

# DEEP TRADE AGREEMENTS: A TOOLKIT FOR POLICY MAKERS AND PRACTITIONERS.



WORLD BANK GROUP

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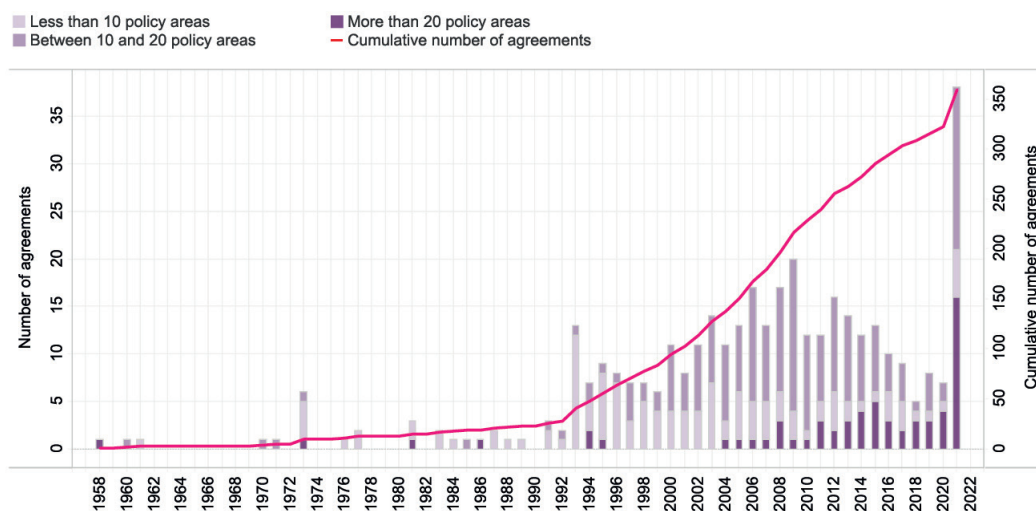
# OVERVIEW OF THE TOOLKIT

Given the current global context, Deep Trade Agreements (DTAs), have become increasingly important and will continue to be crucial in addressing complex global challenges such as climate change, value chains reorganization, and geopolitical fragmentation. Nowadays, DTAs go beyond market access and include provisions that tackle diverse policy areas in order to address global challenges. Hence, DTAs offer a framework for promoting sustainable development, fostering innovation, and enhancing international cooperation.

In recent decades, Preferential Trade Agreements (PTAs) have gained significant prominence on the political agenda. The proliferation of PTAs since the 1990s is not surprising, given the potential economic benefits they offer (Figure 0-1). On average, countries participate in 13 agreements, with the EU taking part in the largest number of agreements (50). Other notable participants include United Kingdom (34), European Free Trade Association (EFTA) members (between 32 and 33), Chile (31), Singapore (27), Turkey (24), and Mexico (22). Emerging economies, such as India (19) and China (17), are also active in this space. The increasing number of countries participating in PTAs reflects the growing recognition of their potential to drive economic growth and development.

Over time, PTAs between countries have become more comprehensive, including provisions that aim to deepen integration among members across a variety of thematic areas. Modern PTAs now cover a broad range of policy areas, including customs procedures, technical barriers to trade, investment rules, intellectual property rights, anti-corruption measures, competition policy, labor and environmental standards, and more. In contrast to the 1960s, where PTAs typically covered 20 policy areas on average, in recent years, they have grown to include 27.

Figure 0-1: Number of preferential trade agreements in force and subject coverage



Note: Number of policy areas covered in an agreement is calculated as the count of policy areas included in a PTA. The maximum number of policy areas mapped is 52. Source: Calculations based on the World Bank Deep Trade Agreements Dashboard using World Bank Deep Trade Agreements Database (Hofmann, Osnago, & Ruta, 2019)

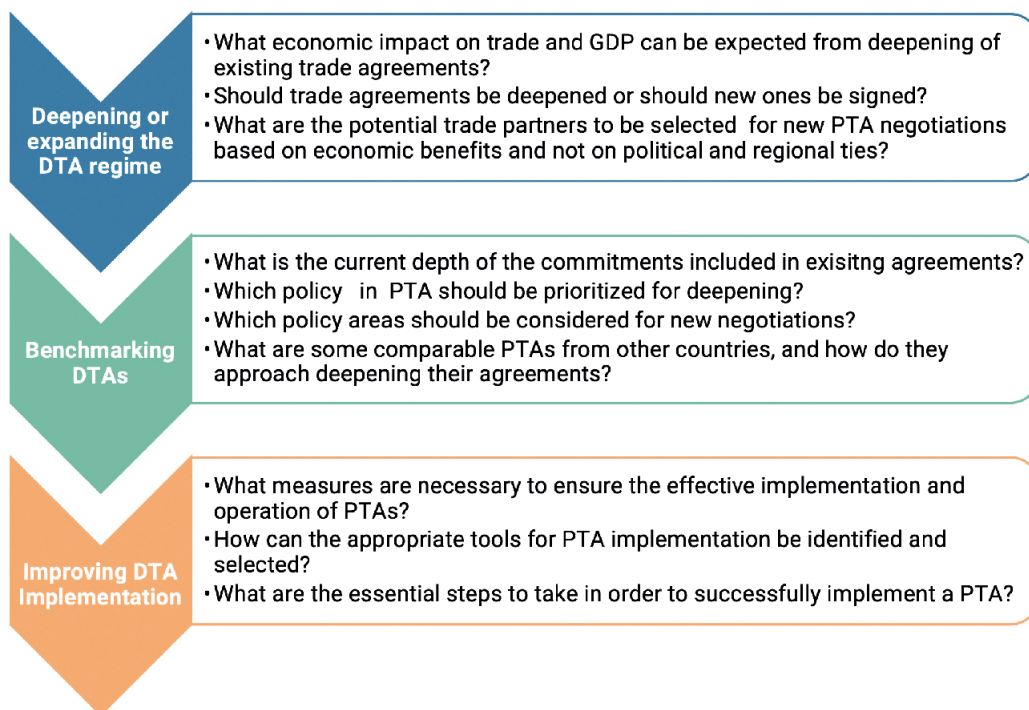
This section is structured as follows. Firstly, it introduces the objectives of the toolkit and offers guidance on how to effectively utilize its three modules. Secondly, it provides an overview of the economic impacts of DTAs, covering both their direct and indirect effects. Thirdly, it provides a definition of DTAs, which will be consistently applied throughout the subsequent sections. Fourthly, it presents the latest literature review, examining existing analytical work conducted on DTAs. Finally, it provides important information regarding the databases used in this toolkit and the DTAs database structure.

## 0.1 Objectives of the Toolkit

**The toolkit is a comprehensive resource that offers a wealth of information for evaluating the potential impact of DTAs, benchmarking their effectiveness, and facilitating their successful implementation.** Whether it is deepening existing trade agreements or signing new ones, benchmarking existing trade agreements or implementing and operationalizing them, this toolkit offers a wide range of standardized and comprehensive tables, graphs, and checklists. The tables and graphs are easily interpretable, providing valuable insights into the current state of trade and potential opportunities for growth and development through DTAs.

**By providing comprehensive economic analysis and practical materials, the toolkit enables policy makers to examine and enhance their PTA regime.** Figure 0-2 displays a range of policy questions that policymakers may need to address to enhance their PTA regime, along with an overview of the three modules that comprise the toolkit.

**Figure 0-2: Policy questions to address when assessing a country's PTA regime**



Source: World Bank elaboration.

The aim of this toolkit is to provide policy makers with the information they need to improve their country's PTA regime and benefit from international trade. It consists of three modules and an interactive dashboard that allows policy makers to select the tools they need to answer their policy questions. With this toolkit, policy makers can make informed decisions to enhance their country's trade agreement frameworks and maximize their economic benefits. The three modules are:

**Module 1: Quantifying the benefits of deepening and expanding DTAs.** This module describes the steps and methodologies to assess for a certain country the status of PTA integration and the potential opportunities from deepening or signing new trade agreements.

- Methodological note
- Interactive dashboard
- Code to reproduce analysis

**Module 2: Benchmarking of the content of DTAs.** This module describes the different steps and methodologies that need to be followed when benchmarking the content of specific provisions included in the agreements signed by a country.

- Methodological note
- Interactive dashboard

**Module 3: Good practices to operationalize implementation of DTAs.** This module seeks to equip policymakers with the necessary tools and capabilities necessary to effectively and efficiently manage DTAs, thereby maximizing their potential benefits.

- Methodological note
- Interactive dashboard

## 0.2 The Direct and Indirect Effects of Preferential Trade Agreements

When a preferential trade agreement (PTA) is ratified between two or more countries in a region, it can alter trade costs both among the member countries and between the member countries and non-members. This trade cost shock can have direct and indirect effects on production and consumption, not only in the countries that are party to the agreement, but also in others.

PTAs have direct and indirect effects:

1. **The direct effects of a PTA, also known as partial equilibrium effects, include increasing the value of exports and reducing import costs between the parties.** Specifically, producers can increase the value of their exports by reducing the costs of exporting goods and importing intermediate goods needed to produce them, while consumers can benefit from lower costs of imported final goods.

2. **Indirect effects of a PTA, also known as the general equilibrium effects, occur as trade costs are adjusted between the PTA members relative to all other countries.** This can result in increased trade costs with non-members and decreased trade costs among PTA members, leading to trade diversion.<sup>1</sup> Additionally, the reduction in international trade costs makes

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<sup>1</sup> (Viner, 1950)



domestic trade more costly, resulting in a second type of trade diversion which takes place between domestic trade and international trade.<sup>2</sup>

**As a result, the PTA can lead to changes in production, trade, and welfare for all countries involved.**

These effects, however, depend on the specific provisions of the agreement and the characteristics of the economies involved. A thorough analysis of the PTA's impacts requires the consideration of the indirect effects as well, which consider changes in relative prices, trade diversion, and other factors that affect the global economy.

### 0.3 What are Deep Trade Agreements?

**Deep trade agreements (DTAs) refer to preferential trade agreements (PTAs) that go beyond traditional tariff reductions and cover a wide range of policy areas such as services, investment, competition, intellectual property, labor, and the environment.** These agreements aim to deepen economic integration between countries by eliminating non-tariff barriers to trade and investment, harmonizing regulations, and standards, and promoting cooperation on a range of issues. The depth of a PTA is typically measured by the number and scope of policy areas covered, as well as the degree of commitment and enforcement mechanisms included in the agreement. DTAs are believed to be more effective in promoting trade and investment than shallow agreements that only focus on tariff reductions.

