

Business Stakeholder Consultations and Free Trade Agreements in Asia: Impact and challenges

Apoorva Singh Vishnoi



Executive Summary

Free trade agreements, i.e., treaties designed to promote the flow of goods and services between countries through tariff liberalisation and other means, have existed in various forms for a while now. However, the growing prevalence of a new type of free trade agreements — so-called “deep trade agreements” — is having far-reaching effects on economics and policies and making it more imperative than ever that businesses have a greater say in the shape and content of free trade agreements (FTAs).

Deep trade agreements (DTA) address not just goods and services but a broad range of sectors and policy areas. Their increasing complexity requires governments to engage effectively with an expanding list of stakeholders, particularly businesses. The main vehicle for such engagement is stakeholder consultation, a mechanism designed to allow businesses to voice their concerns on issues affecting them with FTA partners and to enable governments to draw them more closely in designing FTAs.

This paper sets out to examine how effective stakeholder consultations in developing countries are at driving the inclusion of business feedback in FTAs. It focuses on two developing economies, Vietnam and Indonesia, where such consultations are less formal, involve a relatively small sample of businesses, lack a systematic and predictable approach, and offer little transparency compared to their developed counterparts. The paper first examines the practices surrounding stakeholder engagement in Vietnam and Indonesia and compares them with the established processes in the EU and Australia.

The paper then goes on to identify the seven key challenges faced by the governments as well as the businesses in making these consultations more effective, as we see below:

1. Difficulty in identifying and engaging with the right stakeholders: In most cases, Vietnam and Indonesia engage in consultations only with those stakeholders they have identified as “relevant” or “legitimate”. This makes the consultation process restrictive and can lead negotiators to incorrectly exclude businesses or associations who will be affected by FTA issues, denying them the chance to be heard.

2. Businesses generally lack awareness and knowledge about FTAs: Unless they are involved in the process, businesses in the two countries are often unaware that either FTA negotiations or related stakeholder consultations are taking place or lack a clear understanding of the issues under consideration. This is particularly the case for new-generation DTAs, which are far-reaching in their scope but often involve highly technical information. Many businesses and industry organisations in Vietnam and Indonesia lack knowledge about the negotiation process, how their participation in stakeholder consultations can influence FTAs, and the potential impact of agreements.

3. Transparency in stakeholder consultations: There is an inherent struggle between transparency and confidentiality both in trade negotiations and consultations. While the EU sets the benchmark for openness, Vietnam, Indonesia and Australia all limit the information received by stakeholders, even those involved in consultations. This affects the general public’s ability to determine if they will be affected by a given FTA and stakeholders’ ability to provide relevant and useful feedback.

4. Limited participation of SMEs in the consultation mechanism: Small and medium-sized businesses (SMEs) are far less likely to be involved in consultations than large companies and associations. This is particularly the case in Indonesia and Vietnam, where consultations are dominated by large businesses and associations, while governments prefer consulting with them to consulting with a multitude of companies. In the EU in contrast, the consultation process is automated, with questions framed in a manner that makes it easier for small operators to give inputs.

5. Business leaders are passive, not proactive: The relative passivity of the business community in Vietnam and Indonesia when it comes to trade deals presents a major challenge. This apathy takes two forms: one is a lack of high-quality input (e.g., survey responses) and another is a failure of business leaders to advocate for their interests in FTAs. This may be due to the fact that there are relatively few subsidiaries of multinational corporations in these countries, and thus less trade research capacity and less incentive to engage on cross-border DTA issues Indonesia and Vietnam.

6. FTAs are complex and businesses lack access to research capabilities: Smaller industry associations and businesses in Vietnam and Indonesia have limited access to research expertise since most lack the resources to hire trade experts or develop in-house capacity to engage in wide-ranging issues common in DTAs.

7. Businesses focus solely on goods exports: Businesses in Vietnam and Indonesia tend to focus primarily on goods exports and tariff lines and show little interest in topics such as services or investment.

While the first five challenges relate to the consultation mechanisms themselves, the last two stem from inherent capacity gaps and the current nature of businesses in Indonesia and Vietnam.

The paper then offers the potential pathways for the governments and businesses in Vietnam and Indonesia to explore when dealing with these challenges:

1. Making stakeholder consultations more open and accessible;
2. Making the process of stakeholder identification more rigorous;
3. Improving the outreach and education for businesses;
4. Adopting more structured stakeholder consultations; and
5. Assistance from governments to improve business advocacy and research.

These strategies will ensure that a larger and more diverse set of businesses can contribute high-quality inputs during consultations that will allow negotiators to form negotiation positions that better reflect business needs during FTA talks. Given the rise of DTAs, trade agreements are destined to become increasingly important both for governments and businesses. Therefore, effective and meaningful stakeholder consultations will be vital for all negotiating countries to ensure that the interests of business stakeholders are appropriately reflected in final texts. While this paper concerns itself largely with Indonesia and Vietnam, the insights offered here may be instructional for the wider developing world. Beyond analysing the difficulties and solutions, the paper offers a rare glimpse into the often secretive world of stakeholder consultations in two of Asia's most important FTA-negotiating developing countries. The paper also reveals surprising commonalities in the conduct of stakeholder consultations among Australia, Indonesia and Vietnam, contrasting with the more "ideal" standard offered by the EU. It is hoped that the paper sets off conversations on the importance of stakeholder consultations in the developing world.

Table of contents

Executive Summary	2
List of Figures	6
List of Tables	6
Abbreviations	7
Acknowledgement	9
Section 1: Introduction	10
1.1 About free trade agreements	11
1.1.1 What are free trade agreements and deep trade agreements?	11
1.1.2 Why do free trade agreements matter for the business community?	13
1.1.2.1 Increased trade flows and trade creation	15
1.1.2.2 Attracting foreign direct investment (FDI)	15
1.1.2.3 Strengthening economic and political ties	15
1.1.2.4 Reduced transaction costs	15
1.1.2.5 Improved regulatory quality	15
1.1.2.6 Enhanced integration into global value chains (GVCs)	15
1.1.2.7 Promotion of labour and environmental standards	15
1.1.2.8 Path dependency in trade agreements	15
1.1.2.9 FTAs as a tool for marketing and building trusted relationships	15
1.2 About stakeholder consultations	16
1.2.1 What are stakeholder consultations?	16
1.2.2 Why are stakeholder consultations important?	16
1.2.3 The rise of deep trade agreements and stakeholder consultations	18
1.2.4 Stakeholder consultations around the world at a glance	18
Section 2: Stakeholder consultations with businesses for FTA negotiations	19
2.1 Case study: stakeholder consultations in Indonesia and Vietnam compared to the European Union and Australia	20
2.2 Stakeholder consultations for FTAs in the EU	24
2.2.1 Who conducts stakeholder consultations in the EU?	24
2.2.2 Who are considered stakeholders in the EU?	24
2.2.3 What is the consultation process in the EU?	24
2.2.4 Why the EU is the “gold standard” for consultations	25
2.3 Stakeholder consultations for FTAs in Australia	25
2.3.1 Who conducts stakeholder consultations in Australia?	25
2.3.2 Who are considered stakeholders in Australia?	25
2.3.3 What is the consultation process in Australia?	25
2.4 Shared characteristics of stakeholder consultations in the EU and Australia	26
2.5 Stakeholder consultations for FTAs in Vietnam	26
2.5.1 Who conducts stakeholder consultations in Vietnam?	25
2.5.2 Who are considered stakeholders in Vietnam?	27
2.5.3 What is the consultation process in Vietnam?	28
2.5.3.1 Mechanisms for stakeholder consultations	28
2.5.3.2 Extent of consultations	28
2.5.3.3 Two approaches to consultations: bottom-up and top-down	28
2.5.3.4 VCCI's consultation mechanism	29
2.5.3.5 Why are stakeholder consultations important in Vietnam?	29
2.6 Stakeholder consultations for FTAs in Indonesia	30

2.6.1 Who conducts stakeholder consultations in Indonesia?	30
2.6.2 Who are considered stakeholders in Indonesia?	30
2.6.3 What is the consultation process in Indonesia?	30
2.6.3.1 Collaboration of stakeholders with FTA partners	31
2.6.3.2 Process for consultations	31
2.6.3.3 Medium of stakeholder consultations: online versus in-person	31
2.6.3.4 Why is the stakeholder consultation process important in Indonesia?	32
2.6.3.5 Impact of culture on stakeholder consultation style	42
2.7 Impact of stakeholder consultations in Vietnam and Indonesia	33
2.7.1 Example from Vietnam	33
2.7.2 Examples from Indonesia	33
2.8. Shared characteristics of stakeholder consultations in Indonesia and Vietnam	34
Section 3: Challenges faced by Indonesia and Vietnam for business participation in stakeholder consultations	35
3.1 Difficulty in identifying and engaging with the right stakeholders	36
3.2 Businesses generally lack awareness and knowledge about FTAs	36
3.3 Transparency versus confidentiality in stakeholder consultations	37
3.4 Limited participation of SMEs in the consultation mechanism	38
3.5 Businesses are passive and not proactive	39
3.5.1 Lack of high-quality responses	39
3.5.2 General passivity of the business community in trade advocacy	39
3.6 FTAs are complex and businesses lack access to research capabilities	40
3.7 Businesses are mostly interested in exports of goods only	40
3.8 In summary	41
Section 4: The way forward	42
4.1. Measures to improve the stakeholder consultations process for FTAs in Vietnam and Indonesia	43
4.1.1 Make stakeholder consultations more open and accessible	43
4.1.2 Improve stakeholder identification	43
4.1.3 Improve outreach and education for businesses	43
4.1.4 Adopt more structured stakeholder consultations	44
4.2 Measures to improve the business community's conduct in stakeholder consultations in Vietnam and Indonesia	44
4.2.1 More assistance from the government to improve business advocacy and research	44
4.3 Limits of stakeholder consultations	45
4.3.1 Limited impact of stakeholder consultation	45
4.4 Political and economic reality will define stakeholder consultations	45
Section 5: In conclusion	46
Appendix	48
Bibliography	49

List of Figures

Figure 1	Impact of trade on the world
Figure 2	Impact of DTAs globally
Figure 3	Benefits of stakeholder consultations for the businesses
Figure 4	FTAs signed or under negotiation between Indonesia, Vietnam, Australia and the EU
Figure 5	The stakeholder consultation process in Vietnam
Figure 6	The stakeholder consultation process in Indonesia

List of Tables

Table 1	An illustrative list of subjects covered under FTAs signed by Indonesia, Vietnam, Australia and the EU
Table 2	Table giving overview of stakeholder consultations
Table 3	Services as a percentage of GDP in the four case study economies

Abbreviations

AANZFTA	ASEAN-Australia-New Zealand Free Trade Area
ACCI	Australian Chamber of Commerce and Industry
Ai Group	Australian Industry Group
APINDO	Asosiasi Pengusaha Indonesia
ASEAN	Association of Southeast Asian Nations
AusCham	Australian Chamber of Commerce
CEPA	Comprehensive Economic Partnership Agreement
CITP of Vietnam	Committee on International Trade Policies
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DFAT of Australia	Department of Foreign Affairs and Trade
DG	Directorate General
Dpt.	Department
DTA	Deep Trade Agreement
EU	European Union
EuroCham	European Chamber of Commerce
EUVFTA	EU-Vietnam Free Trade Agreement
FADT	Foreign Affairs, Defence and Trade References Committee
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GDP	Gross domestic product
GND	Governmental Negotiation Delegation
GVCs	Global Value Chains
IA-CEPA	Indonesia–Australia Comprehensive Economic Partnership Agreement
IISD	International Institute for Sustainable Development
IMF	International Monetary Fund
IPM	Interactive Policy-Making Initiative
IP-PTA	Indonesia-Pakistan Preferential Trade Agreement
IPR	Intellectual Property Rights
JSCOT	Joint Standing Committee on Treaties
JSCTIG	Joint Standing Committee on Trade and Investment Growth
KADIN	Kamar Dagang dan Industri Indonesia
MFAT	Ministry of Foreign Affairs and Trade, New Zealand
MoIT of Vietnam	Ministry of Industry and Trade
MNCs	Multinational corporations
MoT	Ministry of Trade, Indonesia
MoU	Memorandum of Understanding
MSMEs	Micro, Small and Medium Enterprises
NCIEC of Vietnam	National Committee on International Economic Cooperation
n.d.	No date
NGO	Non-governmental organisation
PTAs	Preferential trade agreement
RCEP	Regional Comprehensive Economic Partnership
SIA	Sustainability Impact Assessment
SMEs	Small and medium-sized enterprise
SOE	State-owned enterprise

STAR	Support for Trade Acceleration
TFEU	Treaty on the Functioning of the European Union
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
UNCTAD	United Nations Conference on Trade and Development
UK	United Kingdom
US	United States of America
USAID	United States Agency for International Development
USMCA	United States-Mexico-Canada Agreement
VCCI	Vietnam Chamber of Commerce and Industry
VICOFA	Vietnamese Coffee and Cocoa Association
VITAS	Vietnam Textile and Apparel Association
WTO	World Trade Organisation

Acknowledgement

This project was made possible due to the kindness and guidance of Joanna Octavia, Matilda Buchan and Zhouchen Mao. They provided detailed feedback and critical support every step of the way.

I am also thankful to Lord Stephen Green and Chief Executive Michael Lawrence OBE for placing their trust in me and sharing their wisdom on engaging with readers over the years. I deeply appreciate the assistance provided by Juliette Pitt, Evie Cramb, and all the Asia House staff. Thanks are also due to Mark Baillie and Sarah Edmonds for polishing the entire project through their proofreading and editing.

A shoutout to my fellow Fellows for their delightful company during this amazing Fellowship journey. I would like to express my gratitude to my parents, younger sister, and friends, to whom I owe so much. Lastly, everyone who brewed a nice cup of coffee for me this past year is a hero.

Apoorva Singh Vishnoi

Asia House Fellow 2023-24

Section One:

Introduction

Businesses and business associations can be a major source of input during FTA negotiations between countries or regions, and thus play a critical role in shaping the FTA text. Stakeholder consultations are mechanisms that enable businesses to pursue their interests in traditional trade areas and to push for more favourable policies in WTO-plus areas. Such inputs can positively affect the design of FTAs by ensuring that business concerns are addressed in the final agreement.

The issue of stakeholder consultations in FTAs requires urgent attention from businesses and policymakers because FTAs are becoming more technically complex. The sectors and policies covered under new FTAs have a horizontal aspect, i.e., they touch upon almost all economic sectors and policy spaces. However, due to improper identification of stakeholders, businesses may not even realise that they are impacted by an FTA and so may remain away from the consultations. For instance, a business with purely domestic operations may think that an FTA would not affect it, but its subsidies might suddenly dry up or it may be asked to adopt stricter environmental standards. But because it was not identified as a stakeholder or could not participate in consultations, its perspective went unheard.

The paper will focus on the impact of stakeholder consultations in incorporating business feedback into FTAs negotiated by developing countries, using Vietnam and Indonesia as case studies and comparing processes in these two nations with those in the EU and Australia. Specifically, our research will examine the effectiveness of business involvement in trade negotiations, given the direct economic impact of FTAs and the diverse industry perspective that a range of private stakeholders can provide. It will analyse the challenges to making these consultations more impactful for business and offer suggestions for improvement.

Section 1 will provide an overview of FTAs and the importance of stakeholder consultations in FTA negotiations. Section 2 will explore stakeholder consultations process employed in Vietnam and Indonesia in comparison to the process in developed economies — namely, the EU and Australia. Section 3 will identify obstacles to conducting effective consultations for business feedback in Vietnam and Indonesia. Section 4 will discuss potential pathways to improving business participation in FTA consultations and summarise key findings, followed by the conclusion in Section 5.

This analysis draws upon two research methods: (1) primary research through semi-structured interviews with government negotiators, business association representatives and trade advisors active in Vietnam and Indonesia; (2) secondary research through literature review. More information on the research methodology is provided in the Appendix at the end of the paper. The remainder of Section 1 offers an overview of stakeholder consultations and FTAs.

1.1 About free trade agreements (FTAs)

1.1.1 What are free trade agreements and deep trade agreements?

The term FTA refers to any treaty that deals with trade barriers between signatories. Australia defines FTAs as “treaties between two or more countries designed to reduce or eliminate certain barriers to trade and investment, and to facilitate stronger trade and commercial ties between participating countries” (DFAT, n.d. a). In the European Union, FTAs are described as agreements that “deal with preferential duty rates on the shipment of goods between the EU and countries around the world. They have also evolved to cover a wider range of areas to facilitate trade. Among these include government procurement opportunities, business visitor visas, mutual recognition of professional qualifications, the certification of products, intellectual property rights and the cross-border trade in services” (Dpt. of Enterprise, n.d.). Furthermore, FTAs “enable reciprocal market opening with developed countries and emerging economies by granting preferential access to markets” for the EU (European Council, n.d.).

