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Multistakeholderism in the EU's Trade Governance

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This policy brief contributes practical insights to the intense debate on engagement of stakeholders in the European Union's trade policy. In response to growing demand for a constructive dialogue with stakeholders on trade, the EU is developing new mechanisms and adjusting existing ones. However, overall, its current system for consultation remains disjointed and weak. This brief analyses gaps in the consultation regime and provides recommendations.¹

Introduction

This policy brief contributes practical insights and recommendations to the intense debate on engagement of stakeholders in the European Union (EU)'s trade policy. Various arrangements

for consultations exist, such as civil society mechanisms established under the new generation of EU free trade agreements, or the Civil Society Dialogue. However, they have been criticised for ineffectiveness and inability to make trade policy more legitimate. The EU has recently made steps to improve its consultation system. These include the new Group of Experts on EU Trade Agreements and a new 15-point plan (non-paper) of the Commission services on improving engagement with civil society under the Trade and Sustainable Development chapters in trade agreements.² However, multiple shortcomings remain.

¹ This brief represents a shortened version of a policy paper originally published by the Institute for European Studies at the Vrije Universiteit Brussel [here](#). The author is most grateful to Jan Orbie, Jamal Shahin, Lotte Drieghe, Austin Ruckstuhl, Niels Gheyle and Beatriz Porres for their invaluable comments and suggestions on the original paper. This brief has been developed in the framework of the project – *GREMLIN: Global and REgional Multistakeholder Institutions* on the contribution of global

and regional multistakeholder mechanisms in improving global governance. Responsibility for the content, including all omissions and errors, lies solely with the author.

² Non paper of the Commission services "Feedback and Way Forward on Improving the Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements," 26.02.2018.

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This brief focuses on the formal mechanisms operating in the framework of the EU's trade policy (see [Table 2](#)).

What is multistakeholderism and why is it important?

We can broadly define **multistakeholderism** as “policy processes which allow for the participation of the primary affected stakeholders, or groups of these who represent different interests”.³ In addition to civil society, multistakeholder arrangements can include individual citizens, businesses, consultancies, academia, public authorities, social movements etc.

Multistakeholderism is an advanced form of participatory democracy, increasingly accepted as a solution to the infamous “democracy deficit”. If done well, it helps to bridge the gap between the society and the policy-makers and brings two major benefits: improved quality and legitimacy of policies.

What is a “good” arrangement for consulting multiple stakeholders?

A meaningful stakeholder arrangement should fulfil the following criteria:

1. representing the views of all groups within a society with a significant interest in a policy;
2. ensuring balanced participation of stakeholders;
3. accountability of the multistakeholder body and individual stakeholders to each other;⁴
4. accountability of multistakeholder fora to the wider public;
5. political, institutional and legal environment which enables stakeholders to develop positions on policy issues, take part in consultations and have impact on policies.

The EU faces certain issues with all five points. Moreover, it does not have a clearly defined and universally respected objective for consultations in the field of trade.⁵

Systemic challenges

These are fundamental challenges affecting the functioning of the consultation process as a whole. Their resolution calls for political will and, in some cases, legal adjustments.

- **Lack of legitimate and independently acknowledged information about the impact of EU's trade policy** due to failures to conduct impact assessments of EU's trade

³ Jeremy Malcolm, “Criteria of Meaningful Stakeholder Inclusion in Internet Governance,” *Internet Policy Review* Vol. 4, Iss. 4 (2015), 2.

⁴ Ibid.

⁵ See e.g. Jan Orbie, Deborah Martens, Myriam Oehri and Lore Van den Putte, “Promoting Sustainable Development or Legitimising Free Trade? Civil Society Mechanisms in EU

Trade Agreements,” *Third World Thematics: A TWQ Journal* Vol. 1, No. 4 (2016); Jan Orbie, Deborah Martens and Lore Van den Putte, “Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation,” *CLEER Papers* 2016/3 (The Hague: T.M.C. Asser Instituut, Centre for the Law of EU External Relations, 2016).

deals and problems with methodology used.⁶ This harms the policy's legitimacy.

