

Designing and Securing a Mandate and Stakeholder Consultations

Enhancing the contribution of PTAs to
inclusive and equitable trade:

Mongolia

19-21 April 2017

Ulaanbaatar



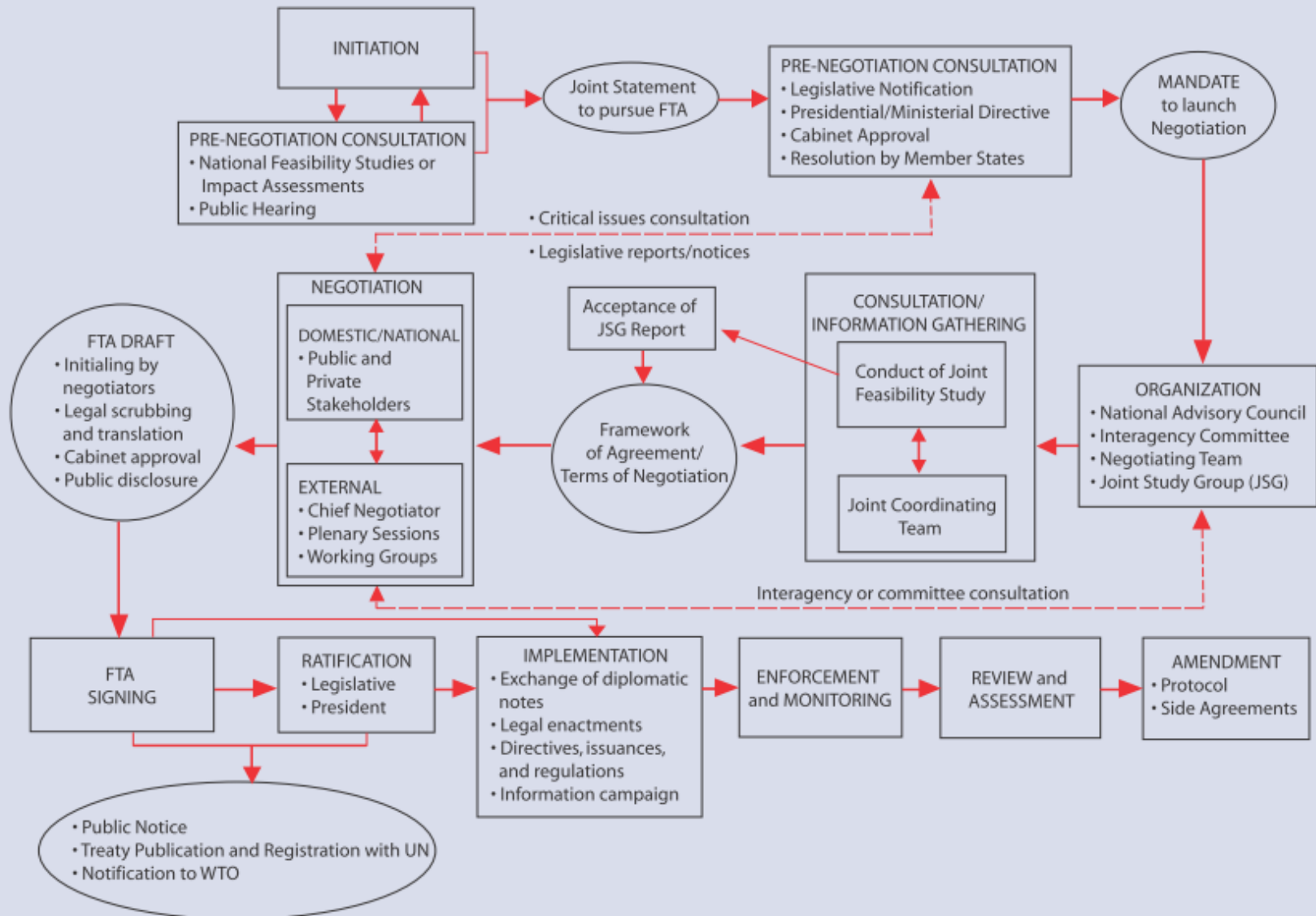
Workshop outline

- Trade, growth and development
- Trade protection and liberalization: from efficiency to meeting social objectives
- PTAs and multilateral trading system and PTAs in Asia-Pacific
- Trade reforms and PTAs of Mongolia
- Towards PTA's contribution to inclusive and equitable trade
 - Mongolia experience so far
- **Getting a PTA done:**
 - **Stakeholders**
 - **Negotiation**
 - Implementation
- What if the expectations are not met?