**The mapping of all PTAs** currently notified to the WTO was carried out over two complementary phases that documented: (1) the scope of the policy areas covered, about 52 policy areas and (2) specific commitments within policy areas.

- **The first mapping<sup>3</sup> in this section provides a breakdown of 52 policy areas** found in 14 European Union (EU) and 14 United States (US) PTAs, which were notified to the WTO as of 2008 (Figure 0-3). These policy areas were identified based on the articles' or chapter headings in the respective agreements.

- **The second mapping in the toolkit is dedicated to identifying the specific commitments under the set of 18 policy areas most frequently covered in PTAs.** Figure 0-4 classifies these policy areas into three broad objectives:

- a) establishing the five economic integration rights
- b) protecting these rights by limiting government discretion to undo them
- c) expanding consumer rights and social welfare

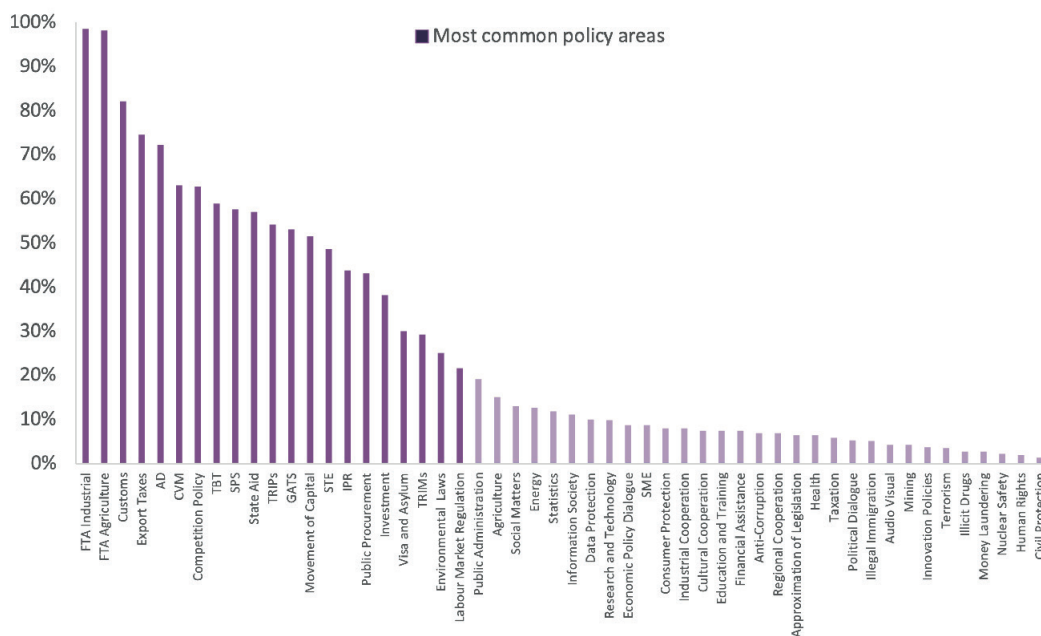
The policy areas differ widely in terms of the nature of their provisions. While some areas primarily focus on substantive provisions like market access commitments and harmonization of standards, others contain a larger number of procedural provisions, such as transparency and procedural requirements.

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<sup>2</sup> (Dai, Yotov, & Zylkin, 2014).

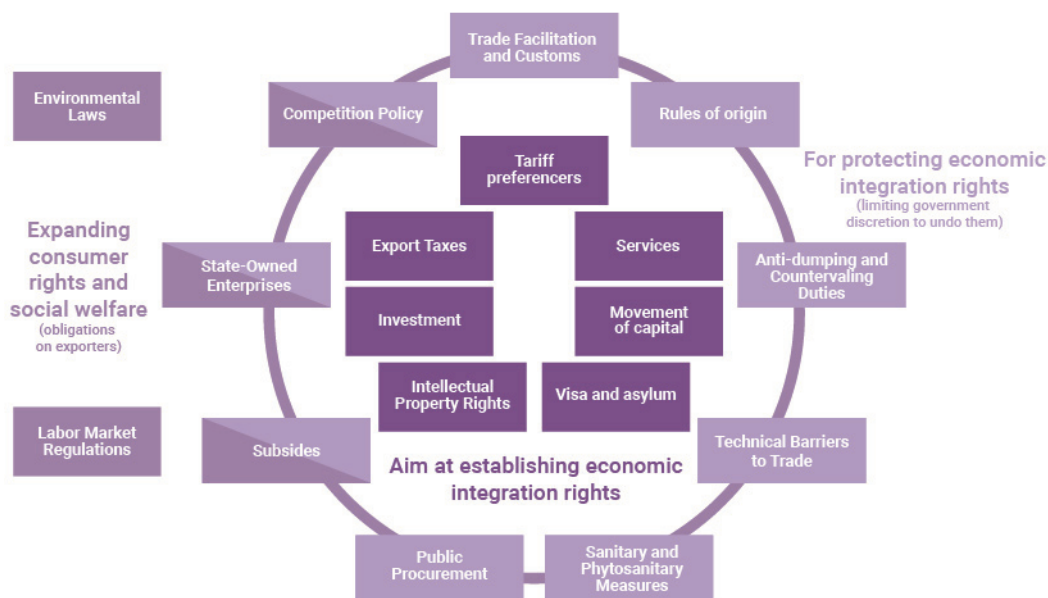
<sup>3</sup> The first mapping is based on the work of (Horn, Mavroidis, & Sapir, 2010), which was also used in the (World Trade Organization, 2011).

Figure 0-3: Number of policy areas covered in PTAs



Source: Calculations based on the World Bank Deep Trade Agreements Database (Hofmann, Osnago, & Ruta, 2019).

Figure 0-4: A classification of policy areas in DTAs



Source: (Mattoo, Rocha, & Ruta, 2020).

## 0.4 Review of Existing Deep Trade Agreements Analysis

**Two important pieces of work have been published along this toolkit.** These analytical pieces are The Economics of Deep Trade Agreements which is also available online and the second one is Beyond Trade: How Deep Trade Agreements Shape Non-Trade Outcomes (forthcoming).

**The Economics of Deep Trade Agreements:**<sup>4</sup> The eBook from the World Bank and CEPR focuses on the determinants of deep trade agreements, how they affect trade and non-trade outcomes, and how they might shape trade relations in a post-COVID-19 world. While multilateral trade negotiations have stagnated and tensions between major players have surged, bilateral and regional agreements seem to have run away with the trade agenda. There are over 300 agreements today, up from 50 in 1990. Most importantly, many of these agreements have extended their reach well beyond tariffs, aiming to achieve integration beyond trade, or ‘deep’ integration.

The eBook also presents an interactive dashboard presenting the data as well as the Deep Trade Agreements Methodology and Data that underpins this toolkit.

**Beyond Trade: How Deep Trade Agreements Shape Non-Trade Outcomes.** The chapters in this eBook build on the detailed information of the World Bank’s Deep Trade Agreements Database to analyze if and how non-trade disciplines in PTAs affect non-trade outcomes. Indeed, the inclusion of provisions that deal with non-trade objectives is increasingly a salient characteristic of PTAs, especially of those signed by advanced economies such as the European Union and the United States with developing countries. Underlying this transformation in the content of trade agreements are multiple reasons, ranging from the changing nature of trade, with the growing importance of global value chains, to the changing politics of trade, with issues like the protection of labor rights and the environment increasingly seen as central in the ratification process of PTAs. Whatever the reasons for non-trade disciplines in PTAs, there is little understanding about their effects – i.e. whether these non-trade provisions actually achieve the intended goals. The research in this eBook helps fill in this important gap. In this introduction, we present the highlights of this analysis.

Additional research on Deep Trade Agreement can be found on the Deep Trade Agreements webpage.

## 0.5 Deep Trade Agreements Database Structure

**The Deep Trade Agreements Database is based on a horizontal and vertical analysis.** The horizontal analysis focuses on the subjects or issues covered by PTAs, while the vertical analysis focuses on the chapter and the disciplines of the PTAs.

### Horizontal analysis: Deep Trade Agreements 1.0

The horizontal analysis focuses on the subjects or issues covered by the PTA (e.g., SPS, TBT, anti-dumping, services, investment, data protection, etc.). It enables a country to get a general overview of the “depth” and breadth of its PTAs in terms of the number and types of disciplines covered, and how this compares to other countries’ PTAs as well as general trends.

The horizontal analysis is based on the Deep Trade Agreements database 1.0- horizontal depth. This dataset maps the coverage of 52 selected areas (see **Appendix 2.A: List of disciplines coded in Deep Trade Agreements database 1.0 and 2.0** for the list of policy areas covered by the database) across

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<sup>4</sup> (Fernandes, Rocha and Ruta, 2021)

PTAs notified to the WTO.<sup>5</sup> It also includes information about the legal enforceability of each policy area: a specific discipline is considered legally enforceable if the language used is sufficiently precise and committing and if it has not been excluded from dispute settlement procedures under the PTA.<sup>6</sup> Section 2.3 provides more information on how to conduct a horizontal analysis.

### Vertical analysis: Deep Trade Agreements 2.0

The vertical analysis focuses on specific chapters/disciplines in PTAs, such as SPS, TBT and anti-dumping, and specifically addresses the various categories identified by the Handbook of Deep Trade Agreements. This analysis enables countries to get a better understanding of the depth and breadth of commitments made within specific chapters across all its PTAs. The vertical analysis is based on the Deep Trade Agreements database 2.0 -Vertical Depth, which provides detailed information on the content of a subsample of policy areas most frequently covered in PTAs.<sup>7</sup>

**The methodology for the vertical analysis and benchmarking is specific to the policy area that is considered.** Section 2.4 provides detailed information on how to develop vertical analyses with respect to three specific chapters in PTAs: Sanitary and Phytosanitary (SPS), Technical Barriers to Trade (TBT), and Investment. For each deep dive, the section will provide an explanation of how the country Note should be structured followed by an explanation of the categories under each of the chapters.

**Modules 1 and 2 use the Deep Trade Agreement Database, but to different extents.** Table 0-1 contains information about the number of agreements used for each module, the years, and the type of DTA database. Module 1 uses the database through 2019, which includes 278 PTAs (see Appendix Table 1.A. 1 for list of agreements included in Module 1). Module 2 uses the database through 2021, which includes 381 PTAs for the horizontal DTA database and 316 PTAs for the vertical DTA database. Note that Module 1 only uses data through 2019 due to the availability of trade and production data. Results will be updated through 2021 as data become available. Module 1 includes 130 countries listed in Appendix Table 1.A. 1 of Module 1.