These FTAs can be bilateral, regional or multilateral. Bilateral FTAs are pacts between two countries or economic blocs (e.g., the EUVFTA or IA-CEPA). Regional trade agreements involve multiple countries or economic blocs (e.g., CPTPP and RCEP). The WTO agreements are considered examples of multilateral FTAs as they involve all WTO members, rather than a handful of countries.

The previous generation of FTAs, sometimes referred to as preferential trade agreements (PTAs), would number only a few pages and mostly focus on tariff barriers faced by goods traded by the agreement partners. The main text of the Indonesia-Pakistan preferential trade agreement (IP-PTA), for example, consists of just five pages and deals solely with tariffs on goods trade (IP-PTA, 2012), but the new generation of DTAs can run to hundreds of pages and cover an almost exhaustive scope of goods, services and policies.

What is a DTA?

DTAs can be defined as “reciprocal agreements between countries that cover not just trade but additional policy areas, such as international flows of investment and labour, and the protection of intellectual property rights and the environment, amongst others” (World Bank, 2020a, p.3).

A “deeper” trade agreement touches on “matters that are of interest to a much broader constellation of domestic interest groups and is therefore – appropriately – more politically sensitive and complex than shallow trade agreements” (Hoekman & Sabel, 2021).

As the World Bank explains in “Overview: The evolution of deep trade agreements”, there is no clear dividing line between these older, shallow trade agreements and next-generation DTAs. This is because the shift in design preference from FTAs to DTAs has been a gradual and non-uniform process of increasing innovation, while many older generation agreements may also touch upon non-trade or WTO-plus issues (World Bank, 2020, p.3).¹

¹ p.3: “While the average PTA [Preferential Trade Agreement] in the 1950s covered eight policy areas, in recent years the typical pact has averaged 17. In other words, there is some preliminary evidence that PTAs are morphing into DTAs, both on the intensive margin (specific commitments within a policy area) and the extensive margin (number of policy areas covered). In this Handbook, we do not draw a sharp distinction between DTAs and PTAs. Rather, the aim is to demonstrate the progressive deepening of PTAs”.

Table 1: An illustrative list of subjects covered under FTAs signed by Indonesia, Vietnam, Australia and the EU

Trade In Goods	Food Supply
Energy And Mineral Resources	Intellectual Property
Capital Movements, Payments and Transfers and Temporary Safeguard Measures	Rules of Origin and Origin Procedures
Financial Services	Textile and Apparel Goods
Electronic Commerce/Digital Trade	Customs Procedures and Trade Facilitation
Non-Tariff Barriers to Trade and Investment in Renewable Energy Generation	Sanitary and Phytosanitary Measures
Telecommunications Services	Technical Barriers to Trade
Cooperation and Capacity Building	Trade Remedies/Safeguards
Trade and Sustainable Development/ Labour/ Environment	Subsidies
State-Owned Enterprises and Designated Monopolies	Investment
Competition and Consumer Protection	Trade in Services
Corporate Governance	Transparency and Anti-corruption
Good Regulatory Practices And Regulatory Cooperation	Temporary Movement of Natural Persons
Cooperation in the Field of Agriculture	Temporary Entry for Businesspersons
Development	Government Procurement
Small and Medium-Sized Enterprises	Macroeconomic Policies and Exchange Rate Matters
Trade and Gender Equality	Competitiveness and Business Facilitation
Domestic Regulation	General Provisions
International Maritime Transport Services	Exceptions
Cooperation on Sustainable Food Systems	Animal Welfare and Antimicrobial Resistance
Professional Services and the Recognition of Professional Qualifications	Innovation

Sometimes DTAs are also referred to as comprehensive economic partnership agreements (CEPAs) in the treaty titles, as in the case of the IA-CEPA and EU-Indonesia CEPA (currently under negotiation).

As one subject interviewed for this paper noted:

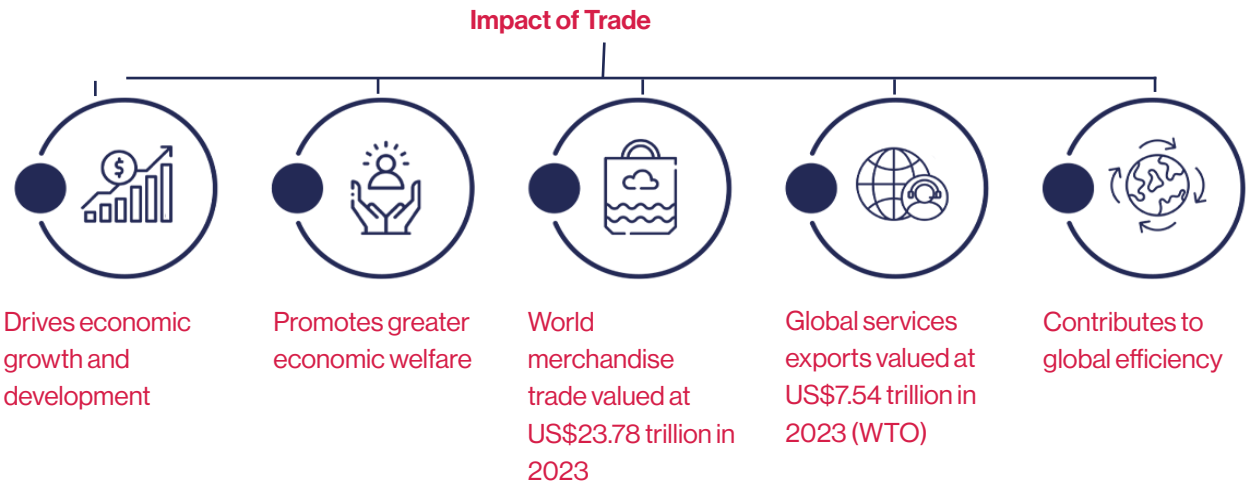
By calling it a comprehensive economic partnership agreement, you know it goes beyond a traditional Free Trade Agreement of reduced tariffs and becomes more technical, is more about capacity building and how the countries could come together almost as a combined regional powerhouse.

- *Business association, Indonesia and Australia*

1.1.2 Why do free trade agreements matter for the business community?

Despite the geopolitical and economic tumults of recent years, trade remains a key driver of economic growth, development and prosperity (IMF, 2023). The figure below illustrates just some of the positive effects of trade on the global economy.

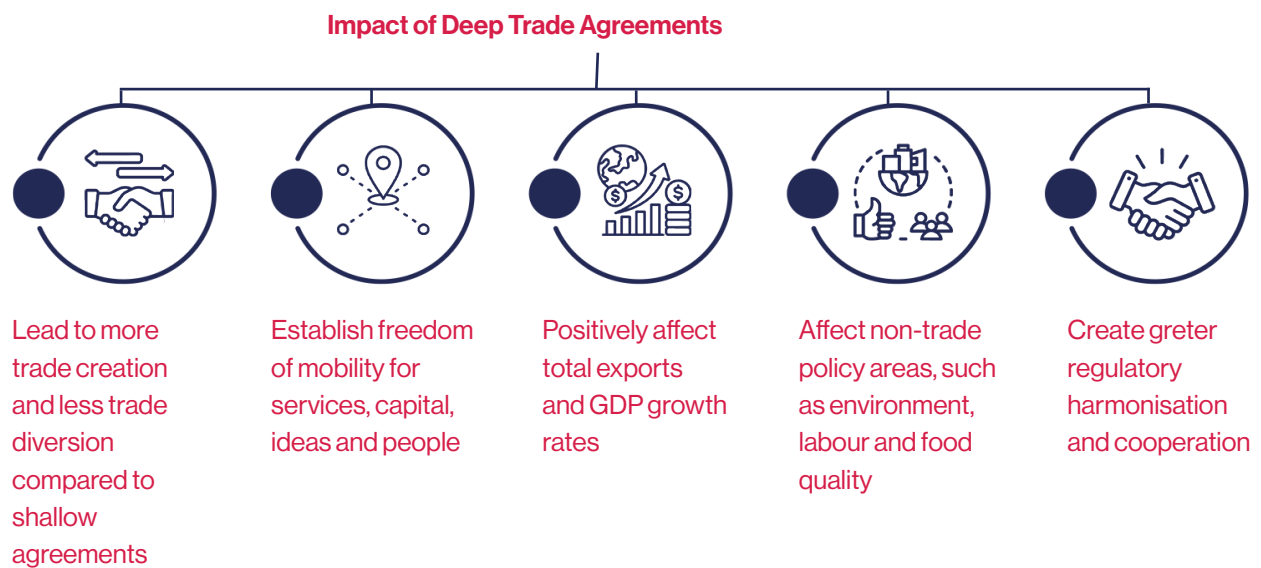
Figure 1: Impact of trade on the world (WTO, 2023; UNCTAD, 2023)



Traditionally, trade agreements were seen as instruments to promote trade by reducing restrictions on the flow of goods and services (e.g., customs duties). In recent years, they have grown in length and complexity, covering an increasing number of policy spaces and economic elements. As outlined above, some of the new-generation DTAs are more than 1,000 pages long (Morin et al., 2017). Such pacts are shaping government policies governing sectors such as electronic commerce and state-owned enterprises, areas with indirect connections to trade such as the environment and labour practices, and areas unconnected to trade such as animal welfare.

This is why DTAs are called the “laboratories of innovation” (Lewis, 2023). Given that many of these agreements are only a few years old, their long-term impact is yet to be fully felt or understood. However, some of the already accepted and understood benefits of DTAs are illustrated below:

Figure 2: Impact of DTAs globally



1.1.2.1 Increased trade flows and trade creation

DTAs can enhance trade by reducing non-tariff barriers, harmonising regulatory practices and increasing regulatory coherence. This, in turn, can result in increased market access for goods and services for enterprises and consumers, greater trade volumes and increased economic efficiency (World Bank, 2023). Research by the World Bank shows they can increase trade volumes and efficiency and reduce trade diversion (Mattoo et al., 2019).

1.1.2.2 Attracting foreign direct investment (FDI)

DTAs can assist in attracting higher levels of foreign direct investment (FDI) to countries as they promote more stable and predictable regulatory environments. The depth of a trade agreement is positively correlated to vertical FDI (Osnago et al., 2019). Greater investment in turn spurs economic growth and development by providing capital, technology transfer and skills enhancement.

1.1.2.3 Strengthening economic and political ties

By deepening economic ties, DTAs have also been seen as potentially contributing to the stability of political relationships among DTA partners, reducing the possibility of conflict and fostering closer cooperation on a range of social, economic and regulatory issues (WTO, 2023).

1.1.2.4 Reduced transaction costs

DTAs can reduce costs faced by firms that operate in multiple national and regional jurisdictions and thus must comply with different regulatory regimes (Bruhn, 2014). The harmonisation of regulations, standards and conformity assessment tests that follow the implementation of a DTA makes it easier for enterprises to operate across borders and avoid “behind-the-border” costs. The EU has been especially active in using DTAs to promote regulatory coherence and harmonisation.

1.1.2.5 Improved regulatory quality

Through DTAs, many advanced economies encourage the adoption of best practices in regulation via sections such as section 28 dealing with “good regulatory practices” in the USMCA (the United States–Mexico–Canada Agreement). This can improve the regulatory environment and governance in DTA member countries (IISD, 2023).

1.1.2.6 Enhanced integration into global value chains (GVCs)

DTAs allow members to become part of GVCs by simplifying production processes across borders and increasing specialisation in specific stages of production that result in more efficient and competitive industries. Participation in

GVCs also facilitates the transfer of technology and expertise, which is especially helpful for developing countries that may face obstacles to getting the necessary skill sets and expertise (Bruhn, 2014).

1.1.2.7 Promotion of labour and environmental standards

One hallmark of DTAs has been provisions that promote commitment by the negotiating partners to a core set of labour standards (e.g., those that prohibit child labour, enforced labour and discrimination in the workplace) and environmental protection. For many advanced economies, like the EU and the US, DTAs have become a mechanism to encourage better labour conditions in developing countries (World Bank, 2020). Provisions promoting commitments to protect the environment, adopt more sustainable practices and reduce negative environmental impacts are even more common than those promoting labour standards. DTAs are also seen as a tool to make environmental treaties like the Paris Agreement more enforceable.

1.1.2.8 Path dependency in trade agreements

Path dependency here means that once an FTA has been signed by a country, it becomes a model for future FTA negotiations, as parts of it become standard text influencing future FTA design. Research has highlighted the trend toward path dependency in trade agreements over the years (Lewis, 2023).

1.1.2.9 FTAs as a tool for marketing and building trusted relationships

Another key benefit to businesses offered by FTAs, as cited by a business association interviewee familiar with IA-CEPA, is their usefulness as a marketing tool. They pointed that such agreements can promote confidence and good faith among signatories since their intent is obviously to drive greater engagement and prosperity between the negotiating countries. Thus, trade agreements could be used to “overcome a lack of understanding of each other’s cultures, business, environment and opportunities, and to work together to build essential long-lasting trusted relationships that can underpin business”.

1.2 About stakeholder consultations

1.2.1 What are stakeholder consultations?

The following categories are recognised as potential stakeholders by many FTA negotiating countries (UNCTAD, 2022):

- Government bodies at national and regional levels, such as ministries, departments, etc.
- Business stakeholders (sometimes referred to as “private stakeholders” in this paper), such as chambers of commerce, businesses, business associations, SMEs, etc.
- Social partners, such as employers’ federations (e.g., APINDO) and trade unions.
- International organisations such as those focused on human rights and environmental protection.
- Civil society organisations or non-governmental organisations.
- Research institutes and experts, advisors and academics from universities.

This paper will focus on the perspectives of business stakeholders who are the most directly involved and impacted non-state stakeholders of FTAs. Indeed, when Vietnam and Indonesia refer to non-government stakeholders, they mainly mean individuals and entities from a business background.

The definition of stakeholder consultations can vary but is quite similar in essence. The EU describes the stakeholder consultation process as follows (European Commission, 2023): “Consulting stakeholders is an important instrument to collect information for evidence-based policy making. Their views, practical experience and data will help deliver higher quality and more credible policy initiatives and evaluations”. In a paper on consultation process in Indonesia and Canada, consultations between the government and the business community (also referred to as public-private consultations) are defined as “a two-way discussion that connects the government and private sector through various mechanisms” (Callista, 2018). The “two-way” characterisation here refers to the fact that consultations serve as fora for government both to impart information to and receive information from the private world.

Stakeholder consultations are not a tool limited to FTA negotiations. They are often used by governments when making other types of policies.

They can be open or closed, transparent or confidential, formal or informal, and conducted via everything, from written submissions, emails and letters to in-person and online meetings to WhatsApp exchanges and telephone calls. Nor is their timing pre-determined across countries; consultations can take place before, during and after FTA negotiations.

1.2.2 Why are stakeholder consultations important?

The importance of the consultations to the industry can be best expressed by stakeholders themselves, as by the Australian stakeholders during an inquiry by Parliament into the Australian Government’s approach to negotiating trade and investment agreements (JSCTIG, 2024):

- The perspective of the Australian Chamber of Commerce and Industry (ACCI) on the value of stakeholder consultations in FTAs: “Both government and stakeholders benefit from genuine two-way dialogue, which equips Australian negotiators through an informed understanding of stakeholder positions and commercial interests and through leveraging their knowledge and expertise”.
- The perspective of Grains Australia: “The success of trade negotiations hinges not only on the government’s ability to represent national interests effectively but also on its capacity to meaningfully engage with industry stakeholders”.

The EU, meanwhile, offers the negotiator’s view: Consultation of external parties increases the legitimacy and hence the quality and credibility of Commission proposals. It allows improving our policies. [...] Consultations should not be considered as a procedural step or as a tool to validate given positions, but rather as an opportunity to collect external views – including critical ones – for policy preparation, to measure expectations and identify policy alternatives” (E. Commission, 2014).