**DESIGNING AND SECURING A MANDATE AND STAKEHOLDER
CONSULTATIONS**

SESSION 9

Model FTA Process



FTA = free trade agreement, JSG = Joint Study Group, UN = United Nations, WTO = World Trade Organization.
Source: ADB Staff.

Preferential Trade Agreements

Who?

What?

When?

How?

Why?

Focus on two key steps

- Pre-negotiation consultations
- Negotiations

Consultation Steps

- Before starting the negotiations
 - Study the benefit of engagement
 - Inter-governmental consultation – discussion on study
- Decide to start negotiations – internal process
 - Mandate
 - Approach
 - Time frame
- Start negotiations
 - Consult private sector

Negotiation Consultations

- Legal Text
 - Inter-government
 - Regulators
 - Law ministry or lawyers
 - Think tanks
- Request and offers
 - Inter-government
 - Regulators
 - Private sector
 - Civil society

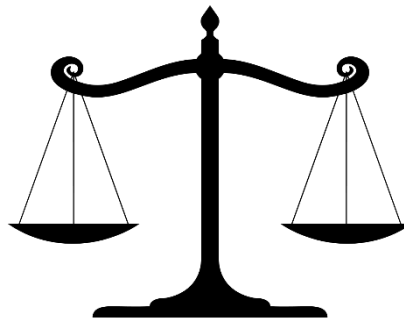
Negotiation Process

DOMESTIC

- Stakeholder consultations
 - Public/Private sector
 - Civil society
 - Producers
 - Consumer groups
- Alignment with domestic policy

EXTERNAL

- Chief negotiators
- Sub-teams at plenary sessions
- Working groups for specialized and technical issues



STAKEHOLDER CONSULTATIONS

Who are Stakeholders?

Within the government

- Parliament
- Executive agencies
 - Cabinet
 - Ministries/Departments
 - Agencies
 - Regulators
- Provincial or local government
- Municipality and other agencies

Stakeholders bring to the table:

Commercial interests

Social considerations

Economic impact

Environmental considerations

Policy issues

Legal dimensions

Public opinion, morals and cultural values

Outside the government

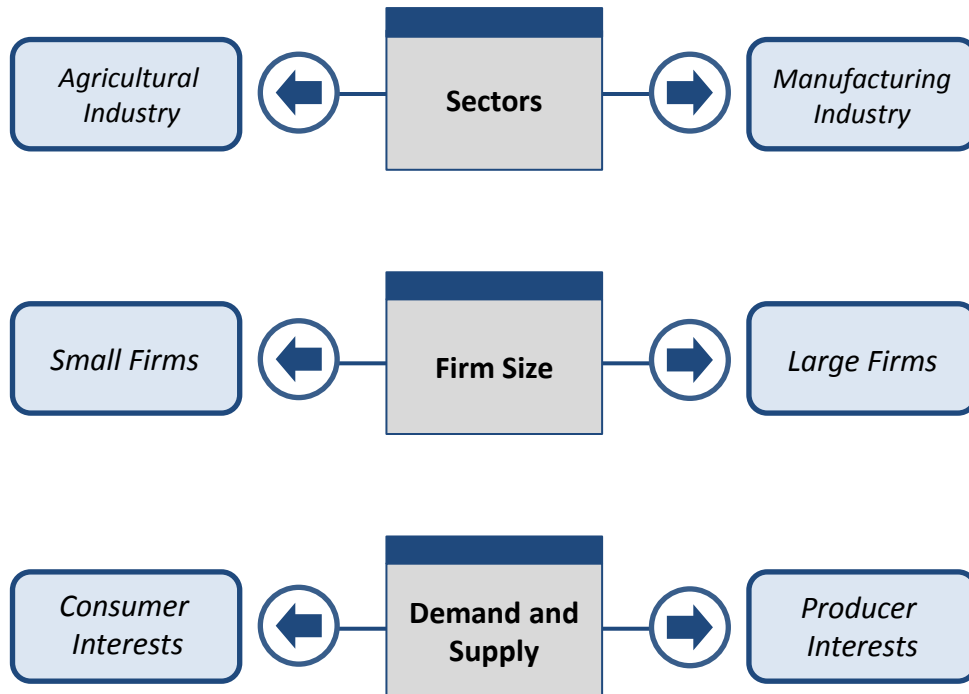
- Private sector
 - Companies
 - Persons
 - Associations
- Chambers
- Civil Society Organizations
- Think tanks / research organizations
- Historically marginalized groups