**Table 0-1: The various databases used in each Module**

	# OF AGREEMENTS	YEARS	DTA DATABASE
Module 1	278	Trade and PTA facts: 2010-2021 Simulations: 1958-2019	Subsample of Deep trade Agreements 2.0 -Vertical Depth
Module 2	381	1958-2021	Deep trade Agreements 1.0 -Horizontal Depth
	316	1958-2021	Deep trade Agreements 2.0 -Vertical Depth
Module 3	n/a	n/a	n/a

Source: Authors' elaboration.

<sup>5</sup> The latest version of the dataset covers 381 agreements between the years 1958 and 2021.

<sup>6</sup> For more information on the dataset coding and legal enforceability see Hofmann et al (2017).

<sup>7</sup> The latest version of the dataset covers 316 agreements between the years 1958 and 2021. The set of disciplines covered in the database can be seen in *Appendix 2.A: List of disciplines coded in Deep Trade Agreements database 1.0 and 2.0*.

## References

Dai, M., Yotov, Y. V., & Zylkin, T. (2014). *On the trade-diversion effects of free trade agreements*. *Economics Letters*, 122(2), pp.321-325.

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Horn, H., Mavroidis, P., & Sapir, A. (2010). Beyond the WTO? An anatomy of EU and US preferential trade agreements. *The World Economy*, 22(11), 1565-1588.

Mattoo, A., Rocha, N., & Ruta, M. (2020). *Handbook of Preferential Trade Agreements*. Washington DC: World Bank.

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World Trade Organization. (2011). *World Trade Report 2011: The WTO and Preferential Trade Agreements: From Co-Existence to Coherence*. World Trade Organization (WTO)

Fernandes, Ana; Rocha, Nadia; Michele Ruta. 2021. *The Economics of Deep Trade Agreements*. CEPR Press.



# **MODULE 1.** **QUANTIFYING THE BENEFITS OF DEEPENING AND EXPANDING PREFERENTIAL TRADE AGREEMENTS**

Alvaro Espitia, Lionel Fontagné, Nadia Rocha, Gianluca Santoni,  
Giulio Vannelli and Aleksandar Stojanov.

## 1.1 Introduction

This module<sup>1</sup> aims to inform policymakers about the status of their Preferential Trade Agreement (PTA) integration and identify potential opportunities for deepening or signing new trade agreements. An interactive dashboard allows users to reproduce the tables and visualizations for each section of this module. The module uses Indonesia as a country example to illustrate these concepts. It is divided into three sections that describe the data and methodologies (Figure 1-1).

However, it is crucial to recognize that while trade liberalization, including PTAs, can bring overall economic benefits, it is important to address the potential adjustment costs with complementary policies. While PTAs can have a positive aggregated impact on an economy, it is also important to acknowledge that certain sectors may experience negative consequences. Therefore, it becomes imperative to implement complementary policies alongside trade liberalization measures to effectively mitigate and manage the adjustment costs associated with trade openness. These complementary policies can play a vital role in minimizing disruptions, supporting affected sectors, and ensuring a smooth transition towards a more open and competitive trading environment.

Figure 1-1: Module 1 scope of for each section

Trade Facts	Assess the structure of foreign trade of a country, including market orientation, product composition, and competitiveness position
PTA Facts	Explore the number and composition of existing preferential trade agreements
PTA Counterfactuals	Quantify the potential economic impact of expanding the country's preferential agreement regime

Source: Authors' elaboration.

**The module uses the Deep Trade Agreement database.** The module utilizes a sub-sample of the Deep Trade Agreements Database 2.0 -Vertical Depth<sup>2</sup> which goes up to 2019, although it's important to note that the database has been updated through 2021. Refer to section 0.5 for more information on the Deep Trade Agreement Databases. The dashboard will be updated annually, the data used in the toolkit will also be updated regularly but will not necessarily follow the same schedule as the dashboard. All the data needed to replicate the results of the current version of the Toolkit, however, will be available in the replication package available online. Module 1 includes 130 countries listed in Table 1.A. 1 of Module 1.

<sup>1</sup> This module is based on the methodology developed in the paper Fontagné et al (2023) (forthcoming).

<sup>2</sup> See Appendix Table 1.A. 1 for the list of agreements included in the analysis of Module 1.

**While the primary focus of the toolkit centers around examining the potential impact of trade agreements on exports and GDP, it is crucial to also consider the revenue implications that arise from PTAs, particularly for countries with limited fiscal capacity.** One of the direct channels through which revenue implications occur is the adjustment in tariffs. It is possible that certain countries may experience a loss in revenue due to tariff adjustments. However, it is important to note that these revenue losses may be offset by the gains in export revenues and GDP growth from other private sector winners and gains in private sector competitiveness. Consequently, a comprehensive assessment of revenue implications is necessary to provide a holistic understanding of the potential outcomes of PTAs for participating countries. See Box 1-1 on how to assess the impact of tariff adjustments.

#### Box 1-1: Tariff revenue implication from PTAs

An immediate concern of low-income countries with tariff revenue reforms is the tax implications. Tariffs are typically an important source of tax revenues in low-income countries, often reflecting the weakness of the domestic tax base and other tax instruments. Hence, the need to adjust tariff revenues whether unilaterally or through negotiations of regional or bilateral trade agreements will raise questions around revenue implications.

The World Bank has developed a simple spreadsheet tool called TRIST (Tariff Reform Impact Simulation Tool) that can be used by policy makers in client countries to analyze the adjustment implications of trade reforms. Detailed information on the tool is provided by Brenton et al. (2009). The tool was initially developed to provide better estimates of the impact of changes in tariffs on government revenues, imports, protection, and prices. When suitable data are available, it can provide information on the short-term relative vulnerability of different sectors in the domestic economy in terms of output and employment (see Brenton et al for the initial motivation, development, and application of the model). It can also be linked to household budget data to trace the influence of changes in prices following trade reform to household expenditures and the costs of attaining the given consumption bundle.

#### Advantages of TRIST:

- **Accuracy:** Projections are based on customs data on revenues (from tariffs, VAT, excise, and other taxes applied at the border) collected at the tariff line level, broken down by user defined trading partner groups and selected products. This improves the accuracy of tariff reform simulations by taking into account tariff exemptions and trading partner specific collection rates.
- **Transparency:** The tool is set up in Excel, and formulas and calculation steps are visible for the user. It is open source in the sense that users are free to change, extend or improve as per their needs.
- **Simplicity:** TRIST incorporates a simple partial equilibrium model of importing. The underlying modeling is intuitive, and simulations can be made by anyone within minutes once the appropriate tariff scenarios have been entered.
- **Policy Relevance:** TRIST allows projecting the impact of tariff reform on total fiscal revenue (incl. VAT and excise) and results are broken down to the product level to identify sensitive products or sectors.
- **Flexibility:** TRIST can incorporate tariff liberalization towards any group of trading partners. User defined tariff scenarios can be added, for example to incorporate a sensitive product list into the liberalization schedule. It is also possible to enter multiple successive liberalization steps and project both their individual and cumulative impact.



## 1.1 Trade Facts: Assessing the Structure of Foreign Trade

Section 1.2 of this module provides a concise overview of a country's current trade structure, including its primary trading partners, exported products, and imported products. Analyzing the destination and composition of exports and imports is essential to assess the impact of existing PTAs and understand trade flows.

**Analyzing a country's current foreign trade structure provides valuable insights into the country's integration into the global trading system.** The purpose of this section is to compare the country's market orientation, product composition of trade, and competitiveness to those of other countries. Understanding the main export destinations and the composition of a country's export basket, as well as import origins and its import basket offers valuable information on its capacity to produce and export. The objective of this section is to address the following questions:

- What is the level of market integration achieved by the country?
- What is the composition of the country's export basket and import basket?
- How does the country's competitiveness position compare to that of other countries?

### 1.1.1 Data and Methodology

This section provides theoretical information for three indicators: **market orientation, product composition of trade, and competitiveness position.** The toolkit uses data from CEPII, Comtrade, Unido, and FAO (see replication documentation for detailed data sources). The interactive dashboard provides access to data for additional years from 2010 to 2019, but the toolkit only shows 2019 data for illustrative purposes.

#### 1.1.1.1 Market Orientation

**Market orientation is assessed by analyzing trade openness, the number of markets accessed, and market share.** One way to measure trade openness is through the trade-to-GDP ratio, which reflects the importance of exports and imports in an economy. This indicator is a fundamental measure of openness to foreign trade and economic integration (also taking into consideration country size), as it shows the level of dependence of domestic producers on foreign demand, as well as the reliance of domestic consumers and producers on foreign supply. The trade-to-GDP ratio is calculated as  $(X-M)/GDP$ , where X represents exports, M is imports, and GDP stands for gross domestic product.

**Stata do file can be found here.**

```
collapse (sum) X M gdp, by(region year)
gen openness = (X + M)/gdp
keep region year openness
reshape wide openness, i(year) j(region) string
```

### 1.1.1.2 Product Composition

Product composition is an essential element to analyze when assessing a country's trade structure. It also pertains to the concentration, for a given range of products that a country is exporting to other countries. To evaluate the product composition, the number of total products can be determined using the HS 6-digit classification system,<sup>3</sup> which groups goods based on their nature, function, and composition. It is vital for countries to have a diverse range of products in their export baskets to avoid being overly dependent on one or a few products. Trade agreements can assist in this regard by facilitating the exchange of goods and services and reducing trade barriers. This allows countries to access more markets and be encouraged to produce and export a broader range of products, resulting in a more stable and sustainable export structure. Similarly, it is important for countries to have resilience over imports in terms of products and origins.

**The analysis aims to provide insights into the concentration of a country's exports and imports.** It assesses the share of the top 10 products and the top one product in total exports, indicating the level of concentration or diversification in export composition. Similarly, the analysis examines the top 10 products and the share of the top one product in total imports, shedding light on import concentration.

### 1.1.1.3 Competitiveness Position

**The competitiveness position provides a valuable insight into the relative performance of a country in the products that it exports, as compared to other countries.** The structural gravity model provides a theoretical framework to evaluate a country's competitiveness position (see Box 1.2 for more information), offering a clear and comprehensive picture. The following version of the gravity model equation is used for this purpose:

$$X_{ij,t} = \exp(\pi_{i,t} + \chi_{j,t} + \textit{Gravity Controls}) + \varepsilon_{ij,t}$$

Where the  $X_{ij,t}$  refers to the value of international exports from origin  $i$  to market  $j$  in year  $t$ . The right-hand side of the equation contains the theoretically consistent determinant of bilateral trade flows.

The *gravity control* matrix includes variables designed to capture trade frictions between pairs of countries, which are determined by geography (the -log- of bilateral distance and common border), history (a dummy variable for common language and a dummy variable for historical links), and trade policy (a dummy variable for preferential trade agreements (PTAs)).

