

出國報告（出國類別：國際會議）

「2018 (FTAAP) 能力建構研討會-智慧  
財產權」出國報告

服務機關：經濟部國際貿易局

姓名職稱：曲專員明玉

派赴國家：韓國

出國期間：107年6月26日至6月28日

報告日期：107年8月21日

## 摘要

本次為期一天半的研討會邀請相關領域的國際組織或智庫專家，協助各 APEC 會員的出席代表瞭解雙邊或多邊貿易協定中智慧財產權議題，並分享渠等參與談判或諮商的經驗及遭遇的挑戰。

第一天的研討會係以課程講授方式進行，共有 4 場次，議題包括 WTO 智慧財產權協定 (TRIPS) 及各國自由貿易協定 (FTA) 之重要內容、國際智財權之發展趨勢、FTA 簽署後智財權法律規範之轉變、FTA 智財章的談判準備與執行經驗分享等。第二天則是分組進行模擬談判，以期與會人員將第一天所學融會貫通，並促進成員間之交流。

參與本次研討會有助於對國際智財權的發展與重要議題建立通盤而精要之認識，並增加國際參與之學習與交流經驗，建議我相關單位未來可多鼓勵年輕同仁參與此類研討會。

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## 一、目的

本研討會係為協助談判人員及與制定智慧財產權相關政策官員，瞭解雙邊或多邊貿易協定中智慧財產權議題，特別是藥品專利與地理標示。主辦單位（韓國外交部）亦邀請相關領域的國際組織或智庫專家，向與會人員分享參與談判或諮商的經驗及遭遇的挑戰，協助 APEC 會員強化對本議題的認識。

## 二、行程

日期	時間	行程	備註
6/26(二)	07:30-11:00	臺灣桃園機場→首爾仁川國際機場(ICN) (搭乘立榮 B7170 班機)	皆為當地時間
6/27(三)	09:00-17:50	第一天研討會	Lotte Hotel Soul
	17:50-20:00	大會歡迎晚宴	Lotte Hotel Soul
	晚間	下榻旅館	
6/28(四)	09:00-12:30	第二天研討會	Lotte Hotel Soul
	12:30-13:30	大會午宴	Lotte Hotel Soul
	19:45-21:25	首爾仁川國際機場(ICN) →臺灣桃園機場(搭乘長榮 BR159 班機)	皆為當地時間

### 三、研討會內容紀要

以下謹按研討會議程順序（議程如附件 1），依序簡述各場次進行情形：

#### (一) 第一天研討會

研討會共分成 4 場次，分別邀請世界貿易組織（WTO）智財權顧問 Wolf R. Meier-Ewert、世界智慧財產權組織（WIPO）國際分類與標準組組長 Young-woo Yun、韓國智慧財產局檢驗品質確保辦公室主任 Heetae Kim、Lerner David 智財事務所律師 Nahoko Ono 及韓國成均館大學法學院教授 Chaho Jung 等專家，就涉及智慧財產權保護之 WTO 規定、FTA 談判等相關議題進行分享與討論，茲分述各場次重點如下：

#### 1. 場次 I（TRIPS 協定及近期國際智財權趨勢議題）

##### (1) 上半場

Meier-Ewert 顧問首先說明 TRIPS 協定所涵括的範圍、保護規範標準、基本原則、執行條款與爭端解決機制。渠進一步分析與 TRIPS 相關之 WTO 爭端解決案件，據統計，截至 2017 年 11 月止，共有 39 件 WTO 爭端解決案件與 TRIPS 相關（占總案件數的 7%），其中所涉議題包含：例外條款的範圍、非歧視原則、執行、WIPO 公約與 TRIPS 條文間之適用等。

##### (2) 下半場

- a. Yun 組長首先介紹 WIPO 組織及任務，並談到近數十年來智財權在國際間的發展情形，尤其隨著科技與經濟的快速進步，專利權的授與自 1990 年代起亦開始飛快成長。以 2016 年統計來看，中國大陸授與專利權的數量居世界首位，具有國際重要有影響地位；美國研發人是全世界申請最多海外專利的；韓國則是每 GDP 單位中擁有最多專利權的國家。
- b. 科技發展也提高智財權種類的多樣性，並影響國際間資訊交換與系統運作方式，也因此促進國際標準的調和、加強政府間交流與合作、提升人類與先進機器智慧的整合等會是未來國際發展的趨勢與重要工作。