So, what are the main reasons for stakeholder consultations? Some reasons are given below (Cote, 2016; OECD, 2019):

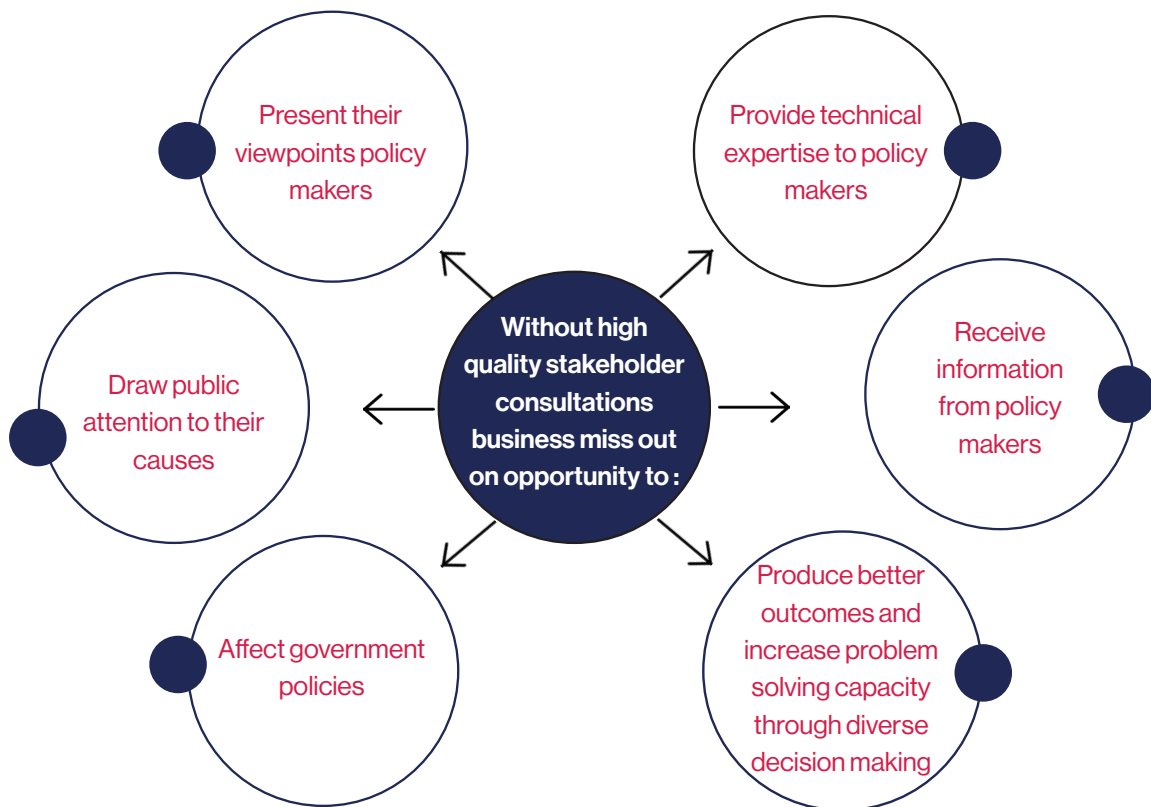
- A. They serve as a source of information for policymakers – in this case, the negotiators of an FTA. Consulting a diverse range of stakeholders allows negotiators to understand the bigger picture, although this can also make the process more time- and resource-intensive.
- B. They increase transparency for non-state actors in FTA negotiations and offer a window into the often highly secretive process of FTA negotiations. This increases understanding and reduces scepticism about the process.

- C. They increase the legitimacy of the FTA in the eyes of both stakeholders and the wider public, who feel more involved and influential in the negotiations.
- D. They allow the parties involved to form deeper connections and foster an understanding of trade issues and the negotiation process. These relationships can make the process of future consultations easier for both sides.
- E. Finally, consultations make for stronger and better FTAs – agreements that are more representative of the interests of the intended beneficiaries (i.e., the stakeholders) and thus, more likely to be utilised and appreciated.

No FTA can reach its full potential if businesses and other stakeholders do not find it useful in their everyday operations.

Research has shown the importance of consultation mechanisms for the stakeholders and the benefits they miss out on if they do not participate, as the figure below shows (Binderkrantz et al., 2023; Ven, 2022). However, the economic costs of ineffective stakeholder consultations on the businesses or the economy as a whole is not a well-researched area at present.

Figure 3: Benefits of stakeholder consultations for the businesses



Historically, trade negotiations were neither transparent nor inclusive. The WTO Ministerial Conference in Seattle in 1999 marked an important milestone for government consultations with the public on trade issues for both the EU and Australia. In Australia, public submissions from the public on trade issues were first sought by DFAT prior to the Seattle conference (JSCOT, 2021). The EU also held its first consultation with civil society before the Seattle Conference, making the consultation process more open. (Muguruza, 2002).

Following violent demonstrations by anti-globalisation protestors during the 1999 Seattle conference, many nations, and even the WTO, took steps to increase transparency. A few years later, the EU's Minimum Standards on consultations came out in 2002.

The next major event influencing attitudes about consultation was the negotiation of the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP) in the 2010s.

In the EU, civil society organisations demanded access on an equal basis with the businesses as well as greater transparency (Chafiz & Young, 2019). The 2015 Australian Parliamentary report “Blind Agreement: Reforming Australia’s treaty-making process” also noted requests by civil society for a better consultation process and recommended that “parliamentarians and stakeholders be given access to treaty text on a confidential basis during negotiations and not a token look at the end as with the TPP” (FADT, 2015).

While the EU and Australian perspectives on consultations are fully public, the paper will also explore the less-accessible viewpoints of stakeholders in Vietnam and Indonesia on the importance and effectiveness of the process, gathered through extensive interviews. We will also explore the impact of these consultations on FTAs negotiated by these two countries.

1.2.3 The rise of deep trade agreements and stakeholder consultations

The need for improved, high-quality and comprehensive consultations has increased with the proliferation of DTAs. It was DTAs such as TPP and TTIP that pushed further reforms in consultation processes in both Australia and the EU, while DTAs such as TPP and IA-CEPA provided unique consultation experiences for Vietnam and Indonesia. Because DTAs are often complex, today’s stakeholder consultations require more sophisticated approaches and greater resources. As noted above, DTAs cover a wide range of issues beyond traditional tariffs, such as e-commerce, sustainability and SOEs. These issues require careful stakeholder mapping and the active participation of stakeholders with rich sectoral knowledge and expertise. Governments must also either hire specialised trade experts or build a team of dedicated in-house researchers, if it hopes to conduct truly effective consultations. The complexity of DTAs makes business involvement in consultations both challenging and crucial.

1.2.4 Stakeholder consultations around the world at a glance

The issue of consultations remains somewhat underexplored in trade policy research, especially in the context of regional or bilateral FTAs. Some researchers have assessed stakeholders’ views on the extent to which measures to increase transparency, following backlash after TTIP, have addressed their concerns (Chafiz & Young, 2019).

Others have analysed the role non-state stakeholders, namely private and civil society actors, played in the negotiation process of the Voluntary Partnership Agreement with Vietnam under the EU Forest Law Enforcement, Governance, and Trade Action Plan (Beck, 2017). Still others have analysed the public-private consultation mechanisms in Canada and Indonesia and made recommendations to Indonesia’s government and business associations on ways to improve consultations (Callista, 2018). Another key paper draws a detailed landscape of participation by non-state actors in trade policy formulation in Vietnam (Dao, et al., 2013).

While information on participation by stakeholders in FTA consultations involving developed economies such as the EU and Australia – which hold dozens of meetings per FTA with hundreds of participants – can be easily accessed, the extent of participation by business stakeholders in consultations involving developing countries remains hard to come by. This dearth of information is especially exasperating for those researching Asia, given that Asian nations are highly active DTA negotiators and can themselves serve as models for other developing countries less active in negotiations and consultations.

Given that the economy of Southeast Asia is one of the fastest growing in the world, aligning FTAs with the interests and capacities of local businesses is essential for maximising the benefits of trade agreements, enhancing economic competitiveness and ensuring the successful implementation of agreements.

Not only is the extent of business participation in consultations held by developing countries such as Vietnam and Indonesia difficult to ascertain but little is known about the effectiveness of consultations in incorporating business feedback into FTAs. This is due to both a lack of public documentation of stakeholder consultations and sensitivity about the confidential nature of negotiations, which discourages transparency. In addition, there is little public pressure for increased disclosure. In contrast to larger economies, public protests against FTAs or pushback by civil society organisations are rare in the developing world.

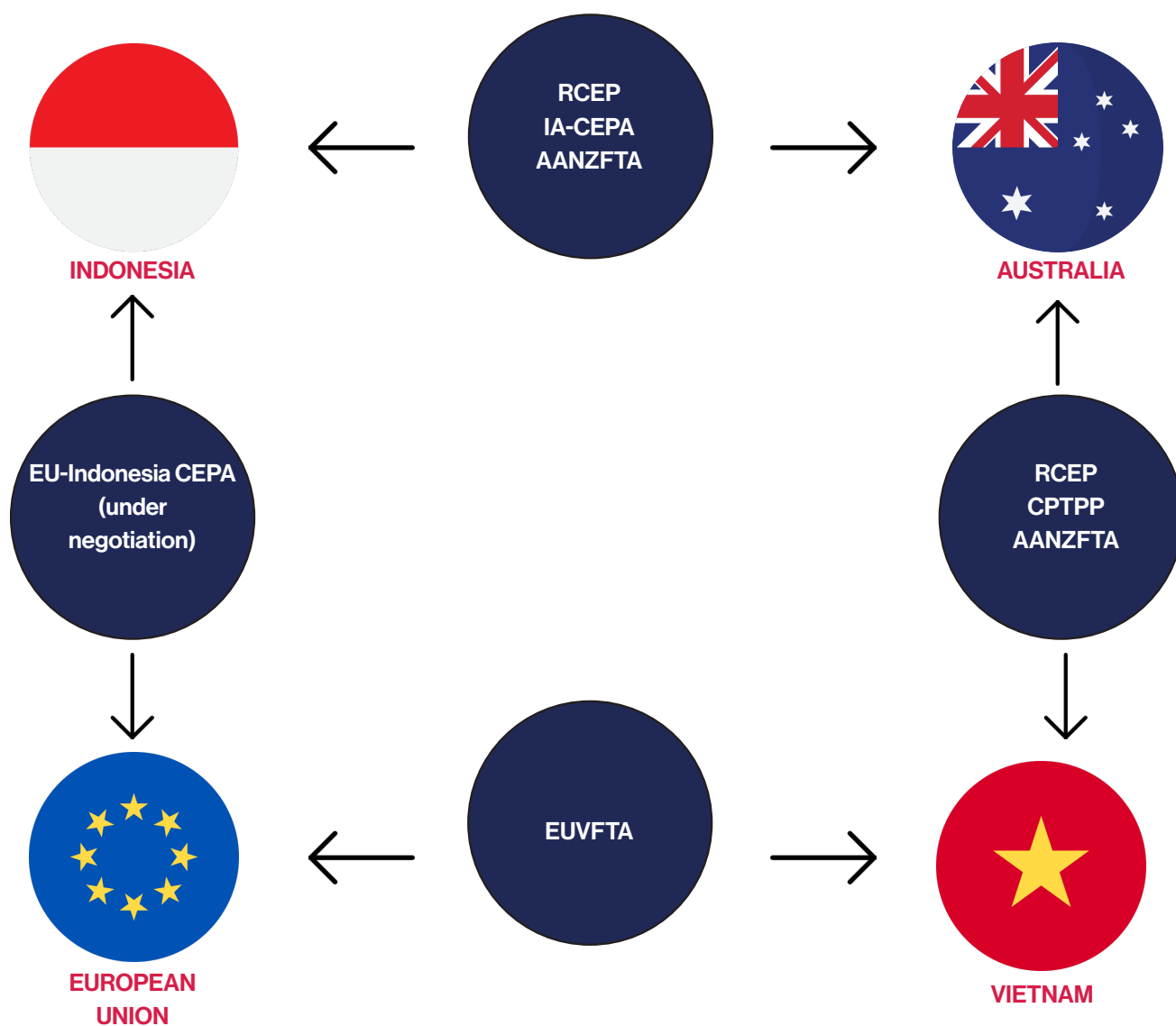
By drawing on primary research such as interviews with key stakeholders in FTA consultations, the paper will provide direct insights that are hard to find anywhere else. In Section 2, we will compare and contrast stakeholder consultations in the EU and Australia with those of Indonesia and Vietnam.

Section Two:

Stakeholder consultations with businesses for FTA negotiations

2.1 Case study: stakeholder consultations in Indonesia and Vietnam compared to the European Union and Australia

Figure 4: FTAs signed or under negotiation between Indonesia, Vietnam, Australia and the EU



The paper will compare the stakeholder consultations process involved in FTA negotiations in four WTO Members States: two developing countries from Asia, Vietnam and Indonesia, and two advanced economies, the EU and Australia. The reasons behind the selection of these four focus economies are outlined in the following section.

Indonesia and Vietnam were selected as representatives of the developing world because:

(1) They are in Asia, a major centre of both merchandise and services trade. The facts below illustrate both Asia's economic strength and Vietnam's and Indonesia's rise as trade powerhouses:

- i. As per the 2024 Economist Impact forecast, Asia is set to be the fastest-growing trading region in the world, in terms of both exports (5.1 per cent growth forecasted) and imports (5.8 per cent growth rate forecasted) (Economist Impact, n.d.).
- ii. (In 2023, Vietnam was Asia's seventh largest exporter, with exports of US\$355.5 billion (Vu, 2023).
- iii. Indonesia's economy is ninth in Asia, with exports worth US\$236.4 billion in 2023 (Jan-Nov) (BPC, 2023).

(2) Both Vietnam and Indonesia are developing countries and comparing their stakeholder consultation processes with those of the EU and Australia can offer revealing and useful insights into the similarities and differences between economies at different stages of development.

(3) They have conducted multiple trade agreements in the last decade, including some landmark DTAs (e.g., CPTPP, EUVFTA and IA-CEPA) with major developed economies (e.g., the EU and Australia). They have also signed more DTAs in the last decade than many other major Asian trading economies, including China, India and Malaysia.

The EU and Australia were chosen as representatives of major economies because:

(1) Both rank highly in the developed world in terms of trade. The EU is the biggest trading bloc in the world, exporting goods worth US\$7.49 trillion in 2022–2023 (Tradeimex, n.d.). Australia was the world's 23rd largest exporter in 2023, with exports of US\$447 billion (World Bank, n.d.a).

(2) Both have been active in trade negotiations in the past decade, signing many DTAs. This stands in contrast to the US, which has been relatively inactive since exiting the TPP and withdrawing from TTIP negotiations.

(3) The EU has developed one of the most open, transparent and extensive stakeholder consultation processes in the world. It can be considered the gold standard of transparency in consultations, for reasons we will outline later. The bloc is also a pioneer in many practices related to stakeholder engagement. Australia, meanwhile, serves as a more practical model of transparency and openness in stakeholder consultations.

(4) Australia has signed multiple trade agreements with Vietnam and Indonesia, both individually and as members of the ASEAN trading bloc. This makes it a better choice for comparisons with Vietnam and Indonesia than countries such as Canada.

(5) Because they are relatively wealthy economies, both their governments and their stakeholders face fewer resource constraints. Not only can their large companies hire trade specialists for research and advocacy, but their civil society organisations are also capable of being active in stakeholder consultations.

Table 2: Table giving overview of stakeholder consultations

Issue	Vietnam	Indonesia	EU	Australia
Authority conducting trade consultations	Ministry of Industry and Trade, Vietnam	Ministry of Trade, Indonesia	European Commission	Department of Foreign Affairs and Trade, Australia
Law on consultations	Prime Minister's Decision No. 06/2012/QĐ-TTg of January 20, 2012, mandates stakeholder consultations, but even before that, consultations had become an established practice	Law No. 24 of 2000 on International Treaties (Undang-Undang No. 24 Tahun 2000 tentang Perjanjian Internasional) and Presidential Regulation No. 82 of 2017 mandate consultations for FTA negotiations	Trade for All Policy (2015) policy and COM (2002) 704 are the official policies governing consultations with stakeholders	No law but the consultations have become a formal practice and are acknowledged as such by policy statements such as "Trading our way to more jobs and prosperity"
Stakeholders involved in consultations	Formally: [1] Other Ministries [2] Directly, VCCI and indirectly, Vietnamese enterprises and business associations via VCCI Informally and occasionally: [3] Foreign business associations may participate indirectly [4] Academics and experts [5] NGOs	Directly: [1] Line Ministries [2] KADIN and APINDO and its members (In some cases, the Ministry of Trade or line ministries may invite a business or association from a sector identified as relevant) [3] Academia Indirectly: [4] Businesses and business associations via KADIN/APINDO and line ministries	Open public consultations that include: [1] Businesses & business associations [2] Civil society [3] Academia Both European and non-European stakeholders can engage	Includes: [1] Commonwealth [federal], State and Territory Ministers and officials [2] Community groups, NGOs, trade unions, academics, peak industry bodies and business representatives
Pre-negotiations engagement	Mandatory but limited engagement compared to the EU	Not an established practice for business stakeholders	An established policy to engage both pre- and post- negotiations	Limited engagement compared to the EU

Mechanisms used	Emails, publications on government websites and conferences (open or confidential)	Meetings, websites and emails from the government, KADIN and APINDO Seminars and workshops may also be organised at the regional level Informal communications	DG Trade's Transparency in Action web page Regular Civil Society Dialogue meetings Ad hoc meetings with civil society from the EU and FTA negotiating partner country Expert Group on EU trade agreements	Calls for written submissions on website Formal stakeholder consultation meetings and briefing sessions Other communication
------------------------	--	--	--	---

2.2 Stakeholder consultations for FTA in the EU

2.2.1 Who conducts stakeholder consultations in the EU?

In the EU, the European Commission's Directorate-General for Trade (DG Trade) is in charge of all forms of stakeholder engagement on trade agreements. Engagements are extensive, open, public and complex. The Commission organises Civil Society Dialogue meetings and Expert Groups on EU trade agreements to reach out to both businesses and civil society stakeholders (E. Commission, n.d. e).