On the supply side, the term  $\pi_{i,t}$  captures the exporting capabilities of country  $i$  and year  $t$ . As shown in Costinot et al. (2012),  $\pi_{i,t}$  can be interpreted as a theoretically consistent index of revealed competitiveness. We exploit this property to position a country's exports on the global competitiveness ladder.

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<sup>3</sup> The HS 6-Digit classification refers to a system of categorizing products for international trade purposes. The Harmonized System (HS) is an international standardized system used to classify traded products. The HS system uses a six-digit code to classify products, with each digit indicating a particular level of specificity in the product description. The first two digits of the HS code indicate the chapter, while the next four digits represent the heading, subheading, and product description. The HS 6-Digit classification is used by customs officials to determine tariffs, quotas, and other trade regulations for products traded between countries.

$\chi_{j,t}$  is capturing the demand components (market size and degree of competition) at the destination market  $j$ ; and  $\varepsilon_{j,t}$  represents an idiosyncratic error term. The equation is defined at the aggregate level (i.e., on the total exports from country  $i$  to country  $j$  in year  $t$ ), but only takes into account the products exported by the selected country. In doing so, each country is ranked according to its competencies as revealed by the number and type of products exported.

### Stata do file can be found here

In the econometric implementation in Stata (reported in the box below), supply factors are captured by the "ppml\_d\_it" fixed effect while demand effects are captured by the "ppml\_d\_jt" fixed effect.

```
egen it = group(iso_o year)
```

```
egen jt = group(iso_d year)
```

```
gen ldist = ln( $dist )
```

```
ssc install ppmlhdfc
```

```
ppmlhdfc v ldist rta contig comcol comlang_ethno, absorb(ppml_d_jt = jt ppml_d_it = it)
```

```
d maxiter (1000) acceleration(steepest)
```

## 1.1.2 Illustration: Trade Facts for Indonesia

**This section provides an illustration of the data available on the interactive dashboard for Indonesia.**

This data can be downloaded for any country to perform a similar analysis to understand the landscape of the foreign trade structure, including market orientation and product composition. The interactive dashboard has data for multiple years, and users can download the data as figures.

**How open is Indonesia to trade and how market-oriented is it?** Table 1.1 provides insight into Indonesia's openness to trade and market orientation. According to the table, Indonesia's trade openness ratio was 0.32 in 2019, which is lower than the average ratio of 0.41 for other East Asia and Pacific (EAP) economies. Despite this, Indonesia's exports reach a significantly larger number of markets compared to other EAP countries, with exports reaching 196 markets in 2019 compared to 148 for other EAP economies. In terms of market differentiation, there has been no significant development in the past five years as Indonesia was already highly integrated with international markets in 2015. However, greater PTA integration can lead to increased market differentiation in the future. Finally, Indonesia's top 10 export destinations accounted for 71 percent of its total exports, which is slightly lower than the average of other EAP countries.

**How diverse is Indonesia in terms of import sources?** Table 1.1 also provides insights into Indonesia's import suppliers. According to the table, Indonesia imported from 168 different countries in 2021. The share of imports from the top supplier, China, has increased over time, from 22.4 percent in 2010 to 30.8 percent in 2021. The top 10 suppliers represent around 80 percent of Indonesia's imports.

**Table 1-1: Indonesia Trade Openness, Market Orientation, Import Suppliers**

Iso3 Code	Year	First Market	Trade Openness (X+M)/GDP	# Reached Markets	Share in total Exports (First market)	Share in total Exports (Top 10 markets)
IDN	2015	USA	0.4	171.0	11.5%	76.7%
	2019	CHN	0.3	171.0	15.9%	77.9%
	2021	CHN	0.4	170.0	22.9%	78.2%
EAP	2015	USA	0.4	172.0	16.6%	70.6%
	2019	USA	0.4	172.0	15.4%	71.3%
	2021	USA	0.4	173.0	15.4%	69.5%

Iso3 Code	Year	First Supplier	# Suppliers	Share in total Imports (First supplier)	Share in total Imports (Top 10 Suppliers)
IDN	2015	CHN	163.0	22.4%	82.1%
	2019	CHN	170.0	27.6%	81.4%
	2021	CHN	168.0	30.8%	80.9%
EAP	2015	CHN	172.0	20.5%	73.2%
	2019	CHN	172.0	19.1%	71.3%
	2021	CHN	173.0	19.8%	70.4%

Source: Calculation based on BACI dataset from the CEPII. X means exports. M means imports.

**What is the composition of Indonesia's exports?** Table 1-2 provides valuable insights into Indonesia's export composition. In 2019, Indonesia's export basket was significantly more diversified than the regional average, with 4,527 exported products, representing 87 percent of the total products in the Harmonized System Classification. Furthermore, only 29 percent of the total exports were accounted for by the top 10 exported products, which is considerably lower than the EAP region average of 49 percent. Over the period from 2015 to 2019, Indonesia's export basket became even more diversified, with the share of top 10 products in total exports decreasing from 32 to 29 percent.

The top export products for Indonesia were 'Palm oil or fractions simply refined' (HS 151190) in 2015 and 'Coal, excluding anthracite or bituminous coal, not agglomerated' (HS 270119) in 2019. In contrast, the top export product for the EAP region in both 2015 and 2019 was 'Electronic integrated circuits and micro assemblies' (HS 854221), highlighting the complexity of the export basket of other countries in the region compared to Indonesia.

**Table 1-2: Indonesia Trade, Product composition**

Iso3 Code	Year	# Exported Products	Share in total Exports (First product)	Share in total Exports (Top 10 products)
IDN	2015	4,589	6.7%	32.8%
	2019	4,522	7.2%	29.4%
	2021	4,449	9.3%	34.7%
EAP	2015	2,315	5.3%	65.1%
	2019	2,184	6.8%	65.7%
	2021	2,159	7.7%	66.7%

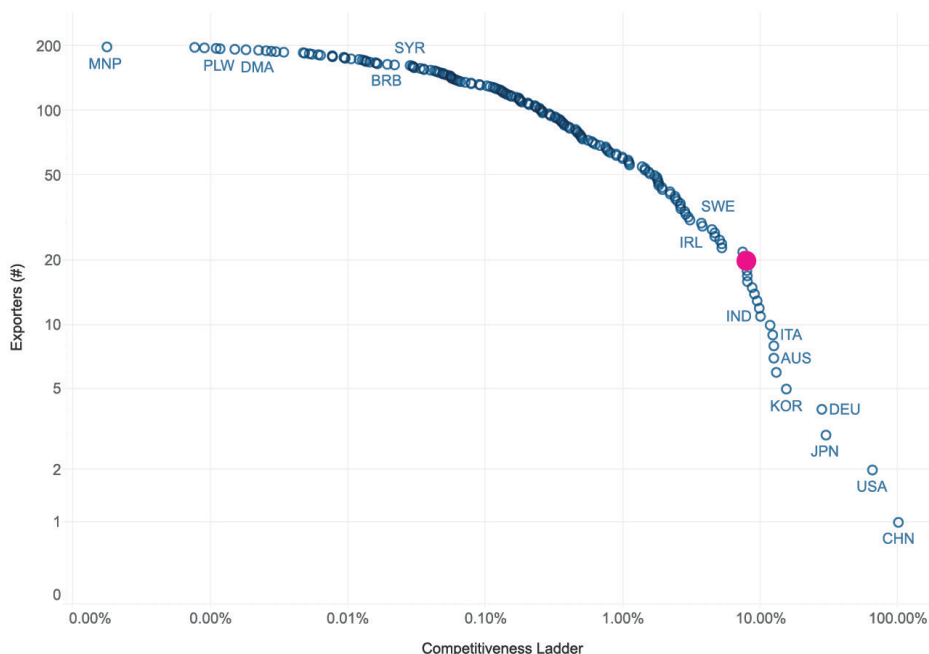
  

Iso3 Code	Year	# Imported Products	Share in total Imports (First product)	Share in total Imports (Top 10 products)
IDN	2015	9,574	10.2%	45.9%
	2019	9,516	7.4%	40.2%
	2021	9,490	7.0%	42.5%
EAP	2015	7,187	6.7%	72.2%
	2019	6,925	8.9%	73.2%
	2021	6,733	8.9%	73.1%

Source: Calculation based on BACI dataset from the CEPII. HS 2002 at 6-digit, total number of products: 5221.

**How competitive are Indonesian firms and what is their position in the global competitiveness ladder?** The toolkit used the structural gravity model (see Box 1.2 for more information) to evaluate the competitiveness of Indonesian firms on a global scale and subject to a normalization factor to allow for comparison. By exploiting the structure of the gravity equation, the model estimates a measure of export performance that accounts for the composition effects of both geographic and industrial dimensions, thereby capturing the degree of competitiveness of a country's exporting firms. As shown in Figure 1-2, countries such as China, the United States, Japan, and Germany rank highly in this measure. Indonesia is highlighted in red and is positioned in the top quartile of the distribution, indicating a high level of competitiveness among its exporters. Over the period 2015-2019, Indonesia ranked 17th out of 197 economies in the sample, and 6th among the countries in the EAP region, trailing only China, Japan, Korea, Australia, and Thailand.

Figure 1-2: Indonesian Competitiveness position (2019)



Source: Calculation based on BACI dataset from the CEPIL; classification HS2002 at 6-digit (4774 products exported by Indonesian exporters over the period 2015-2021). The graph reports the normalized exporter multilateral resistance term estimated with a structural gravity equation: estimation is conducted in the period 2002-2021; multilateral resistance terms are means over the period 2015-2021. Normalization is applied.

## 1.2 PTA Facts: Exploring the Number and Composition of PTAs

This section of the module provides a comprehensive analysis of the PTA regime of each country, presented in a series of tables. The analysis includes both the number of agreements and the level of ambition of each agreement, and provides insights into the specific provisions and sections contained in each PTA. This information is crucial for identifying opportunities to deepen existing agreements and for making comparisons with other country's PTA frameworks. By understanding where a country stands in comparison to its regional peers or aspirational countries identified in the analysis, it becomes easier to evaluate the extent to which its exporters have integrated foreign markets.