Stakeholder concerns

- Commercial impacts
- Policy outcomes
- Bureaucratic changes
- Political consequences
- Legal precedents
- Macroeconomic consequences
- Environmental changes
- Social reforms

Managing Stakeholder interests

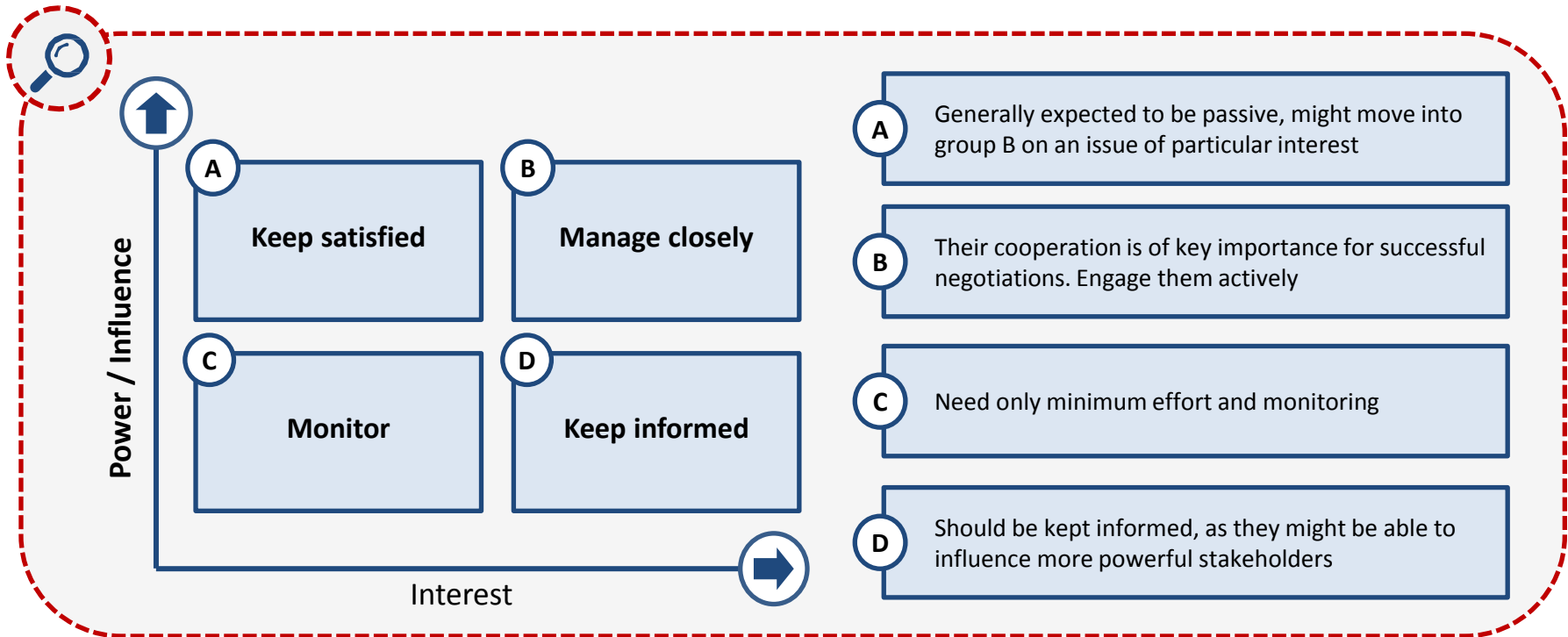
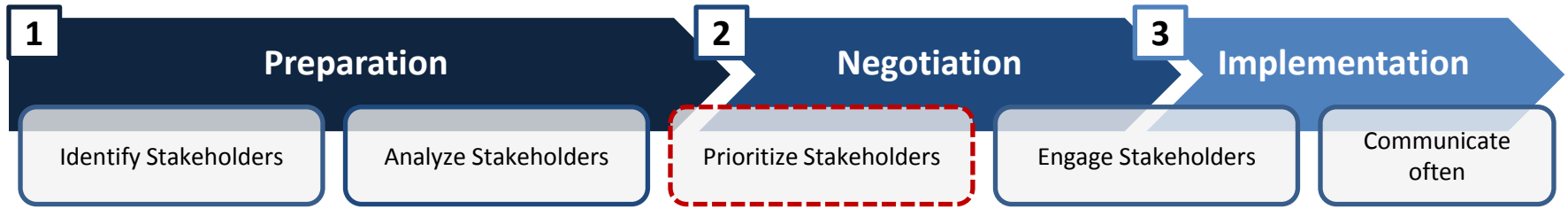
Complex Web of Domestic Interests



