# Stakeholder Consultations and Communication

Date: 17 January 2024

# Learning Objectives

- Understanding Stakeholder Consultations in Free Trade Agreements
- Explore various subjects pivotal in trade agreement discussions
- Delve into types of consultations/consultation mechanisms and their pros and cons
- Understand the importance of timely consultations at various stages of trade agreement negotiations
- Best practices and communication strategies

# Stakeholder Consultations in Trade Agreements

# Who are Stakeholders?

- Stakeholders is a collective term for local, affected, interested and expert individuals, groups or institutions
- They have a stake, or an interest in the project activity – that may be affected by it (either positively or negatively) or they may have an interest in it and be in a position to influence its outcomes
  - Local communities, indigenous people, civil society organizations, and private sector entities, comprising women, men, girls and boys
  - They can include, among others, relevant ministries, local governments, locally affected people, national and local NGOs, Community Based Organizations (CBOs), Indigenous Peoples organizations, women's groups, private sector companies, farmers, and research institutions.

- In context of FTAs, it is important to ensure that stakeholders consultations are inclusive i.e. they include marginalized individual or groups
  - Marginalized individuals and groups refer to the section of society that experiences social, political and economic exclusion discrimination and are unable to participate in the mainstream economic, political, cultural and social activities

# Understanding Stakeholder Consultations

- Stakeholder consultation comprises of meaningful engagement with different stakeholders
  - To discuss potential market access, environmental, social and any other economic impacts
- Stakeholder consultations aim to:
  - identify, engage and consult in a meaningful manner to improve project design and its outcomes
  - inform them about the projects, discuss their likely impacts (both positive and negative) during the design, planning and implementation stage and relevance to
  - establish an ongoing engagement process to obtain inputs, feedback and to raise concerns (if any)

# Key Features

- Stakeholder consultations is a two-way process that is:
  - Continuous
    - Ongoing and iterative throughout the FTA cycle, starting as early as possible
    - Encourages stakeholder feedback and engagement in the development, design and implementation process of the FTA
  - Inclusive
    - Ensures that different categories of stakeholders are represented and involved
    - Considers and responds to feedback

