

# Training of Trainers

# Enhancing Capacity on

# Trade Policies and Negotiations

## Session 8 : Overview of the process of negotiations and implementation

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# **Presentation Structure**

- **Preparation**
- **Exercise**
- **Consultation with stakeholders**
- **Performing regulatory audit**

# PREPARATION

**Is preparation for  
negotiations  
necessary?**

# THE FOUR MAIN QUESTIONS



# Prepare for.....

- **Identify players/actors**
  - Coordinator
  - Stakeholders
- **Learning by doing or doing by learning?**
- **Examine the benefits and challenges/risks of engagement.**
- **Offensive and defensive interests – identify.**
- **Build consensus within the country.**

# Preparedness

- **Who sets the agenda for negotiations?**
  - You or your trade partner?
- **Coherence with the existing domestic policies?**
- **Stock taking before start of negotiations**
- **Fix up the desired goal that you want to achieve.**

# EXERCISE



# **EXERCISE – 10 minutes**

- **Desired goal(s) that you want to achieve.**
- **Discuss and identify the agenda for negotiating FTA & EIA agreement:**
  - **Good or Services or both**
- **Identify stakeholders in your country**
- **Any other issue(s) that your delegation would like to raise?**



**Discussions**

**15 minutes**

# STAKEHOLDERS

# Stakeholders

- Define as per your experiences:
  - Who are the ‘Stakeholders’?
  - How do you identify?
  - Why in any negotiation identification of and consultations with stakeholders is very important?

# Identification of the stakeholders

## Within government:

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

# Identification of the stakeholders

## Outside Governments:

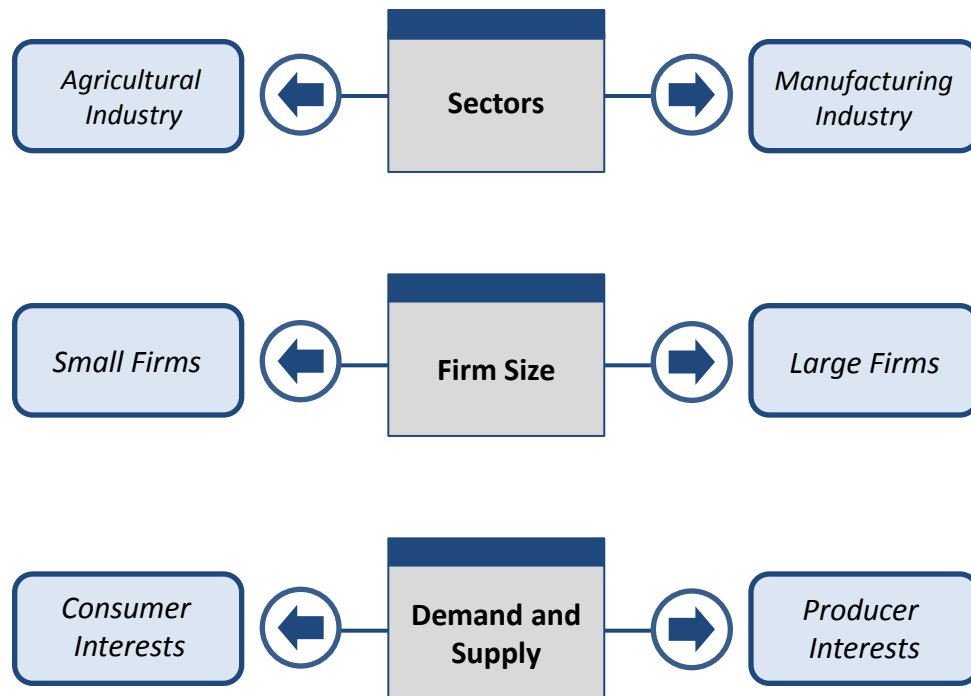
- **Private sector**
  - Companies
  - Persons
  - Associations
  - Chambers
- **Civil Society Organisations**
- **Think tanks / research organisations**
- **Ethnic groups**