2.2.2 Who are considered stakeholders in the EU?

One distinctive feature of the EU's consultation process is how negotiators actively engage with both business and non-business stakeholders through such initiatives as Civil Society Dialogue meetings, where business leaders and national trade associations rub shoulders with trade unions and non-governmental organisations. However, civil society organisations have in the past complained that business enterprises are more closely involved in talks and given more attention by the authorities (E. Commission, n.d. e).

2.2.3 What is the consultation process in the EU?

The EU's consultation process is extensive, open and transparent. Its approach to consultation is dictated by the "Minimum Standards for Consultation" adopted in 2002 (E. Commission, 2002). In 2015, the Commission adopted the so-called "Trade for All" Policy. This policy has established tools such as the "Transparency in action" website, which publishes details related to trade agreements under negotiation (E. Commission, 2015). To foster inclusive negotiations, the policy also included the creation of an advisory group on EU trade deals and will publish recommendations for negotiating directives in the future. Article 11 of the Treaty on the Functioning of the European Union (TFEU), Regulation (EU) No 182/2011 (Comitology Regulation) and the Interinstitutional Agreement on Better Law-Making (2016) also encourage both transparency and consultations with stakeholders.

Trade talks in the EU begin with the publication of recommendations for negotiating directives for trade agreements by the Commission. This document explains why a given trade agreement has been proposed, its expected scope and the goals of the proposal.

Then, based on these recommendations, the Commission asks for authorisation from the Council to open negotiations. These draft negotiation directives allow all interested stakeholders, whether businesses, organisations or individuals from civil society, to be informed of and even to discuss the issues and policy areas in the negotiation. Once the draft directives are accepted by the Council, they are published and negotiations formally begin (E. Commission, n.d. f).

The Commission then publishes substantive material that allows interested stakeholders to track how the negotiations are evolving. This includes legal texts proposed by the EU's side: a practice that even countries like the US and Australia do not engage in due to concerns about secrecy. An extensive Sustainability Impact Assessment (SIA) is also conducted, where the input of the stakeholders is taken into account (E. Commission, n.d.).² Businesses and other stakeholders can interact through the following fora:

(1) Trade Civil Society Dialogues: These are organised by DG Trade and allow business associations, civil society organisations and trade unions to directly engage with EU trade negotiators and give their feedback on agreements. The meetings are regular and structured, with DG Trade officials informing the participants of progress and then listening to their views (E. Commission, n.d.).

(2) Expert Group: In 2017, the EU created an Expert Group on trade agreements to provide technical expertise and share expertise on issues being negotiated. This group is populated by a "balanced group of stakeholders" that includes trade unions, employers organisations, consumer groups and other non-governmental organisations (E. Commission, n.d. b).

(3) Individual meetings: The EU will often also meet interested stakeholders for one-on-one meetings outside the Civil Society Dialogue.

Once the negotiations conclude, a finalised text is published by the Commission. Engagement with the stakeholders continues even after the agreement is signed, however. The Expert Group advises on implementation while the Commission receives input from relevant stakeholders and wider civil society through open public consultation on evaluations of the effects after the agreement in question (Chafiz & Young, 2019).

² SIAs offer an "in-depth analysis of the potential economic, social, human rights, and environmental impacts of ongoing trade negotiations" to the Commission and are produced by external consultants.

2.2.4 Why the EU is the “gold standard” for consultations

The European Commission has developed one of the most “ambitious”, “formalised”, and “state-of-the-art” public consultation regimes in the world (Bunea et al., 2024). It can offer lessons on how to design participatory mechanisms. Also, due to its open, extensive consultations, the Commission engages with “a high number of diverse stakeholders” who serve as a “source of input complexity” on matters of “technically sophisticated policy matters” years (ibid.). In simple terms, the diverse stakeholders in consultations for trade negotiations by the EU lead to greater complexity and technicality in the EU’s FTA proposals, as one can see in hundreds of pages of DTA proposals by the EU in the last few years. The developing countries, on the other hand, do not engage in this level of stakeholder consultations, and the FTAs between them remain less complicated.

2.3 Stakeholder consultations for FTA in Australia

2.3.1 Who conducts stakeholder consultations in Australia?

In Australia, stakeholder consultations come under the Department of Foreign Affairs and Trade (DFAT). DFAT consults interested individuals and organisations (DFAT, n.d. c); it must also summarise details of all consultations in a National Interest Analysis report to the Parliament (JSCTIG, 2024).

2.3.2 Who are considered stakeholders in Australia?

As with those held by the European Commission, consultations in Australia engage a wide range of stakeholders: from industry bodies and individual companies to State and Territory governments, academics, unions, consumer groups and other interested parties. These consultations allow DFAT to identify commercially significant impediments to trade and business or other areas of concern, and then to raise these with negotiating partners during FTA talks.

2.3.3 What is the consultation process in Australia?

While there is no law mandating and regulating public consultations in Australia, they have become a widely established practice and are acknowledged as such by government policy statements such as: “Trading our way to more jobs and prosperity” (Trove, 2011) and the Australian Parliament’s 2015 inquiry into treaty-making processes (FADT, 2015).

Under current practice, DFAT begins consultations with industry, civil society organisations and other interested parties early in the negotiation process for each FTA. Feedback from consultations also informs its wider negotiation strategies and priorities. Consultations are done via “media releases, calls for public submissions and multiple rounds of face-to-face consultations” (FADT, 2015). For IA-CEPA, consultations happened through targeted events, stakeholder meetings and even phone calls (DFAT, 2019). DFAT shapes FTA negotiations based on concerns revealed during these consultations. This in turn ensures that the negotiating agenda is based on the current interests of Australia (DFAT, n.d. c).

There is no set format for written stakeholder submissions. They can be brief letters or emails or lengthy documents. However, stakeholders are encouraged to provide evidence to support their views in the form of data and documentation. All submissions are public unless the submitter requests confidentiality. In this exceptional case, a summary may be provided – unless the stakeholder in question provides a compelling reason for not doing so. So, while the level of transparency level is lower than that of the EU, it is still quite high.

The DFAT also engages in direct consultations with stakeholders, the intensity and frequency of which may vary. One of the most laborious stakeholder consultations undertaken by Australia was for the TPP (later adopted as CPTPP). This began in 2008, two years before the launch of TPP negotiations. DFAT conducted public consultations in various cities and threw them open to businesses, civil society and interested members of the public, after publishing the details of each meeting on the DFAT website. After an initial set of general consultations, a second round of more specific and issue-based consultations was scheduled. Invitations were sent to more than 450 individuals and organisations on TPP stakeholder contact lists. In these meetings, senior government negotiators briefed stakeholders on the progress in the talks and gathered feedback.

Even after these consultations wrapped up, stakeholders were invited to contact negotiators with follow-up queries via email, teleconference or in person. By the time negotiations concluded in 2015, DFAT had received 90 written submissions and engaged in direct consultations with more than 1,000 stakeholders (FADT, 2015). One of the individuals interviewed for this report had this to say about Australia's consultation process:

Australia is pretty organised and they're pretty good in terms of their outreach and just basically trying to work with the industry groups to sort of get everybody on board.

- Trade advisor, Indonesia and Australia

Australia's consultation process lies between the EU's level and the level of Indonesia and Vietnam in terms of transparency, formalisation and resources expended.

2.4 Shared characteristics of stakeholder consultations in EU and Australia

There are a number of similarities – and some key differences – between stakeholder consultation processes in the EU and Australia, which are outlined below:

The two have the following points of similarity:

a. Consultations in both the EU and Australia are open to all – not just businesses. Both governments take great pains to include civil society organisations, consumer groups, trade unions and NGOs. There is also little use of the “invitation” model for consultations (i.e., identifying certain business stakeholders as relevant or representative in advance and then inviting them), the model generally used in both Vietnam and Indonesia. Instead, they use communications to make the wider public aware that consultations are taking place and encourage all interested parties to take part.

b. Both employ many practices to increase transparency for the general public and publish details related to the consultations and their responses to them.

- For example, in the case of the IA-CEPA, DFAT reported details of the stakeholder consultations in a National Interest Analysis report, including (DFAT, 2019):
 - a summary of the consultation process;
 - brief references to concerns or interests expressed by stakeholders; and

- an alphabetical list of 143 stakeholders who engaged with the DFAT and the Business Partnership Group, beginning with “ACIL Tasman” and ending with “World Society for the Protection of Animals”.
- Similarly, the EU has made the details of stakeholder consultations held for the EUVFTA public, including (AsktheEU, 2019):
 - a list of meetings with individual stakeholders consulted from 2012 to 2019 (144 in total);
 - an overview of stakeholders met with over the period (73);
 - a list of meetings of the DG Trade Civil Society Dialogues, where the EU- Vietnam FTA negotiations were discussed (18);
 - a list of stakeholders that registered for one or more Civil Society Dialogues (408);
 - a list of stakeholders met individually or via the Civil Society Dialogues (452).

c. Business stakeholders in both economies also have more funds to undertake sophisticated, technical trade research and advocacy to advance their interests.

There are also differences between the two – particularly in the scale of consultations. The EUVFTA involved a large and involved consultation process with a vast number of stakeholders, in part because of institutionalised practices such as the Civil Society Dialogues.

Another difference is that Australia does not follow the EU practice of publishing proposed texts and detailed summaries of each round of talks due to concerns about confidentiality.

2.5 Stakeholder consultations for FTA in Vietnam

2.5.1 Who conducts stakeholder consultations in Vietnam?

In Vietnam, all FTA negotiations are led by a Governmental Negotiation Delegation (GND) on International Economics and Trade and headed by the Deputy Minister from the Ministry of Industry and Trade (MoIT), who serves as the chief negotiator (Dao et al., 2013). Personnel from other ministries may also join the delegation. The GND is the body responsible for all consultations and stakeholder coordination. The National Committee on International Economic Cooperation (NCIEC) supports the negotiations and coordinates with other departments through inter-Ministerial and inter- Departmental consultations.

2.5.2 Who are considered stakeholders in Vietnam?

One interviewee explained:

We divided the stakeholders into two categories: one, business community; and another one is relevant government agencies [...] We base our decision on who to consult on three criteria [...] The first one is who knows best; the second one is what industries will be the most impacted if we sign this agreement and the third one is who makes the decisions [in the business association or government department].

- *Government negotiator, Vietnam*

A 2012 law, Prime Minister's Decision No. 06/2012/QĐ-TTg of January 20, 2012, on Consultation with the Business Community on International Trade Agreements (the "2012 Prime Minister's Decision"), formally identifies the "business community" as a stakeholder. The business community is limited by definition to "Vietnamese enterprises defined under the Enterprise Law, business associations and lawful representative agencies and organisations of these enterprises as provided by Vietnamese law" (Dao et al., 2013). Other government departments and agencies are identified as another category of stakeholders in the 2012 Prime Minister's Decision.

The Vietnam Chamber of Commerce and Industry (VCCI) is a national organisation which represents the business community, entrepreneurs, employers and business associations (AusCham, 2024). It has become intermediary between the government and business sectors. It is important to note here that the VCCI's role is influenced by the government while its Chairman is also a member of the National Assembly, Vietnam's main legislative body (Loc, n.d.).

VCCI was mandated as the focal point for collecting the opinions of the business community. [...] This is the national organisation representing the whole of the business community in Vietnam. Whether or not they are official members.

- *Business association member, Vietnam*

VCCI is the most important [business association] for two reasons. First, they represent the whole business community and that's why they are capable of giving the most diverse inputs and comments. So, you can ask them any question concerning agriculture, industry or even services etc. And second, they have a very capable research centre called the "WTO Center" which has the resources to do research and then give good advice to the negotiating team.

- *Business association member, Vietnam*

VCCI set up the Committee on International Trade Policies (CITP) in 2010 as the forum where the private sector and government bodies could voice their opinions on trade issues. CITP members come from some of Vietnam's largest industries and include industry associations, experts from government departments and universities. Private businesses can also get in touch with specific government bodies through the VCCI and CITP. VCCI's WTO Research Center does in-house research on trade policies and publishes news related to trade agreements – whether already negotiated or under negotiation – on its website in English and Vietnamese (Dao et al., 2013).

As consultations are focused on getting inputs from the Vietnamese business community, foreign business associations there such as EuroCham and AusCham do not participate directly in consultations, unlike their Vietnamese counterparts (e.g., the Vietnamese Coffee and Cocoa Association (VICOFCA) or the Vietnam Textile and Apparel Association (VITAS). Similarly, the 2012 Decision precludes a non-Vietnamese enterprise from weighing in formally on trade issues, although the Vietnamese branch of a multinational corporation or foreign enterprise can be involved more directly. We should note here that the consultation processes in the EU and Australia do not impose such limitations.

Whenever we say stakeholders in trade negotiations, we mean the business community, including the business associations. It is different from the UK or the US where when they say stakeholders, they mean everybody outside the negotiations. [...] From time to time, we may consult the civil societies, the NGOs and academics, but it's not mandatory.

- *Government negotiator, Vietnam*

While academics and experts are involved in consultations as members of CITP, they are not formally considered to be stakeholders. NGOs and civil society organisations are also not deemed to be stakeholders – in contrast to the EU and Australia – so they usually have little influence over the content of an FTA.

2.5.3 What is the consultation process in Vietnam?

In Vietnam, consultation by the government with business stakeholders has been mandatory since the 2012 Prime Minister's Decision, which sets out the powers, responsibilities and scope of consultations between the government and the business community when preparing and negotiating trade agreements. The law also outlines the minimum information that must be provided before any trade negotiations start, the mechanisms to be deployed and the details of how trade negotiation should be conducted.

The MoIT conducts a feasibility study when it proposes a potential FTA for Vietnam and before the negotiations are launched. It has two research institutes – The Institute of Trade and Industrial Policy and The Strategy Institute – which help it prepare a proposal to present to the government for approval. It is when conducting this feasibility study for an FTA that the business community is engaged and the first discussions with the external stakeholders are held. (Dao, et al., 2013).

Despite the opacity of the process, our interviews with government negotiators and business associations yielded a wealth of information on how consultations are conducted. This is outlined below.

2.5.3.1 Mechanisms for stakeholder consultations

A government regulator interviewed for this paper explained how the business community is engaged in consultations:

We use two main mechanisms: official letters and seminars. We do not use electronic platforms like social networks. We send out official letters to the business community in which we summarise the negotiation issues, and then we elaborate a little bit on the possible impact on that business community, and then we invite them to make comments. You give them some background information and then some food for thought and once they understand what is going on they can make they can make the comments. The same procedure would be applicable for seminars.

We organise the seminar and then we invite people to make comments on the issues under negotiation. We also have an email address to which people can send emails, ask questions or give inputs or comments, but the business community in Vietnam rarely uses that kind of communication.

- Government negotiator, Vietnam

2.5.3.2 Extent of consultations

In interviews with government negotiators, it became clear that the frequency of consultations depended on the complexity of the agreement being negotiated. During TPP negotiations, for instance, as many as 30 or 40 business associations would be consulted at times. After each round of talks, negotiators would come back and hold consultations. If a seminar was being organised, they would summarise the outcome of the latest round of negotiations and seek comments from the business community. For a trade agreement between Vietnam and an Asian country, such frequency would not be required.

2.5.3.3 Two approaches to consultations: bottom-up and top-down

An interviewee from a business association sheds further light on the two modes of consultation employed during trade talks:

(1) Bottom-up consultation: Any business can submit a recommendation or an opinion directly to the negotiating team. Alternatively, the business can send it to VCCI so it can be analysed and used to prepare a recommendation that represents the opinion of the whole business community. Especially in cases where the agreement text is too complex to be understood by an individual or a firm, businesses will address their opinion to VCCI, which aggregates the opinions and recommendations for submission to the negotiating team.

(2) Top-down consultation: This takes place when the negotiating team wants input from the business community on a particular issue. In this case, the team will identify the businesses they want to consult in a specific sector or sectors, invite these businesses to a meeting and then listen to them.

2.5.3.4 VCCI's consultation mechanism

An interviewee explained that the VCCI does not have a rigid or formal consultation process, but has different processes depending on the context, the circumstances and the nature of the issue in question.