#### 2. 場次 II（FTA 簽署後智財權法律規範之轉變）

##### (1) 上半場

- a. Kim 主任主要從 2018 年韓美 FTA（KORUS）及 2011 年韓歐 FTA（KOREU）智財權章之重要內容及後續執行，分享韓國的經驗與作法。2018 年更新之

KORUS，主要增加專利連結制度、刪除未執行專利（non-executed patent）之撤回條款、新穎性優惠期；另在 KOREU 的部分，由於韓國地理標示（GI）保護項目遠低於歐盟，韓國為爭取未來可修改附件清單之空間，雙方同意成立 GI 工作小組，處理增加附件清單項目、合作及建議等事項。

- b. FTA 生效後，韓國持續檢視執行情況及發展合作綱領，並透由 IPR 委員會解決雙方在執行面遭遇之困難。以 2018 年韓美 FTA 為例，刪除未執行專利之撤回條款便係檢視 2012 年韓美 FTA 生效後之執行情形，發現從未有過撤回之案例，繼續保留此條款將構成過度預防，並對專利權造成不合理之限制。
- c. 另韓國雖目前共對外洽簽了 52 個 FTA，數目雖遠超過世界主要貿易國（如美國、歐盟及日本）但從涵蓋範圍及承諾程度 2 項指標檢視 FTA 品質，僅有少數 FTA 能同時滿足此 2 項指標；此外，中小企業運用 FTA 程度遠不及大企業，以及與 FTA 夥伴國在農業部門貿易逆差增加等，則為韓國目前仍待克服之挑戰。

## (2) 下半場

- a. Ono 律師從日本觀點分享日本智財權保護在 FTA 談判中的發展歷程。與韓國不同，日本在 2002 年以前致力於 WTO/TRIPS 的多邊談判，而非雙邊 FTA，其原因在於 1970 年代起美日間的貿易摩擦讓日本對雙邊談判存有抗拒，以及國內農民團體的壓力等。日本政府於 1998 年 WTO 西雅圖部長會議失敗後，才轉變其貿易政策，開始與新加坡展開磋商，雙方並於 2002 年簽署全面經濟夥伴協定（EPA）。迄今，日本已簽署的 FTA 共有 16 個（歐日 FTA 已於 2017 年 12 月簽署但尚未生效）。
- b. 綜觀此 16 個 FTA 中有智財權相關內容，從僅有少數與 IPR 有關的條文進展到 IPR 專章；從以 WTO/TRIPS 為規範內容到超越 WTO/TRIPS 保護水準，顯見日本與他國的 FTA 對於 IPR 保護在量與質上，都隨時代演進而成長。未來將持續秉著 3 個原則進行 FTA 談判：提升專利授權程序的簡化與透明度、加強 IPR 保護、強化 IP 執法（IP enforcement）。

## 3. 場次 III（FTA 之智財權談判中有關 TRIPS-Plus 綱領議題）

### (1) 上半場

Meier-Ewert 顧問帶大家瞭解近期 FTA 智財權條文的發展情況，先從智財權條文占 FTA 總條文的比重、條文規範方式、所涵蓋的智財權領域等提供概括介紹，續

就不同 FTA 之重要規範條款，如：邊境措施、智財權作為投資資產、不同種類商標權之保護情形、專利連結、地理標示保護等，闡述其特殊性及意義。

## (2) 下半場

Ono 律師從 TRIPS 及 TPP 草案條文為基礎，對應觀察不同 FTA 之相關規範，並以日本為例，說明雙邊及多邊協定內容如何影響日本國內智財法之修訂，包括承認電腦程式應用之可專利性 (patentability)、延長專利新穎性優惠期 (grace period) 等。

## 4. 場次 IV (就 FTA 智財章的談判準備與施行之經驗分享)

### (1) 上半場

- a. 談判策略擬定：Kim 主任從過去參與韓國政府團隊洽簽 FTA 的經驗，分享談判的準備及談盤過程中面臨的挑戰。韓國係考量經濟效益、夥伴國之準備程度、區域代表性及在外交與安全利益上與韓國之相容性等因素，選定擬洽簽 FTA 夥伴國；而在擬定談判策略前，韓國團隊會研究夥伴國過去所洽簽之 FTA 內容、其國內法律及當前國際協定發展。進入 FTA 內容草擬及雙方磋商階段，韓國會成立任務工作小組，除進行可行性評估研究外，也廣泛蒐集外部各界意見並整合相關政府單位。
- b. 對內及對外協調：跨部門組成之談判團隊會依主談人擬定之策略及對手國訴求，協調各業別之談判目標及底線。對公眾溝通工作方面，除召開公聽會及研商會議聽取社會各方意見，並向國會報告談判進展外，在美韓 FTA 談判過程中更分別在國會及行政部門中籌組了特別委員會及支持委員會，俾建立及凝聚社會共識。

