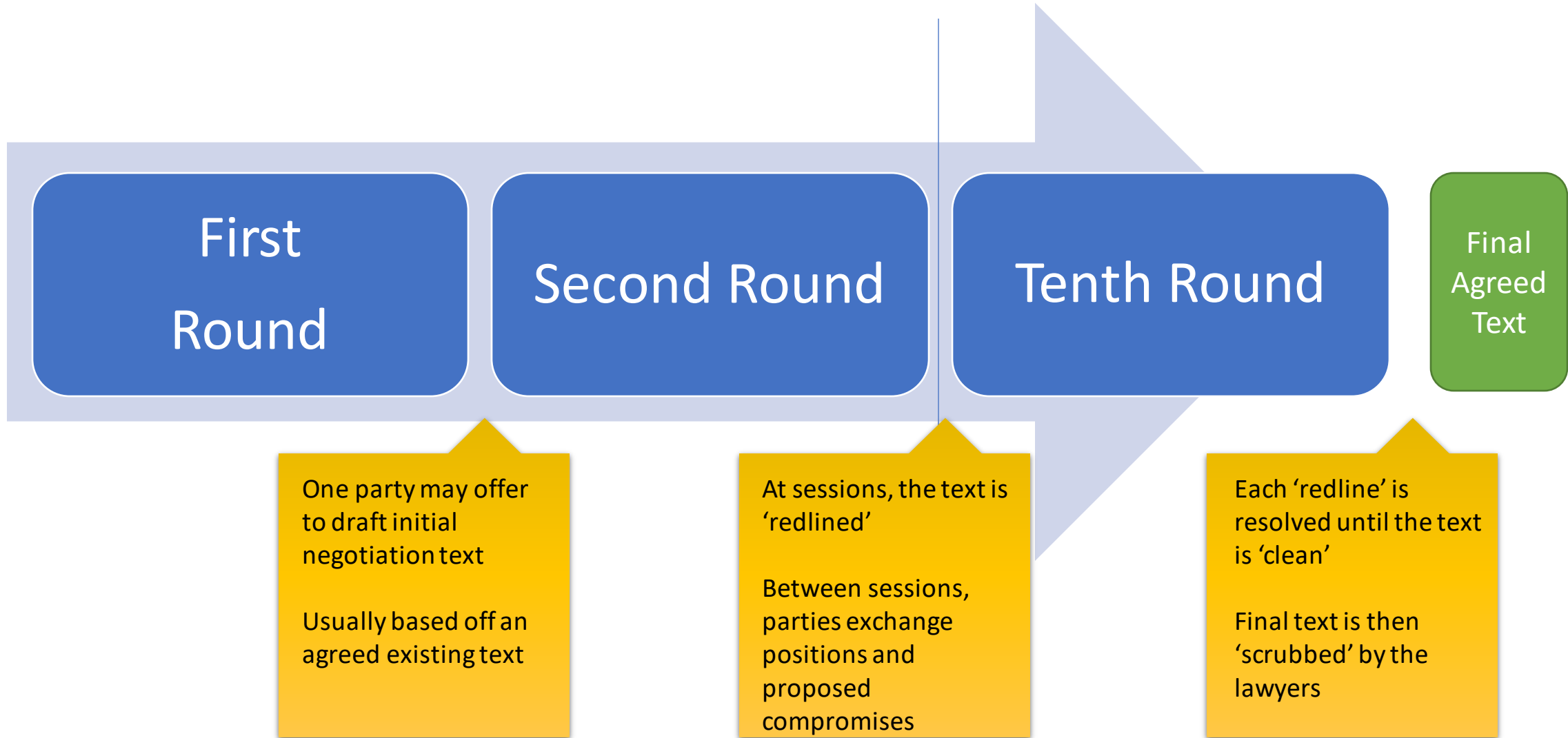
## Tactics

How to promote your country's position in negotiations

# Modality: Regional/Bilateral E-commerce Negotiations



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# Modality: Regional/Bilateral E-commerce Negotiations

