

# BRIEFING PAPER



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## Stakeholder Consultation in FTA Negotiations: *Why Bother?* *Lessons for Developing Countries*

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*As nations strengthen their relations with neighbours near and far seeking to grow their economy, raise employment, and address critical development needs, trade has become an integral part of their strategy. Free trade agreements (FTA) have proliferated in every region of the global, where currently 619 trade agreements are notified with the WTO. While FTAs are more commonly negotiated between government representatives bilaterally or plurilaterally, the need for greater in-depth, relevant, and accurate information on the state of the economy, particularly concerning sectors most affected by trade liberalisation, is increasingly important. One of the key sources of such vital information is stakeholders. These can include a variety of informed actors from businesses, civil society, labour organisations, traders, producers, academia, etc.; however specific efforts should be made to include vulnerable groups such as women-owned enterprises, small and medium-sized enterprises (SMEs), small-scale farmers, and workers in the informal sector.*

*This Briefing Paper examines mechanisms for inclusion of stakeholders in the trade negotiation process. It provides examples and suggestions for involving a range of stakeholders in the process of FTA negotiations balancing the diverse objectives of negotiators and the need to extract pertinent information from all sectors of the economy and particularly vulnerable sectors.*

### Increasing Inclusion of Stakeholders in FTA Negotiations

Eliciting stakeholder participation to inform and guide the formulation of priorities during the process of negotiating a FTA is increasingly practiced by governments from the US, EU, Canada, Japan, Australia, New Zealand, and Singapore. This is despite the absence of legal provision that explicitly mandates informing stakeholders about the progress of negotiations conducted over multiple rounds or soliciting input from stakeholders during the process of trade policy formulation. In the face of greater proliferation of complex comprehensive bilateral and regional trade agreements, there is a need for insight beyond tariff lines and export statistics. Hence, countries are progressively incorporating stakeholder input in FTA

negotiations as an instrument of trade policy at various stages of their trade policy cycle.

A consultation does not necessarily imply delegation of decision-making authority. Instead, it can be viewed as an information exchange mechanism between multiple parties and could constitute a channel to generate consensus on trade policy (brief examples of country practices in stakeholder consultation are provided in Table 1).

The consultation process can be 'top-down' where decision-making power is held closely at high levels of government and discussions are limited to representatives of national organisations, such as industry associations and unions, but lack the buy-in from a large portion of society. It can also be 'bottom-up' where a substantial and diverse amount of information is captured in preparation for negotiations,

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however can prove challenging with a variety of interest vying for consideration.

## **Why Bother with Stakeholder Consultations?**

Stakeholder consultations contribute to establishing a repository of information invaluable for the formulation of trade strategy, preparation of negotiations, and monitoring mechanisms. Some of these factors are outlined:

### *A Valuable Source of Diverse Information*

Specific experiences of stakeholders pertaining to trade remedies, investment situations, or non-tariff barriers are essential to outline priorities for negotiations, particularly to ensure the greatest benefit from an agreement. In certain cases, special sectors are identified as trading interests while negotiating an FTA. Thus, stakeholders can assist in narrowing the sector-specific focus of negotiations.

For instance, in negotiations on the EU-Thailand FTA the EU used questionnaires to solicit information from stakeholders relating their own interest as well as issues of tariffs, rules, facilitation, and investment. Information in these areas extracted or substantiated by stakeholders can allow for negotiators to more accurately discuss specific product modalities.

### *Increase Transparency in FTA Negotiations*

By creating an inclusive and participatory negotiation process for FTAs through stakeholder consultations, it allows for an open and more predictable discussion with a reduced threat of corruption as well as pushback from the public. Policy debates behind closed doors are dominated by a few actors with selected interest that critically lacks input from the broader concerned community. A less transparency trade negotiation has the potential to cause scepticism and public discord, as seen in protest around the world against the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP).

Some governments have taken the view of stakeholder engagement in FTA negotiations as a tenet of transparency in trade policy. For example, the Australian government's trade policy statement released in April 2011 affirmed that transparency is one of the five principles guiding the government's approach to trade policy.<sup>1</sup> This is demonstrated through the commitment made by the government to ensure

that Australia's trade objectives are in line with the full community in consultation on the Australia-Korea FTA negotiations.

### *Political Buy-in*

The increasingly common practice of political buy-in may gain prevalence as support procured from stakeholders becomes as important as the advice and knowledge they also provide, particularly in promoting an agreement to the broader public. The need to attract support is enhanced in cases of specific groups that may suffer as the result of an FTA and its trade liberalisation; the fear being certain groups would publicly demonstrate their dissent to an FTA or refrain from supporting progress of the negotiations.