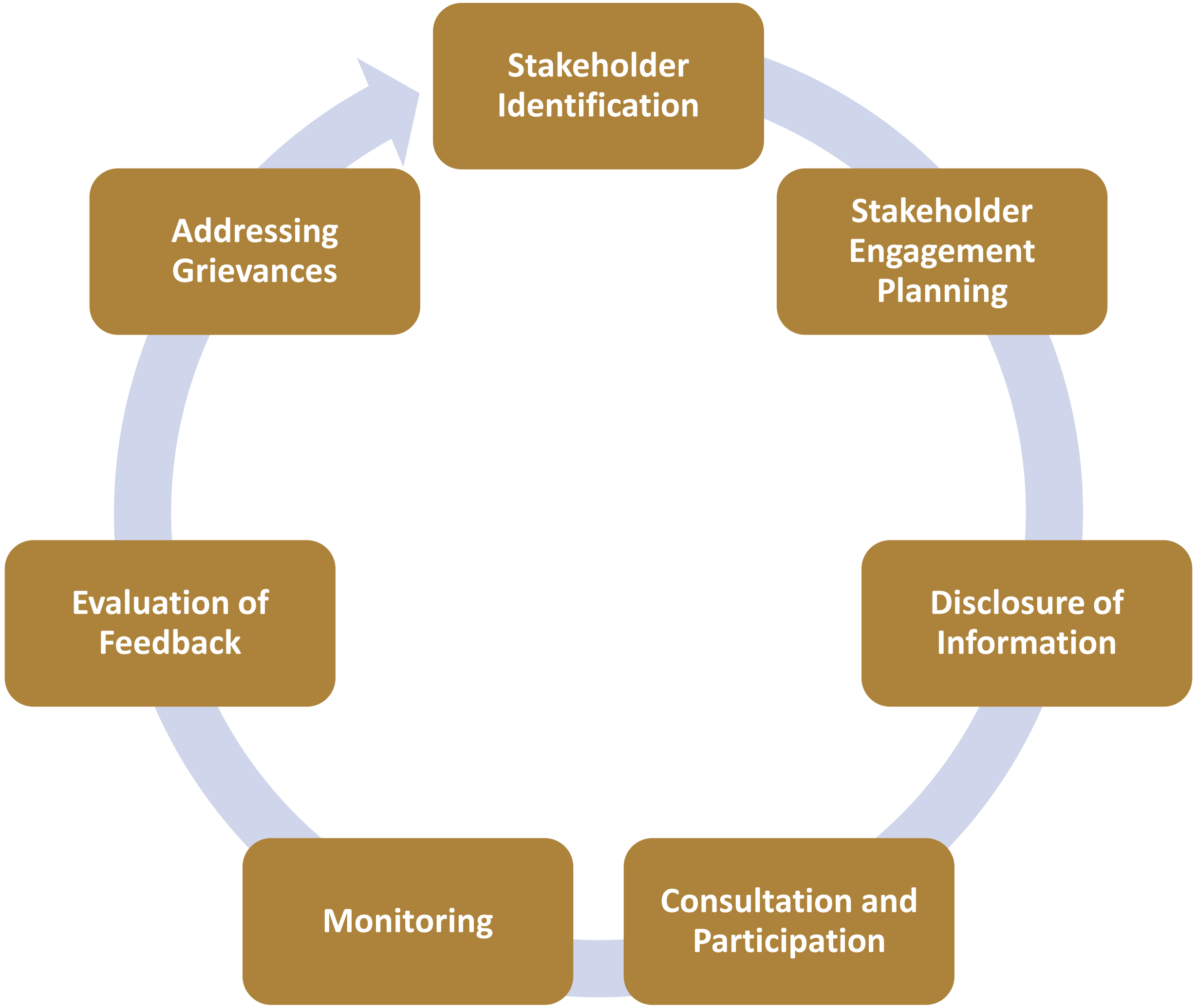
# Key Features

- Equitable and non-discriminatory
  - Ensures that poorer or more vulnerable parts of the affected stakeholders are given a voice
  - Free of external manipulation, interference, coercion, discrimination, intimidation
- Transparent
  - Based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information in a timely manner and culturally appropriate format
    - Includes the scope of consultation and the ability of stakeholders to influence FTA-related decisions
  - Public disclosure of systematically documented and relevant aspects of the FTA

# Why are Stakeholder Consultations Needed?

- Consulting stakeholders is an important instrument to collect information for evidence-based policymaking during FTA negotiations
  - Stakeholder views/inputs, practical experience and data supports credible policy initiatives and evaluations
- The consultations are a source of rich and diverse information on economic aspects, including environmental, social, and governance impacts
- Consultations support in triangulating results of economic analysis and feed as inputs into FTA negotiations
- Stakeholder consultations:
  - Ensure transparency and legitimacy of the policy development process
  - Contribute to successful policy implementation

# Stakeholder Consultation Lifecycle in FTAs



# Main Categories of Stakeholders

| | |
|---|---|
| Citizens | • The general public - individual non-expert citizens<br>• Individual expert citizens responding on their own behalf |
| Businesses | • Large-sized enterprises<br>• SMEs<br>• Microenterprises<br>• Self-employed |
| Social Partners and Representatives | • Chambers of commerce<br>• Employers’ organizations<br>• Business organizations<br>• Trade union organizations<br>• Representatives of professions or crafts |

# Main Categories of Stakeholders

| | |
|---|---|
| Non-Governmental Organizations | • Non-governmental organizations<br>• Platforms<br>• Networks<br>• Similar associations |
| Consultancy | • Professional consultancies<br>• Law firms<br>• Self-employed consultants |
| Research and Academia | • Think-tanks<br>• Research institutions<br>• Academic institutions |

# Main Categories of Stakeholders

**Organizations representing regional, local, and municipal authorities, other public or mixed sub-national entities**

- Regional, local, or municipal structures
- Other sub-national public authorities
- Transnational associations and networks of public subnational authorities
- Other public or mixed entities, created by law whose purpose is to act in the public interest

**National public authorities, decentralised agencies and other international public authorities**

- National and regional/local governments
- National and regional/local Parliaments
- National and regional/local public authorities or agencies
- Intergovernmental organizations

# Stakeholder Mapping for FTA Consultations

- Mapping is crucial to identify all stakeholder categories pertinent to the relevant policy area. This requires:
  - Categorizing stakeholder groups based on their interest, influence, and expertise in the initiative under consideration
  - Exploring the existence of sectoral social dialogues or relevant committees for consultation regarding the policy area's scope
  - Adhering to data protection considerations when utilizing existing stakeholder lists from prior consultations, networks, expert groups, or the Transparency Register

# Approach to Identify Stakeholders for FTA Consultations

The '*six tests for stakeholder identification*'

- Test 1. Who is directly impacted?
  - Whose daily/weekly lives will change because of this policy?
  - Who cannot easily take steps to avoid being affected by this policy?
  - Who will have to change their behavior because of this policy?
- Test 2. Who is indirectly impacted?
  - Whose daily lives will change because others have been directly impacted by the policy?
  - Who will gain or lose because of changes resulting from this policy?
- Test 3. Who is potentially impacted?
  - In particular circumstances, who will have a different experience as a result of this decision?
  - Are there individuals or groups who will have to adjust their behavior if specific conditions apply?

# Approach to Identify Stakeholders for FTA Consultations

- Test 4. Whose help is needed to make it work?
  - Are there vital individuals or groups in the delivery chain?
  - Who will have the ability to obstruct implementation unless co-operating?
  - Who understands the likely impact of this decision on other stakeholders?
- Test 5. Who thinks they know about the subject?
  - Who has studied the subject and published views on it?
  - Who has detailed know-how and expertise that those implementing the policy should also understand?
  - Are there individuals or groups that will be perceived as knowledgeable on the subject?
- Test 6. Who will show an interest in the subject?
  - Are there organizations, authorities, bodies, or individuals who think they have an interest?
  - Has anyone been campaigning about the issue?
  - Is there anyone publishing or broadcasting views on this subject?