# **What do stakeholders bring to the table**

- **Commercial interests**
- **Economic impacts**
- **Policy issues**
- **Politics**
- **Legal dimensions**
- **Institutional considerations, legacy and hierarchy**
- **Public opinion, morals and cultural values**
- **Environmental considerations**
- **Social considerations**

# Managing Stakeholder interests

## Complex Web of Domestic Interests

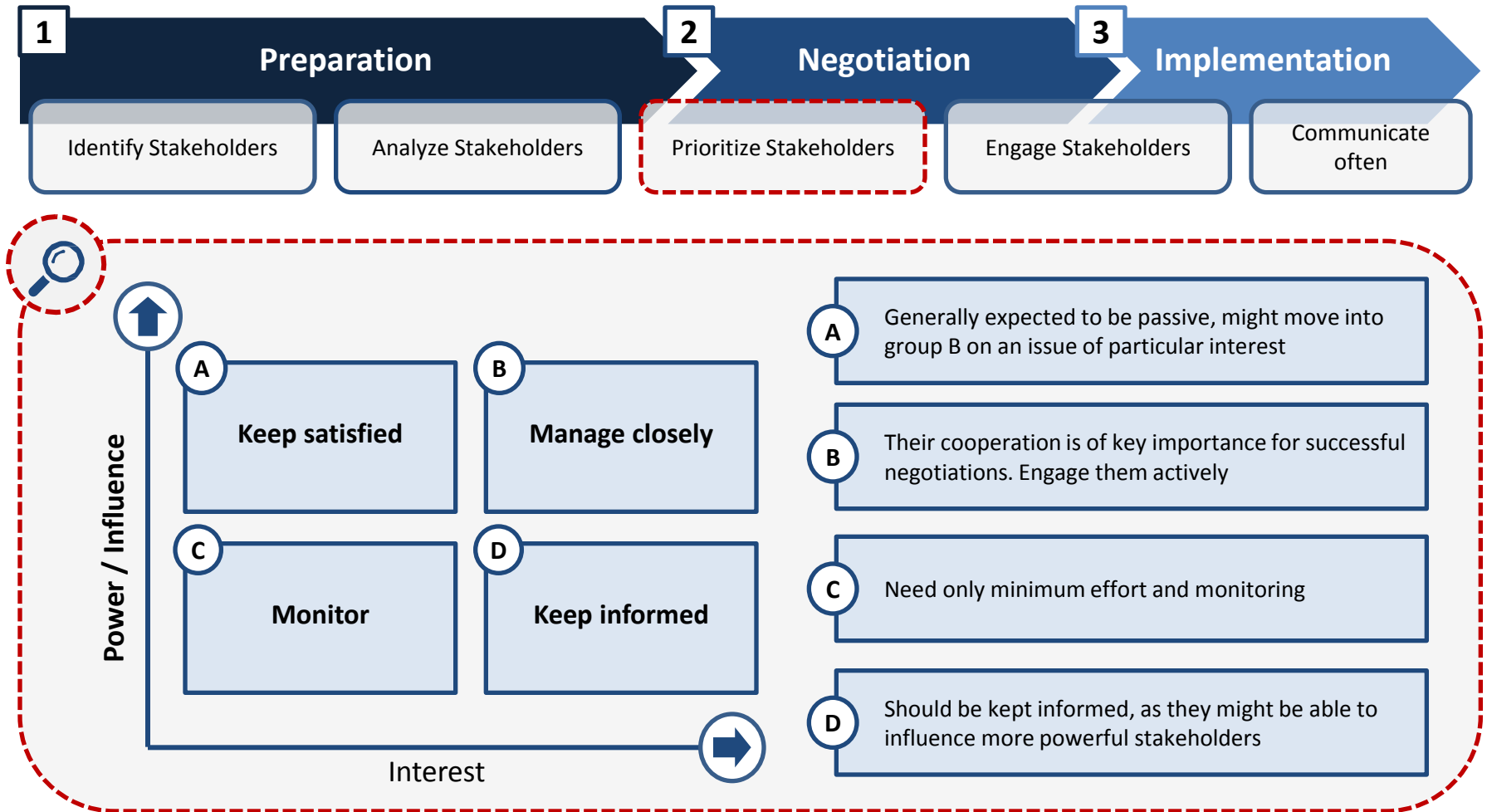


## Considerations

- 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



# The 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 as well as other agencies in government

# The consultation steps (2)

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

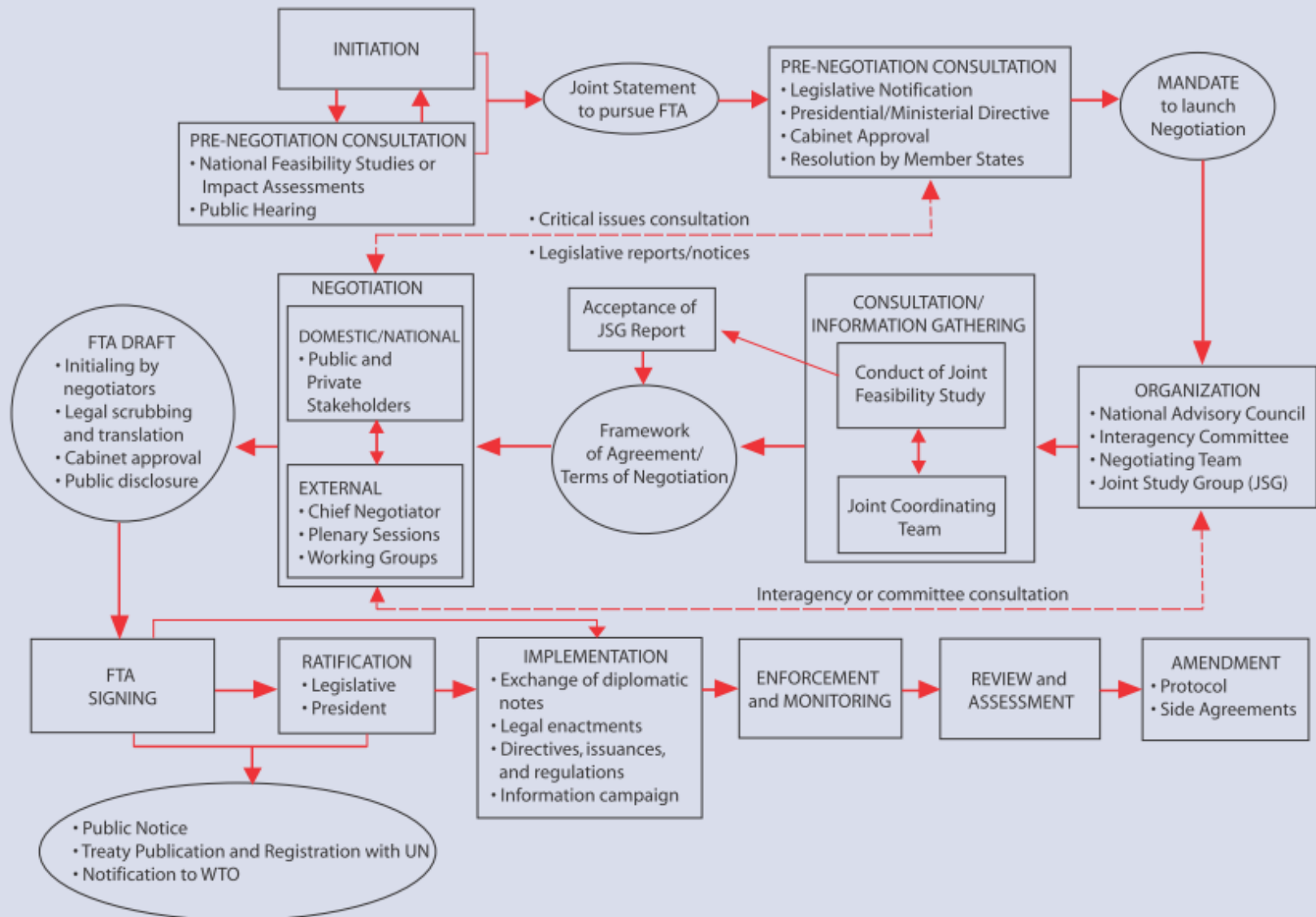
# Industry's preparedness

- **Who sets the agenda for negotiations?**
- **To help successfully in policy making process**
- **Feedback during negotiations**
- **After implementation:**
  - **Trade defense measures**
  - **Circumvention**
  - **Any other issues**

# **Formulating negotiating strategy**

- **Frame the issue for negotiations**
- **Identify of win-win solutions**
- **Evidence based research and analysis**
- **Identify potential supporters among domestic and foreign stakeholders**
- **Outline message to potential supporters**