Considerations

- With special-interest groups free to rent-seek, PTA outcomes could be less efficient
- Especially actors who will suffer losses have strong incentive to lobby
- Structural change in PTA can be facilitated through a compensation mechanism
- Compromises will have to be made across groups
- Importance of establishing channels of communication with different groups before and during negotiations

Prioritizing Stakeholders



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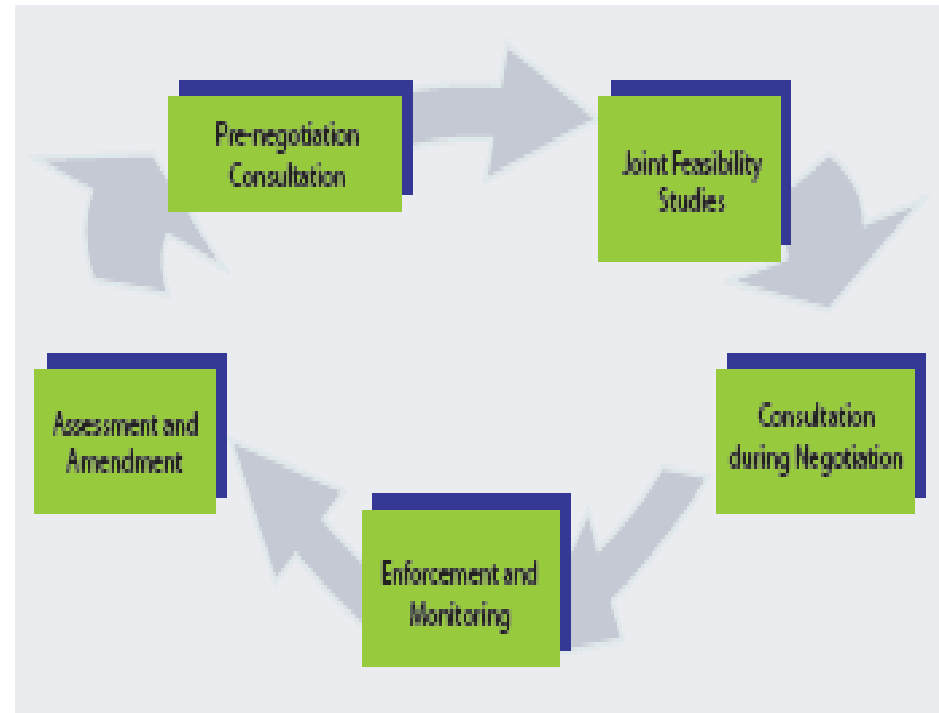
EXTERNAL

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NEGOTIATIONS

WHAT HAPPENS IN NEGOTIATIONS?

- Content
- WTO framework
- Process
 - Negotiation rules
 - Rounds
- Type of agreements
- Continuing consultations



WHO approves the mandate and who NEGOTIATES?

