

TPA Perú-USA

Factors Influencing Negotiation and Implementation

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NEGOTIATION

- BACKGROUND FACTORS

Objectives: trade

Interests: exporters

Atmosphere: yes or yes

Negotiators: knowledge, experience, personality, negotiation skills

Third parties: multinationals, civil society, labor and private groups.

Power positions: very asymmetric

Preparations: lack of methodological tools to measure benefits and losses

No MAPAN schedule

- DIMENSIONS OF NEGOTIATION

1. Negotiation process: a) pre-negotiation, b) face to face, c) post negotiation

2. Internal arrangements and organization: composition of tables and advisory committees, access, communications, disclosure, and public consultations

3. Cultural factors: time flexibility, individual vs collective action, personal relations

4. Strategic factors: tough or soft stance; formal or informal; argumentative or informative; need of agent with higher level of expertise.

- ATTITUDES IN NEGOTIATING
 - a) Creative
 - b) Collaborative
 - c) Antagonistic
 - d) Destructive

- Concerning
 - a) Human relations
 - b) Materials
 - c) Collateral effects

- THE OTHER PARTY IN OUR HOUSE

Disrupt unity of your friends

Make your own people afraid of not signing.

Allow representatives of the other party in your team or as advisors

Speak aloud all positive effects and hide all negative effects

Fait accompli

No transparency

ASIMMETRIES AND LACK OF BALANCES IN TPA PROVISIONS:

Access to information and knowledge

Access to public health

Capital over labor

Extensions of IP rights over other public rights

Investment over the environment

IPR protection over technological transfer,
trade and development

IPR above free, open and fair competition

Shortening Doha and other exemptions and
flexibilities

LOOKING FOR BALANCE

- US DEMOCRATS VS REPUBLICANS
 - a) Change in composition of US Congress
 - b) Letter to USTR to ammend the TPA
 - c) Ammendments approved by USTR
 - d) Ammendments approved by Peruvian Government and Congress
 - e) US Congress approved FTA
 - f) Implementation phase

IMPLEMENTATION

- Executive Special Powers were asked to the Peruvian Congress in December 2007 to adapt and accommodate Peru's legislation to the TPA. Congress approved Law 29157 delegating legislative faculties to the government for 180 days in matters related to the TPA.
- The Government considered this occasion an opportunity to make extensive modifications in the legislation concerning the promotion of investment, competitiveness, modernization of the State, improving the regulatory framework and in the promotion of small and mid-size enterprises.

- 99 DL were enacted by the Government in June 2008. Not all of them related to the TPA. A number of these decrees were questioned by civil society groups and/or the USTR.
- In January 2009 the Peruvian Congress approved Law 29316 which ammended all of those DL questioned by the USTR.
- Inmediately after it, USTR and President Bush signed the entry into force of the Peru-USA TPA, just a few days before President Obama assumed constitutional power.
- SPDA, AIS, REDGE, national business associations and intellectuals questioned additional concessions granted in law 29316.

AT THE ANDEAN COMMUNITY

- Efforts to change the Andean legislation on intellectual property divided the Andean Community. Colombia and Peru facultated themselves to ammend several articles of Andean Decision 486. The new Andean Decision 689 was enacted in August 2008. Bolivia and Ecuador refused to joint it. Bolivia has threaten to demand Peru for not fulfilling Andean Community obligations.

IMPLEMENTATION STRATEGY

- a) Veil of Secrecy
- b) Capture of institutions
- c) Vertical and hurracaneous
implementation
- d) USTR pressure
- e) Lack of participation of civil society
and local business groups.

- f) Advisory role of WIPO's civil servants.
- g) Alliances with multinational firms and its lawyers in the country.
- h) Pushing for other objectives much more related to promotion of investment, competitiveness and modernization of the State.
- i) Not much concern about poverty, the public domain and the common good.

EFFECTS

- Asymmetries and lack of balances has been reinstated in the implementation process.
- A new institutional structure will emerge as a consequence of TPA implementation.
- Public policy objectives will need to be reevaluated.
- Weakens the protection of the environment in favor of investment
- Breaks regional and local arrangements
- Major structural changes in the ownership and management of water, land and natural resources
- Changes in public health and access to education and cultural industries

CHALLENGES FOR IMPLEMENTATION

- Andean Community Survival
- Andean supranational intellectual property legislation
- How will this affect the multilateral process?
- Democrats' response in the USA
- Resistance from local interests groups
- Perfecting and improving legislation
- Building capacities and institutions
- Promoting innovation

NEED FOR COMPENSATORY MEASURES

- How to reduce negative effects?
- How to protect public health, genetic resources, access to culture, traditional knowledge, folklore?
- How to promote local innovation and IP rights in Peru? IP Promotion Funds.
- Promote competition and consumer protection