- **Identify opposing stakeholders & the means for reducing or deflecting opposition**
- **Establish the utility, legitimacy and fairness of proposed outcome**

# Model FTA Process



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

# REGULATORY AUDITS

# **Regulatory audit**

- **Various sources within and outside Government**
- **During WTO Trade Policy Review Mechanism**
- **However, changes do happen!**
- **Useful in negotiations:**
  - **Prepare for better understanding of trade partner's policies and regulations**
  - **Enhances quality of dialogue between negotiators, sectoral regulators and private sector stakeholders.**



# **Regulatory audit: usefulness**

- **Better understanding among the negotiators and regulators of the implications of commitments being offered**
- **Benchmarking the national regulatory regime in terms of its effectiveness and compliance with international best practices**
- **Anticipating and preparing for requests that are likely to ensue from negotiating partners once the negotiations have started**

# Pre-negotiation step

- **Cost benefit analysis : Study**
  - Patterns of trade
  - Modeling
  - Identify gains and losses
  - Vulnerable sectors
  - Regulatory audit
- **Evaluation of maximum gain:**
  - PTA or FTA, BIT or RTA, WTO, Autonomous?
- **Wide consultations: stakeholders**
  - Strengths and weakness
  - Sensitive sectors
  - Market access benefits
  - Rules of Origin – Juridical or natural persons

# **Negotiation step**

- **Decide modalities first**
- **Negotiations are held in different Rounds**
- **Positive/Negative list approach**
- **Request is made to other Parties on export interest sectors**
- **Other Party then offers – items & level**
- **Negotiations are then held on expanding the sectors and domestic regulations**

# **What countries do presently?**

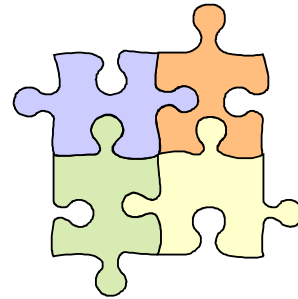
- **First stage: In-house analysis – trade & tariff**
- **Second stage: Studies on purely economic parameters**
- **Third stage: Findings – stakeholders consultations**
- **Fourth stage: Finalising study**
- **Fifth stage: Share study in inter-governmental consultations**
- **Final stage: Final consultations with all stakeholders and firm up its negotiating position**
- **Time to time information is also posted online**



# RESEARCH



# CONSULTATIONS



Rajan Ratna

# NEGOTIATIONS



# Post Negotiation Implementation

# Issues

- **Process of negotiations?**
- **What are post negotiation issues?**
- **How to enforce?**
- **Way forward**