- **Weak links and gaps in the consultation system.** Consultation arrangements are weak or non-existent in some institutions and in some trade formats. In other cases, there is no continuity between policy-making stages.
- Certain trade agreements suffer from **excessive fragmentation of civil society consultation mechanisms in the framework of a single agreement.** This is inefficient and creates confusion for stakeholders.
- **Stakeholders' recommendations are not always translated into policies:** this process is at the discretion of the EU institutions and partner governments. Moreover, **accountability of governments is weak.**
- **The EU's stakeholders are not equally interested in all trade agreements.** Some deals largely pass "under the radar" of public scrutiny.
- The European Commission is **insufficiently sensitive** to the fact that multistakeholder structures in partner countries often operate by different principles and, as a consequence, fails to adjust its consultation standards. Also, realities in the partner countries are not always understood by EU stakeholders.
- The EU's formal and informal consultations in the field of trade are frequently **dominated by business representatives,**

while civil society (except for business associations) and other not-for-profit interests are somewhat side-lined. This tarnishes the public image of the EU's trade policy.

Procedural challenges

Procedural challenges to dialogue with stakeholders are easier to resolve than the systemic ones, although they do require putting new procedures in place and investing additional resources.

1. **Stakeholders lack funds** for analysing the EU's policies and engaging with EU representatives and their own members. Stakeholders from the "new", "small" and less prosperous EU member states, most partner states' representatives, as well as not-for-profit groups coming from civil society are particularly disadvantaged.
2. **Existing civil society mechanisms (in the framework of free trade agreements) have insufficient organisational support,** especially on the partner countries' side.
3. **The EU's efforts for engaging stakeholders are not getting sufficient public attention,** as many consultation mechanisms are closed to the press.
4. **The selection of stakeholders is insufficiently transparent,** and the current system largely excludes certain types of interests, such as individual businesses or academia.

⁶ European Court of Auditors, "Special Report No. 2: Are Preferential Trade Arrangements Appropriately Managed?" 2014; Karin Ulmer, "Trade Embedded

Development Models," *The International Journal of Comparative Labour Law and Industrial Relations* 31 No. 3 (2015), 314-6, 325.

5. EU's engagement with national level stakeholders remains insufficient.

Recommendations for improving systemic conditions for multistakeholderism

1. The inclusiveness of the EU's consultation mechanisms will benefit from a **consistent use of a broad definition of "stakeholder"** (as in the 2017 Better Regulation Toolbox).
2. An ambitious but necessary recommendation is **streamlining the consultation process and "filling the gaps"** in cases where consultation mechanisms are non-existent or weak.
3. Applying the principle of **"one agreement, one civil society body"**⁷ to avoid fragmentation.
4. **Strengthening the EU institutions' own capacity for engagement with stakeholders.** The institutions need human resources to engage stakeholders proactively and channel the outputs of consultations into the policy-making process.
5. **More assertive enforcement of provisions on consultations:** in particular, the EU should make better use of the dispute settlement mechanisms under the Trade and Sustainable Development (TSD) chapters, as requested by civil society.
6. **Ensuring accountability:** providing stakeholders with feedback on how and

why their recommendations have or have not been implemented in practice.

7. The EU may consider **formats** where both independent and government, or quasi-government, stakeholders from third countries are present. This could help to minimise the hostility of certain partner governments to civil society consultations.
8. **Promoting horizontal ties among business and non-economic interests on trade issues.**
9. Building **mutual awareness between EU and partners' representatives**, for instance through dedicating more resources to field trips and EU-to-partner meetings.

Recommendations for improving procedural aspects of multistakeholderism

1. **Adapting financial support guidelines** to enable a broader range of organisations to take part in consultations, in particular, improving the availability of operational grants to civil society.
2. **Reimbursing stakeholders** for costs incurred during participation, providing micro-grants for analytical work, supporting civil society organisations in liaising with their members (for instance, organising surveys).⁸
3. **Implementing a massive publicity strategy for multi-stakeholder mechanisms**, offering a voice to their participants. In addition to more traditional media channels, civil society organisations in particular can be

⁷ European Economic and Social Committee, Opinion on The New Context for EU-CELAC Strategic Relations and the Role of Civil Society (own-initiative opinion), rapporteur: Mário Soares, co-rapporteur: Josep Puxeu Rocamora, REX/488, March 30, 2017.

⁸ See e.g. European Economic and Social Committee, Opinion: Trade and Sustainable Development Chapters (TSD) in EU Free Trade Agreements (FTA), REX/500, Rapporteur: Tanja Buzek.

supported in disseminating the results of the meetings and collecting feedback. In parallel, it is necessary to create a **“one stop shop” information service** providing a clear overview of the different possibilities for engagement.