- MANDATE ?
- - Government approval to proceed with the formal negotiations, authority to represent the Government
- -may change along the way

- Could be different entities, depending on a country?
 - Ministry of Commerce (Trade)
 - Ministry of Finance
 - Ministry of Foreign Affairs
 - Sectoral ?
- Need to build a STRONG negotiating TEAM, chief negotiator, working groups
- Management of the process

Box 3.5: Typical Composition of Working Groups in the Negotiating Team

Chapter/Provision	Ministry/Agency (as chair)
Goods (other than agriculture)	Trade and industry/Foreign affairs/Tariff commission
Rules of origin	Trade and industry/Customs
Agriculture and sanitary and phytosanitary measures	Agriculture
Services and investment	Finance/Economic affairs/Investment
Competition policy	Competition bureau/Fair trade commission
Technical barriers to trade	Standards, industry regulators
Trade rules and facilitation	Trade/Customs
Government procurement	Finance
Cooperation and development	Foreign affairs
Dispute settlement, institutional provisions, and intellectual property	Attorney general/Justice department/ International law/Intellectual property bureau

A negotiating team

- Trade policy decisions have economy-wide impacts on resource distribution
 - Should be taken at the “top” of the economic management structure
- President/Cabinet offices should be closely involved in coordination
 - Negotiations normally led by a Trade/Foreign Ministry
 - Plus well-briefed, well-integrated teams from ministries whose ‘clients’ include the principal stakeholders
 - Industry, agriculture, mining, finance (services)
 - Some involvement from e.g. Justice ministry
- Inter-Ministerial coordination can be fragile without firm direction at the highest level

Roles in the team: leader

- For trade agreement negotiators it is all about text
 - Forget the idea of bargaining on e.g. duties: we know pretty well what will happen there
 - The ‘lead’ negotiator should be the person who negotiates the initial “chapter headings” draft
 - Probably drawing on a model(s) used elsewhere
 - The lead negotiator should always have a strong sense of where each part of the text ‘stands’ at any point (difficult and time consuming)
 - He/she should rely on team members drawn from different agencies to take a lead in each chapter negotiation
 - Chapters will probably be negotiated concurrently

Training for negotiators

- Negotiation of a comprehensive agreement, even in a bilateral context, is inherently complex
 - There is no training like experience
 - Including WTO experience
 - Most of the total time taken should be devoted to gathering data and consulting with stakeholders
 - This is a job for the negotiators themselves; face-to-face contact with stakeholders is the best way to learn and to spread understanding of the objectives, benefits, risks
- The biggest challenge is keeping good people in their jobs throughout the talks

Reviewing the agreement

- Although negotiations take... as long as they take, the process of review and 'legal scraping' must not be skipped or compressed too much
 - Review is the task of ensuring coherence with goals and sufficient detail on obligations etc.
 - A job for the team leader and each chapter-lead (first) in conjunction with stakeholder representatives (second)
 - Legal-scraping means ensuring accuracy and compliance with requirements for ratification e.g. by parliament
 - Legal-scraping should not be left until after the talks finish. It should be more or less continuous with the talks.
- The Parties review of the agreement is an essential process that normally follows a year or more after ratification

Coordinating

- Bargaining is a very small part of trade negotiations. Negotiators devote more resources to
 - Discovery (collecting data, evaluating options)
 - Coordination among government agencies, including with sub-national governments
 - Coordination with private sector ‘stakeholders’
 - Legislation and ratification (including legal ‘scraping’ of texts)
 - Keeping parliaments informed
 - Implementation and review