# Negotiations Process

## Framing the negotiations and issues.

- Analysis of the issues involved

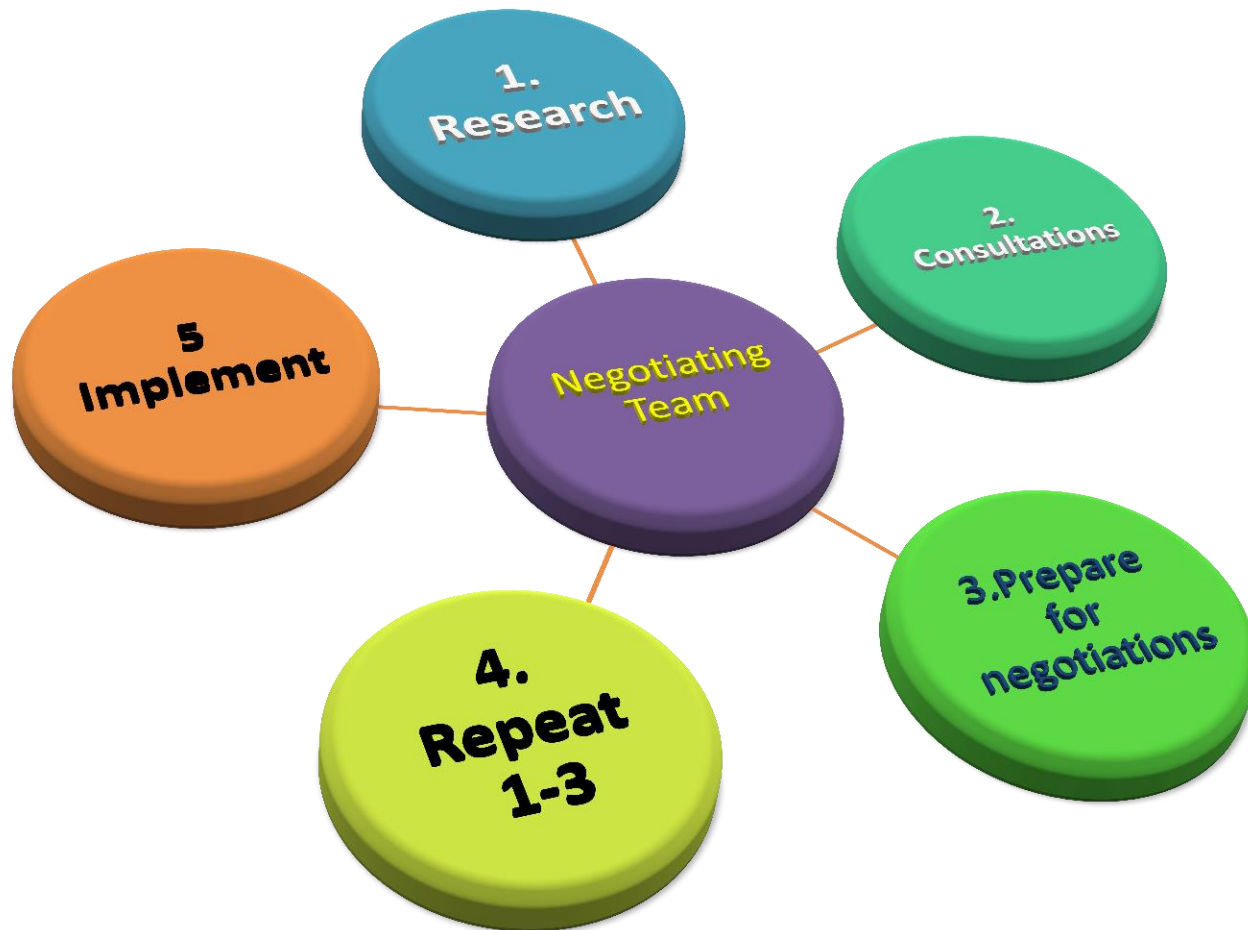
## Create negotiating team

- Exploration of Stakeholders Interests
- Establishing a Negotiating Strategy
- Start negotiation