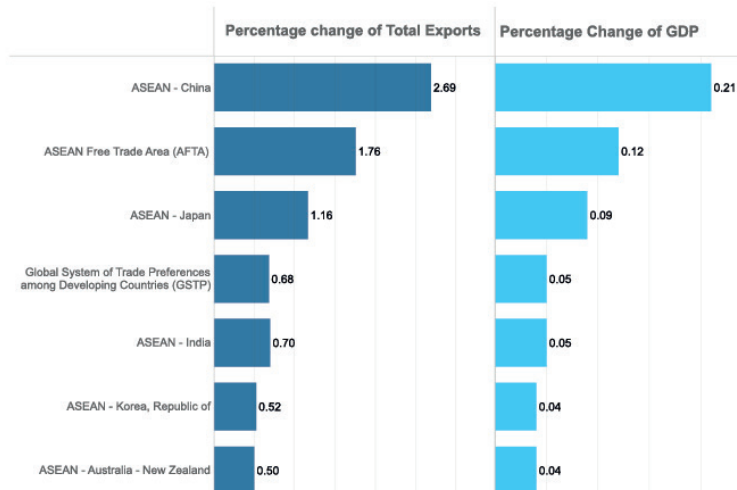
## 1.2.1 Data and Methodology

To analyze the depth of the PTAs in this module, the toolkit utilizes a sub-sample of the classification from the Deep Trade Agreements Database (Vertical Depth). Deep Trade Agreements database 2.0 -Vertical Depth,<sup>4</sup> which provides detailed information on the content of a subsample of policy areas most frequently covered in PTAs.<sup>5</sup> See section 0.5 for additional information. The module examines the content of 278 PTAs and categorizes them into three optimal groups: Deep, Medium, and Shallow. The clustering is based on the 903 provisions in the World Bank dataset, which are grouped into 18 policy areas. The ranking is based on the extent to which agreements have a broader range of provisions and are more effective in promoting trade between members.

## 1.2.2 Illustration: PTA Facts for Indonesia

**How many PTAs are in place with Indonesia and what is their depth?** As shown in Table 1.3, Indonesia currently has six preferential trade agreements in force: Asean Free Trade Agreement (AFTA, 1992), China (2005), Japan (2008), India (2010), Korea (2010), and Australia and New Zealand (2010). From a trade perspective, the most important agreement is the one with China, which accounts for 28 percent of imports and 16 percent of exports, followed by AFTA members (13 percent of imports and 15 percent of exports). The only agreement in the “medium” category is the one signed with Australia and New Zealand. All other agreements fall into the “low” category.

Figure 1-3: Indonesia Preferential Trade Agreements



Source: Calculation based on Trade Agreements database 2.0 -Vertical Depth for years 1958-2019. Clustering defined according to Fontagné et al. (2023).

**What are the effects of those PTAs for Indonesia in terms of exports change, GDP change, and trade shares?** Figure 1-3 shows the bilateral trade creation effects of the current PTAs. Overall, the current trade regime has had a positive impact on world trade and Indonesia’s GDP, but the effects are mixed across agreements. AFTA, China, and Japan agreements have a greater impact on exports and GDP compared to agreements with India, Korea, Australia, and New Zealand. For example, the AFTA agreements increased Indonesian exports by 1.76 percent and increased GDP by 0.12 percent.

<sup>4</sup> Mattoo et al. (2020).

<sup>5</sup> The latest version of the dataset covers 316 agreements between the years 1958 and 2021. The set of disciplines covered in the database can be seen in Appendix 2.A: List of disciplines coded in Deep Trade Agreements database 1.0 and 2.0.

## 1.3 PTA Counterfactuals: Estimating Deeper PTAs and New PTAs

This section provides estimates of the potential impact of both deepening existing PTAs and signing new ones and presents a methodology for selecting trade partners based on a country's demand and consumption patterns. By analyzing these patterns, the toolkit identifies the top partner countries with whom a country should consider signing an agreement from a purely static perspective limited to gravitational forces (i.e., economic mass and geography). The objective of the toolkit is to estimate the potential economic impact of signing new or deepening existing trade agreements. To achieve this, the model creates a counterfactual scenario in which trade agreements are either deepened or newly signed, based on the interests of policy makers in the selected country. By doing so, the toolkit enables policymakers to make informed decisions regarding trade policy that can lead to increased economic growth and welfare.

### 1.3.1 Data and Methodology

#### 1.3.1.1 Structure of the Data

This section of the module provides access to a dataset that combines trade and production data for agriculture and manufacturing with the Deep Trade Agreements database. Trade and production data are combined to compute domestic sales and estimate trade integration.

The general equilibrium, which aggregates the manufacturing and agricultural sectors of 130 countries, combines production and trade data.<sup>6</sup> The entire dataset and code can be accessed here.

- i) Manufacturing trade and production data is from UN Comtrade and UNIDO-Indstat.
- ii) Agricultural trade and production data is from the Food and Agriculture Organization of the United Nations (FAO).

The degree of trade integration of the economy is a key aspect of analyzing trade agreements and requires the inclusion of domestic sales. Trade integration is measured in the domestic economy as the difference between the value of production and value of total exports (both measured in gross terms) which equals to domestic sales (intra-national or within the country sales).<sup>7</sup> If the resulting value of domestic sales is zero, the model considers it as missing. When production data is missing or implies negative domestic sales, the module follows a standard procedure to fill in the data gaps.<sup>8</sup>

Data on PTAs covered in the analysis can be obtained here.<sup>9</sup> The database provides information on countries and profile contents included in 278 PTAs. Based on their ambition, agreements are classified into three group: deep, medium and shallow as per the classification as provided in section 2.1 of this module.<sup>10</sup> The clustering algorithm analyses the content of the 903 provisions grouped into 18 policy areas. The ranking reflects the fact that more comprehensive agreements contain a wider range of provisions and are more effective in promoting trade between the members of the agreement. This implies that different elasticities of trade outcomes to trade agreements will need to be accounted for. It should be noted that the PTA classification is a statistical one. It does not require any ex-ante assumptions about the relative weights of the different policy areas, which results in a more objective classification.

<sup>6</sup> See Appendix Table 1.A. 2 for the list of countries included in the analysis

<sup>7</sup> Yotov 2021

<sup>8</sup> Specifically, as in Fontagné et al. (2023), the toolkit linearly interpolates production values between non-missing data points and extrapolates the remaining missing values using the ratio of gross output to value added

<sup>9</sup> The agreements used in this analysis represent a sub-set of agreements from Mattoo et al. 2020

<sup>10</sup> Follow classification based on Fontagné et al. (2023)

### 1.3.1.2 Estimation of Deepening Existing Trade Agreements

To gauge the impact of trade policy changes, particularly the deepening of existing trade agreements and signing new ones, the toolkit employs a comprehensive model that accounts for trade costs and PTA elasticities. The PTA elasticities are disaggregated into three groups: deep, medium, and shallow. The border effect is the allocation of domestic and foreign sales (exports). This effect considers how much of the goods produced domestically are sold domestically versus how much is sold abroad. The toolkit utilizes production data for each sector, as detailed in section 1.4.1.1, to estimate the border effect accurately.

**To estimate scenarios for deepening existing PTAs or signing new ones, the model utilizes trade costs and elasticities, and accounts for the reallocation between domestic and foreign sales, known as the border effect.** The structural gravity model forms the basis of this module:

$$X_{ij,t} = \exp \left( \sum_{z=1}^3 \beta_z PTA_{ij,t}^z + \sum_{T=1980}^{2010} \beta_T INTL BRDR_{ij} * T + \pi_{i,t} + \chi_{j,t} + \mu_{ij} \right) + \epsilon_{ij}$$

where,  $X_{ij,t}$  includes yearly data on domestic and international sales of manufacturing and agricultural products from 1986 to 2019. Notably, changes in the trade cost matrix affect the distribution of sales between domestic and foreign markets, and this effect can only be observed by including data on domestic sales, as is done here. Finally, as globalization increases, the so-called “border effect” (i.e., how much a country sells domestically versus abroad) is reduced for all countries; again, this effect can only be controlled for by including information on domestic sales (in addition to exports and imports). Equation 9 is estimated using a PPML estimator.

The study’s primary variable of interest is PTA, which is divided into three clusters: PTA=1, PTA=2, and PTA=3. To distinguish between domestic and international trade flows, the variable INTL BRDR is used (taking the value of one for international trade and zero for domestic trade). The dummy variable is interacted with decades indexed by  $T$ , with the period after 2010 serving as the reference. This interaction allows for the control of the “border effect” and its changes over time due to the trend of globalization. Fixed effects for exporters and importers account for time-varying MRT, while bilateral fixed effects control for time-invariant bilateral trade frictions. Additionally, a control for transitional PTAs (i.e., agreements no longer in effect) is included.

#### Stata do file can be found here

```
cap drop decade
gen      decade = 1980 if year <= 1989
replace decade = 1990 if year <= 1999 & decade == .
replace decade = 2000 if year <= 2009 & decade == .
replace decade = 2010 if year <= 2020 & decade == .
```

```
cap drop INTL_BRDR
```



```

gen INTL_BRDR = (iso_o != iso_d)
cap drop INTL_BRDR_*
foreach decade in 1990 2000 2010 {
generate INTL_BRDR_`decade' = 1 if iso_o != iso_d & decade == `decade'
replace INTL_BRDR_`decade' = 0 if INTL_BRDR_`decade' == .}

cap drop ij
egen ij = group(iso_o iso_d)

* sym option to be chosen in the Master dofile
ppml_panel_sg trade rta rta_out INTL_BRDR_*, ex(iso_o)im(iso_d) year(year)$sym
cluster(ij)

outreg2 using "$RES\iso\Structural_Gravity.xls", dec(3) keep(rta rta_out
INTL_BRDR_*) addtext(Period, Full, Dependent, trade_frictions) labreplace

ppml_panel_sg trade rta_k* rta_out INTL_BRDR_*, ex(iso_o) im(iso_d)
year(year) $sym genD(gamma_ij_alt) predict(y_hat) cluster(ij)
outreg2 using "$RES\iso\Structural_Gravity.xls", dec(3) keep(rta_k*
rta_out INTL_BRDR_*) addtext(Period, Full, Dependent, trade_frictions) lab

```

**Table 1-4: Gravity Estimations of the elasticity of trade to PTAs by Cluster**

Agreement	Entry into force	# of partners involved	Level of Depth	Partners Share (M)P	Partners Share (X)
ASEAN Free Trade Area (AFTA)	1992	9	Shallow	24%	24%
ASEAN - China	2005	1	Shallow	28%	16%
ASEAN - Japan	2008	1	Shallow	9%	9%
ASEAN - Australia - New Zealand	2010	2M	Medium	4%	2%
ASEAN - India	2010	1	Shallow	3%	8%
ASEAN - Korea, Republic of	2010	1	Shallow	5%	5%

**Notes:** Exporter-time (it), Importer-time (it) and Exporter-Importer (ij) fixed effects are always included. Standard errors are clustered at the country pair level (ij).