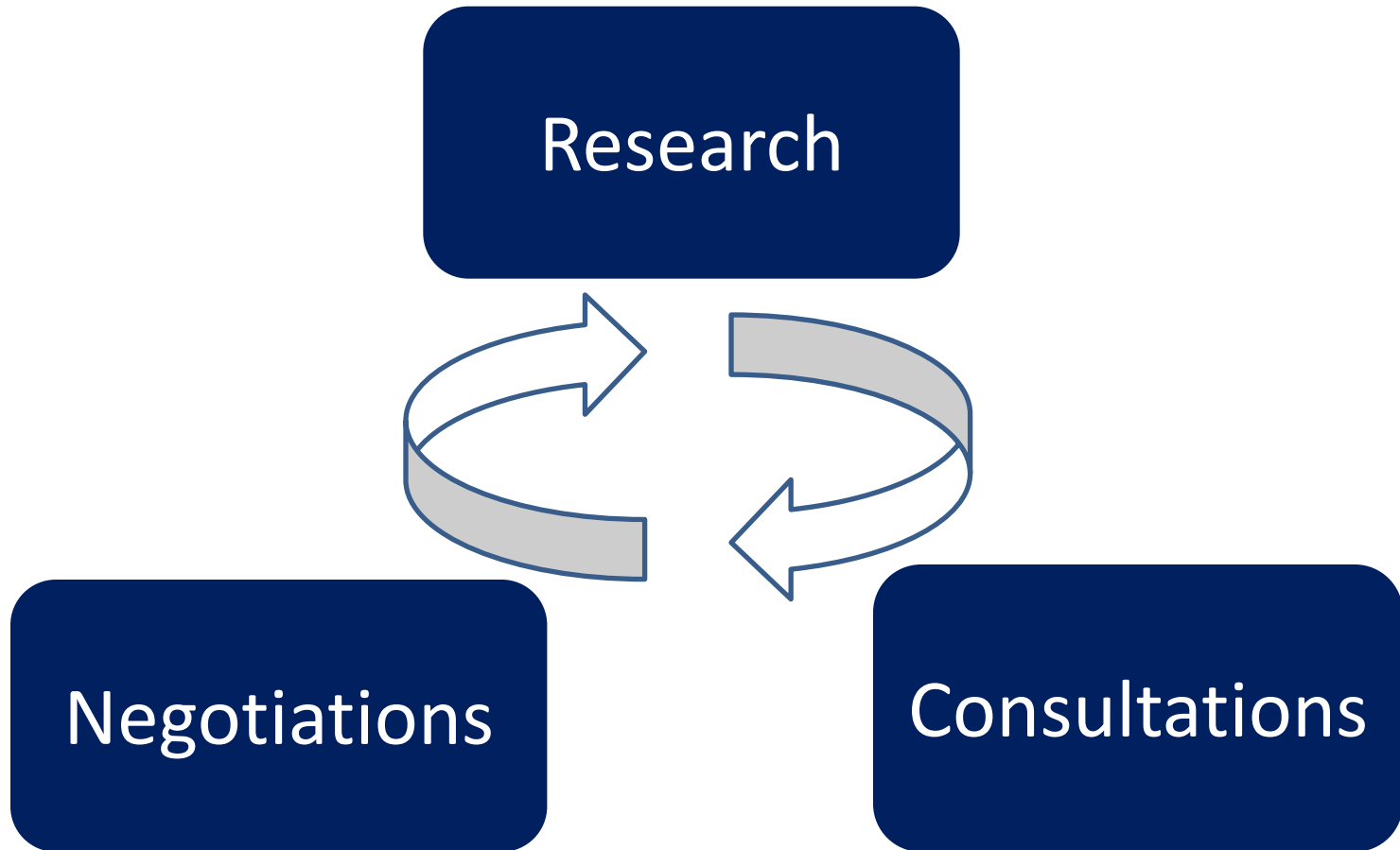
Co-opting business and CSOs

- Reasons to include firms, CSOs at an early stage
 - It is more efficient to rely on advice than to attempt to evaluate the commercial impacts
 - Firms and CSOs coopted through early and continuing consultation will be more likely to support ratification and to cooperate with implementation
 - Transparency will allow firms time to adjust investment plans more smoothly, minimizing adjustment disruption and costs
 - Including employment costs in particular sectors

How, how soon

- Establish an advisory group as one of the first steps
 - Ensure it has broad sector representation to prevent attempts at “agenda capture”
 - Ensure participants are responsible for representation of diverse interests within an industry or community interest area (express an already-coordinated view)
 - Probably by including existing representative bodies
 - If necessary, fund attendance (not participation) at negotiations
 - Keep government and advisory roles distinct
- Make appointments at the ‘pre-feasibility’ stage

Negotiation Loop



Going forward

- Regulatory Audit
- Legal scrubbing
- Cabinet approval
- Public disclosure

- Signing
- Ratification
- Notification



Implementation

Summary

- Evidence based research and analysis
- Identify win-win situations (trade is not a zero-sum game)
- Identify potential supporters among domestic and foreign stakeholders
- Identify opposing stakeholders and means for addressing concerns
- Establish utility, legitimacy and fairness of proposed outcome