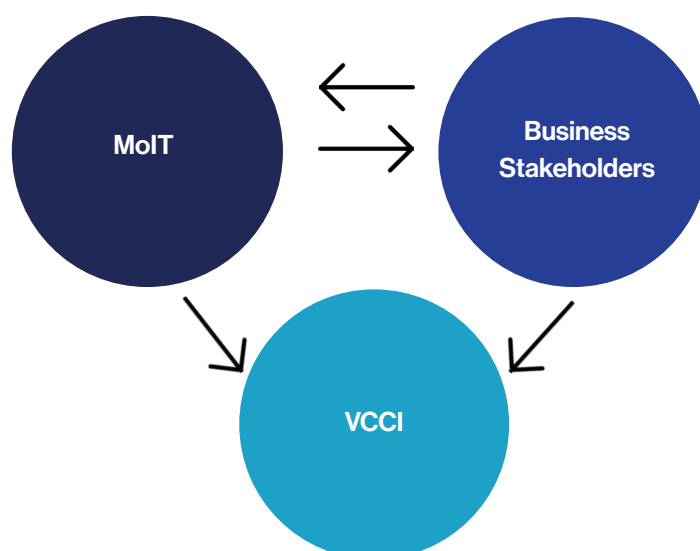
For example, during TPP talks, the VCCI was dealing with the Intellectual Property Rights (IPR) section. After it received a draft of the section, it analysed the draft to judge the advantages and the disadvantages of the provisions, then made a brief report on the potential impact.

It sent this to some 50 business associations in sectors that might be affected (e.g., pharmaceuticals or agriculture), along with a survey seeking opinions on the draft. It then held follow-up meetings with potentially affected groups.

Based on the feedback received, the association compiled a comprehensive report on the potential impact of the IPR section of the agreement from the viewpoint of Vietnamese businesses and submitted this to the negotiating team.

The interviewee added that any recommendations made by the VCCI on an FTA must represent the entire business community, not just one interest group or sector.

Figure 5: The stakeholder consultation process in Vietnam (arrows indicate the party approached)



2.5.3.5 Why are stakeholder consultations important in Vietnam?

A government negotiator interviewed for this paper offered three reasons why Vietnam conducts stakeholder consultations:

First, we have the mandatory obligation to listen to the concerns of the business community. Second, I very much would like to see the comments of the public on what we are doing. And third, of course, we would like to have more and more support for each and every agreement that we've made.

- Government negotiator, Vietnam

2.6 Stakeholder consultations for FTA in Indonesia

2.6.1 Who conducts stakeholder consultations in Indonesia?

In Indonesia, all trade-related matters are supervised by the Ministry of Trade. Within the Ministry, the Directorate General (DG) of International Trade Negotiation which houses the units responsible for both multilateral and bilateral trade deals. The work of the unit responsible for bilateral treaties, the Bilateral Negotiations division, is complemented by the FTA Center, also under the DG. The Bilateral Trade Division is mandated to conduct both negotiations and stakeholder consultations, while the FTA Center acts as the forum for communicating with the public about FTAs and consulting them about their trade-related concerns (MoT, n.d.). Indonesia's Trade Policy Agency provides in-house research capability to the DG of International Trade Negotiation.³

2.6.2 Who are considered stakeholders in Indonesia?

In Indonesia, the business sector is mainly represented by two industry organisations: the Permanent Committee on Multilateral Institutions and Free Trade Agreements of KADIN Indonesia⁴ and the International Relations and Investment Division of APINDO.⁵ Their members include state-owned enterprises (SOEs), private businesses, individuals and business associations numbering in the thousands (KADIN, n.d.).

The other category of stakeholders is the ministries and departments identified by the Ministry of Trade as relevant to the negotiations (e.g., the Ministry of Industry). These are referred to as "line ministries".

There are three means by which other business associations or businesses can convey their opinions: they can get in touch with the negotiators directly; go through KADIN or APINDO; or contact the line ministries. As is the case in Vietnam, other than academics from the country's universities, non-business participants are not included in consultations and do not form part of the engagement strategies of either the Ministry of Trade or KADIN and APINDO (Callista, 2018).

2.6.3 What is the consultation process in Indonesia?

Indonesia has laws dealing with FTA negotiations and the consultation process for international agreements.⁶ However, since these do not include detailed requirements, the process can vary from FTA to FTA. According to one of the Indonesian government negotiators interviewed for this paper, the DG generally holds consultations before FTA negotiations begin, and then during various rounds of talks.

Once talks are concluded, negotiators hold follow-up meetings, which inform the implementation process. However, unlike the EU and just like Vietnam, regular meetings before, during and after each negotiation round are not a given but are done case by case.

The consultation process typically begins when the DG, as official coordinator, announces on its website and social media that Indonesia plans to open talks with a partner country or countries on a new FTA. The DG will then schedule consultations with KADIN and APINDO and representatives from the line ministries. The structure of these meetings varies: sometimes the DG will hold joint sessions that include both line ministries and the private sector; at other times, they will meet each representative group separately.

The DG gets in touch with business associations in the following ways:

(1) Through line ministries

Line ministries (e.g., the Ministry of Industry) sometimes hold separate consultations with their own stakeholders and associations and use input from these to prepare an internal position.

(2) Through KADIN and APINDO

For consultations, negotiators also work through KADIN and APINDO, which "are like the national representative for the private sectors in Indonesia". KADIN and APINDO identify the relevant sectors and then pinpoint entities within those sectors for consultation, conduct studies, discuss issues with these entities, and make recommendations on their behalf. They also act

³ Also known as Badan Kebijakan Perdagangan and formerly known as Trade Research and Development Agency (TREDA) or Badan Pengkajian dan Pengembangan Perdagangan.

⁴ KADIN stands for Kamar Dagang dan Industri Indonesia or Indonesian Chamber of Commerce and Industry. <https://www.kadin-indonesia.com/>

⁵ APINDO stands for Asosiasi Pengusaha Indonesia or the Employers' Association of Indonesia. <https://rsr.akvo.org/en/organisation/3146/>

⁶ For laws on negotiation and consultation, look at Law No. 24 of 2000 on International Treaties or "Undang-Undang No. 24 Tahun 2000 tentang Perjanjian Internasional". See also Presidential Regulation No. 82 of 2017, <https://peraturan.bpk.go.id/Details/44991/uu-no-24-tahun-2000> or "Peraturan Presiden Nomor 82 Tahun 2017 tentang Tim Perunding Perjanjian Perdagangan Internasional", <https://jdih.kemendag.go.id/pdf/Regulasi/2017/Perpres%20Nomor%2082%20Tahun%202017.pdf>.

as mediators between other business associations and government negotiators, helping the business associations to form their views on negotiations and offering the government the opinion of the wider business community as a whole. Members may also approach KADIN or APINDO after learning about negotiations from news media.

(3) Direct contact

There are cases where relevant business organisations may not be members of KADIN and APINDO. If a negotiating team wishes to gather feedback from these groups, they will approach them individually and invite them to the coordination meetings. During IA-CEPA negotiations, for example, associations representing agriculture, green industries and beef sectors were invited to consultations along with relevant line ministries. When dealing with the issue of deforestation in talks with the EU, the cocoa association, palm oil association and rubber association would be invited to offer their perspective on how measures to curb forest loss will affect their products. When it deems necessary, the government may also make contact with private businesses, including SMEs, in different regions. Major sectoral associations may also contact smaller businesses and associations separately, especially at a regional level.

2.6.3.1 Collaboration of stakeholders with FTA partners

Here, Indonesia diverges from Vietnam in the manner its main business organisations, KADIN and APINDO, have in certain cases prepared joint reports with the business associations of FTA partners, including Australia and the EU. During negotiations for the IA-CEPA, KADIN and APINDO collaborated with the Australian Chamber of Commerce and Industry, the Australia Indonesia Business Council, the Australian Industry Group (Ai Group) and the Indonesia Australia Business Council to prepare joint reports for both the Indonesian and the Australian governments. For consultations on Indonesia–EU CEPA, KADIN and APINDO consulted with a select group of some 70 members, including business associations and private companies, and summarised the results of this consultation in a report to the government. The two associations also collaborated with the European Chamber of Commerce (EuroCham) in Indonesia to prepare a joint report, similar to that prepared for the IA CEPA, with recommendations for both the Indonesian and the EU governments. KADIN and APINDO will also organise workshops and invite both private members and negotiators (Callista, 2018).

2.6.3.2 Process for consultations

In addition to formal meetings, the Ministry of Trade may also receive written submissions from business organisations. Once the DG has gathered all insights from the various categories of stakeholder consultations, they will submit these to the Trade Policy Agency for analysis.

In the words of one interviewee:

We take into consideration all the inputs that we have received from the stakeholder consultations and then, if it is of critical interest to our stakeholders, it will be also reflected in our negotiations.

- Government negotiator, Indonesia

2.6.3.3 Medium of stakeholder consultations: online versus in-person

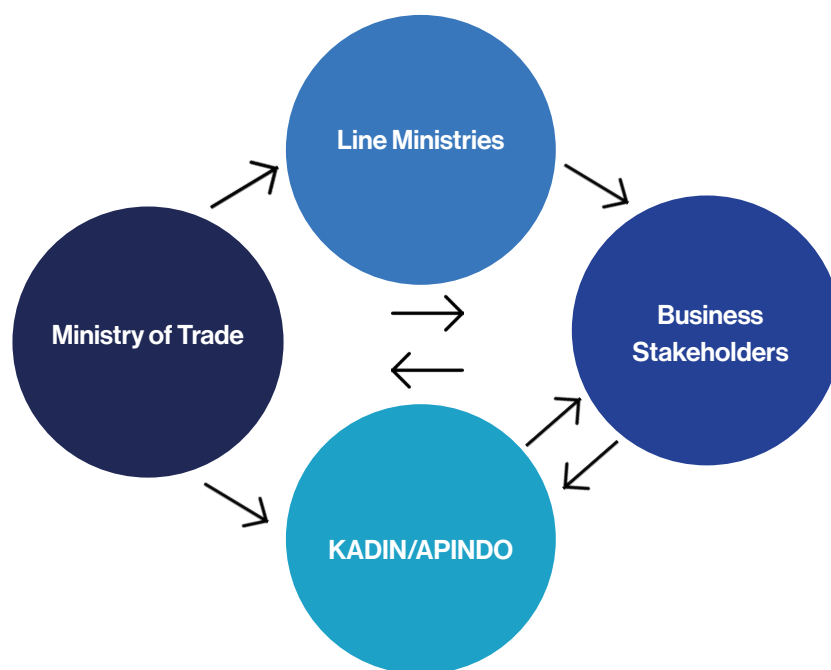
The government can use both physical and digital means to organise consultations. For online meetings, a platform like Zoom may be used.

The two government negotiators interviewed for this paper outlined the relative strengths of the two media:

(1) Online meeting: Online meetings allow people from remote locations who cannot come in person to join in. Also, since online meetings are easier on the budget than physical gatherings, they allow the government to hold meetings more frequently.

(2) In-person meeting or hybrid meeting: Hybrid meetings combine in-person consultations with online calls. On the benefits of using online platforms for meetings, the negotiator interviewed said, “We have a sense that meeting in person is much more effective than the Zoom meeting only”. This is because face-to-face gatherings allow stakeholders to talk about sensitive or confidential issues more readily.

Figure 6: The stakeholder consultation process in Indonesia (arrows indicate the party approached)



2.6.3.4 Why is the stakeholder consultation process important in Indonesia?

One interviewee from a business association who had worked with both Indonesian and Australian businesses said “socialisation” (i.e., consulting with stakeholders) can promote buy-in for FTAs and other policy measures:

Now the term “socialisation” is one that’s used very often in Indonesia. It’s just like a stakeholder engagement process where if you have an initiative that you want to gain traction, then you need to communicate it and communicate it with nuance to stakeholders and influencers to ensure that you’re getting people moving in the same direction with you and not fighting against you.

- Business association member, Indonesia and Australia

One of the government negotiators interviewed offered a more formal reason why stakeholder consultations matter:

The government must conduct a meeting based on law because without the consultation meetings, your national position is not valid.

- Government negotiator, Indonesia

2.6.3.5 Impact of culture on stakeholder consultation style

The interviews also provided an example of how a less talked about factor, the “culture” of a country, can impact the stakeholder consultation process. The example here discusses the impact of Indonesian culture on how businesses in an industry conduct internal consultations before providing their opinion to the government.

The example comes from a trade advisor who has worked on consultations in both Indonesia and Australia and who noted the role played by Indonesia’s culture in the style of consultations. They observed that in many ways, Indonesia is more effective than Australia at establishing a common position on trade issues because of the importance Indonesian culture places on consensus. If a big player has an interest in a particular outcome on, for instance, a sustainability issue, it may organise a focus group or some other kind of informal meeting with different communities around the country to gather input. Then it will convene a gathering of the big plantation companies, smaller players, forest unions and certifiers, who will together form a consensus view within the sector.

In Australia, the advisor said, business associations will try and get all members on board and spend time crafting the industry position, but, at the end of the day, the big player's perspective will prevail. There is less cultural imperative for creating a consensus on the industry position by engaging in lengthy discussions with everyone and hearing everyone out.

Whereas in Indonesia the big players would also use the industry associations to shape their demands, but they do this through engaging in a consensus-building exercise by bringing other entities to the discussion table, as per the experience of this interviewee. So, in a way, the attitude towards industry-wide stakeholder consultations for an FTA in Indonesia is a bit more inclusive compared to Australia, something that was noted as counterintuitive by the interviewee. Now, this is only one perspective on how culture can play a role in stakeholder consultations, but it can be an interesting area to explore in future research.

2.7 Impact of stakeholder consultations in Vietnam and Indonesia

Interviewees raised a number of specific examples of how stakeholder consultations in Vietnam and Indonesia have affected the negotiations and content of FTAs.

2.7.1 Example from Vietnam

A government negotiator from Vietnam highlighted an instance where stakeholder consultations had an impact on the content of an unspecified FTA text. It related to the addition of a "legitimate public policy objective" exception during negotiations for the TPP (now CPTPP) in the agreement's Electronic Commerce section.

Parties negotiating the deal were particularly focused on two issues in e-commerce. The first centred around the unrestricted flow of data across the borders of member countries. The second was restrictions on the localisation of equipment and data, which some partners wanted to eliminate entirely.

During stakeholder consultations in Vietnam, some participants raised objections to these proposals and suggested the agreement should include wording that allowed countries to place restrictions on data flows and equipment location when needed.

As a result of this input, Vietnam demanded the inclusion of a clause that allowed restrictions in cases where the free flow of data or the lifting of equipment localization rules clashed with a "legitimate public policy objective". This wording was accepted and became part of TPP (later CPTPP) in Articles 14.11 and 14.13.

Once the TPP included this wording, Vietnam was willing to agree to the free flow of data and the lifting of localisation requirements. That meant if Vietnam – or any other TPP member – had a legitimate public policy objective, they could set up barriers to the unfettered flow of data or require a foreign services provider to localise equipment in Vietnam. A similar exception was included in the Regional Comprehensive Economic Partnership Agreement (RCEP) as well. The interviewee recalled that China was hesitant to join the e-commerce section of RCEP but the inclusion of the exception in Articles 12.14 and 12.15 addressed its concerns (MFAT, n.d.).

2.7.2 Examples from Indonesia

An Indonesian government negotiator interviewed for this paper cited two examples of stakeholder consultations having an impact on the IA-CEPA agreement between Indonesia and Australia. The first related to the "Economic Cooperation" section (DFAT, n.d. b); the second to the "Skill Exchange" Memorandum of Understanding (DFAT, n.d. d). The negotiator explained that as Indonesia is still a developing country, the Economic Cooperation section was included in the IA-CEPA to balance big industries with smaller industries and SMEs. The negotiator said the inclusion of this section offers SMEs "opportunities to maximise what they can gain from the trade agreement" and that "this way, we can convince our private stakeholders". Although SMEs are not explicitly mentioned in the section, it does allow for an "Annual Work Program", which can focus on opportunities for SMEs if both FTA partners agree.

The Skills Development MoU ("Memorandum of Understanding on the Indonesia- Australia Skills Development Exchange Pilot Project") offers Indonesians a chance to receive skills training in Australia and was mentioned as another example of how stakeholder concerns influenced Indonesian demand during negotiations.

2.8 Shared characteristics of stakeholder consultations in Indonesia and Vietnam

Stakeholder consultations in Vietnam and Indonesia share the following characteristics that set them apart from the EU and Australia:

(1) Informal style: The informal style of contact, which can include meetings over coffee or WhatsApp, is quite accepted in both countries. As an interviewee from a business association remarked: “A lot of advocacy happens over a cup of coffee with the right person, rather than (through) formal submissions”. This less rigid style has its advantages, particularly for stakeholders who cannot or do not wish to hire trade advisors to prepare lengthy documents, since it gives them an easier means of expressing their concerns. However, the businesses or business associations that do not have personal contacts are deprived of this means of access to negotiators and the main industry bodies. The EU’s and Australia’s more open style of negotiation tackles this problem.