# Stakeholder Consultations - Subjects

# Subject and Objective

- The subject and objectives of the consultation are to be defined by the specific circumstances of each negotiated agreement
- The objectives of stakeholder consultation process for FTA negotiations are to:
  - Activate engagement of a wide range of stakeholders to reflect their experience, priorities, and concerns
  - Identify priority areas and critical issues relating to the possible economic, social, environmental, and human rights impacts in the negotiations
  - Ensure transparency of impact assessments
- Stakeholder consultations also plays a crucial role in supporting quantitative analysis of FTA impact assessment

# Subject –Consultations Support Quantitative Analysis

- By highlighting areas most likely to be impacted:
  - Identify sectors or industries that are likely to experience significant changes or benefit from the trade agreement
  - Consider potential winners and losers in the context of FTA talks
  - Provide recommendations for mitigating negative impacts and maximizing positive outcomes of the FTA
- Develop different liberalization scenarios:
  - Develop various scenarios for trade liberalization based on the outcomes of the reviews
  - Consider phased approaches or different levels of liberalization in key sectors
  - Evaluate the potential economic, social, and political impacts of each liberalization scenario
- Interpret results of econometric analysis :
  - Policy makers integrate the findings from consultations and reviews into economic modeling exercises to make sense of results
  - Consultation feedback enables to refine and adjust liberalization scenarios of modeling results

# Understanding the Incidence of NTMs – Trade in Goods (I)

- Stakeholder consultations during negotiations play a crucial role in assessing the incidence of market access barriers and other regulatory NTMs for goods.
  - Relevant stakeholders e.g., businesses can provide detailed information on existing NTMs, including safety, environmental, or health-related measures like SPS and TBT measures
  - Groups representing consumer interests can highlight NTMs that affect product safety, quality, and adherence to environmental standards
  - Insights on implicit market access barriers like informal practices, hidden regulations, or non-transparent procedures, discretionary decision making that hinder the smooth flow of goods

# Understanding the Incidence of NTMs – Trade in Goods (II)

Stakeholders, especially businesses engaged in international trade, can offer insights into:

- Customs procedures
  - Understanding the efficiency of customs processes is crucial for reducing delays and ensuring a smooth flow of goods across borders
- Issues with documentation and certification processes
  - E.g., labeling requirements, product testing, etc.
- Promotes clarity by highlighting
  - Areas where regulations are unclear or where businesses face difficulties in understanding and complying with requirements

# Understanding the Incidence of NTMs – Trade in Services (I)

- For services, consultations provide an insight into market access barriers
- Financial sector regulations:
  - Understand the incidence of existing barriers to cross-border investment in the financial sector
  - Assess the experience of navigating regulatory frameworks for financial transactions and identify areas of harmonization that would facilitate trade
- On-ground issues and barriers to Labor Mobility:
  - Assess restrictions on the movement of professionals, skilled workers, and other labor categories across borders
  - Examine visa and work permit requirements, duration limitations, and any other barriers hindering the free movement of labor

# Understanding the Incidence of NTMs – Trade in Services (III)

- Issues relating to mutual recognition of certificates:
  - Discuss the problems faced due to lack of harmonization of professional and technical standards
- Market Access and National Treatment:
  - Understand any discriminatory practices that may disadvantage foreign service providers compared to domestic counterparts
  - Identify areas where transparency and predictability is needed and desired
- Capacity Building and Technical Assistance:
  - Facilitate the exchange of information and best practices
  - Identify areas where capacity building is required

# Understanding the Incidence of NTMs – Horizontal Issues (I)

- Investment Barriers:
  - Identify and analyze obstacles or restrictions on FDI that businesses experience
  - Assess legal, bureaucratic, or financial impediments that could affect the free flow of capital across borders
    - Lack of transparency in the regulatory environment can make it challenging for investors to understand the criteria and timeline for obtaining necessary approvals
    - Informal practices, such as favoritism towards local businesses or discriminatory treatment of foreign investors, can hinder fair competition
    - Corrupt practices, such as bribery, may disproportionately affect foreign investors
    - Unpredictability of tax policies may not be immediately evident
    - Lack local networks may cause foreign investors face difficulties in building relationships and accessing business opportunities

# Understanding the Incidence of NTMs – Horizontal Issues (II)

- Barriers to Access to Public Procurement:
  - Identify if foreign businesses face unfair obstacles when competing for public contracts
  - Examine the experience of businesses in navigating existing discriminatory practices in government procurement in foreign markets with respect to:
    - corruption risks and unfair practices within the procurement system
    - Only some tenders being published publicly
    - Tender criteria is unclear and discriminatory – e.g., short timelines which are difficult for foreign suppliers to cater to
    - Language barriers if tenders published only in local language or translations are poor and uploaded much later
    - Lack of transparency in procurement data with respect to past procurement value and volume
    - Interoperability issues – e.g., some countries might not accept digital signatures
  - High incidence of abovementioned practices hinder fair competition and consultations provide an insight into the depth and breath of issues

# Understanding the Incidence of NTMs – Horizontal Issues (III)

- Competition Policy (Including Subsidies):
  - Assess the impact of subsidies on competition for businesses within the market
  - Identify and address any anti-competitive behavior, whether from private entities or government-backed enterprises
- Special Conditions or Privileges Given to or by State-Owned Enterprises:
  - Examine any preferential treatment or advantages granted to state-owned enterprises (SOEs) that impacts firms' business in the country
  - Assess the competitive implications of such privileges on private enterprises
  - Present the experiences related to transparency and accountability of state-owned enterprises to ensure a fair business environment