Interestingly, Japan's 'Basic Policy on Comprehensive Economic Partnerships' acknowledges that certain sectors may be affected as a result of negotiations pertaining to FTAs. However, Japan adopts a proactive approach where domestic preparation with respect to vulnerable sectors such as agriculture, which is likely to be affected by free trade negotiations, precedes actual negotiations.<sup>2</sup>

In the Australia-Korea FTA negotiations, full community consultations were solicited. The respondents indicated that there would be benefits in concluding an FTA with Australia and urged expediting the process in relation to Korea extending preferential terms to Australia's competitors. This positive response by stakeholders provided government the advantage of proceeding with stronger support and greater legitimacy. Transparency in negotiations was affirmed by regularly consulting business groups, trade unions, and community organisations.

Further, when stages of a negotiation were concluded, results were posted on to the government websites. To determine the impact on regional areas, consultation with regional industry and business representatives were also conducted.<sup>3</sup>

### *Instituting Mechanisms to Protect Vulnerable Sectors in FTA Negotiations*

While it may be tempting to omit consideration of a large and diverse group of stakeholders, such as from vulnerable sectors, while engaging with stakeholders on FTA negotiations, a participatory engagement and inclusive mechanisms can prove immensely

beneficial. This is especially due to the valuable input vulnerable sector stakeholders can often provide on trade implications from a more grassroots level and the economic status of a diverse set of industries. Mere cursory involvement of vulnerable groups, including women-owned enterprises, SMEs, small-scale farmers, and the informal sector, would not be sufficient to ensure proper attention and protection of those sectors that are most frequently affected as a result of FTAs.

By taking advantage of vulnerable sector stakeholder knowledge regarding the Trans-Pacific Partnership agreement, for example, TPP Minister Akira Amari was able to provide specific sectors in Japan's agriculture industry, i.e. rice, wheat, beef, dairy products, and sugar, a lower tariff reduction of 30 per cent compared with other commitments of 81 per cent. Japan currently has a comprehensive Economic Partnership Agreements Policy where it prioritises reforms, support systems, and innovation for vulnerable sectors such as agriculture, tourism, and SMEs together with its FTA strategies.

As accession to the WTO meant greater liberalisation of its own vulnerable agriculture sector, the Philippines' capacity to comply with WTO rules proved more difficult than expected. Criticism stemmed from the lack of adequate stakeholder consultation during the accession process. There were opportunities for greater stakeholder engagement for the Philippines in the Seattle Ministerial in 1999, where farmers, industry and other stakeholder groups were involved in a Task Force on the WTO Agreement on Agriculture (Re)negotiations. However, such extensive consultations were described as being 'tedious'.<sup>4</sup> Vulnerable groups often lack the resources or capacity to engage at high-level consultations and require greater support to provide their valuable input.

In addressing the need for stakeholder consultations concerning vulnerable sectors and FTAs, few mechanisms are available. Supporting setting up stakeholder networks to strengthen coordination and increase transparency as well as instituting trade adjustment programmes can assist in constructively revamping the industry to better position itself to tackle import competition.

A stakeholder network, government supported or community/industry led, composed of sector representatives, policymakers, NGOs and labour unions can allow for continuous

monitoring and input on trade strategy in relation to the impact of trade negotiations on national industries, particularly vulnerable sectors. A network or federation can incorporate government ministry officials and legislative policymakers within the organisation, such as the Export Development Council in the Philippines, which is responsible for 'formulating and coordinating the national export development effort', or it can be an external stakeholder group that works with the government to consult on specific sectoral matters, such as the European Economic and Social Committee or the Joint Economic Council that meets twice annually with the Government of Mauritius.<sup>5</sup>

Countries, especially developing countries, which may lack the capacity to arrange such a wide ranging stakeholder networks and dialogues, will need assistance. An option may be reviewing and modelling successful engagement mechanisms such as the East African Community 'Consultative Dialogue Framework'.

Additionally, early warning mechanisms managed by sector-specific working groups, such as the Autos Working Group created to address auto safety and environment standards related to market access under the US-Korea FTA can tackle regulatory issues that may arise from FTAs with a focus on vulnerable sectors.

An effective stakeholder consultation strategy should be developed for vulnerable industries and commodities. Examples of further mechanisms are detailed in Table 2.

