

Designing and Securing a Mandate and Stakeholder Consultations

Enhancing the contribution of PTAs to
inclusive and equitable trade:

Viet Nam

15-17 March 2017

FTU, Hanoi



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 Viet Nam
- Towards PTA's contribution to inclusive and equitable trade
- Viet Nam 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 8

Key Learning Objectives

1. Understanding when and with who a country should pursue a PTA – pre-consultations and impact assessments.
2. Importance of involving a wide-range of stakeholders to include more viewpoints – important for inclusivity.
3. Preparing for negotiations and impact assessments.
4. Typical structures of negotiating teams and the negotiation process.

Preferential Trade Agreements

Who?

What?

When?

How?

Why?

Preparing for negotiations

- Identifying potential partners
- Cost-benefit analysis
 - Building offensive and defensive lists
- Determining organizational structure
 - Nominating leads
- Identifying stakeholders

Preparedness

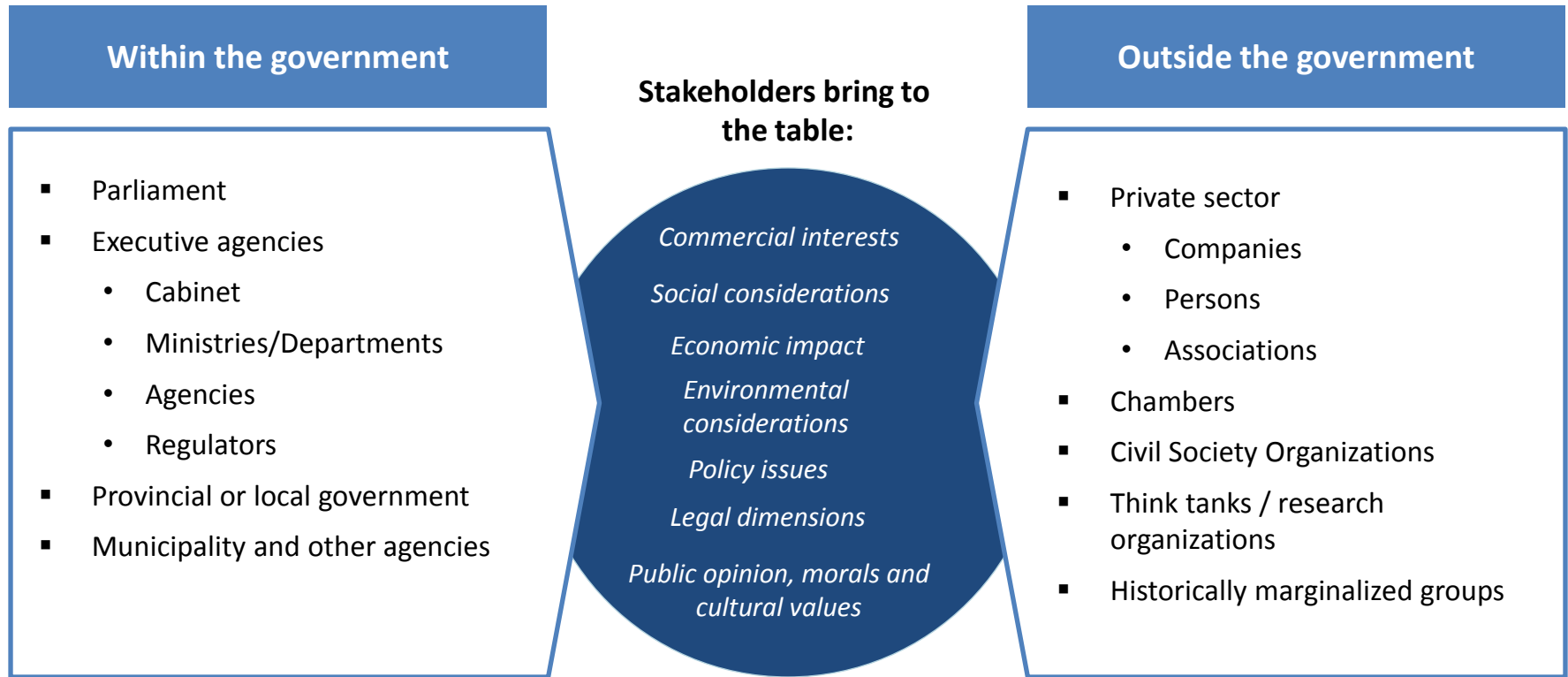
- Setting the agenda for negotiations
 - Who is active, who is passive?
- Determining coherence with domestic policy
- Framing the desired goals before negotiations
- Starting negotiations
 - Mandate
 - Approach
 - Time frame

IDENTIFYING STAKEHOLDERS

What are Stakeholders?