### (2) 下半場

- a. Chaho Jung 教授除了分析 2018 年韓美 FTA 的重要內容外 (如專利期限延長制度、專利連結制度及強化賠償等)，另說明韓國、日本與中國大陸當前的智財權法制現況及所面臨的挑戰。此 3 國的智財法律均相似，但規範深度與廣度均不及歐、美，因此有必要在法制面加強效率及可信度。
- b. Jun 教授另指出，倘欲統一中、日、韓的專利法，首先可考慮在專利市場引進評鑑中心機制，以活化亞洲的專利競爭力。中長期則可以歐盟法制為標竿，推動簽訂亞洲之區域專利協定。



## (二) 第二天研討會（模擬談判）

### 1. 分組討論

#### (1) 情境設定

依大會設定之背景，A、B 兩經濟體前已就 FTA 智財權章中之 GI 保護商擬出相關原則性協定草案（附件 2），雙方將在此基礎上續行談判。A、B 在資源條件、國內產業及談判目標方面，具有不同條件及考量，概述如次（詳如附件 3）：

- a. **資源條件：**A 經濟規模較 B 先進且大，A 經濟體雖然有豐富 FTA 談判經驗，且有諸多技術支援及能力建構計畫可協助其他經濟夥伴發展，但其本身擁有之地理標示資源卻相當有限。B 則為發展中經濟體，FTA 談判經驗有限，但其國內正進行重要制度改革，以預備將來能從 FTA 談判中取得經濟發展機會。隨著近期經濟發展，B 正面臨大量專利申請案件；另 B 擁有豐富 GI 資源，尤其是在其世界級的紅酒、烈酒及農產品等方面。
- b. **談判主要目標：**A 經濟體盼 B 經濟體能加速其國內專利審查程序，同時就延遲審查案件調整專利期限；B 經濟體則盼加強 GI 之保護，並對加速專利審查及調整專利期限有所保留。

#### (2) 討論情形

所有成員二分為 A 組及 B 組（分屬於上開二經濟體之談判團隊，本人屬於 A 組），A 組先選出俄羅斯代表作為主談人，組員共同討論出優先目標、談判底線、可讓步方案、談判策略等。A 組認為要求 B 組加速其國內專利審查程序是個沒有實質承諾的訴求，故擬將調整專利期限作為優先談判目標，並願放寬協定生效後之措施實施緩衝期間，同時提供 B 組技術上援助以提升其國內專利審查效率。

### 2. 雙邊模擬談判

#### (1) 談判過程

- a. 雙方各自表述對此次談判的期待後，由 A 組先提出盼保留目前草案所有條文之訴求，惟 B 組多次未有正面回應，僅請 A 說明國內相關法制，並反覆說明雙方應提供草案附件所列 GI 之足夠保護的必要性與重要性，致雙方溝通過程數度呈現膠著狀態。
- b. 在反覆溝通過程中，A 組多次陳述其具體訴求及可接受方案，包括：允諾列入

附件之 GI 只要依 A 之法律被認定為商標，即在 A 境內受商標權保護、在協定生效實施之緩衝期間，可接受 B 僅於特定產業適用協定規定、同意成立工作小組、願提供 B 加速專利審查之技術協助。

- (2) 談判結果：此次談判歷時約 40 分鐘（不含分組討論 20 分鐘），雙方未獲具體共識，僅再次釐清彼此關切議題之細節及交換立場。即便如此，亦收促進相互瞭解與溝通之效，有助於下回合談判之推展。