**The impact of PTAs on trade creation varies depending on the depth of the agreement.** As presented in Table 1-4, the study found significant differences in the direct trade effects across depth levels by estimating the PTA elasticities by cluster. Specifically, a “deep” PTA was found to increase bilateral exports by 67 percent<sup>11</sup> which is statistically different from the impact of “medium” and “shallow” PTAs. These types of PTAs increase bilateral exports by 24 and 17 percent, respectively.

<sup>11</sup> The percentage difference is computed as  $[\exp(\beta \text{ PTAs}) - 1] * 100$ . Where  $\beta$  PTAs: “Deep” = 0.512; “Medium” = 0.219; “Shallow” = 0.158

This module looks at two scenarios:

Scenario 1: Intensive margin	Scenario 2: Extensive margin
<ul style="list-style-type: none"> <li>● Simulation of the economic impact of deepening existing preferential trade agreements for each country in the sample by increasing their depth to the highest cluster (deep).</li> <li>● Focuses on the impact of increasing the depth of existing preferential trade agreements.</li> </ul>	<ul style="list-style-type: none"> <li>● Simulation of the impact of ratifying new preferential trade agreements and evaluating their effect under different levels of ambition.</li> <li>● Focuses on the impact of ratifying new preferential trade agreements with varying levels of ambition.</li> </ul>

**The economic quantification of the counterfactual preferential trade regime is computed as follows:**

The structural gravity framework is re-estimated for each simulated change in the trade policy regime to obtain a counterfactual matrix of trade costs and relative production and consumption price indexes (i.e., the MRTs). The variation in trade costs affects the price indexes that channel the effect of a policy change outside the member partners, i.e. the conditional GE effect. The change in consumption and output prices then affects output and expenditure, i.e. the full endowment GE effect. The total effects of the changes in the production and consumption price indexes for each country combine into a terms of trade effect (which is our GDP effect).<sup>12</sup> See Box 1-2 for a detailed description of the gravity system.

**Estimating the full endowment GE effects necessitates an iterative procedure that approaches an equilibrium state when the variation in factory prices between successive iterations is minimal.**

Once convergence is attained, the GE impact of a policy change can be assessed by calculating the percentage change between the final (after convergence) and initial indexes of interest (such as exports, MRT, and output). The outcomes examined in the toolkit are the variations in a country's total exports and GDP. The latter is calculated as the variation of exporter prices (factory gate prices) over importer prices (the inward MRT), using the terms of trade as a measure of real income.

**The toolkit presents only the percentage changes in the key indices of interest, namely, total exports and GDP, between the baseline and the counterfactual scenarios to facilitate interpretation.**

The toolkit follows a standardized procedure for estimating the baseline effects and calculating the price effects of the counterfactual scenarios. For each country and scenario, these procedures are performed in advance.

<sup>12</sup> See James E. Anderson, Yoto V. Yotov (2016), Terms of trade and global efficiency effects of free trade agreements, 1990–2002, Journal of International Economics, Volume 99, Pages 279-298

**Box 1-2: A closer look at the structural gravity model**

The toolkit builds on the well-established empirical application of Anderson et al. (2018). Here, we follow the theoretical underpinnings of Yotov et al. (2017). However, as Arkolakis et al. (2012) show, the gravity framework accommodates a large class of trade models with different microeconomic foundations, including: a Ricardian framework (Eaton & Kortum, 2002; Costinot et al. 2012); a heterogeneous firm model (Chaney, 2008); a system of sectoral input-output linkages (Caliendo & Parro, 2015).

Consider a world that consists of N countries, where each economy produces a variety of goods differentiated by origin (Armington, 1979). Consumers in each country j maximize the CES utility function in (1) subject to budget constraint in (2):

$$U = \left\{ \sum_i \alpha_i \frac{1-\sigma}{\sigma} c_{ij}^{\frac{\sigma-1}{\sigma}} \right\}^{\frac{\sigma}{\sigma-1}} \quad (1)$$

$$\sum_i p_{ij} c_{ij} = E_j \quad (2)$$

where  $\sigma > 1$  is the elasticity of substitution among goods from different countries i,  $\alpha > 0$  is the CES preference parameter taste parameter,  $c_{ij}$  denotes consumption of varieties from country i in country j, and  $E_j$  is total expenditure of country j.

The maximization problem yields that expenditure in j for goods produced in i is: i) proportional to total expenditure,  $E_j$ , in destination j; ii) inversely related to delivery price  $p_{ij}=p_i \tau_{ij}$ , where  $\tau_{ij}$  are bilateral trade costs between i and j; iii) proportional to the CES price aggregator,  $P_j$ ; iv) contingent to the elasticity of substitution  $\sigma$ .

$$X_{ij} = \left( \frac{\alpha_i p_i \tau_{ij}}{P_j} \right)^{1-\sigma} E_j \quad (3)$$

Imposing market clearance and rearranging terms, the structural gravity system can be re-written as follows<sup>13</sup>:

$$\text{Partial Equilibrium} \left\{ \begin{aligned} X_{ij} &= \frac{Y_i E_j}{Y} \left( \frac{\tau_{ij}}{\Pi_i P_j} \right)^{1-\sigma} \end{aligned} \right. \quad (4)$$

$$\text{Conditional GE} \left\{ \begin{aligned} \Pi_i^{1-\sigma} &= \sum_j \left( \frac{\tau_{ij}}{P_j} \right)^{1-\sigma} \frac{E_j}{Y} \end{aligned} \right. \quad (5)$$

$$\left\{ \begin{aligned} P_j^{1-\sigma} &= \sum_i \left( \frac{\tau_{ij}}{\Pi_i} \right)^{1-\sigma} \frac{Y_i}{Y} \end{aligned} \right. \quad (6)$$

$$\text{Full Endowment GE} \left\{ \begin{aligned} p_i &= \left( \frac{Y_i}{Y} \right)^{\frac{1}{1-\sigma}} \frac{1}{\alpha_i \Pi_i} \\ E_i &= \varphi_i Y_i = \varphi_i p_i Q_i \end{aligned} \right. \quad (7)$$

where  $\Pi_i$  and  $P_j$  are respectively the outward and inward multilateral resistance terms (MRT) (Anderson & van Wincoop, 2003) respectively, which govern the structure of bilateral trade costs and transmit the direct effect of trade policy (Eq. 4) to general equilibrium effects through price changes;  $Y_i$  is the value of total production in exporter i;  $Y$  is the value of world output;  $\varphi_i$  is an exogenous parameter defining the relation between the value of output and aggregate expenditure.

Equation 4 governs the direct (partial) equilibrium effect of a change in bilateral trade costs between countries i and j. This first-order effect affects only liberalizing countries and is usually the strongest. Equations 5 to 8 govern instead the general equilibrium effects that arise from the variation of the MRT. The latter can be decomposed into: i) a conditional GE effect, which is transmitted only through the variation of MRT; ii) a full endowment GE effect, which endogenizes total output and expenditure and allows factory-gate prices to respond to changes in trade costs and further affect MRT.<sup>14</sup>

<sup>13</sup> See Yotov et al. (2017) for a step-by-step derivation and Larch and Yotov (2022) for additional details.

<sup>14</sup> Larch & Yotov (2022) further discuss the transmission of PTA effects to FDI.

### 1.3.1.3 Signing New Trade Agreements

**This toolkit provides a theoretically sound mechanism for selecting countries with which to sign new PTAs.** This is known as the extensive margin. The selection of countries with which to sign new PTAs are the optimal partners according to a statistical procedure considering only gravitational forces, but it should be noted that such decisions can depend on a variety of factors, including geographic, historical, and political which are not taken into consideration in the statistical model. This toolkit provides a theoretically sound decision-making framework based on the gravity model and the following hypothesis: that it is more profitable for each country to sign a new agreement with partner countries that are the best consumers or producers of the products that the country produces or consumes. The model to estimate the potential partners exclusively relies on international trade data without domestic production data and deviating from the GE model.

**This theoretical approach to selecting countries with which to sign PTAs has two advantages.** First, the structural gravity approach provides a theoretically consistent estimate of each country's demand and supply capacity. Second, this approach can be adapted to different countries of interest.

**The identification of the best partners implies an estimate of who the best partners are:**

- i) the best importers of the products the country exports (export/supply capacity)
- ii) the best exporters of the products the country imports (demand capacity)

**The methodology for calculating each country's export and demand capacities and ranking their best candidates for PTAs is based on a structural gravity model.** The model estimates the export capacity of one country to another and the demand capacity. Estimation of supply- and demand-side terms is conducted using the following empirical gravity specification, on trade flows including respectively imported and exported products of the country of interest. Then, normalizing these terms, ranks of best candidates for signing new agreements can be easily constructed.

$$X_{j,t} = \exp(\pi_{i,t} + \chi_{j,t} + \text{Gravity Controls}) + \varepsilon_{j,t} \quad (9)$$

$X_{j,t}$  trade (exports and imports) flows of country  $i$  to country  $j$  at year  $t$

$\pi_{i,t}$  export capabilities (supply side terms) of country  $i$  at year  $t$

$\chi_{j,t}$  demand capabilities of country  $j$  at year  $t$

*Gravity Controls* includes distance, PTA, contiguity, colonial and cultural linkages.

**For each country, the gravity estimation can be performed for the specific subset of its traded products.** For a country interested in signing a new agreement to promote better access to inputs, the gravity estimation is performed only for the group of products that the country imports, and the best producers of these products can be identified. Conversely, for a country interested in signing a new agreement to promote exports, the gravity estimate is performed only for the group of products that the country exports, and the best consumers of these products can be identified.

Based on the ranking of the best exporters of intermediate goods and the best importers, we define the 10 best countries with which to sign a new agreement as the average rank between them.

**Finally, this theoretical approach can be used to identify with which countries existing trade agreements should be deepened.** This approach allows us to examine the deepening of existing trade agreements (intensive margin) and better identify which counterfactual policy scenarios to consider.