Why engage with
Stakeholders?

Who are Stakeholders?

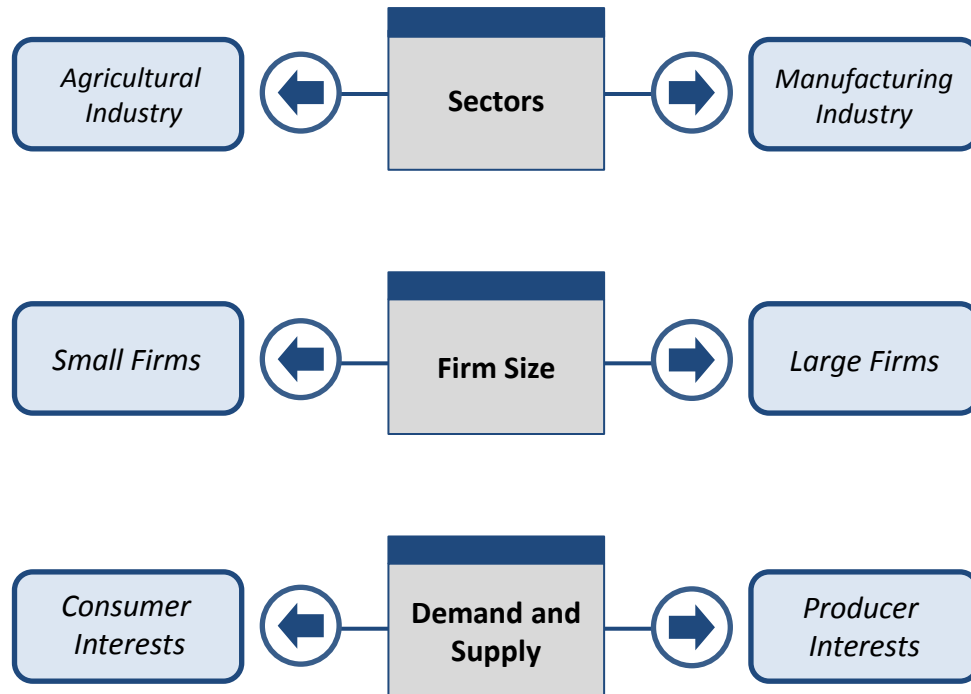


Stakeholder concerns

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

Managing Stakeholder interests

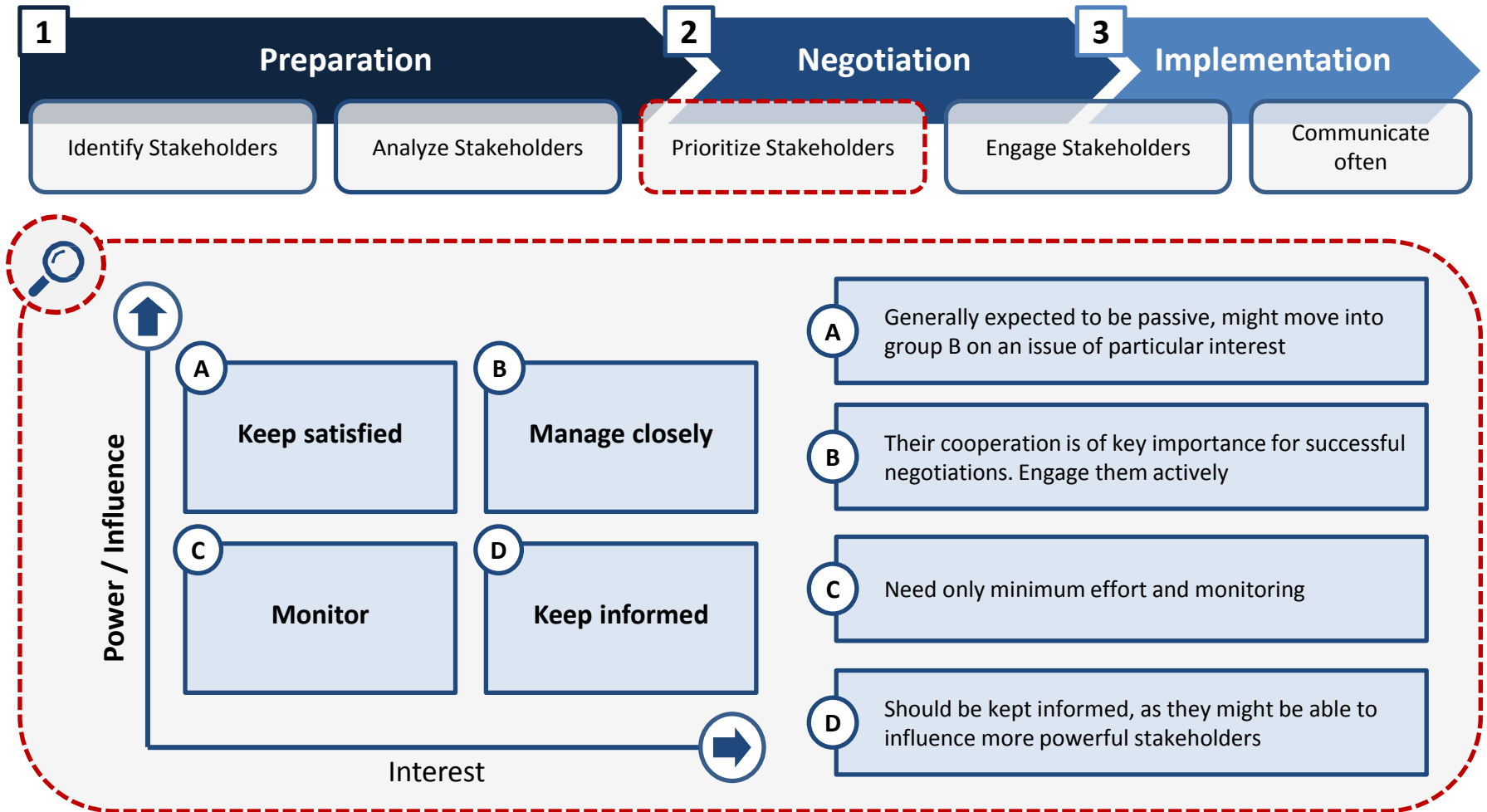
Complex Web of Domestic Interests



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



NEGOTIATION PROCESS

Organizational Structure