# Understanding the Incidence of NTMs – Horizontal Issues (IV)

- Restrictions on E-commerce:
  - Understand the experience of existing or perceived digital trade restrictions with respect to
    - Cross-Border Data Transfer Restrictions – e.g., Data localization requirements
    - Digital Service Taxes
    - Content Restrictions and Censorship
    - Restrictions on Digital Payments
    - Government Surveillance and Access to User Data
  - Identify opportunities for enhancing cross-border e-commerce and digital trade
    - Current and emerging trends within their sectors including consumer preferences, technology adoption, and evolving business models
    - Legislation and regulations affecting various industries
    - Societal trends and shifts in public opinion that may influence business practices
    - Economic trends, policy directions, and priorities of the government

# Subject – Environment

- Consultations can facilitate a screening and scoping exercise by identifying:
  - the key environmental issues to sustainability in the FTA member countries
  - the regions and sectors most impacted by these issues
  - the components of a potential agreement that are likely to produce the greatest impact (positively and negatively) on these issues, regions, and sectors
  - the existing environmental regulatory framework of the FTA member countries and its implementation
- Stakeholder consultations can complement the quantitative estimates to explain the potential environmental impacts from the FTA
- Additionally, countries can examine the potential interaction between the FTA and the multilateral environmental agreements (MEAs) to which any of the FTA member countries is a signatory

# Subject – Social Aspects and Labour

- Stakeholder consultations can help in understanding the social and labour landscape of a foreign markets
  - Quality of jobs
  - Wage levels, wage gaps, and the adequacy of compensation for different job categories
  - Working conditions including workplace safety, hours of work, and the overall work environment
  - Informal labor force issues including lack of job security, limited access to social protections, and informal contractual arrangements
  - Prevalence of contract labor
  - Ease or challenges associated with enforcing employment contracts
  - Existing social protection system
  - Efforts to combat child labor
  - Level of compliance to international standards
- Further, these consultations can take suggestions on how an FTA to foster businesses to grow while ensuring positive social externalities
  - They can comment on the readiness firms to comply with such provisions of an FTA

# Subject – Human Rights

- Since quantification of the impacts associated with human rights is often difficult, stakeholder consultations play a critical role in assessing FTA impact
- Stakeholder consultations can be foundation in identifying
  - Labor Rights Violations
  - Forced Labor and Human Trafficking
  - Discrimination and Equality Issues
  - Violation of Social and Economic Rights
  - Environmental and Indigenous Rights Violations
  - Access to Justice
  - Freedom of Expression
- Effective and meaningful stakeholder engagement is a crucial element of a 'rights-based approach' to human rights impact assessment
  - FTA process in which human rights principles are used to inform and guide the design of the process as well as the analysis that takes place under it.

# Consultation Types and Mechanisms

# Types of Consultations

- There are three broad consultation types:

  - Full Public Consultations
  - Targeted Consultations
  - Confidential Consultations

# Full Public Consultations

**Full public consultation should be:**

- with all affected parties
- transparent and open to the public

**These are appropriate when:**

- transparency and public accountability of decision making is the most important priority
- the integrity of the decision process will not be compromised by early public scrutiny

# Targeted Consultation

**Targeted consultation should be:**

- With parties most directly affected by the proposal
- Made publicly available

**When is it appropriate:**

- When an affected group of stakeholders is in a small or well-defined geographical area or business sector
- When consultation should be contained so that effort is not wasted in involving unaffected parties

# Confidential Consultation

## Confidential consultation should be:

- With all affected parties, as far as is possible given the confidentiality concern
- Done discreetly, such as through a commercial-in-confidence process
- Done on a case-by-case basis

## When is it appropriate?

- When the sensitivity of the issue requires to assess public sentiment or inform affected entities discreetly
  - without needlessly triggering widespread concern, anger or confusion among affected households or businesses

# Consultation Mechanisms

- There are various mechanisms available to conduct stakeholder consultations during FTA negotiations
- Some key ones include:
  - Survey and Questionnaires
  - Interviews
  - Focus Groups and Roundtables
  - Workshop and Seminars
  - Public Meetings
  - Written Submission and Comments
  - Civil Society Dialogue
  - FTA Website
  - Advisory Committee

# Survey and Questionnaires

- Surveys and questionnaires are widely used tools in stakeholder consultations FTAs to systematically gather quantitative information as well as qualitative inputs like opinions and feedback from a broad range of stakeholders
- These allow for a structured approach to understanding stakeholder perspectives and standardized data collection and analysis

| Pros | Cons |
| --- | --- |
| • Efficient for collecting large amounts of data<br>• Standardized format allows for easy comparison and analysis<br>• Can reach a wide audience | • Limited depth of information compared to other methods<br>• May not capture the richness of qualitative insights<br>• Low response rate |

# Interviews

- Interviews are another form of consultation when engaging with the identified stakeholders
- These are conducted over telephone, virtual and face-to-face meetings will constitute the most direct form of stakeholder engagement
- Conducting one-on-one or group interviews with key stakeholders provides an opportunity for in-depth discussions and deeper understanding of their perspectives

| Pros | Cons |
|---|---|
| • In-depth understanding of individual perspectives<br>• Flexibility to explore follow-up questions<br>• Personal connection with stakeholders | • Time-consuming, especially with a large number of stakeholders<br>• Potential for interviewer bias |

# Focus Groups and Roundtables

- Brings together a small, diverse group of stakeholders for a facilitated discussion can help uncover shared concerns, opinions, and ideas
- Provides an opportunity for consensus building
- Ensure adequate number and knowledge of participants at FGDs

| Pros | Cons |
| --- | --- |
| • Facilitate open discussions and idea generation<br>• Capture group dynamics and consensus<br>• Opportunity for immediate feedback | • Potential for dominant voices to overshadow others<br>• Groupthink may influence responses |