(2) “Invitation” style: In Indonesia and Vietnam, governments often confine their invitations to businesses and associations they have determined are “relevant” or “legitimate”. These invitations are rarely extended to civil society organisations or consumer unions. Nor do they include SMEs or smaller industry bodies. Again, processes in the EU and Australia are more inclusive, since governments issue open invitations and place businesses and civil society organisations on an equal footing in consultations.

Some of the other similarities – such as a lack of resources, passive business stakeholders, limited transparency and approach to SMEs – will be addressed in Section 3.

Section Three:

**Challenges faced
by Indonesia
and Vietnam
for business
participation
in stakeholder
consultations**

This section analyses the obstacles to effective business stakeholder consultations in Indonesia and Vietnam.

Its analysis is based on themes identified in interviews with government negotiators, business associations and trade advisors. While both countries have functional and well-developed stakeholder consultation systems, some challenges remain, especially when compared to the consultation processes in the EU and Australia.

The following section will discuss areas needing special attention as well as opportunities for future improvement .

3.1 Difficulty in identifying and engaging with the right stakeholders

As noted above, in some cases, both Vietnam and Indonesia engage in the model of identifying the “relevant” or “legitimate” stakeholders in advance and inviting these – and only these – for consultations. This varies from FTA to FTA as do the reasons for this potentially exclusionary approach. The government may wish to pose specific questions to the “representative” association in a sector or they may only regard certain business organisations as “legitimate” and not others.

However, this approach makes the consultation process more closed and can lead officials to overlook affected stakeholders. Such oversights are particularly common when the section under discussion includes horizontal measures, i.e., those affecting several industries rather than a single industry (UNCTAD, 2020). One interviewee who belonged to a sectoral industry association in Indonesia that had ties to Australia said the association was not included in the IA-CEPA consultations. The association received all information on the FTA talks from the newspapers. The interviewee was unaware that the association could have approached the government or KADIN directly to give feedback on the negotiations.

The interviewee stated:

I don't know why we were not included in that discussion, but hopefully in the next discussion or in the next revision on the trade policy, we can get an invitation from the government.

- Business association, Indonesia

By the interviewee's estimate, 20 per cent of the association's members, which included sector experts and businesspeople, were also members of KADIN but still did not participate in the consultations. While the interviewee was not sure of the reason for their non-participation, it is possible this was due to apathy (discussed below) or a lack of awareness that consultations were taking place.

3.2 Businesses generally lack awareness and knowledge about FTAs

One theme echoed by many interviewees was a widespread lack of understanding, awareness and knowledge about ongoing trade negotiations, issues on the trade agenda and the process of stakeholder consultations in their countries. Different interviewees had similar but unique takes on the issue. While the low level of public awareness about trade matters is a challenge for trade negotiators all over the world, including in the EU and Australia, the interviewees who flagged it during the research provided perspectives from Indonesia and Vietnam.

One interviewee from Indonesia expressed dissatisfaction with the level of government communication about consultations. They said, “The consultations aren't very well publicised, if at all”, and that they knew of some bigger companies that didn't even know the process existed. This is despite social media postings and other means used by the Indonesian government to publicise FTA negotiations and consultations. There is far less public communication related to trade deals in Vietnam, where the government does not even use social media to inform the public about consultations and provides little information about negotiations on its WTO Center website. Public outreach efforts in both countries appear more prevalent after an FTA has been signed, with more details published on government websites and seminars being conducted to increase awareness and utilisation of the FTA in the business community.⁷

Another reason behind a lack of awareness about FTAs, stakeholder consultations and their impact lies in the complexity of FTAs, especially DTAs. As noted above, DTAs have moved beyond simple tariff issues to encompass many different policy areas and are often hard to understand for even the most well-informed layperson.

⁷ See example for Indonesia's FTA utilisation seminar: <https://www.kemendag.go.id/berita/foto/webinar-memetik-manfaat-dari-ic-cepa>; See example for Vietnam's FTA utilisation seminar: https://goglobal.moit.gov.vn/en/news/news&news_id=3029.

One interviewee from a business association active in Australia and Indonesia noted:

I am not a trade agreement wonk. I'm not familiar with all the intricacies of what a trade agreement is. Also, you'd be well aware that in this region there are a whole range of intersecting, overlapping trade agreements, with AANZFTA, RCEP and CPTPP all having their own unique complexions. You have to be a real university professor, I think, to understand the nuances between them.

- *Business association member, Indonesia and Australia*

By the interviewee's estimate, 20 per cent of the association's members, which included sector experts and businesspeople, were also members of KADIN but still did not participate in the consultations. While the interviewee was not sure of the reason for their non-participation, it is possible this was due to apathy (discussed below) or a lack of awareness that consultations were taking place.

No, because it is a free trade agreement. It's two governments talking government language to each other in a document. [...] You've got two languages and politicians from both sides discussing things and if you add language issues, understanding the true meaning is quite tough. You can understand the words, but you can't understand the meaning and I think that to a certain extent is what free trade agreements are about. The words are there, but it's the meaning underlying the relationships and how it has all been formed that will actually influence how you apply it as a business or as a country. [...] I like free trade agreements, but I really don't have time or energy to understand or want to see how they're made and that's up to people who enjoy that environment. [...] I think we're interested in the quality of stuff that goes into that factory and the outcome, but that black box of negotiation is difficult to understand.

- *Business association member, Vietnam*

Thus, the issues dealt with in trade agreements are not something a common businessperson will fully grasp unless they have a trade policy officer or have stumbled upon a cogent explanation by accident.

This paper has not attempted to compare the relative levels of awareness between an average businessperson in Indonesia or Vietnam with those of businesspeople in the EU or Australia, but this would be an interesting point of future research.

3.3 Transparency versus confidentiality in stakeholder consultations

Another challenge raised during the interviews relates to transparency in trade negotiations. At present, the EU sets the benchmark for transparency and openness while Vietnam, Indonesia and Australia all disclose information only to a limited group of stakeholders – and even these select few only receive limited information. Generally, updates after each round of negotiations will be shared with stakeholders who have been acknowledged as relevant from the beginning, although the level of disclosure can vary from FTA to FTA and stakeholder to stakeholder.

A government negotiator from Vietnam said negotiating teams there summarise the topic of discussion for business associations rather than handing over a full transcript of the negotiations. The process of summarising can be burdensome for the negotiating team, but they have little choice if they are to avoid breaching confidentiality requirements. Alternatively, sometimes they will get around the confidentiality question by setting up a hypothetical situation and soliciting a reaction to that from stakeholders.

A government negotiator from Indonesia said they do not publicise the results of coordination meetings, the specific wording of an FTA or their positions on issues. All details remain confidential. All they will disclose publicly is that negotiations with a given negotiating partner or partners were held on a given day.

Australia's level of transparency in FTA talks is closer to that of Indonesia and Vietnam than that of the EU. The DFAT does not publicly disclose the proposed text of an FTA, nor does it give detailed updates after every round of talks. TTIP negotiations (Chafiz & Young, 2019). Also, while the need for confidentiality is a legitimate concern, it can impede the effectiveness of stakeholder consultations.

Even for stakeholders, it can be difficult to obtain updates, as an interviewee who has worked on consultations with the government noted: “(If) you wanted to get a good update, you have to be quite persistent in terms of trying to find the right person to get the updates from”. The interviewee added that, after getting in touch with an Australian government negotiator with some difficulty, they were simply redirected to the sparsely populated website. They said the government’s stated reason for this hesitation is that they did not want to risk compromising the negotiations.

Of the four economies examined in this report, the EU is the only outlier. The bloc’s extraordinary level of transparency, where open and public updates are given after every round of talks, is in large part a result of the controversy surrounding the TTIP negotiations (Chafiz & Young, 2019). Also, while the need for confidentiality is a legitimate concern, it can impede the effectiveness of stakeholder consultations. In Australia’s Parliament committee meetings on stakeholder consultations in FTA negotiations, for example, limited transparency has often been cited as a problem in consultations. In the 2024 parliamentary report on the subject, one person said that confidentiality “reduces the capacity of stakeholders to provide informed and valuable feedback to the government” (JSCTIG, 2024). In the 2015 report, one individual said, “If the content of trade agreements is opaque, identification of relevant stakeholders is extremely problematic” (FADT, 2015). The problems that a lack of transparency poses for consultations are also applicable to Vietnam and Indonesia.

3.4 Limited participation of SMEs in the consultation mechanism

A tricky aspect when it comes to stakeholder participation in consultations is the limited involvement of SMEs. Interviewees from both Indonesia and Vietnam generally acknowledged that SME involvement in the stakeholder consultations was negligible. This appears to be in part because government officials may be more willing to engage with business associations rather than multitudes of companies.

One government negotiator from Vietnam admitted that the stakeholder consultation mechanism was not set up for SMEs, but said this was because SME perspectives were represented by the country’s business associations. A government representative from Indonesia said the government there would consult big associations about trade issues, which would then share this information with SMEs through papers or meetings.

An interviewee from a business association noted that, unlike larger businesses, SMEs do not have the corporate structure suited to engagement in consultations. They added that, with no legacy of participating, smaller companies often lack the knowledge to effectively advocate for their interests.

Another interviewee who had worked on stakeholder consultations in Australia and Indonesia agreed that SMEs have limited capacity. They explained that while it is certainly possible for SME representatives to join committees set up by the Australian government to gather inputs on trade talks, generally it is representatives from big companies who sit on them. SMEs can still come before these committees and air their views if they “really, really, really wanted to present”. However, often SMEs face internal limitations. They may be unable to fully comprehend the issues involved or articulate their views because they do not have a trade expert on their staff, or they may be too busy and worried about operational matters to prioritise the time-consuming task of getting to grips with a complex trade agreement.

Half the time with an SME I don’t understand what it is that they’re trying to articulate because they don’t have a “trade wonk” on staff who can explain to them if they’re dealing with problems in customs or with another problem that can translate into something that they might be able to get out of an FTA. They’re just too busy worrying about cash flow, employees, etc. Then, it’s also a matter of whether the person from an industry association, when they’re putting together their submission, has the time to go around and get enough feedback from SMEs.

- *Trade advisor, Indonesia and Australia*

The EU is an outlier here again. In the EU, the consultation process is automated with questions framed in an accessible manner, which means it is easier for small operators to give inputs, as the trade advisor with experience in Indonesia and Australia noted. Another interviewee who had consulted with both the EU and the Vietnamese governments said that in the EU officialdom is more open about engaging with a private company and recognising it as a direct stakeholder. In Vietnam, though, the government prefers to deal with one main organisation rather than with many small companies, so business associations fill the gap, helping small companies channel their inputs to the government.

3.5 Businesses are passive and not proactive

The apathy demonstrated by Vietnamese and Indonesian businesses and business associations in the consultation process manifests in two ways: one is that businesses often provide poor quality input (e.g., responses to surveys) if they offer input at all; another is that they display a general reluctance to advocate for their interests in FTAs.

3.5.1 Lack of high-quality responses

Even when businesses in these two countries are invited to provide input on an FTA (i.e., consultation dates are published or surveys are sent to them directly), they often provide poor-quality responses or do not respond at all.

One interviewee who had worked on business stakeholder consultations said if they send out a request to multiple parties, many will either fail to respond or will not offer helpful responses. The interviewee said this is even the case for larger or foreign companies operating in the region. For negotiators actively seeking input from larger companies or multinationals, it can be hard to find the right person or the relevant department. Even if they do, the person contacted will say they are too busy to respond or have “better things” to do. This lack of responsiveness in Indonesia and Vietnam may be tied to a widespread lack of understanding about trade issues.

The difficulty in obtaining high-quality input may also be linked to the fact that there are relatively few multinationals operating in developing countries. Larger economies such as the EU and Australia are home to many MNCs, which rely on cross-border trade and are strongly affected by the terms of FTAs. Most companies in developing countries such as Vietnam and Indonesia are primarily focused on domestic markets.

The numbers tell the tale: in 2018, 162,466 MNCs were operating in the EU, 116,497 of which were headquartered in the bloc (Pârjoleanu, 2020). Australia ranks seventh in the world for playing host to top MNCs, with 66 of the 2,188 largest multinationals (by revenue) making their homes in the country (Investment Monitor, 2021). Australia is also home to 3,688 subsidiaries of the world’s largest MNCs. In contrast, Indonesia and Vietnam hosted only 868 and 602 subsidiaries, respectively.

This can affect the quality of inputs in that it is larger MNCs that have both the resources to employ trade policy experts to prepare detailed submissions and because their value chains are global, a strong incentive to engage on complex issues in the newer DTA issues that go beyond tariffs and market access.

3.5.2 General passivity of the business community in trade advocacy

The passivity of the business communities in developing countries such as Vietnam and Indonesia extends beyond a failure to provide quality input. In many countries, businesses often fail to advocate for their interests in trade agreements at all.

According to one government representative interviewed for this paper, this is far from the case in the US and the UK, where negotiators often do not have to wait for industry input. Instead, the pharmaceutical association or the solar energy association will come to them to raise points they would like raised in trade talks.

An interviewee from the private sector in Vietnam said companies that are interested in a given policy issue must be more assertive in pushing for what they want during trade negotiations. They have to go “tit-for-tat” and ask for the same advantages offered to other trading partners. Another interviewee agreed, saying that it is up to companies to “roll up” during negotiations and ask, “What’s in it for me?”

Again, this passivity could stem from a number of factors: a lack of understanding or awareness about FTA negotiations and their effects on businesses, a lack of resources, the absence of an established practice of lobbying for desired changes in trade policy, or insufficient outreach by the government. While some of these issues may be corrected by a conscious effort by business communities and governments, others may be harder to fix.

3.6 FTAs are complex and businesses lack access to research capabilities

Limited research capacity in businesses and associations in Vietnam and Indonesia emerged as a key challenge in interviews.

It should be noted here that while smaller business associations lack research capacity, that is not the case for larger industry bodies. One interviewee from Vietnam's government cited the work done by the Center for WTO and International Trade, the research unit of the VCCI. An interviewee from Indonesia pointed to the in-house research capabilities of KADIN and APINDO. However, to promote a generalised improvement in research capability across the business community, these bodies require quality feedback from other business associations.

One interviewee from a business association in Vietnam that did have some research capability observed that the "research and papers" gave them tools to deal with the issues that emerge during trade negotiations. However, other business associations and businesses appeared to have limited research resources for trade negotiations, which limited their ability to give valuable feedback in consultations.

When asked why businesses in developed countries are more active in giving inputs during trade talks, one Vietnamese government negotiator said:

It is not because the EU and the US have a better consultation mechanism than we do; it's because the business communities are so rich. So, they hire some research facilities to do some research and then these people would be designing the whole thing. The business community – for example, the pharmaceutical company or some NGO or some civil society – just brings that kind of outcome to USTR or the European Committee.

- *Government negotiator, Vietnam*

Poor research capacity also explains the lack of high-quality responses in Vietnam and Indonesia. As noted above, given the fact that there are relatively fewer MNCs in Vietnam and Indonesia, there are fewer stakeholders able or willing to hire trade experts for FTA consultations.

3.7 Businesses are mostly interested in exports of goods only

The lack of interest in issues beyond exports and tariffs was another common theme that emerged from our discussions.

One government negotiator noted that the only thing that companies in Vietnam really benefit from is the promotion of exports. This is why they seldom focus on portions of an FTA that deal with other matters, such as services or investment:

We are not exporting our services; we have no interest in going out there to invest in some country. So, we don't care about investment sections; we don't care about services; we just care about "trade in goods". And the only benefit you can get in trade in goods is the elimination of tariffs [...] We need to wait for our business community to grow before we can have some meaningful inputs from them and before you can raise new issues in our international trade agreements.

- *Government negotiator, Vietnam*

Another interviewee from Vietnam echoed this, saying there is little interest in imports or other issues under discussion in DTAs. A trade advisor who has consulted in Indonesia and Australia noted that stakeholders are often only interested in achieving a single goal, such as the elimination of a particular tariff. One interviewee from a business association in Vietnam said all they wanted from FTAs was the "right to have a priority access with no tariff barrier to the partner's market".

This narrow focus means businesses often fail to show initiative and that the government negotiators seldom get high-level engagement from businesses on other areas in a negotiation. Again, this can be linked to the fact that both Indonesia and Vietnam have relatively few MNCs and many businesses that derive most of their revenue from goods exports, rather than the provision of services.

Table 3 shows services as a percentage of GDP (value added), although this does not show which could be bought by foreign partners.