#### 四、心得與建議

- (一) 主辦單位的用心籌備反映出韓國在國際經貿事務之積極參與及豐富經驗，韓國講員就國際智財權發展的觀察與談判實務經驗讓與會代表均受益良多。
- (二) 綜觀出席代表之表現，尤以年輕官員富有積極參與態度及求知精神。建議我相關單位未來可多鼓勵年輕同仁參與此類研討會，以增加渠等參與國際會議之學習與交流經驗。
- (三) 「模擬談判」是一相當有創意且可綜合運用所學的演練方式，同時亦可促進參與人員間的互動與認識，建議未來我方舉辦相關 APEC 研討會時亦可參考辦理。
- (四) 本次為期一天半之研討會涵蓋議題多元，主要偏重在建構處理智財權議題之基礎能力，對於初入門接觸此領域之人員，可藉參與此研討會對國際智財權的發展與重要議題建立通盤而精要之認識。惟對於智財權談判有相當經驗之官員來說，內容恐略為不夠深入，此亦為主辦單位在規劃講授內容深淺時的為難之處。另活動安排相關建議已提供主辦單位參考。

五、附件

附件 1：研討會議程



**ANNEX I. Program**  
**FTAAP Capacity Building Workshop on Intellectual Property Rights under the 3<sup>rd</sup> REI CBNI**

Seoul, Republic of Korea, June 27-28, 2018

☞ Master of Ceremony & Moderation: Dr. Jinseok Park, Partner of DARAE LAW & IP

DAY 1 (JUNE 27)	Wednesday
9:00 am – 09:30 am (30 mins)	Arrival/Registration/Coffee
09:30 am – 10:00 am (30 mins)	<p><b>Welcoming Remarks/Photo Session</b>                      Mr. Jae Kwon KANG, Director General for International Economic Affairs, Ministry of Foreign Affairs (MOFA), Republic of Korea</p>
10:00 am – 11:15 am (1 hour 15 mins)	<p><b>Session I : WTO/TRIPS Agreement and Recent Trends of Global Intellectual Property Issues</b></p> <p><i>The first session will provide introductory framework for both day 1 and day 2 discussions. This session includes an overview on WTO/TRIPS Agreement structure and its implications. The speakers will touch upon an analysis of WTO/TRIPS Agreement in view of recent FTAs and emerging global intellectual property issues in trade-related aspects.</i></p> <p><b>The WTO TRIPS Agreement in the International Intellectual Property System</b>                      Speaker: Mr. Wolf R. Meier-Ewert, Counsellor, Intellectual Property, Government Procurement and Competition Division, World Trade Organization (WTO)</p> <p><b>Recent Trends of Global Intellectual Property Issues</b>                      Speaker: Mr. Young-Woo YUN, Head, International Classifications and Standards Division, World Intellectual Property Organization (WIPO)</p> <p><b>General Discussions (Questions &amp; Answers with Participants)</b></p>
11:15 am – 12:30 pm (1 hour 15 mins)	<p><b>Session II : Changes in the Intellectual Property Legal Landscape with FTAs</b></p> <p><i>The second session will discuss implications and lessons of FTAs in light of law revisions on intellectual property issues. The speaker(s) will highlight the distinctive features and the limitations of intellectual property provisions in their FTAs.</i></p> <p><b>Changes in Intellectual Property Laws after FTAs - Law Revisions and Implementation</b>                      Speaker: Mr. Heetae KIM, Principal Director, Office of Examination Quality Assurance, Korean Intellectual Property Office (KIPO)</p> <p><b>Changes in the IP Legal Landscape with FTAs – Japan’s Case</b>                      Speaker: Dr. Nahoko ONO, IP Lawyer, LernerDavid LLP, USA</p> <p><b>General Discussions (Questions &amp; Answers with Participants)</b></p>