# Workshops and Seminars

- Interactive sessions where stakeholders can participate in activities, discussions, and collaborative problem-solving exercises to explore and express their views
- The priority stakeholders may include
  - Organizations that administer trade and trade-related matters
  - The private sectors deeply involved in trade with potential FTA partners
  - Social groups likely to receive significant impact from the FTA

| Pros | Cons |
|---|---|
| • Encourage collaboration and team building<br>• Generate creative solutions through interactive activities<br>• Real-time engagement with stakeholders | • Time and resource-intensive<br>• Difficult to manage in large settings |

# Public Meetings

- Open forums where stakeholders can voice their opinions, ask questions, and engage in discussions with decision-makers and project teams
- Facilitate direct interaction between negotiators and the public, providing a platform for open dialogue and transparency
- They allows for real-time engagement and the exchange of ideas

| Pros | Cons |
| --- | --- |
| • Open and transparent communication<br>• Inclusivity, allowing diverse voices to be heard<br>• Builds trust and community engagement | • Limited time for individual contributions<br>• Potential for disruptions and conflicts |

# Written Submission and Comments

- Allows stakeholders to provide detailed feedback in a structured manner
- A dedicated online platform or tool is often created for stakeholders to submit their written comments, suggestions, or concerns regarding the proposed FTA
- Clear guidelines and templates may be provided to stakeholders for standardized data collection
- There is typically a specific period during which stakeholders can submit their written comments

| Pros | Cons |
|---|---|
| • Allows for detailed, structured feedback<br>• Accommodates a wide range of perspectives | • May not capture real-time concerns<br>• Relies on stakeholders' willingness to provide written feedback |

# UK's Call for Input for FTA with GCC

In October 2021, the UK initiated a call for input for FTA negotiations with Gulf Cooperation Council (GCC). Written communication was sought to seek input on which aspects of UK's current trading arrangements with the GCC should be looked at to improve or amend. This information was to help inform UK's approach for starting negotiations on a free trade agreement (FTA) with the GCC.

The call received 147 responses. All responses were be submitted via the online consultation platform. The stakeholders were provided with an Information note for the consultation relating to future trade negotiations between the UK and Gulf Cooperation Council (GCC).

# Civil Society Dialogue

- Civil society organizations use dialogues to advocate for social issues, influencing negotiations to consider factors such as labor rights, environmental protection, and human rights
  - Non-governmental organizations (NGOs), advocacy groups, community organizations, and other entities
- The FTA team and relevant ministries need to regularly meet with civil society to discuss the upcoming trade policy
  - Civil society dialogues contribute to raising public awareness about the implications of FTAs

| Pros | Cons |
| --- | --- |
| • Ensures a diverse range of voices are heard<br>• Enhances transparency and inclusivity<br>• Inclusion of specialized knowledge and expertise | • Complex and time-consuming<br>• Fragmented views<br>• Resource intensive<br>• Highjack agenda for specific interests |

# Civil Society Dialogue on the Trade Sustainability Impact Assessment (SIA)

## EU-India Free Trade Agreement Negotiations

The European Commission aims to have a transparent and accountable trade policy based on consultations with all parts of European civil society. DG Trade's Civil Society Dialogue involves regular, structured meetings to discuss trade policy issues.

The EU organised three civil society dialogues as a part of its stakeholder consultations for undertaking a sustainability impact assessment of the EU-India Free Trade Agreement. In October 2023, it undertook to the final round of the meeting with the purpose to present to EU civil society organizations the draft final report on the Trade Sustainability Impact Assessment (SIA) in support of negotiations with India.

The study team presented findings from the analysis, including three case studies, conclusions, and recommendations, as well as an overview of consultation activities. The study team encouraged participants to look at the draft Final Report package published on DG TRADE website1 and project website2 and indicated that comments can be submitted by 3 November 2023.

The dialogue also apprised the participants with the updates on the ongoing negotiations.

# Example – The EU 2024 Calendar for Civil Society Dialogue Meetings

| Quarter (2024) | Title |
|---|---|
| Q1 | Key Environmental aspects ex-post Evaluation: inception report |
| | Stakeholder meeting on the establishment of a multilateral investment court** |
| | IPI |
| | EU-Latin America Trade relations |
| | WTO MC13 preparatory meeting |
| | WTO MC13 debrief |
| | Review of the FDI screening Regulation |
| | ASEAN |
| Q2 | India |
| | EU-US Trade and Technology Council |
| | EU-Africa trade and investment relations |
| | Due diligence/forced labour |
| | Ex post evaluation of the EU SADC EPA |
| Q3 | Key Environmental aspects ex-post Evaluation: final report |
| | Meeting on EU Trade Policy with Sabine Weyand |
| | Trade defence instruments - annual report 2023 |
| Q4 | EU-Japan EPA ex-post evaluation: Inception report |



Source: [European Commission, 2024]

# A Dedicated FTA Website

- A dedicated project website can serve as the primary platform for online consultations and regularly informing stakeholders about the progress of the FTA
- The website can provide all relevant information and reports
  - Draft impact assessment reports
  - Minutes of Civil Society Dialogues and the local workshop
  - Relevant background information and newsletters
  - Questionnaire functionalities for the online stakeholder consultation
  - Publication of stakeholder input
  - Dedicated email address for inputs and queries

| Pros | Cons |
| --- | --- |
| • Broad reach and real-time engagement<br>• Interactive and dynamic communication<br>• Accessibility and convenience for participants | • May not be suitable for all demographics<br>• Information security concerns may arise<br>• Technical barriers for some stakeholders |