4. Carrying out a comprehensive **stakeholder mapping** and **engaging stakeholders in a proactive manner**.
5. **Improving efficiency of consultation mechanisms** through such measures as: producing discussion papers, inviting qualified moderators / mediators, engaging dedicated experts in support roles, and developing realistic working plans as well as interim / final reports.
6. **Strengthening engagement with stakeholders on the national level** (including civil society and other interest groups in partner countries) in national languages.

Conclusions

The European Commission can be commended for several recent initiatives to improve openness of its trade policy-making. However, these measures are not yet sufficient, and a broader overhaul of the Commission's

consultation practices is needed. The EU should adopt a **holistic approach, identifying and filling the gaps in the overall consultation regime**. Its current system for engaging civil society and other stakeholders is disjointed and lacks continuity. There is a multitude of sometimes overlapping mechanisms which do not ensure similar possibilities of participation at all stages of decision-making, to all stakeholders, on all topics in all trade deals. **It is also important to adhere to a broad and inclusive definition of multistakeholderism when developing formal consultation mechanisms.**

In addition, the EU faces multiple **difficulties of a more technical nature** when setting up consultations on trade. Among the recommendations offered in this brief are providing appropriate financial and organisational support which would enable a diverse range of stakeholders to participate in a meaningful way; increasing efficiency of the mechanisms; and ensuring that the EU's consultations and stakeholders' views enjoy wide publicity. It is crucial to align consultations in the field of trade with general standards set in, among others, 2017 Better Regulation Toolbox.⁹

⁹ European Commission, “Better regulation “Toolbox” [complements the better regulation guideline presented in SWD(2017) 350].

Table 1. Consultation and dialogue mechanisms on trade policy, by institution and policy-making stage (source: authors compilation)

	General strategic debate and agenda-setting	Proposal and ex ante assessment	Negotiations	Conclusion and ratification	Implementation	Monitoring of implementation and ex post assessment	Enforcement and dispute settlement
European Commission*	CSD (seldom); Group of Experts (GoE) on EU Trade Agreements; other expert groups; Citizens' Dialogues in member states; ad hoc meetings; European Economic and Social Committee (EESC) opinions	Online public consultations; GoE on EU Trade Agreements; other expert groups; "scoping exercises" & impact assessments (also incl. consultations) – some agreements only; possibility to give input to SIAs – some agreements only; CSD; EESC opinions	Meetings with stakeholders; online public consultations; GoE on EU Trade Agreements; environmental and social studies conducted; updates published after each round; EESC opinions	Meetings with civil society and other interested parties	Market Access Committee – open to business participation; in some cases, partners participate in implementation, e.g. as contractors	Monitoring: GoE on EU Trade Agreements; other expert groups; DAGs – economic, labour and environmental rights only – some agreements only; GSP+ Monitoring Process and stakeholder participation in GSP Review; interim or ex post assessment: some countries only; feedback through review clauses and on annual FTA implementation reports; EESC opinions	DAGs can suggest signatories on their respective sides to initiate complaint procedure regarding implementation of the TSD chapters; some agreements only
	+ Expert groups; informal contacts; separate consultations with social partners, European Services Forum, Trans-Atlantic Business Council etc. – throughout the process						
European External Action Service	Mostly ad hoc; civil society roadmaps exist for engagement with civil society but do not always touch on trade issues or stipulate a structured dialogue on these topics						
Council	Ad hoc, non-transparent; Council Committees seem to prefer dealing with business to other stakeholders						
Individual member states	In general, no single approach; member states consult stakeholders and are lobbied as a gateway to the Council; stakeholders lobbying "big" and "old" MS have more chances to succeed at the EU level thanks to these states' greater influence. Some attempts to coordinate dialogue of individual member states with third country stakeholders (also prioritised by civil society roadmaps)						
European Parliament**	Hearings; INTA Monitoring Groups and Sub-Committees; ad hoc engagement including public events (may be organised by individual groups or MEPs) (role of the Parliament very limited at this stage)	Hearings; ad hoc engagement; INTA Monitoring Groups and Sub-Committees	Hearings; some lobbying; INTA Monitoring Groups and Sub-Committees	Some lobbying; ad hoc engagement	Hearings, ad hoc engagement (role of the Parliament very limited at this stage)	Hearings; INTA Monitoring Groups and Sub-Committees; ad hoc engagement including public events (may be organised by individual groups or MEPs) (role of the Parliament very limited at this stage)	(Role of the Parliament very limited at this stage)
Stakeholder-to-stakeholder	Cooperation and competition; mostly ad hoc + sectoral NGO platforms' meetings + joint projects; EU-to-EU, third country-to-third country, EU-to-third country						
Third countries and stakeholders	Patterns of engagement very individual; from developed consultation mechanisms to ad hoc to none; some dialogue initiatives are promoted / supported by the EU						