## Observations and Suggestions

Countries have increasingly resorted to utilising the information provided by stakeholders. However, the effectiveness of the use of such information is enhanced by creating adequate mechanisms to empower vulnerable sectors against shocks from trade liberalisation.

In addition to industry experts, civil society, and academics, vulnerable sector stakeholders must be included in consultations as an essential voice for the marginalised and communities in general, including women's groups, SMEs, farmer groups, small-scale and informal traders, all of which are critically impacted by trade liberalisation through FTAs.

While some NGOs have been included in recent regional trade agreement negotiations, criticism continues to call attention to the

greater need of transparency and including a broader range of stakeholders.<sup>6</sup> Additionally, while large corporations may possess the resources for analysis and input, the same level of capacity cannot easily be said for smaller companies despite their highly valuable ground-level insight. Hence, there is a need to develop capacity-building programmes to improve the quality of input provided by all stakeholders.

Further models and lessons learned can be retrieved relevant to FTA negotiations from engagement frameworks such as the East African Community ‘Consultative Dialogue Framework’ and the European Economic and Social Committee.

### *Suggestions for an Optimal Stakeholder Consultation Strategy*

The following steps help in identifying how best to draw up an optimal stakeholder consultation strategy:

- *FTA strategy/FTA policy:* Negotiating parties develop strategies that explicitly emphasise protecting vulnerable sectors from the effects of FTAs, which would include comprehensive input from a wide range of vulnerable sectors stakeholders.
- *Determine range of stakeholders:* Countries differ in the definition of stakeholders who contribute to FTA negotiations in markedly distinct ways. Due to today’s interconnected global market, governments should create clear and comprehensive policy to seek input from as many stakeholders as possible, including sector specific experts, economists, academic scholars, union and business representatives, and civil society organisations (CSOs). A specific focus on vulnerable group inclusion will be required to ensure the greatest benefit and safeguards.
- *Frequency of disclosure:* Countries differ on whether or not they should provide complete information to stakeholders. Countries, such as Japan and Australia update information pertaining to FTA negotiations consistently in order to keep stakeholders involved about the progress in each negotiation round. To promote and strengthen an inclusive process with stakeholders, information flow should be as open as possible and utilise accessible technology where relevant.
- *Frequency of engagement:* Keeping in mind various, and at times conflicting, interest of

stakeholder groups, the differing frequencies with which stakeholder groups are consulted should be noted. Sectoral advisory groups, such as used to advise the Canadian Minister of International Trade, should be considered.

- *Prioritising labour and environment:* In the case of Canada, guided by the 2001 ‘Framework for the Environmental Assessment of Trade Negotiations’ and the cabinet directive on ‘Environmental Assessment of Policy, Plan and Programme Proposals’, environmental assessment consultations are undertaken independently of FTA negotiations. The EU conducts Sustainable Impact Assessments on all its FTAs, which includes social, labour, and environmental assessments of potential impact. These kinds of assessments could extend to assessing the impact on human resources such as identifying disparaged labour groups and undertaking an impact of other disadvantaged groups such as women and informal sector and low income workers.
- *Protective mechanisms:* As evident in Table 2, measures to protect vulnerable sectors and industries can be taken through constructing mechanisms in FTAs or create programmes for individual firms and workers to support transitioning into other sectors as a result of adverse impacts from FTAs or to compensate losses for a specified period.
- *Monitoring and assessment:* Continue to consult with stakeholders, such as exporters, on their ability to take advantage of an FTA through use of indexes like coverage rate, utility rate, and utilisation rate. Maintaining contact with vulnerable groups during implementation of an FTA will allow governments to appreciate the ground-level impact of trade liberalisation, both positive and negative, and govern accordingly.

Stakeholders should be viewed as a vital resource in FTA negotiations rather than excluded for stirring up doubts or concerns. Specifically, those stakeholders vested in the interest of vulnerable sectors, the industries most affected by trade liberalisation, require a greater voice in negotiations. Institutionalised and constructive consultation with a range of participants in trade negotiations can only strengthen the final agreement and ensure the greatest positive impact for the society.