12:30 pm – 2:30 pm	<b>Luncheon</b>
2:30 pm – 4:00 pm (1 hour 30 mins)	<p><b>Session III : WTO/TRIPS-plus Agenda in FTA Negotiations on Intellectual Property</b></p> <p><i>The third session will discuss WTO/TRIPS-plus agenda in FTA negotiations on intellectual property, including geographical indications, pharmaceutical patents, and other emerging and controversial intellectual property issues in recent FTAs.</i></p> <p><b>The TRIPS Agreement and Free Trade Agreements – Recent Trends</b>  Speaker: Mr. Wolf R. Meier-Ewert, Counsellor, Intellectual Property, Government Procurement and Competition Division, World Trade Organization (WTO)</p> <p><b>WTO/TRIPS-Plus Agenda in FTA Negotiations on IP– Japan’s Case</b>  Speaker: Dr. Nahoko ONO, IP Lawyer, LernerDavid LLP, USA</p> <p><b>General Discussions (Questions &amp; Answers with Participants)</b></p>
4:00 pm – 4:20 pm	<b>Coffee Break</b>
4:20 pm – 5:50 pm (1 hour 30 mins)	<p><b>Session IV: Experience Sharing on Preparing and Implementing Intellectual Property Chapters in FTA</b></p> <p><i>The fourth session will cover the preparation procedures in coordinating and negotiating intellectual property chapters for FTAs. This session also looks at post-FTA implementation of an FTA Chapter at domestic level. The speaker(s) will touch upon some preparatory works for drafting texts and negotiating provisions on intellectual property as well as consultation with IP stake holders in FTAs. Examples of domestic implementation of an FTA chapter will be also presented.</i></p> <p><b>Preparing and Negotiating Intellectual Property Chapter in FTAs</b>  Speaker: Mr. Heetae KIM, Principal Director, Office of Examination Quality Assurance, Korean Intellectual Property Office (KIPO)</p> <p><b>Korea's Preparation and Implementation on FTAs with the USA and Europe</b>  Speaker: Mr. Chaho JUNG, Professor, SungKyunKwan University (SKKU) Law School</p> <p><b>General Discussions (Questions &amp; Answers by the Participants)</b></p>
5:50 pm – 8:00 pm	<b>Welcome Dinner (Hosted by Director General of MOFA)</b>

<b>DAY 2 (JUNE 28)</b>	<b>Thursday</b>
9:00 am – 9:30 am	Arrival /Coffee
9:30 am – 11:00 am (1hour 30 mins)	<p><b>Session V: Mock Negotiation</b></p> <p><i>The workshop participants will have an opportunity to experience FTA negotiation through a 'mock negotiation' in the fifth Session. They will be divided into two groups which will be guided by an instructor in each group. For 30 minutes, each group will prepare negotiation strategies and the groups will conduct negotiations for one hour based on their preparations. The topics of the mock negotiation will be selected from one of the debated issues in FTAs such as geographical indications or pharmaceutical patents.</i></p> <p>Instructors: Dr. Jinseok PARK, Senior Patent Attorney, DARAE Law &amp; IP Group</p>
11:00 am – 11:20 am	<b>Coffee Break</b>
11:20 am – 12:00 pm (40 mins)	<p><b>Session VI: Discussions and Sharing Experience of APEC Members</b></p> <p>APEC member government officials (KOR, SIN, PER etc.)</p> <p><i>The sixth session will be devoted to discussions among participants and sharing their experiences in the area of intellectual property.</i></p> <p><b>General Discussions (Questions &amp; Answers by Participants)</b></p>
12:00 pm– 12:30 pm	<b>Session VII: Wrapping Up and Evaluations</b>
12:30 pm – 1:30 pm	<b>Luncheon</b>

## 附件 2：模擬談判之協定草案

### **Article OO: Protection of Geographical Indications**

1. For the purpose of this Agreement, geographical indications are indications, which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. With the recognition of the importance of the protection of geographical indications, both Parties shall protect, in compliance with their respective domestic legislation, the geographical indications of the other Party registered and/or protected by that other Party, that fall within the scope of protection stated in Articles 22, 23 and 24 of the TRIPS Agreement.

[Further to the acceptance of this obligation, both Parties shall not permit the importation, manufacture and sale of products, in compliance with their respective domestic legislation, which use such geographical indications of the other Party, unless such products have been produced in that other Party.]

[3. Economy B shall protect the geographical indications listed in Annex 16.4.3 for their exclusive use in products originating in Economy A. Economy B shall prohibit the importation, manufacture and sale of products with such geographical indications, unless they have been produced in Economy A, in accordance with the applicable law of Economy A.]

[4. Economy A shall protect the geographical indications listed in Annex 16.4.4 for their exclusive use in products originating in Economy B. Economy A shall prohibit the importation, manufacture and sale of products with such geographical indications, unless they have been produced in Economy B, in accordance with the applicable law of Economy B.]

[5. Within two years from the entry into force of this Agreement, both Parties shall enter into consultations to protect additional geographical indications. As a result of these consultations, both Parties shall protect and/or recognize, under the terms stated in this Agreement, the geographical indications listed in Annex OO and any additional geographical indications submitted by the Parties that fall within the scope of protection of geographical indications set out in Articles 22, 23 and 24 of the TRIPS Agreement.]