*Only DG TRADE considered here: due to "silo mentality", different DGs do not have a well-developed cooperation among themselves

**Only INTA considered here: due to "silo mentality", different committees do not have a well-developed cooperation among themselves.

Table 2. European Commission's Directorate-General for Trade's mechanisms for dialogue with stakeholders and main procedural challenges by mechanism (source: author's compilation)

Mechanism for dialogue with stakeholders	Description	Comments
Domestic Advisory Groups (DAGs)	Introduced under "new generation" agreements to monitor implementation of Trade and Sustainable Development (TSD) chapters. Exist on both EU and partners' side	DAG membership is not balanced between economic, labour and environmental interests, although this is expected. DAGs have no legal power to affect the implementation process. Partner countries tend not to take into account their recommendations; DAGs themselves are not particularly productive in issuing ones. There is "little evidence that vigorous monitoring has been conducted". ¹⁰ In many partner countries DAGs do not exist, are weak or lack independence. There are no legal provisions for joint DAG-to-DAG meetings, relations between EU and non-EU DAGs are weak.
Civil Society Dialogue (CSD)	European Commission's oldest (since 1999) and most universal mechanism for engagement with civil society. 494 registered organisations as of September 2018. Ad hoc meetings as reaction to major developments	It is more technical than strategic, topics are often selected by the Commission. Mainly debriefing by the Commission not two-way dialogue. Meetings do not generate clear outputs for Commission's work; only a few organisations use the option of preparing "position papers". Observations show that only about 5 to 20% of registered organisations attend each meeting. The CSD is oriented at "representative" organisations; universities and academics cannot register in the CSD database. Oriented towards English-speaking, Brussels-based organisations. The Commission is not proactive in engaging stakeholders on specific topics. ¹¹
Online public consultations	Organised through "Your Europe" online portal. Open to all interested parties	May gather excessive number of responses, thus being very taxing to analyse, or not gather a sufficient number of responses to be representative. ¹² It can be difficult to obtain balanced input from various groups. The system may be intentionally abused. Sometimes too difficult for target groups to understand terminology-wise. Summaries of results and follow-up measures are not always published.
Group of Experts on EU Trade Agreements	Established in 2018 as a high-level initiative for liaison with major EU-level organisations and networks. 28 members + 2 observers, meets every 2 months	Paradoxically very limited in membership and consists of EU-level organisations but is ambitiously tasked with advising on "perception and public debate" on trade agreements and in particular with providing insight into national-level debate. Overall very broad and somewhat unclear mandate. Some stakeholders argue the number of participants is still too large to get their message across.
Other consultative committees, expert groups, business contact groups	Convened by the Commission; both formal and informal	Non-transparent. Sometimes engage with non-governmental stakeholders but the criteria are not clear, nor are the steps that must be taken to be invited to a meeting.
Bilateral meetings	Informal, take place throughout policy-making cycle	Non-transparent. Approx. 70% of the meetings take place with business representatives. ¹³ Only data about meetings with Commissioners and most senior civil servants is public.

¹⁰ Mirela Barbu et al., "A Response to the Non-paper of the European Commission on Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)," 26 September 2017.

¹¹ Deloitte and Coffey International Development, "Evaluation of DG TRADE's Civil Society Dialogue in order to Assess its Effectiveness, Efficiency and Relevance. Final Report," 2014.

¹² See Opinion of the European Economic and Social Committee on the Evaluation of European Commission Stakeholder Consultations (own-initiative opinion), SC/040, Brussels, 2 July 2015, rapporteur: Ronny Lannoo.

¹³ Author's calculations using data from Transparency International EU, "EU Integrity Watch," <http://www.integritywatch.eu/>

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