# Example - SIA Website – EU-SADC EPA

## Sustainability Impact Assessment: Angola's Accession to the EU-SADC EPA

Home About Resources Consultations Contact

### The pillars of the SIA

The SIA consists of two equally important and complementary components:

- a robust analysis of the potential economic, social, human rights and environmental impact (both negative and positive) that Angola's accession to the EU-SADC EPA could have in Angola or the EU (including the EU's outermost regions) - this section provides more details on these analysis; and
- a continuous and wide-ranging consultation process to ensure a high degree of transparency and the engagement of all relevant stakeholders in the conduct of the SIA.

### Economic impact analysis

The economic impact analysis provides the starting point for the SIA, as many of the other effects are consequences of the agreement's economic effects. The analysis is not restricted to changes in Angola's and the EU's exports and imports but covers a broad range of economic factors.

### Social impact analysis

The social analysis will seek to respond to the question of how Angola's accession to the EU-SADC EPA may affect the situation on gender equality, the labour market, job quality, welfare, rights of consumers, and public policies and services, such as social protection, education, and health-care.

### Human rights analysis

The human rights analysis will respond to the question of how Angola's accession to the EU-SADC EPA may affect the human rights situation in Angola or the EU. The assessment will be carried out by taking into account the EC human rights impact assessment guidelines as well as using the Better Regulation Toolbox.

# Advisory Committee

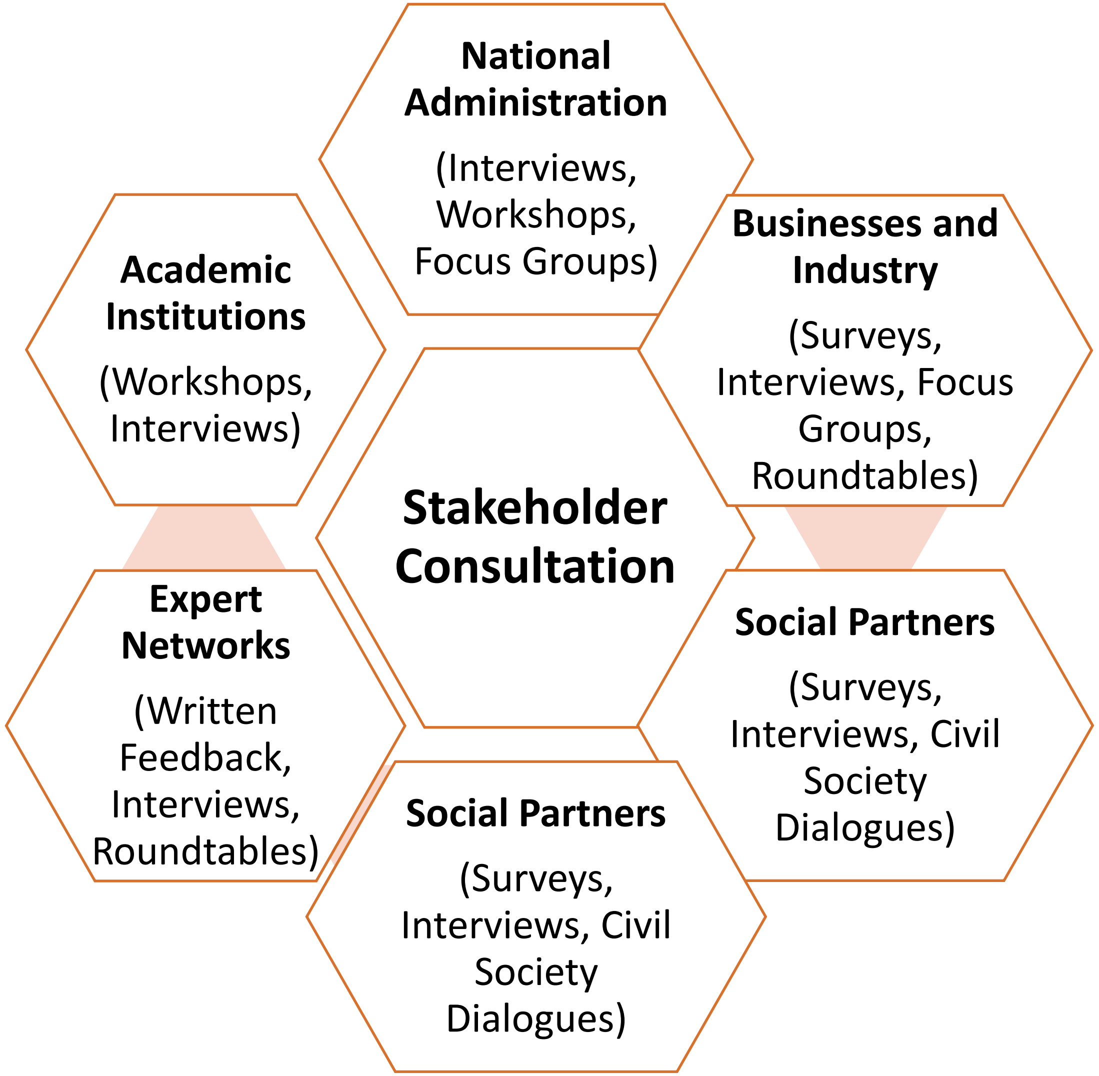
- Establish committees comprising representatives from various stakeholder groups to provide ongoing input
- Analyze and assess specific issues related to the FTA negotiations
- Provide recommendations or suggestions to the government or relevant authorities involved in the FTA negotiations
- Serves as a structured feedback mechanism

| Pros | Cons |
|---|---|
| • Continuous engagement with diverse perspectives<br>• Expertise from various stakeholder groups | • Requires careful selection for representation<br>• May add complexity to decision-making processes |