## Consultations and seeking mandate

## Implementation

**CONDUCT NEGOTIATIONS**



# **National Law and International influence**

**National law needs to be in conformity with international obligations**

**Care to be taken while making international commitments**

**Experience in negotiations a crucial factor**

**Negotiating skills**

**Networking with like-minded states**

# **... International influence...2**

## **First stage of using trade positions**

**Identify national priority and objectives on the issue (SWOT)**

**Harmonise the laws across borders irrespective of the stage of development**

## **Second stage**

**Stress on effective enforcement of harmonised laws in bilateral negotiations**

## **Third stage**

**Seek multilateral redress at WTO/RTA Dispute Settlement**

# **Key negotiating strategy**

- **Frame the issue for negotiations**
- **Identify of win-win solutions**
- **Identify potential supporters among domestic and foreign stakeholders**
- **Outline message to potential supporters**
- **Identify opposing stakeholders & the means for reducing or deflecting opposition**
- **Establish the utility, legitimacy and fairness of proposed outcome**

# **Structure**

- **Text - Definitional and legal issues?**
- **Schedules - Market access**
  - **WTO Doha Round Negotiations**
  - **FTA negotiations**
- **Goods or services – different approaches**
- **Opportunities and Challenges**

# Negotiating issues

- How do you define what is “environmental goods or services”?
- Should you look at national perspective or global perspective?
- What is a ‘win-win-win’ situation?
- Is import always bad?



# Negotiations

- **Goods**
  - Reduction/elimination of tariffs and non-tariffs
- **Services**
  - Market access
  - Domestic Regulation
  - Mutual Recognition
- **Investment**
- **Technology Transfer**
- **Different approaches to be followed in WTO and RTAs**

# **Services, Investments and ToT (2)**

- **Market access**
  - Mode 1
  - Mode 3
  - Mode 4
- **MRAs**
- **Liberalizing sectors for investments – attract FDI**
- **Technical assistance and capacity building.**

# Approaches

- **WTO (Bound, different than actual)**
  - Goods – tariff and non tariff
  - Services – market access and domestic regulations
- **FTAs (WTO bound plus)**
  - Goods – tariff (duty free), non-tariff
  - Services – market access and domestic regulations
  - Transfer of technology - investment
  - Technical Assistance

# Implementation

- **Schedules to be drawn:**
  - **WTO**
  - **FTAs**
- **Binding commitments**
- **Violation - subject to disputes**
- **Ratification:**
  - **Domestic policy changes**
- **Implementation**

# **Monitoring and enforcement**

- **Role of coordinating Ministry is important**
- **Ratification**
- **Ensure that all the domestic legislations are in place before the implementation date**
- **Transparency: notify to partners**
- **Preparing domestic industry as well as other stakeholders**
- **Monitor progress – annual or as per schedule and re-notify**
- **Cases of surge in imports - monitor**

# Conclusion

- The importance of proper research and stakeholders consultations in the design of trade agreements – very important and essential
- There can be several problems associated with:
  - Conflicting interests
  - Domestic policies
  - Inefficiencies
  - Large industry vrs. SME

# Lessons

- Trade can be an important means of implementation for attaining SDGs.
- Tremendous potential exist for production and export of CSGT in Asia Pacific.
- Even MFN tariffs on these items are lower.
- Countries are liberalizing these items in PTAs/FTAs. But needs to be established if this is as a conscious policy to liberalise CSGT or in general.
- Non-tariff issues are not yet addressed, especially standards maintained due to environmental reasons.
- Technology transfer on these items need to be facilitated as market access is not the only solution.

# India's negotiations: Some illustrations

Country/Group	Start	Finish	Total Time	No. of consultations held) (Inter Govt. & industry)
Sri Lanka	August 1998	November 1998	4 months	4-5
SAFTA	1999	2004	5 years	> 20
Singapore	2003	2005	2 years	>40
ASEAN	2004	2009	5 years	> 70
South Korea	2006	2009	3 years	>30
Thailand	2004	Not concluded	>13 years	>50
BIMSTEC	2004	Not concluded	>13 years	>50
EC	2007	Not concluded	>10 years	>30
Japan	2007	2010	4 years	>30



**THANK YOU**