Table 3: Services as a percentage of GDP in the four case study economies (World Bank, n.d.b)

Economy	Services as percentage of GDP (value added) (year)
European Union	65 per cent (2023)
Australia	64.2 per cent (2023)
Indonesia	42.9 per cent (2023)
Vietnam	42.5 per cent (2023)

3.8 In summary

Interviews with government representatives and business stakeholders in Vietnam and Indonesia revealed seven obstacles to effective business stakeholder consultations prior to and during trade negotiations:

1. Difficulty in identifying and engaging with the right stakeholders or merely selecting approved interlocutors only;
2. Lack of awareness of trade negotiation;
3. Lack of transparency due to concerns about confidentiality;
4. Limited participation by SMEs in the consultation mechanism;
5. Failure of businesses and business associations to advocate for their interests;
6. Lack of research capability in business stakeholders; and
7. Limited interest in trade issues other than goods exports.

While the first five challenges are related to the stakeholder consultation mechanisms, the last two stem from the inherent capacity gaps and current business landscape in the two countries.

Section Four:

The way forward

4.1 Measures to improve the stakeholder consultations process for FTAs in Vietnam and Indonesia

4.1.1 Make stakeholder consultations more open and accessible

The difficulties negotiators in Vietnam and Indonesia face in inviting the right stakeholders to consultations can be solved by changes in the consultation process.

In Vietnam, top-down consultations are currently limited to a few stakeholders picked by the government to discuss specific issues. Since this is not the case for the bottom-up approach, reducing reliance on the top-down model would avoid the all-too-frequent misstep of relevant stakeholders being excluded from consultations. Even in cases where negotiators are seeking inputs from specific associations on issues that will affect a particular sector, it should be made clear that other associations can join the consultations, if interested in the issue in question. This openness should also be extended to individual companies to the extent possible.

In Indonesia, while there are three ways for business stakeholders to approach the government – through line ministries; through KADIN and APINDO; and directly – the top-down approach to soliciting feedback varies from FTA to FTA. Again, there would be benefits to adopting a more open and standardised methodology. Even when the government is targeting a certain group of stakeholders for consultation on a particular question, meetings should be open to other participants to the extent possible. This principle of open and inclusive consultation should apply to government-led consultations as well as those led by KADIN, APINDO and other large business associations.

4.1.2 Improve stakeholder identification

In some cases, it may not be possible to make the consultations open due to sensitivities involving the negotiations or confidentiality requirements. In these cases, the mapping or identification of stakeholders must be done more rigorously so that all relevant stakeholders can be invited. An interviewee from a trade association from Indonesia whose members trade with Australia said their association should be invited to consultations so they can “support policy”. Greater rigour in stakeholder identification would ensure that all representative views are received by the government or large industry body, thus making its position in trade talks more balanced and better informed.

4.1.3 Improve outreach and education for businesses

Despite the fact that disclosures to the public during trade talks are generally limited in both Vietnam and Indonesia, government negotiators from both Indonesia and Vietnam pointed out that the governments do engage in awareness-raising efforts for stakeholder consultations for FTAs and on trade policy issues in general. A government negotiator from Vietnam said:

The Vietnamese business community is a bit passive. This is why sometimes we need to take the initiative. We need to educate them to make them familiar with the negotiation issues and help them understand what we are talking about. Sometimes the terminology of negotiation is so complicated that you need to educate them to make them understand what is going on. Based on that you can get very good comments from them, and sometimes they might even give you some kind of input that you can bring back.

- Government negotiator, Vietnam

These efforts were also acknowledged by interviewees from the private sector. A business association from Vietnam praised the fact that the final text of the EUVFTA was disseminated in more user-friendly language. A trade advisor who has worked on past consultations said it is necessary to use TV and other media to ensure people are aware of and talking about the key issues related to FTAs.

However, the effectiveness of the current outreach programme needs to be improved. A business association member from Indonesia, who could not participate in the IA-CEPA consultations, proposed the increased use of webinars and seminars to encourage people to take part in consultations. They added that these would allow negotiators to pinpoint what stakeholders want and need in an FTA and learn which areas might be relevant to them. The interviewee said that while the government does maintain an outreach programme, the effectiveness of such efforts needs to be monitored and amplified, when relevant.

While the efforts at outreach and education by the governments do exist and are acknowledged, they remain an area for future improvement. Some ways improvement could be done are:

- increasing the scale and intensity of outreach programmes;
- using different media for communication ranging from digital to traditional media;
- monitoring effectiveness of outreach programme for each FTA consultation;
- identifying business sectors or areas where the effectiveness of outreach programmes was not satisfactory; and
- drawing lessons from past outreach efforts and implementing these lessons in future outreach programmes.

If they want to promote greater understanding of trade issues – and thus attract more useful inputs for negotiations – both governments should address designing better outreach and communication programmes for businesses.

4.1.4 Adopt more structured stakeholder consultations

An interviewee who has acted as a trade advisor on consultations in Australia and Indonesia (both of which are negotiating FTAs with the EU) noted the advantages of the EU's structured approach to consultations. They said the automation of part of the process makes it easier for small operators to get their inputs in.

This automation was driven by standards adopted by the EU for consultation and policymaking at large. In 2001 the bloc adopted the Interactive Policy-Making Initiative (IPM): “a consultation mechanism, which is designed to receive and store rapidly and in a structured way, reactions to new initiatives” (E. Commission, 2002). The EU's Guidelines on Stakeholder Consultations also suggest the adoption of structured questionnaires that use “a combination of closed questions (with defined multiple-choice answers) and open-ended questions (allowing for free-text responses) at the end of each section of closed questions (Commission, n.d.) (E. Commission, n.d. a).

Creating a similarly well-structured consultation mechanism that offers sufficient supporting information phrased in a clear, jargon-free way could increase the involvement of SMEs in both Indonesia and Vietnam. Such a mechanism would also mitigate the effects of low trade policy awareness and the limited research capacity of many business stakeholders. It is, however, very expensive.

4.2 Measures to improve the business community's conduct in stakeholder consultations in Vietnam and Indonesia

4.2.1 More assistance from the government to improve business advocacy and research

Governments of both the developed and developing world can help the involvement of businesses in trade advocacy and research. This becomes clearer through some of the examples that emerge from Indonesia and Vietnam.

The governments of the developed economies have helped address, and can continue to do so in future, the all-too-common issue of capacity and resource gaps in the governments and business communities in the developing world. Two salient examples came up during interviews:

1. Through the Support for Trade Acceleration (STAR) programme. USAID has funded capacity-building efforts in Vietnam since the signing of the US-Vietnam Bilateral Trade Agreement in 2001 (USAID, 2003). The agency assisted with Vietnam's WTO accession along with the implementation of other FTAs. An interviewee who worked as a lawyer on consultations in Vietnam cited the key role USAID played in the 2000s in organising trade workshops in the country to help with capacity-building on trade issues.

2. During the IA-CEPA and Indonesia-EU CEPA negotiations, the EU and Australian governments funded joint stakeholder reports prepared by business associations from the negotiation parties (Callista, 2018). A business association interviewee who was part of the Australia-Indonesia Business Partnership Group (BPG) during IA-CEPA talks outlined how the group enabled effective collaboration by the governments of the developed world and developing world on trade issues. Founded in 2012 and funded by the Australian government, the group was staffed by business community members from the Australian Chamber of Commerce and Industry, KADIN Indonesia, the Australia-Indonesia Business Council, the Indonesia-Australia Business Council, Ai Group and APINDO, and were an integral part of the negotiation of the trade agreement. The group pulled together an initial report on the potential benefits of IA-CEPA along with a set of recommendations made on behalf of the private sector. In 2016, the group followed up with “broad-based consultations with businesses and member associations through individual interviews, workshops and written submissions” (AusCham, 2016). Based on these consultations, it crafted another report and another set of recommendations. The interviewee noted that this level of joint stakeholder consultations was unique even in Australia's trade history. The Interviewee said the group was created when “the

governments came together and decided that they wanted to have a business reference group supporting the negotiation". They said following the initial report, "We came together as a business group again to continue to feed into the negotiations". Often in the coffee breaks during the rounds, the stakeholders from the group would have the opportunity to talk informally with negotiators about emerging themes.

But, naturally, support need not and should not come solely from the developed world's governments. Business enterprises in the developing world that lack research capacity can also benefit from support from their own governments. An Indonesian government representative highlighted an initiative to identify key sectors in five-year, 10-year and 25-year plans and then fund research by enterprises in these sectors, although this funding is not limited to research in trade policy.

Government funding to encourage trade policy research can help compensate for the lack of resources in many private sector companies. It is important to note here that such funding should be part of a clearly stated policy. Business and business association stakeholders should also be active in requesting funds and appreciating the importance of trade policy research.

While help with funding for trade research in developing countries like Indonesia and Vietnam can help, it is unlikely to eliminate the problem altogether. Private sector funding is needed but it is expensive. In both the EU and Australia, it is private funding that drives the trade policy research and advocacy, although programmes such as Horizon Europe, the EU's research and innovation funding programmes, have offered some assistance from time to time (GGP, 2021).

4.3 Limits of stakeholder consultations

While measures such as those laid out above will contribute to a much more effective stakeholder consultation process in Vietnam and Indonesia, there are limitations to how much they can be improved – as well as the degree of impact consultations actually have on FTA negotiations, especially in developing countries. The section below takes a sombre note of these limitations.

4.3.1 Limited impact of stakeholder consultation

You just kind of put things into the machine and hope it comes out the way you want.

- Trade advisor, Indonesia and Australia

On the whole, improved stakeholder consultations should improve the process of FTA negotiations and help negotiators become better able to represent the interests of stakeholders. But even if the consultation process is operating at an "ideal" level, businesses may face the following obstacles to having their interests reflected in trade agreements:

a. There may be competing interests that the government has to balance when forming its position for FTA negotiations. For instance, it may choose to propose lower tariffs on aluminium to benefit the downstream cars industry, even though the upstream aluminium industry has demanded higher ones. An interviewee who has served as a trade advisor commented that there is "no sort of guarantee that your [demand] will actually make it through" and sometimes "you think you've got something and then you just didn't get it".

b. The government may also have to drop a demand to please a negotiating partner. A government negotiator from Vietnam offered the following hypothetical example: negotiators may have to compromise on a demand from the pork industry in order to convince a negotiating partner to give the textile industry what it wants. Still, the government may compensate the pork industry through other domestic policy measures.

4.4 Political and economic reality will define stakeholder consultations

Stakeholder consultations take place against a backdrop of real-world economic, social or political limitations. Irrespective of the type of policy under consultation, meaningful stakeholder engagement is resource-intensive, expensive, difficult and time-consuming, and this is even more true when engaging stakeholders who reside "outside the capital, especially where transport or access is poor" (UN, 2020).

This is why even if governments and business stakeholders do all they can to create a consultation process that gives businesses a voice in FTAs, there will be challenges that cannot be waived away. Some of these will have no solutions and some plague both the developed world and the developing world to varying degrees. Vietnam, Indonesia, Australia and the EU have different economic and social realities, and their governments and business stakeholders will have different priorities and visions for both stakeholder consultations and FTA negotiations.

Section Five:

In conclusion

FTAs will become increasingly important both for governments and businesses across the globe, especially with comprehensive DTAs that touch upon more policy issues than ever before. If governments are to maximise benefits for their domestic economies, it will become ever more essential to hold effective and meaningful FTA negotiations that reflect the interests of business stakeholders. Also, as the DTAs of today serve as templates for future FTA negotiations (referred to as “path dependency”), the businesses should know that each FTA negotiation and its final product has an influence on negotiations with other trading partners too. The consultations for each FTA should consider this fact.

The following measures can improve the stakeholder consultations and the impact they make in FTA negotiations:

- Introduce a more open and accessible stakeholder consultation process;
- Make the process of stakeholder identification more rigorous and inclusive;
- Increase efforts to engage and educate businesses on questions of trade policy;
- Introduce structured stakeholder consultations; and
- More help from governments to the private sector to improve business advocacy and research.

While this report has focused on Indonesia and Vietnam in its examination of the challenges to effective stakeholder consultations, its findings and recommendations may be instructional for other nations, both in the developing world and beyond.

This paper has also striven to offer readers a glimpse into a mostly secretive world of stakeholder consultations for trade agreements in two of Asia's most important FTA- negotiating developing countries. Interviews with trade experts in these countries revealed often surprising similarities between the conduct of stakeholder consultation in Australia, Indonesia and Vietnam. The EU – with its next-level transparency and highly formal, institutionalised consultations – was a notable outlier.

All the four governments studied have made improvements in how they conduct negotiations over the years, with all of them displaying an increasingly positive attitude towards stakeholder consultations.

This trend appears reflected in the wider world. According to the OECD: “Many countries are expanding their processes for consultation and engagement, moving from passive styles of consultation (such as posting texts online for comment) to proactive efforts to engage continuously with a wider range of stakeholders using a broader range of tools, including workshops, town halls and roadshows. Engagement is becoming more systematic and more continuous, before, during and after the negotiation of agreements” (OECD, 2019).

Going by the present trend, the consultation process is bound to improve further in both Indonesia and Vietnam, as they negotiate more FTAs and governments and business stakeholders become more incentivised to adopt more effective consultation practices.

As one trade advisor from Vietnam noted, commenting on how much Vietnam has improved its trade policy capacity from the 1990s when it began negotiating an FTA with the US to the present day:

Everything was impossible and you know, we kept saying everything is impossible until it becomes inevitable.

- *Trade advisor, Vietnam*

The improvement in Vietnam's trade policy capacity in the 1990s must have appeared an impossible task but today, Vietnam's capacity has reached a higher level due to consistent efforts and not due to an overnight miracle. Similarly, the improvements in consultation processes in developing countries may appear difficult at the moment but as long as both governments and businesses are intent on enhancing the stakeholder consultation process, and match this intent with regular efforts, change is inevitable. This change may not happen in a day or a year but will happen over time.

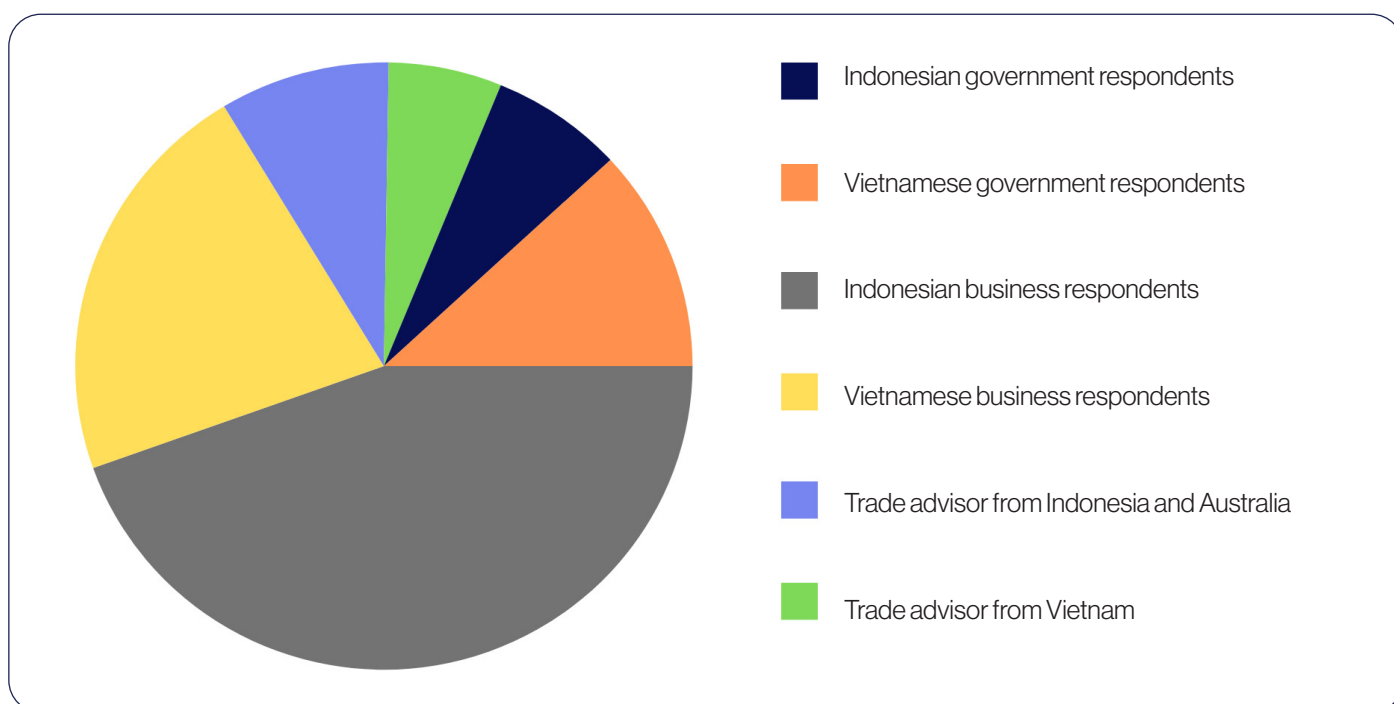
While this paper offered some insights into the complex, technical world of new- generation DTA negotiations and the little-talked-about world of stakeholder consultations, there remains considerable scope for research into the impact of stakeholder consultations on the choices made by governments in trade negotiations.