Basic Guidelines

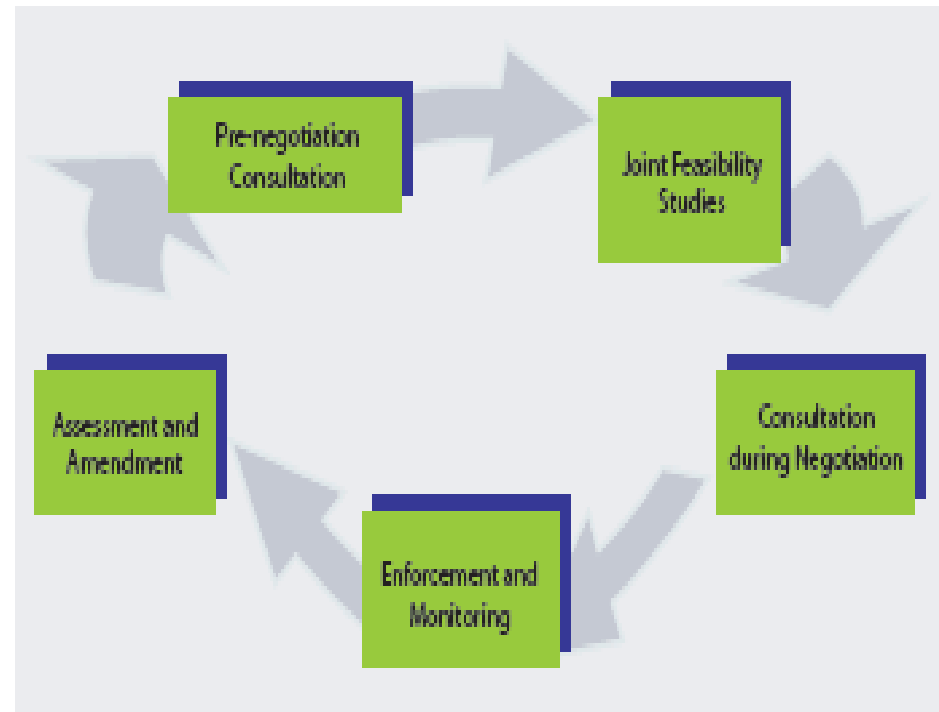


- Trade policy decisions should be taken at the “top” of the economic management structure
- Support of political leadership: President / Cabinet offices should be closely involved in coordination
- Size and structure of negotiating team depends on resources, negotiations complexity; level of ambition



WHAT HAPPENS IN NEGOTIATIONS?