# Example – US Advisory Committee for Trade Policy and Negotiations (ACTPN)

- Scope and objectives:
- The ACTPN is a statutory non-discretionary trade advisory committee established to provide overall policy advice to the U.S. Trade Representative on matters arising in connection with the development, implementation, and administration of the trade policy of the United States including: (1) negotiating objectives and bargaining positions before entering into trade agreements; (2) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and (3) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.
- The U.S. Trade Representative anticipates sharing the ACTPN's advice with other relevant agencies interested in the subject matter.

# Consultative Approach: Summing up




Source: [UNCTAD 2021]

# Informing FTA Negotiations

# Purposes and Tools of Consultation in Different Stages of the FTA Cycle (I)

## Stage 1: Preparation and FTA Formulations

- Purpose of consultations:
  - Obtain the views of the stakeholders
  - Identify potential conflict lines
  - Gather additional information
  - Verify consistency and acceptance of the proposed FTA regulations
  - Provide information to the affected parties about the proposed FTA
- Tools:
  - Useful tools and methods include those that support communication, discussion, development and expression of opinions from citizens and interest groups:
    - public hearings, informal consultation, circulation of regulatory proposals for public comment, public notice-and comment, Advisory Board, e-consultation, focus groups

# Purposes and Tools of Consultation in Different Stages of the FTA Cycle (II)

## Stage 2: Implementation and Delivery

- Purpose of consultations:
  - Ensure that domestic laws and regulations are consistent with the obligations and commitments outlined in the FTA
  - Address concerns and challenges arising from the FTA implementation
  - Identify areas where government officials, businesses, and other stakeholders may require additional training or support to comply with FTA requirements
  - Establish mechanisms for monitoring and evaluating the impact of the FTA on various sectors of the economy
  - Establish procedures for dispute resolution in case issues arise during the implementation phase.
  - Maintain open lines of communication with the public to keep them informed about the progress of the FTA implementation

# Purposes and Tools of Consultation in Different Stages of the FTA Cycle (III)

## Stage 2: Implementation and Delivery

### Tools and methods:

- **Public Consultations** – Seek input and feedback from the public through consultations, town hall meetings, and other forums
- **Technical Assistance Programs** – Provide technical assistance to government officials and businesses to facilitate compliance with FTA provisions
- **Online Portals and Information Sharing** – Establish online platforms for sharing information related to the FTA, including updates, resources, and contact points for inquiries
- Use various communication tools to disseminate information, including official websites, press releases, and public consultations

# Purposes and Tools of Consultation in Different Stages of the FTA Cycle (IV)

## Stage 3: Post-Implementation Assessment

- Purpose of consultations:
  - Review and evaluate the efficiency, effectiveness and cost-effectiveness of the regulation
  - Monitor and assess impact of FTA on various sectors and gather feedback
  - Assess whether the expected benefits and outcomes of the agreement are being realized
  - Monitor global and domestic economic conditions and assess the FTA's resilience to changes in circumstances
  - Share information on the achievements and challenges faced during the post-implementation period
- Tools:
  - Periodic review, surveys, opinion polls, e-consultation, advisory board, expert panel, focus groups

# Analysing the Data (I)

Concluding the consultation process necessitates a thorough analysis of input from both stakeholders and the public

A structured approach is imperative for assimilating diverse submissions received through various channels during a comprehensive consultation

Consideration of numerous factors is crucial to ensure a robust analysis within the constraints of time and resources

Given the susceptibility of qualitative data to bias, a systematic analysis is vital for mitigation

# Analysing the Data (II)

- Two main tiers of consultation data/results analysis exist:
  - **Foundational analysis**, suitable for those with a proficient grasp of data literacy.
  - **Advanced analysis**, intended for individuals with specific skills employing specialized software (e.g., STATA, NVivo) to facilitate tasks such as campaign detection, entity recognition, computer-aided analysis of open-text responses, correlations, and cluster analysis

# Foundational Analysis

- Foundational statistical concepts encompass Mean, Median, Mode, Standard Deviation, and Percentage
- Analyzing closed questions yields straightforward data, like '67% of respondents believing the legislative framework delivers benefits.'
- However, such information lacks nuance for policymakers unless viewed through stakeholders' perspectives. For instance, 'While 74% of industry respondents perceive benefits, only 32% of citizens share this sentiment.'
- To ensure accuracy in contribution analysis, always include the number of respondents alongside presented percentages

# Advanced Analysis

- Note that the respondents to a public consultation are self-selected, which means that the responses are not drawn from a representative sample
  - Basic analysis thus provides limited added value to results from a self-selecting (i.e. non-randomly selected) sample and can potentially be misleading
- Analysis beyond the 'basic' form can be undertaken using advanced techniques
  - Example - **weighting of data** to make answers count for more or less to ensure they are representative
    - One can only use this technique if you have a good understanding of the demographic make-up of the population and returns

# Interpretation of Data

- It is essential to provide the right context of the consultation when presenting the outcome, including information on who participated and whom respondents represent
- Distinction should be made between the different stakeholder categories that contributed to the consultation
- Stakeholder Credibility Test:
  - Longevity: has the stakeholder organization been established long enough to acquire the wisdom in the policy field?
  - Expertise: how well does it know the subject matter?
  - Representativeness: who exactly does it represent and how well does it do so?
  - Track record: how useful/credible has its contribution been in the past?
  - Reputation: how seriously do other people take this organization?