#### Stata do file can be found here.

```

cap drop i
cap drop j

egen i = group(iso_o)
egen j = group(iso_d)

egen it = group(iso_o year)
egen jt = group(iso_d year)

bys jt: egen tx = total(v)

gen v_sh = v / tx
gen ldist = ln($dist)
gen lv = ln(v)

* PPML value

preserve
ppmlhdfc v $covar , absorb( ppml_d_jt = jt ppml_d_it = it) d maxiter(1000)
acceleration(steep)

replace ppml_d_jt = exp(ppml_d_jt)

bys year: egen max_rca = max(ppml_d_jt)
gen norm_IMRT = ppml_d_jt/max_rca

keep if year >= $ldate_bg1

collapse (mean) norm_IMRT , by(iso_d)
rename iso_d iso

merge 1:1 iso using "$TEMP\cty_list_in_GE"
keep if _m == 3
drop _m

gsort -norm
gen rank = _n
drop norm
keep if rank <= 30

gen estimation = "PPML value"
gen item = "demand"
save "$RES\iso\temp\norm_IMRT_ppml", replace
restore

```

### 1.3.2 Illustration: PTA Counterfactual for Indonesia

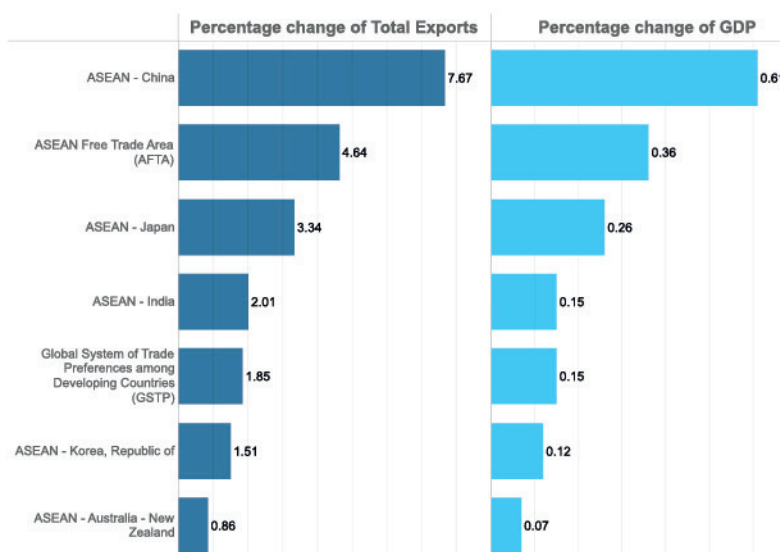
This section of Module 1 of the toolkit focuses on estimating the impact of deepening existing preferential trade agreements (PTAs) for Indonesia and the potential impact of signing new PTAs.

#### 1.3.2.1 Deepening existing PTAs (intense margin)

**What is the impact of deepening Indonesian PTAs?** Figure 1-4 presents estimates for the counterfactual simulation of deepening the existing PTAs for Indonesia. Indonesia currently has six preferential trade agreements (PTAs) in force. It has been a member of the ASEAN Free Trade Area (AFTA) since 1992 and, along with other AFTA members, has ratified five other agreements with China (2005), Japan (2008), India (2010), Korea (2010), and Australia and New Zealand (2010). None of these agreements is classified as “deep” according to Fontagné et al. (2023).

**Increasing the depth of the agreements to the highest cluster would imply a meaningful impact for Indonesia.** Deepening the coverage of the current agreements with China and AFTA would have the strongest impact. It would boost Indonesian export by 7.69 percent and GDP by 0.61 percent. In addition, deepening the AFTA agreement to its maximum depth would have a major impact on Indonesia. It would mean export growth of 4.64 percent and GDP growth of 0.36 percent.

**Figure 1-4: Deepening existing PTAs for Indonesia, year 2019, general equilibrium effect**  
Intensive Margin, percentage points



**Note:** Source Rocha et al. (2023). percent change compared to the baseline in total exports and GDP of participating countries. We assume  $\sigma = 6$ . The reference country for the normalization is Costa Rica. Notice that  $\Delta \text{GDP} = \Delta \text{Factory Gate} - \Delta \text{IMR}$ . In these simulation scenarios we set the entire agreement to its highest depth: this implies increasing the depth for also other AFTA members with third countries.

**In line with the structural gravity framework, the mechanisms driving the results are essentially two:**

- **exports valorization:** through the reduction of bilateral trade frictions, the price of exported goods declines: a lower share of the value of the shipped goods “melts” in the transportation and exported goods gain competitiveness in the foreign market.<sup>15</sup>
- **import price reduction:** assuming the opposite perspective, a reduction of bilateral trade frictions makes imported goods available at lower price thus increasing the purchasing power of firms and consumers in the destination economy.

The general equilibrium gravity framework can estimate this “terms of trade” effect measuring a welfare improvement from trade liberalization. The two terms are measured as the change in Factory Gate (i.e. producer prices) and the change in Inward Multilateral Resistance term (i.e. consumer prices).<sup>16</sup>

### 1.3.2.2 Signing New Trade Agreements (Extensive Margin)

What is the impact of signing new PTAs for Indonesia? First, based on the theoretical framework of this module of the toolkit as defined in the methodology of section 3, the intuition that it should be more profitable for a country to sign a new agreement with those partners that are the best consumers or producers of the products that the country produces or consumes. Figure 1-5 shows the impact on GDP of estimates for signing new trade agreements with countries that produce and consume products consumed and produced by Indonesia. Figure 1-6 shows the impact of signing new trade agreements with theoretically selected (endogenous) partners on trade.

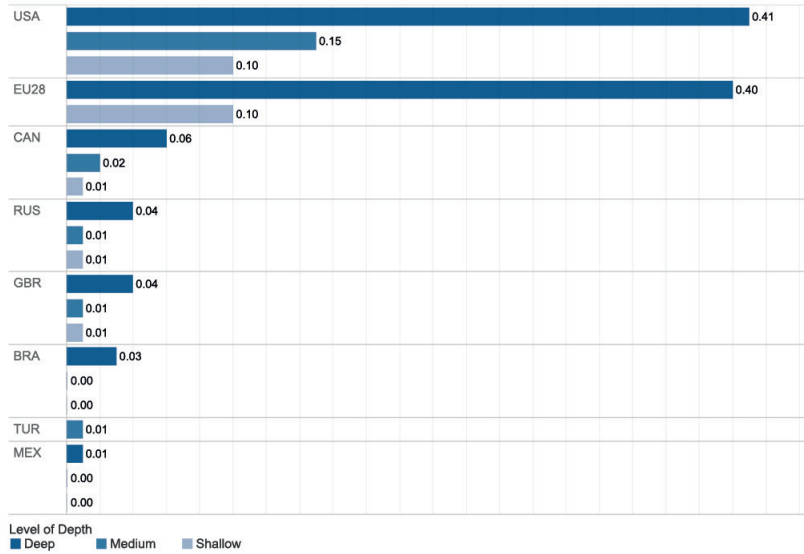
**This example emphasizes the importance of selecting new trade partners based on theoretical considerations, as PTAs formed with these partners are more likely to have a significant impact on both trade and GDP.** In this example, the importance of endogenous (theoretical) selection is highlighted, which means selecting countries that consume and produce goods that are consumed or produced by Indonesia as well. It points out that several proposed agreements involve countries that are included in the selection of the policy perspective. It also notes that the most profitable agreements are with the United States and the European Union, with Canada and Turkey emerging as endogenously relevant partners.

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<sup>15</sup> Indeed, the export valorization effect may be also induced by an increase competitiveness effect induced by the reduction of bilateral trade frictions.

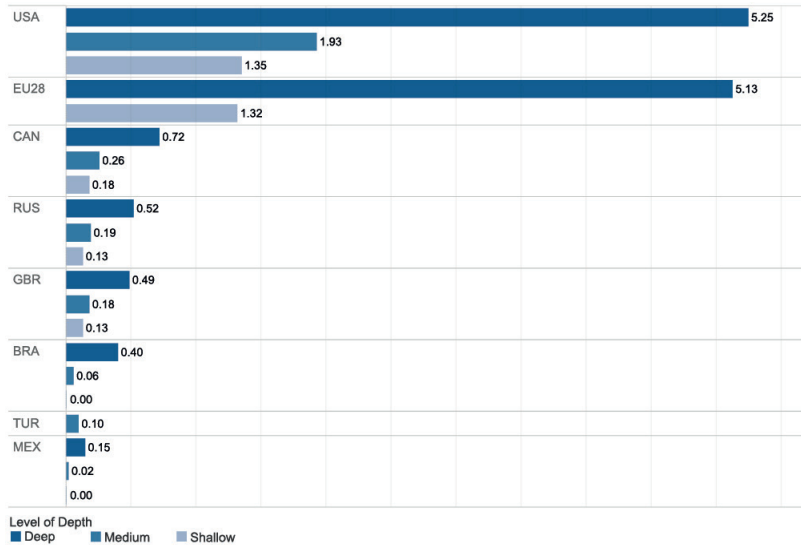
<sup>16</sup> Notice that given the structure of the model  $\Delta \text{GDP} = \Delta \text{Factory Gate} - \Delta \text{IMR}$

**Figure 1-5: Ratifying new PTAs for Indonesia impact on GDP, year 2019.**  
A general Equilibrium Effect.



**Note:** Source Rocha et al. (2023). Percent change compared to the baseline in total exports and GDP of participating countries. We assume  $\sigma = 6$ . Notice that  $\Delta \text{GDP} = \Delta \text{Factory Gate} - \Delta \text{IMR}$ . In these simulation scenarios we set the entire agreement to its highest depth.

**Figure 1-6: Ratifying new PTAs for Indonesia impact on trade, year 2019.**  
A general Equilibrium Effect.



**Note:** Source Rocha et al. (2023). Percent change compared to the baseline in total exports and GDP of participating countries. We assume  $\sigma = 6$ . Notice that  $\Delta \text{GDP} = \Delta \text{Factory Gate} - \Delta \text{IMR}$ . In these simulation scenarios we set the entire agreement to its highest depth.



## 1.4 Conclusion

Module 1 of the Toolkit aims to provide a decision support and operational tools for trade policy issues by providing quantitative general economic equilibrium analysis based on sound theoretical foundations. This type of analysis has been conducted for a large number of countries and considers several alternative scenarios for trade agreements, taking into account both the different policy ambitions of the agreements (intensive margin) and their geographical location (extensive margin).

This module also provides the methodological input for the selection of new agreements to be evaluated in the extensive margin simulations. Indeed, the structural gravity framework makes it possible to determine endogenously (based on theoretical framework) for each country the most promising trading partners with which to conclude new agreements.

Applying the methodology to the case of Indonesia, it should be noted that the endogenously identified partners match those selected through a policy relevance approach. The results are an important sign of the validity of the proposed methodology. Moreover, the information on alternative partners is rich in suggestions that could be relevant to the country's performance.