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



Negotiation Process

INTERNAL

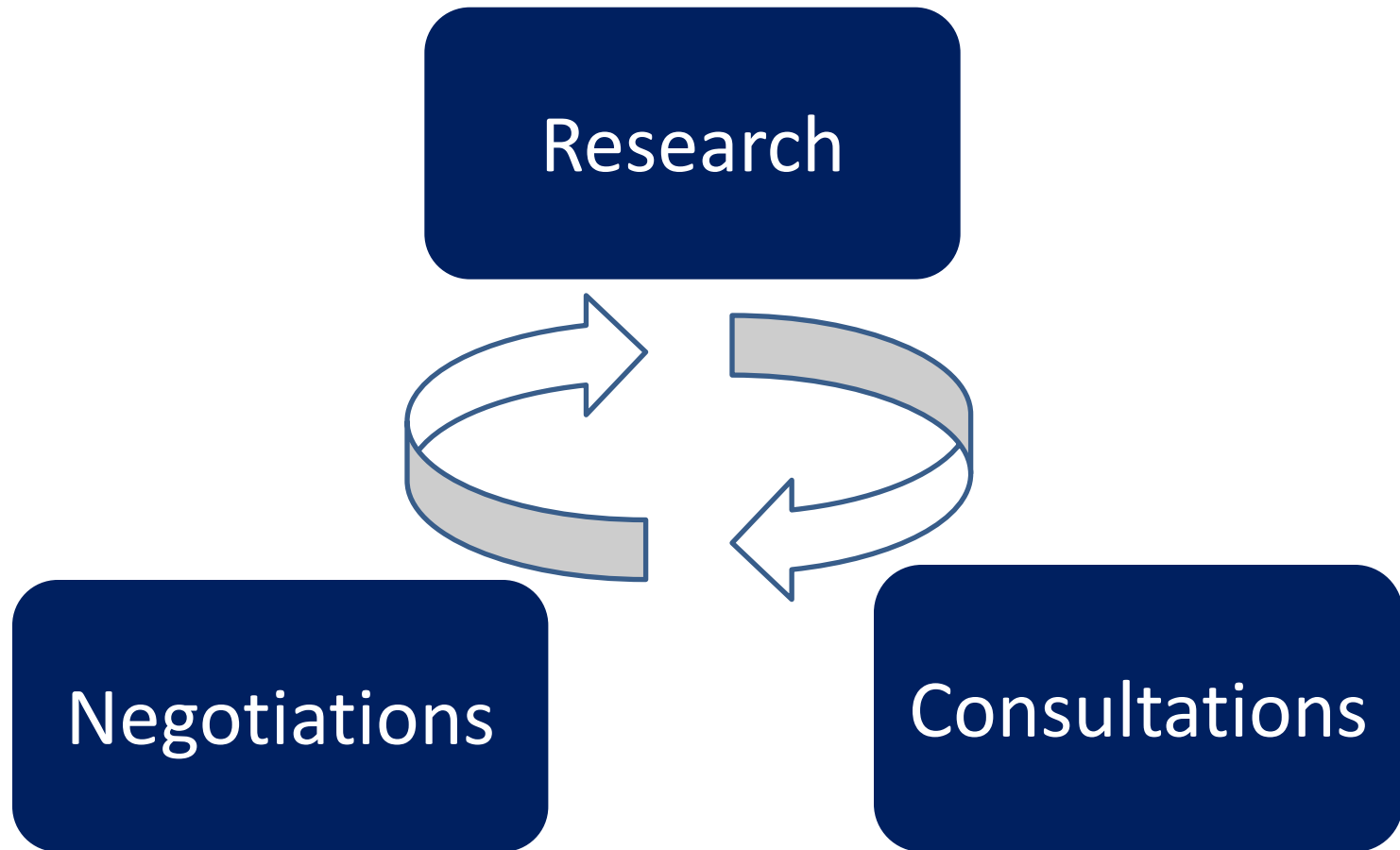
- Stakeholder consultations
 - Public/Private sector
 - Civil society
 - Producers
 - Consumer groups
- Domestic review

EXTERNAL

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



Negotiation Loop



In practice: what countries do

1. In-house analysis – trade and tariffs
2. Economic and econometric studies
3. Findings – stakeholder consultations
4. Finalizing studies
5. Sharing study in inter-governmental consultations
6. Final consultations with all stakeholders and firming up negotiation position

Summary

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

THANK YOU

ANNEX

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

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

- 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

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 ‘scrapping’ 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