Appendix

The author interviewed 17 stakeholders from March 2024 to June 2024 through the online platforms MS Teams and Zoom. Stakeholders included government negotiators, business association representatives and trade advisors who were either actively involved in negotiations and consultations for FTAs signed by Indonesia or Vietnam, or who were stakeholders in the FTAs. Two different sets of questions were prepared for negotiators and those active in the business community (business associations and trade advisors). Interviews generally lasted from 30 - 45 minutes.

The author used a semi-structured format, in that a standard set of questions was asked but based on responses, included additional or related points of inquiry. Interviews were recorded and then transcribed.

Out of the 17 interviewees, 10 were connected with Indonesia (working in Indonesia or on Indonesian trade agreements) while the rest were connected to Vietnam (working in Vietnamese or on Vietnamese trade agreements). Four respondents were government negotiators (civil servants who have served as negotiators), two were trade advisors who had worked on stakeholder consultations and the rest were representatives of business associations.



Two things should be noted here regarding the presentation of interviews:

a. The gender-neutral “they” pronoun is used for interviewees rather than “he” or “she” to provide further anonymity to the interviewees.

b. The quotations from the interviewees here have been cleaned up by removing filler words, converting them from conversation style to a style better suited to text (e.g., by placing full stops and other punctuations, or by removing “you know”) and by removing repetition. However, the essence of the quotations is strictly maintained, and further background is provided whenever necessary, so the quotations appear in proper context.

Bibliography

AsktheEU (2019), Stakeholder contacts and communication, EU-Vietnam Free Trade Agreement (EVFTA).

Available at: https://www.asktheeu.org/en/request/stakeholder_contacts_and_communi
[Accessed 7 July 2024].

AusCham (2016), Indonesia-Australia Business Partnership Group Submission towards the IA-CEPA. Available at: https://www.australianchamber.com.au/wp-content/uploads/2016/08/2016_ia-bpg_submissions_towards_the_ia-cepa-final_complete.pdf
[Accessed 7 July 2024].

AusCham (2024), Vietnam Chamber of Commerce and Industry (VCCI). Available at: <https://auschamvn.org/publicity/vietnam-chamber-commerce-and-industry-vcci>
[Accessed 6 July 2024].

Beck, A.-K. (2017), Climbing the Ladder of Participation. Non-State Stakeholder Involvement in the Negotiation Process of the Vietnam Voluntary Partnership Agreement under the EU FLEGT Action Plan. Available at: https://www.ibei.org/ibei_studentpaper36_105673.pdf
[Accessed 6 August 2024].

BPS (2023), Exports in November 2023 reached US\$22.00 billion & Imports in November 2023 reached US\$19.59 billion. Available at: <https://www.bps.go.id/en/pressrelease/2023/12/15/1972/exports-in-november-2023-reached-us-22-00-billion--imports-in-november-2023-reached-us-19-59-billion.html>
[Accessed 7 August 2024].

Bruhn, D. (2014), Global Value Chains and Deep Preferential Trade Agreements: Promoting Trade at the Cost of Domestic Policy Autonomy? Available at: https://www.idos-research.de/uploads/media/DP_23.2014_01.pdf
[Accessed 8 August 2024].

Callista, J. (2018), Public-Private Consultation for Free Trade Agreement Negotiations in Canada and Indonesia. Available at: <https://www.iccc.or.id/wp-content/uploads/2020/08/Public-Private-Consultation-for-Free-Trade-Agreement-Negotiations-in-Canada-and-Indonesia-January>
[Accessed 6 August 2024].

Chafiz, R. A. & Young, L. M. (2019), The Promise of Transparency: Stakeholder Views on Changes to the EU Trade Negotiation Process. *Estey Journal of International Law and Trade Policy*, 19(2), pp. 1496-5208.

Cote, K. R. (2016), Stakeholder Consultation in FTA Negotiations: Why Bother? Lessons for Developing Countries. Available at: https://cuts-citee.org/pdf/Briefing_Paper16-Stakeholder_Consultation_in_FTA_Negotiations-Why_Bother.pdf
[Accessed 8 August 2024].

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), (n.d.), SOE. Available at: <https://www.mfat.govt.nz/assets/Trade-agreements/TPP/Text-ENGLISH/17.-State-Owned-Enterprises-and-Designated-Monopolies-Section.pdf>
[Accessed 7 August 2024].

Dao, N. T., Nguyen, Q. H., Nguyen, T. H. & Ngo, C. L. (2013), Participation Of Non-State Actors In Formulation Of Trade Policy In Vietnam. Available at: https://www.wti.org/media/filer_public/9d/8f/9d8f5033-3e8e-4e71-a3ea-df598b800e01/participationofnonstateactors.pdf
[Accessed 6 August 2024].

Department of Enterprise, Trade and Employment, Ireland (n.d.), Free Trade Agreements. Available at: <https://enterprise.gov.ie/en/what-we-do/trade-investment/free-trade-agreements/#:~:text=The%20EU%20negotiates%20trade%20agreements,of%20areas%20to%20facilit>
[Accessed 8 August 2024].

Department of Foreign Affairs and Trade (DFAT), Australia (2019), National Interest Analysis, IA-CEPA. Available at: <https://www.dfat.gov.au/sites/default/files/iacepa-1a-national-interest-analysis-including-attachmen>
[Accessed 4 August 2024].

DFAT (n.d. a), About free trade agreements (FTAs). Available at: <https://www.dfat.gov.au/trade/about-ftas/about-free-trade-agreements> [Accessed 19 July 2024].

DFAT (n.d. b), Section 15: Economic Cooperation, IA CEPA. Available at: <https://www.dfat.gov.au/trade/agreements/in-force/iacepa/iacepa-text/Pages/iacepa-section-15-economic-cooperation> [Accessed 7 August 2024].

DFAT (n.d. c), Have your say: public consultations on FTAs. Available at: <https://www.dfat.gov.au/trade/for-australian-business/have-your-say-public-consultations-on-ftas> [Accessed 7 August 2024].

DFAT (n.d. d), Memorandum of Understanding on the Indonesia-Australia Skills Development Exchange Pilot. Available at: <https://www.dfat.gov.au/trade/agreements/in-force/iacepa/iacepa-text/trade-and-investment/memorandum-understanding-indonesia-australia-skills-development-exchange-pi> [Accessed 6 August 2024].

Economist Impact (n.d.), Bridging the region. Available at: <https://impact.economist.com/projects/trade-in-transition/regional-analysis-asia-pacific> [Accessed 7 August 2024].

European Commission (2002), COM(2002)704, Towards a reinforced culture of consultation and dialogue: General principles and minimum standards for consultation of interested parties by the Commission. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0704>: [Accessed 7 August 2024].

European Commission (2014), Stakeholder Consultation Guidelines 2014: Public Consultation Document. Available at: https://ec.europa.eu/smart-regulation/impact/docs/scgl_pc_questionnaire_en.pdf [Accessed 7 August 2024].

European Commission (2015), "Trade for all" strategy. Available at: <https://www.europarl.europa.eu/legislative-train/carriage/trade-for-all-strategy/report?sid=8201> [Accessed 6 August 2024].

European Commission (2023), Better regulation toolbox 2023. Available at: https://commission.europa.eu/system/files/2023-09/BRT-2023-Section%207-Stakeholder%20consultation_0.pdf [Accessed 7 August 2024].

European Commission (n.d. a), Consultation Guidelines 2014 Public Consultation Documents. Available at: https://ec.europa.eu/smart-regulation/impact/docs/scgl_pc_questionnaire_en.pdf [Accessed 7 August 2024].

European Commission (n.d. b), Factsheet on the transparency policy in EU Trade. Available at: <https://circabc.europa.eu/ui/group/7fc51410-46a1-4871-8979-20cce8df0896/library/ebae888d-6243-48a2-a766-e21923793a71/details> [Accessed 5 August 2024].

European Commission (n.d. c), Objectives of the EU Trade Civil Society Dialogue. Available at: https://policy.trade.ec.europa.eu/analysis-and-assessment/eu-trade-meetings-civil-society/objectives_en [Accessed 8 August 2024].

European Commission (n.d. d), Sustainability Impact Assessments. Available at: https://policy.trade.ec.europa.eu/analysis-and-assessment/sustainability-impact-assessments_en#:~:text=SIAs%20provide%20the%20Commission%20with,impacts%20of%20ongoing%20trade%20negotiations.&text=The%20Sustai [Accessed 7 August 2024].

European Commission (n.d. e), Transparency in EU trade negotiations. Available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/transparency-eu-trade-negotiations_en. [Accessed 7 August 2024].

European Commission (n.d. f) Transparency Policy in DG TRADE. Available at: <https://circabc.europa.eu/ui/group/7fc51410-46a1-4871-8979-20cce8df0896/library/ebae888d-6243-48a2-a766-e21923793a71/details> [Accessed 6 August 2024].

European Council (n.d.), EU trade agreements.
Available at: <https://www.consilium.europa.eu/en/policies/trade-policy/trade-agreements/#what>
[Accessed 8 August 2024].

Foreign Affairs, Defence and Trade References Committee (FADT) (2015), Blind agreement: reforming Australia's treaty-making process.
Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/-/media/C
[Accessed 7 August 2024].

Global Governance Programme (2021), Can EU trade policy deliver on EU values?
Available at: <https://globalgovernanceprogramme.eui.eu/can-eu-trade-policy-deliver-on-eu-values/>
[Accessed 7 August 2024].

Government of Australia (2011). Gillard Government Trade Policy Statement: Trading our way to more jobs and prosperity.
Available at: <https://webarchive.nla.gov.au/awa/20110422102506/http://www.dfat.gov.au/publications/trade/trading-our-way-to-more-jobs-and-prosperity.html>
[Accessed 7 August 2024].

Hoekman, B. M. & Sabel, C. F. (2021), Plurilateral Cooperation as an Alternative to Trade Agreements: Innovating One Domain at a Time. *Global Policy*, 12(S3), p. 49.

IISD (2023), Good Regulatory Practice Provisions in Regional Trade Agreements: Examples and considerations for developing countries.
Available at: <https://www.iisd.org/system/files/2023-01/regional-trade-agreements-developing-countries.pdf>
[Accessed 8 August 2024].

International Monetary Fund (2023), World Trade Can Still Drive Prosperity.
Available at: <https://www.imf.org/en/Publications/fandd/issues/2023/06/world-trade-can-still-drive-prosperity-georgieva-okonjo-iweala>
[Accessed 8 August 2024].

Investment Monitor (2021), Where are the global hotspots for MNC subsidiaries?
Available at: <https://www.investmentmonitor.ai/uncategorized/where-are-the-global-hotspots-for-mnc-subsidiaries/?cf-view&cf-closed>
[Accessed 5 August 2024].

Joint Standing Committee on Treaties (JSCOT) (2021), Strengthening the Trade Agreement and Treaty-Making Process in Australia.
Available at: https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024556/toc_pdf/Report193.pdf;fileTy
[Accessed 6 August 2024].

Joint Standing Committee on Trade and Investment Growth (JSCTIG) (2024), *Section 3 - Determining the national interest and assessing impacts*.
Available at: *Strengthening Australia's approach*
[Accessed 7 August 2024].

JSCTIG (2024), Inquiry into the Australian Government's approach to negotiating trade and investment agreements.
Available at: <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000322/>
[Accessed 8 August 2024].

KADIN (n.d.), Keanggotaan.
Available at: <https://kadin.id/en/keanggotaan/>
[Accessed 4 August 2024].

Lewis, M. (2023), International Trade Agreements: Laboratories of Innovation or Propellers of Fragmentation?, *Journal of International Economic Law*, 26(1), March, Pages 110–123.
Available at: <https://academic.oup.com/jiel/article-abstract/26/1/110/6964502>
[Accessed 8 August 2024].

Loc, V. T. (n.d.), World Economic Forum.
Available at: <https://www.weforum.org/people/vu-tien-loc/>
[Accessed 7 August 2024].

Mattoo, A., Mulabdic, A. & Ruta, M. (2019), Trade Creation and Trade Diversion in Deep Agreements.
Available at: <https://thedocs.worldbank.org/en/doc/328491559591517896-0050022019/original/TradeCreationandTradeDiversion.pdf>
[Accessed 8 August 2024].

Ministry of Commerce, Pakistan (2012), Indonesia Pakistan-Preferential Trade Agreement (IP-PTA) Available at: https://www.commerce.gov.pk/wp-content/uploads/pdf/Indonesia_Pakistan_PTA.pdf [Accessed 19 August 2024].

Ministry of Foreign Affairs and Trade (MFAT), New Zealand (n.d.), Electronic Commerce. Available at: <https://www.mfat.govt.nz/assets/Trade-agreements/TPP/Text-ENGLISH/14.-Electronic-Commerce-Section.pdf>. [Accessed 7 August 2024].

Ministry of Trade, Indonesia (n.d.), Free Trade Agreement Center. Available at: <https://ftacenter.kemendag.go.id/> [Accessed 7 August 2024].

Morin, J.-F., Pauwelyn, J. & Hollway, J. (2017), The Trade Regime as a Complex Adaptive System: Exploration and Exploitation of Environmental Norms in Trade Agreements. *Journal of International Economic Law*, 20(2), p. 365.

OECD (2019), Engaging and consulting on trade agreements. Available at: https://issuu.com/oecd.publishing/docs/engaging_and_consulting_on_trade_agreements [Accessed 7 7 2024].

OECD (2019), Engaging and consulting on trade agreements. Available at: https://issuu.com/oecd.publishing/docs/engaging_and_consulting_on_trade_agreements [Accessed 6 August 2024].

Osnago, A., Rocha, N. & Ruta, M. (2019), Deep trade agreements and vertical FDI: The devil is in the details. *Canadian Journal of Economics/Revue Canadienne d'Économique* 52(4),1558-1599. Available at: https://www.researchgate.net/publication/338873555_Deep_trade_agreements_and_vertical_FDI_The_devil_is_in_the_details [Accessed 8 August 2024].

Pârjoleanu, R. (2020), "The Role of Multinational Corporations in the European Union". *Postmodern Openings*, 11(4), p. 109.

Tradeimex (n.d.), EU Trade Statistics 2022-23. Available at: <https://www.tradeimex.in/blogs/eu-trade-statistics> [Accessed 6 August 2024].

UN Trade and Development (UNCTAD) (2020) Available at: https://unctad.org/system/files/official-document/ditctabinf2020d6_en.pdf.

UNCTAD (2022), Guidebook On Trade Impact Assessment. Available at: https://unctad.org/system/files/official-document/ditctncd2021d4_en.pdf [Accessed 8 8 2024].

UNCTAD (2023), Total trade in services. Available at: <https://hbs.unctad.org/total-trade-in-services/#:~:text=Global%20services%20trade%20up%2015%20per%20cent%20in%202022&text=In%202022%2C%20it%20increased%20by,in%20both%20goods%20and%20services>. [Accessed 8 August 2024].

USAID (2003), Building Trade Capacity in the Developing World. Available at: https://pdf.usaid.gov/pdf_docs/pdabx241.pdf [Accessed 6 August 2024].

Vu, K. (2023), Reuters: Vietnam 2023 economic growth slows to 5.05% as exports fall. Available at: <https://www.reuters.com/world/asia-pacific/vietnam-2023-economic-growth-slows-505-2023-12-29/> [Accessed 7 August 2024].

World Bank (2020a), Handbook of Deep Trade Agreements. Available at: <https://documents1.worldbank.org/curated/en/685311594363725995/pdf/Handbook-of-Deep-Trade-Agreements.pdf> [Accessed 8 August 2024].

World Bank (2020b), Overview: The Evolution of Deep Trade Agreements. Available at: <https://pubdocs.worldbank.org/en/612591607633317234/Overview-The-Evolution-of-Deep-Trade-Agreements.pdf>. [Accessed 9 August 2024].

World Bank (2023), Deep Trade. Agreements: A Toolkit For Policy Makers. And Practitioners.

Available at: https://datatopics.worldbank.org/dta/toolkit_09_11_2023.pdf

[Accessed 8 August 2024].

World Bank (n.d. a), Exports of goods and services (BoP, current US\$).

Available at: https://data.worldbank.org/indicator/BX.GSR.GNFS.CD?most_recent_value_desc=true

[Accessed 7 August 2024].

World Bank (n.d. b), Services, value added (% of GDP).

Available at: <https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS>

[Accessed 5 August 2024].

World Trade Organization (WTO) (2023), Trade in a year of polycrisis.

Available at: https://www.wto.org/english/res_e/booksp_e/anrep_e/ar23_spotlight_trade-polycrisis_e.pdf

[Accessed 8 August 2024].

WTO (2023), World Trade Report.

Available at: https://www.wto.org/english/res_e/booksp_e/wtr23_e/wtr23_e.pdf

[Accessed 8 August 2024].