**Table 1: Stakeholder Consultation Practices**

	Japan	Australia	New Zealand	Singapore	US	EU	Canada
<b>Extensive practices of consultation</b>	✓	✓	✓	✓	✓	✓	✓
<b>Mandatory by law</b>	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned
<b>Comments</b>	The Joint Study Group for the Japan-Korea FTA invited business organisations to gather support to quickly conclude the FTA						In the case of the TPP, included an independent assessment of the environmental impacts
<i>Range of Stakeholders consulted</i>							
<b>Businesses</b>	✓	✓	✓ <sup>7</sup>	Not mentioned	✓	✓	✓
<b>Trade Unions</b>	Not mentioned	✓	✓	Not mentioned	✓	✓	✓
<b>NGOs/ Consumer Organisations</b>	Not mentioned	✓	Not mentioned	Not mentioned	✓	✓	✓
<b>Others</b>	✓	✓	✓	Not mentioned	✓	✓	✓
<b>Comments</b>	Includes academia	Environmental assessment impact undertaken	Participation of academic institutions	Uses a panel of experts known as FTA advisers who coordinate with interested companies	For the TPP, comments by international participants solicited <sup>8</sup>	CSOs monitor trade agreements on social and environmental issues	May include NGOs involved in environmental issues for negotiations of the TPP

**Table 2: Example of Mechanisms Built into Agreements to Safeguard Vulnerable Sectors**

Country (Specific FTA/ policy)	Vulnerable Sector/ Commodity	Functioning of the Mechanism
US (US-Korea FTA)	US cars in the Korea market <sup>9</sup>	Includes a separate motor vehicles dispute settlement procedure which allows the US to “snap-back” tariff concessions on Korean passenger cars where Korea may act in non-conformity with or causing nullification or impairment of its obligations under the agreement. Creation of an ‘Autos Working Group’ to highlight regulatory issues that may arise in the future and to serve as an early warning system.
US	Agriculture	Trade Adjustment Assistance for Farmers: Provides technical assistance and cash benefits to producers of agricultural commodities and fishermen affected by import competition. The commodities covered include asparagus, catfish, shrimp, lobster and wild blueberries. Following the completion of technical assistance programmes, farmers and fishermen are required to formulate business plans which outline their future strategies to deal with import competition.
US-EU (TTIP)	Goods, services, investment, and jobs	Forums and Working Groups (High Level Working Group on Jobs and Growth, and High Level Regulatory Cooperation Forum) created for public consultation to discuss cooperation between the US and EU and gather detailed views on trade relationships between the US and EU related to negotiations on the TTIP agreement. <sup>10</sup> Other public and governmental consultations have been conducted by the Executive Office of the US. <sup>11</sup>
Japan (Strategy of Global Outreach)	Manufacturers	Strategic Market Creation Plan (for negotiation of economic partnership agreements): Industrial sectors are identified that can compete in the market but with initial support from the government.
Korea (Korea-Chile FTA and US-Korea FTA)	Domestic Industries	‘Directive compensation’ provides damages when prices decline under 80% of the standard price. <ul style="list-style-type: none"> <li>• Products covered under Korea-Chile FTA: Kiwi and facilitated grapes.</li> <li>• Products/sectors under US-Korea FTA: Agriculture, fisheries, manufacturing, service industry and employees who were affected as a result of the FTA negotiation.</li> </ul>
Korea (Korea-Chile FTA)	Manufacturers and services	‘Directive compensation’ is also provided to support closure of affected industries. Three years of standard net income is provided after the FTA when certain industries are closed as a result of import competition. <ul style="list-style-type: none"> <li>• Products covered under Korea-Chile FTA: Kiwi, peach and facilitated grapes. Now extended to all industries which are damaged</li> </ul>
		‘Enhancing Industrial competitiveness’ is undertaken supporting production of higher quality products and for the modernisation of facilities.

*Contd...*

Country (Specific FTA/ policy)	Vulnerable Sector/ Commodity	Functioning of the Mechanism
		<ul style="list-style-type: none"> <li>Sectors chosen include breed and livestock management, fruit growing, horticulture and farming, brand promotion, seed industry etc.</li> </ul> <p>Trade Adjustment Assistance: Financial support was used for equipment funds, consulting support, and management funds.</p> <p>A 'Business shift support regime' is provided to reduce or close the business affected by an FTA and to launch new businesses and production.</p> <p>With respect to workers, support is provided for jobs relocation, accelerating employment, and skills development.</p>
Korea	Electrical industry	Electric installations which were earlier classified as falling under industrial use are now covered under electrical bills, customs-free import of feed, zero rate VAT for feed, fertiliser, agricultural pesticides, equipment for agriculture and fisheries.

## Endnotes

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11. See 'Stakeholder Consultations, Investment and the T-TIP', available at: [www.ustr.gov/about-us/press-office/blog/2014/March/Stakeholder-Consultations-Investment-and-the-TTIP](http://www.ustr.gov/about-us/press-office/blog/2014/March/Stakeholder-Consultations-Investment-and-the-TTIP)

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