#### **Annex 16.4.3**

##### **Geographical Indications of Economy A**

- OO (for Ginseng)

#### **Annex 16.4.4**

##### **Geographical Indications of Economy B**

- OO (for wine and spirits)

- OO (for wine and spirits)

- OO (for wine)

#### **Article OO: Accelerated Examination**

1. Each Party shall ensure that, if an invention claimed in the application for a patent is being worked by any person other than the applicant for the patent in that person's business after the publication of the application, that person or the applicant for the patent may file a request to the competent authority of the Party that the application be examined in advance of other applications, in accordance with its laws and regulations.

Where such a request has been filed, the competent authority of the Party shall take the request into consideration and endeavor to examine the application in advance of other applications, where appropriate.

[2. Each Party shall ensure that, if an invention claimed in the application for a patent is deemed necessary to urgently process examination, the applicant for the patent may file a request to the competent authority of the Party that the application be examined in advance of other applications, in accordance with its laws and regulations.]

#### **Article OO: Patent Term Adjustment for Delayed Examination**

1. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than [four years] from the date of filing of the application in the territory of the Party, or [three years] after a request for examination of the application, whichever is later. ~~Periods attributable to actions of the patent applicant need not be included in the determination of such delays.~~



## Mock Negotiation for APEC Capacity Building Workshop on Intellectual Property

Negotiate an “in principle” agreement for the three outstanding provisions of an FTA Chapter on intellectual property between two Parties (Economies A, B)



90-minutes session

**Number of participants: 21**

### 1. Introduction

For some countries, even those which are leaders in intellectual property protection and are a force for international action to address newly emerging intellectual property issues, the inclusion in a free trade agreement (FTA) of commitments related to their domestic legislations does not often figure in their list of negotiation priorities.

Indeed, there may be some countries which do not wish to include provisions for stronger protection and enforcement of intellectual property since they will be used to involve comprehensive modifications of the national legislations on intellectual property and may result in additional obligations to their national stakeholders.

However, some other countries see the inclusion of such provisions in an FTA as essential in order to provide assurance that any innovative works and national intellectual assets be protected through intellectual property rights. These countries also see the FTA result as an opportunity to cooperatively engage with partner countries on key intellectual property issues. Indeed, in some countries, intellectual property provisions have become essential for ratification of an FTA and are seen as the quid pro quo for the expected economic benefits of that FTA.

Whatever a country's position, FTAs often already incorporate references to the intellectual property protection in the preamble, as well as in the intellectual property chapters with the basis of fundamental principles established by the WTO/TRIPS Agreement.

Whether or not to go beyond those provisions and deepen the intellectual property protection commitments in the FTAs is subject to the negotiating partners objectives and their eventual willingness to do so.

## 2. Scenario

You are a member of a negotiating team from one of two Economies (A, B) negotiating a FTA Chapter on intellectual property. (see the list below of participants on each team).

Each economy has differing economic characteristics, legal frameworks and practices on intellectual property, as set out in the table below. Your team is responsible for negotiating the Intellectual Property Chapter of the FTA.

All areas of the FTA negotiation are well advanced. The Intellectual Property Negotiating Group has almost finalized the provisions in the Chapter and agreement has been reached in several areas on intellectual property issues.

However, three key provisions remain outstanding; the level of protection for geographical indications; accelerated examination; and patent term adjustment for delayed examination.

The Intellectual Property Negotiating Group has struggled to find a zone of agreement on these three provisions that address each country's negotiating goals. Achieving a balance among the three issues that best represent the interests of the two Parties is the optimum result.

The objective of the mock negotiation is to reach an agreement "in principle" amongst the two Parties regarding the scope and strength of these three outstanding provisions in the FTA's Intellectual Property Chapter.

Each team will have 30 minutes to prepare for the mock negotiation and another hour to undertake the negotiation. Each team is encouraged to designate one person to act as a lead negotiator during the mock negotiation.