## A.1. Facilitating Electronic Transactions

### (1) Electronic transactions frameworks

1. Each [Party/Member] shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 [taking into account, as appropriate, other relevant international standards.]
2. **[Alt 1:**  
Each [Party/Member] shall endeavour to:
  - (a) avoid unnecessary regulatory burden on electronic transactions; and
  - (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.]**[Alt 2:**  
Each [Party/Member] shall:
  - (a) minimise the regulatory burden on electronic commerce; and
  - (b) ensure that a [Party's/Member's] regulatory frameworks support industry-led development of electronic commerce.]**[Alt 3:**  
Having regard to their national policy objectives, [Parties/Members] shall endeavour to avoid measures that:
  - (a) unduly hinder electronic commerce; or
  - (b) have the effect of treating commerce by electronic means in a more restrictive manner than commerce conducted by other means.]

**Paragraph 1:**

- Based on text proposals by US, SG, HK, CN and CA.

**Paragraph 2:**

- Alt 1 based on text proposals by US, SG, HK, UA and CA.
- Alt 2 based on text proposal by CN.
- Alt 3 based on text proposal by BR.

“Redlining” is a key tool for trade negotiations.

E-commerce relies heavily on the text of commitments, rather than market access schedules.

Facilitator or Secretariat has critical role in bringing text proposals based on country proposals – seeking to move countries towards consensus.

Nothing is agreed until everything is agreed.

# Strategy: Domestic Consultations & Briefing

## Domestic

What do domestic stakeholders want from the negotiations?

What are our offensive and defensive 'red lines'?

Our Industry?

Our Government?

**FINAL  
TRADE  
AGREE  
MENT**

## Foreign

What is other party willing to concede on our core interests?

How close can we come to the other party's 'red lines'?

What are other party's domestic stakeholders' offensive and defensive interests?

# Strategy: Domestic Consultations & Briefing

Preparing an overall vision/strategy for e-commerce negotiations needs extensive consultation.

e-commerce is a sector that moves faster than the law and policy.

Negotiations are carried out between G2G only

Domestic Consultation is critical BEFORE and AFTER negotiations

Consider pre-negotiation briefings for industry and Government (separately)



# Strategy: Domestic Consultations & Briefing



Before each round, prepare a CONFIDENTIAL BRIEF document for negotiators. This is your strategy + tactics.

Based on industry and Government consultations, set out positions for each clause of the text. For important positions, you may want to have 'red lines' – a position you will not accept.

Whenever possible, table text positions ahead of the negotiation. This will allow the other side to engage properly.

No surprises!



# Tactics: Achieving your objectives through creativity

## Priority Swaps

Accepting a priority of your partner's in exchange for securing a priority of yours



Party A prefers no commitment on free flow of data across borders and strong commitment on consumer protection



Party B wants some commitments on free flow of data across borders and soft commitments on consumer protection



# Tactics: Achieving your objectives through creativity

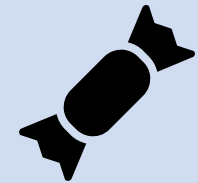
## Sweetener

Help your partner move beyond its redline position by offering strong support for domestic reform. This can help them 'sell' the outcome at home.

Party A will not accept any commitment on ensuring free flow of data across borders



Party B offers technical and financial support for development of data centres in Party A



# Tactics: Achieving your objectives through creativity

## Wiggle Room

Accept a partner position but with appropriate flexibility for implementation

Party A will not accept any commitment on ensuring free flow of data across borders



Party B submits text that establishes a commitment, except for 'legitimate public policy' reasons.



# E-commerce Negotiations

## Modality

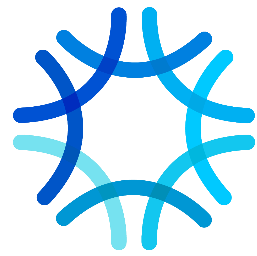
How will e-commerce negotiations be organised?  
Who will lead and contribute?

## 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?



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