# Informing Trade Negotiations – Factual Summary Report

- For each consultation activity, it is good practice to publish factual information on the input received from stakeholders to ensure transparency
- The purpose of factual summary report on the stakeholders' input is to give a first, succinct overview on 'what has been said'
- Should be neutral, as it precedes the in-depth analysis and interpretation of consultation results
- Basic statistics on the number of the participants to the consultation activities, their country of origin, their stakeholder type and other relevant basic figures should be provided
- The factual summary following a public consultation should contain the following main elements:
    - A concise and balanced overview of contributions received
    - Factual information on inputs received
    - Neutrality
    - Aggregation at an appropriate level
    - Information on the process
    - Information on results/data processing and security
    - Any necessary disclaimer

# Informing Trade Negotiations – Synopsis Report

- The report aims to:
  - inform policymaking on the outcome of all consultation activities
  - inform stakeholders on how their input has been incorporated
- The synopsis report covers all
  - consultation activities
  - ad hoc contributions directly linked to the preparation of the policy
  - evaluation or fitness check
  - information on the input received through the 'call for evidence'
- It summarizes the results of all consultation activities and gives both a qualitative and a quantitative analytical overview of these results
- The synopsis report should be prepared as soon as possible after the last consultation activity

# Informing Trade Negotiations – Explanatory Memorandum

- For legislative proposals, the explanatory memorandum should explain how far the main contributions have been considered in the draft policy initiative
  - Explain the overall consultation strategy and add reference to the factual summary and synopsis report
  - Highlight the link between respondents' inputs and the impact assessment that justifies and explains the options proposed
  - Report why certain options were discarded (in particular when those were widely supported by respondents)
  - Be transparent about minority and dissenting views

# Best Practices for Stakeholder Consultations

# Best Practice Principles

- Conducting stakeholder consultations for FTA negotiations ensures transparency, inclusivity, and broad-based support for the agreement
- Early and Continuous Engagement:
  - Begin consultations early in the negotiation process to allow sufficient time for meaningful input
  - Maintain ongoing communication with stakeholders throughout the negotiation phases
- Identify and Prioritize Stakeholders:
  - Clearly identify and categorize stakeholders, including business groups, civil society organizations, government agencies, and affected industries
  - Prioritize engagement with key stakeholders who may be significantly impacted by the FTA
  - Expand stakeholder mapping beyond the obvious groups – pinpoint and involve target groups at risk of exclusion or underservice

# Best Practice Principles

- Customize Outreach Strategies:
  - Tailor communication strategies to each stakeholder group, considering their specific interests, concerns, and expertise
  - Utilize a variety of communication channels such as public forums, online platforms, and written submissions
- Transparency and Information Sharing:
  - Provide clear and accessible information about the negotiation process, goals, and potential impacts
  - Share draft texts and negotiating proposals, where possible, without compromising sensitive information
- Establish Feedback Mechanisms:
  - Establish effective mechanisms for stakeholders to provide feedback, comments, and suggestions
  - Encourage open dialogue through public hearings, consultations, and roundtable discussions

# Best Practice Principles

- Build Capacity of Stakeholders:
  - Provide relevant stakeholders with the necessary information and resources to understand the potential implications of the FTA
  - Offer capacity-building sessions to enhance stakeholders' ability to participate constructively in the consultations
- Address Concerns and Questions:
  - Be prepared to address concerns and questions raised by stakeholders promptly and transparently
  - Consider establishing a dedicated point of contact for stakeholder queries
- Ensure Inclusivity and Diversity:
  - Ensure representation of diverse perspectives, including those of marginalized groups, women, and small businesses
  - Use inclusive language and avoid jargon to make information accessible to a wider audience

# Best Practice Principles

- Record and Analyze Input:
  - Systematically record and analyze the input received from stakeholders
  - Provide feedback on how stakeholder input has influenced the negotiation process
- Make Consultations an Iterative Process:
  - Use stakeholder consultations as an iterative process, allowing for adjustments in response to feedback received during different stages of negotiations
- Post-Negotiation Engagement:
  - Continue engagement with stakeholders after the negotiations to update them on the final agreement and its implementation
  - Establish mechanisms for ongoing dialogue as the agreement is implemented

# Best Practice Principles

- Ensure Consultations are not burdensome:
  - Stakeholders have limited time to devote to the consultation process
  - Timeframes for consultation should be realistic
  - Avoid holiday periods and the end of the financial year
  - Be aware of the burden that the government as a whole may be placing on stakeholder groups
    - If the concerned stakeholders are subject to frequent consultation efforts, try consulting jointly with other agencies to minimize the burden

# Thank you for your attention!