### 3. Characteristics of Each Participating Economy

<b>Economy A</b>	<p>Economy A is more developed and larger than Economy B. Its domestic intellectual property governance framework and institutions are robust and well-resourced. It has a long history of negotiating intellectual property provisions as part of its FTAs.</p> <p>As the largest economy in the region, with a wide variety of resources at its disposal, Economy A is involved in many technical assistance and capacity building projects and can afford to support such activities in its partner's jurisdiction.</p> <p><b>Geographical Indications</b></p> <p>Economy A has relatively weak and limited resources of geographical indications (GIs). Considering passive attitude towards GIs of the domestic industry in Economy A, its GI policy gives preference to trademark protection, availing the owner of a registered trademark a right prevent all third parties, including GIs right holders, from using identical or similar signs, where such use would result in a likelihood of confusion.</p> <p>Consequently, Economy A wishes to have the GI provisions of the FTA to merely reaffirm its obligations under the WTO/TRIPS Agreement. That is, the goal of negotiation of Economy A is just to maintain its commitments on the protection of geographical indications as set ou in the WTO/TRIPS Agreement.</p> <p><b>Accelerated Examination</b></p> <p>Economy A has received a number of complaints mainly from its pharmaceutical industry for delayed patent examination in Economy B. On average, the pendency period of patent examination in Economy B exceeds more than four years, whcih has severely delayed earlier acquisition of patent rights and their subsequent enforcement. In an effort to address the challeges, IP stakeholders in Economy A have high hopes that an accelerated examination scheme will be introduced in Economy B through a negotiation deal.</p> <p><b>Patent Term Adjustment for Delayed Examination</b></p> <p>Further, Economy A wishes to set up a scheme to adjust the term of a patent to compensate for unreasonable examination delays that occur in granting the patent.</p>
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<p><b>Economy B</b></p> <p><i>It takes more than 4 yrs to grant patent.</i></p>	<p>Economy B is a developing economy with a middle-level GDP. While it has little experience in negotiating FTAs, Economy B is in the process of undergoing significant domestic reforms to prepare it to take advantage of the economic opportunities the new regional FTA will provide.</p> <p>Nonetheless, it is suspicious that its FTA partners will use the intellectual property provisions for protectionist purposes or to require harmonization of intellectual property legislation amongst FTA parties.</p> <p>Thus, Economy B desires that the obligations under the FTA do not involve extensive modification of its national legislation. Economy B is also concerned about taking on significant commitments on intellectual property given that it has limited resources, capacity and experience at its disposal to implement such provisions.</p> <p>At the same time, however, Economy B has a significant interest in protecting geographical indications for its world class wines, spirits and local agricultural products. As a demandeur of stronger and comprehensive provisions on GIs, Economy B is often faced with strong opposition from its negotiating partners to its proposed provisions.</p> <p><b>Geographical Indications</b></p> <p>Economy B has a strong background in protecting a wide variety of resources on geographical indications. In particular, its domestic industry is very vocal about the need to include binding geographical indication-related provisions in its trade agreements and that there be some recourse should questions of non-compliance be raised. In addition, its legislators demand that their approval of any final agreement is contingent on the inclusion of further enhanced geographical indication obligations in the FTA. The negotiation goal of Economy B under the FTA mainly focuses on the protection of geographical indications.</p> <p><b>Accelerated Examination</b></p> <p>Recent economic development in the region around Economy B has resulted in a sharp increase in patent filings. At the same time, this has caused severe delay in patent examination. As a result, there has been a request mostly from foreign applicants to reduce the pendency period. Economy B is under some pressure from overseas stakeholders to address these challenges in the context of accelerated examination.</p> <p>The position of Economy B has been to support the domestic industry and it is a little heisitant to launch a new scheme to speed up the exmaination process.</p>
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### **Patent Term Adjustment for Delayed Examination**

Given the much delayed examination, Economy B sees some value in such provisions, but remains skeptical of the long-term consequences of introducing provisions for patent term adjustment. They are concerned that such measures will benefit mostly its overseas partners.

As the potential impacts of the patent term adjustment obligation proposed by Economy A are unknown, Economy B wants to maintain maximum flexibility in terms of the new requirements this obligation impose on them and ensure that its sovereignty in patent matters is respected.

附件 4：活動照片



「2018 FTAAP 能力建構研討會-智慧財產權」全體成員合照



講座授課情形



出席代表發言



講座回應現場提問



A 組討論情形 I



A 組討論情形 II





分組模擬談判（A 組正面）



分組模擬談判（B 組正面）



回饋分享



大會餐敘