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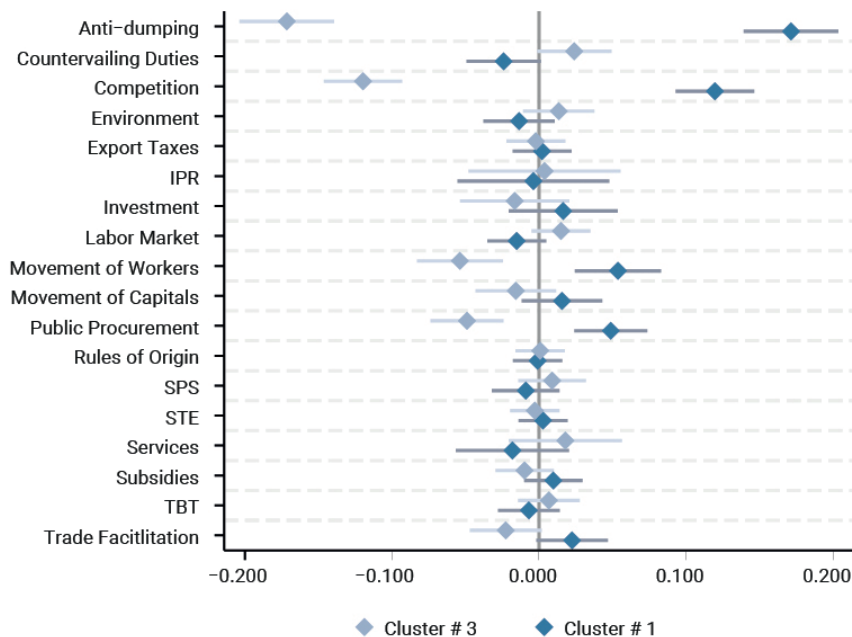
## Appendix 1.A

What is the marginal effect of the different policy domain on the probability that a deal falls into the Deep or Shallow clusters?

Appendix Figure 1.A.1 plots the 18 provision areas on the vertical axis and the marginal effect of each provision area on the probability that a PTA belongs to the Deep (#1) or Shallow (#3) cluster of agreements on the horizontal axis, based on a simple econometric linear probability model. The chart shows that anti-dumping and competition provisions play a more important role in the deep cluster than provisions in areas such as the regulation of the labor market. Following this line of reasoning, it would require, on average, the introduction of more ambitious anti-dumping, competition, and technical regulation provisions to deepen a PTA classified in cluster #3 to a PTA classified in cluster #1 - the type of counterfactual considered in the toolkit. The types of provisions that discriminate against these two types of PTAs are also government procurement and labor mobility.

Appendix Table 1.A.1 shows the list of individual trade agreements classified into the group of the most ambitious agreements (the “Deep” group includes 29 agreements) and those of medium ambition (the “Medium” group includes 96 agreements); the agreements of low ambition (the “Shallow” group) are the most numerous, 153 of which are not shown in the table but are available in the online toolkit documentation.

**Figure 1.A.1: Marginal Probability of being in Cluster # 1 and # 3**



**Note:** Source Fontagné et al. (2023). Marginal effect of the 18 different provision areas from a linear probability model for being in the corresponding cluster. The model controls for the decade of signature of the agreements. Cluster # 2 is the reference group.

Appendix Table 1.A.1: PTAs by cluster

CLUSTER #1 29 PTAS		CLUSTER #2 96 PTAS	
EC TreatyNAFTA EC (9) Enlargement EC (10) Enlargement	CAFTA-DR EFTA - Hong Kong, China CARICOM	Japan - Peru Japan - Malaysia EU - Algeria	China - Costa Rica Korea, Republic of - United States Panama - Peru United States - Colombia United States - Panama EU - Colombia and Peru
ANZCERTA EC (12) Enlargement Andean Community (CAN) EC (15) Enlargement COMESA EU - Mexico	EU - Turkey EU - Palestinian Authority EU - Tunisia EFTA - Morocco Trans-Pacific Strategic	EFTA - Korea, Republic of United States - Bahrain EFTA - Lebanon EU - Albania	EU - Central America Korea, Republic of - Turkey
Canada - Chile CISEU - Morocco China - Macao, China China - Hong Kong, China EC (25) Enlargement EFTA - Chile ECOWASUnited States - Jordan EC (27) Enlargement Chile - Japan EFTA - Serbia Peru - Mexico EFTA - Ukraine EFTA - Montenegro	EU - Israel CEFTA - 2006 EU - South Africa Chile - Mexico EFTA - Mexico EU - North Macedonia EU - Bosnia and Herzegovina Japan - Singapore EU - Jordan EFTA - Singapore EU - Lebanon Singapore - Australia United States - Chile	Economic Partnership EFTA - Egypt Malaysia - Australia Japan - Thailand EU - Montenegro Pakistan - China Pakistan - Malaysia Mexico - Central America EU - CARIFORUM States EPA United States - Oman United States - Peru China - New Zealand Nicaragua - Chinese Taipei Panama - Chinese Taipei	Costa Rica - Peru Mexico - Uruguay Costa Rica - Singapore New Zealand - Chinese Taipei
EU (28) Enlargement Eurasian Economic Union (EAEU) EFTA - Bosnia and Herzegovina European Economic Area (EEA) EFTA - 1971	United States - Singapore EU - Chile  Korea, Republic of - Chile EU - Egypt United States - Australia	Japan - Viet Nam ASEAN - Australia - New Zealand EU - Serbia Colombia - Mexico Hong Kong, China - New Zealand EFTA - Albania EFTA - Peru EU - Korea, Republic of Guatemala - Chinese Taipei Peru - Korea, Republic of EFTA - Colombia	EU - Moldova, Republic of Switzerland - China EU - Ukraine EU - Georgia Iceland - China EFTA - C. America (Costa Rica and Panama) Korea, Republic of - Australia Japan - Australia
EFTA - 1984 EFTA - 1993 EFTA - 20x <sup>2</sup> 17	Thailand - Australia Japan - Mexico EFTA - Tunisia Thailand - New Zealand United States - Morocco Korea, Republic of - Singapore		Canada - Korea, Republic of Australia - China China - Korea, Republic of  Japan - Mongolia Korea, Republic of - India CPTPP Gulf Cooperation Council (GCC) Canada - Peru Canada - Colombia

**CLUSTER # 1**  
**153 PTAS**

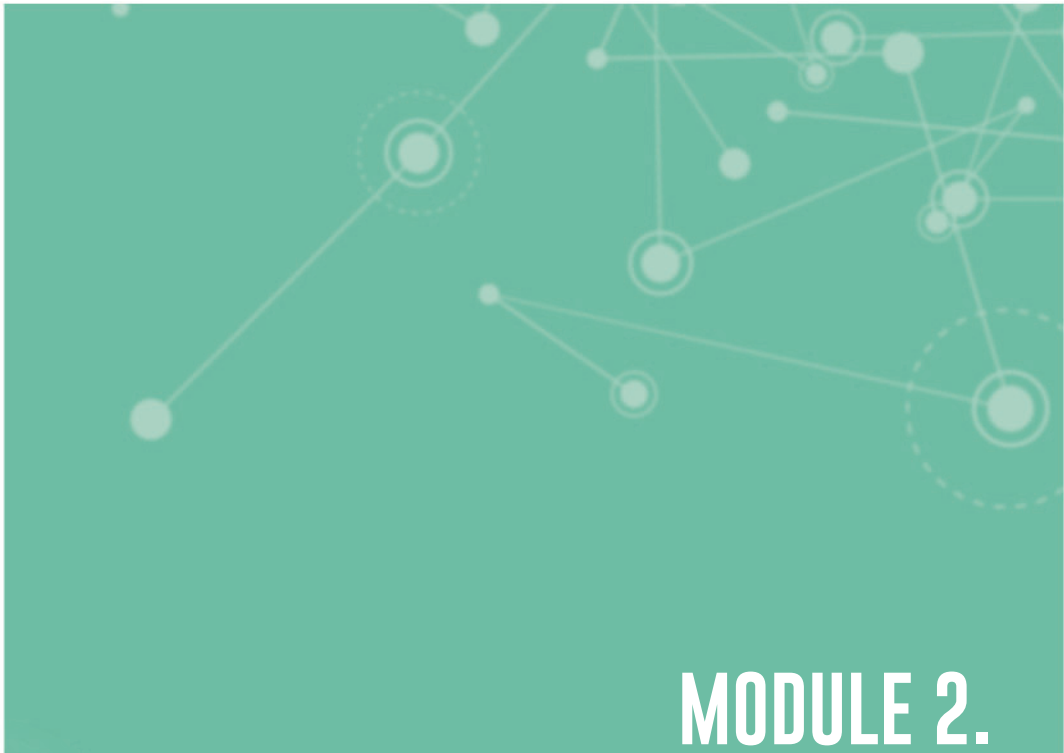
Korea, Republic of - Colombia	Turkey - Albania	Georgia - Turkmenistan
Costa Rica - Colombia	EFTA - SACU	Israel - Mexico
Pacific Alliance	Turkey - Georgia	Southern African Development Community (SADC)
Korea, Republic of - New Zealand	Panama - Costa Rica (Panama - Central America)	Economic and Monetary Community of Central Africa (CEMAC)
Southern African Development Community (SADC) - Accession of Seychelles	ASEAN - Japan	EFTA - Palestinian Authority
Korea, Republic of - Viet Nam	El Salvador- Honduras - Chinese Taipei	Georgia - Kazakhstan
Mexico - Panama	Chile - Honduras (Chile - Central America)	Kyrgyz Republic - Ukraine
Singapore - Chinese Taipei	Turkey - Syria	Kyrgyz Republic - Uzbekistan
Hong Kong, China - Chile	Egypt - Turkey	Georgia - Armenia
Canada - Honduras	Chile - India	Pan-Arab Free Trade Area (PAFTA)
Chile - Viet nam	East African Community (EAC) - Accession of Burundi and Rwanda	Ukraine - Kazakhstan
Canada - Panama	Mauritius - Pakistan	Canada - Israel
Ukraine - Montenegro	Agadir Agreement	EU - Faroe Islands
Turkey - Mauritius	Turkey - Morocco	Turkey - Israel
Gulf Cooperation Council (GCC) - Singapore	Panama - Singapore	Eurasian Economic Community (EAEC)
EU - Eastern and Southern Africa States Interim EPA	Chile - China	Kyrgyz Republic - Moldova, Republic of
Chile - Malaysia	South Asian Free Trade Agreement (SAFTA)	Georgia - Azerbaijan
Canada - Jordan	Iceland - Faroe Islands	Georgia - Ukraine
Treaty on a Free Trade Area between members of the Commonwealth of Independent States (CIS)	Ukraine - Belarus	Armenia - Turkmenistan
Chile - Nicaragua (Chile - Central America)	Russian Federation - Serbia	Armenia - Ukraine
El Salvador - Cuba	Turkey - Palestinian Authority	Ukraine - Azerbaijan
Turkey - Chile	Turkey - Tunisia	Ukraine - Uzbekistan
Turkey - Jordan	ASEAN - China	Faroe Islands - Switzerland
India - Malaysia	Jordan - Singapore	South Asian Preferential Trade Arrangement (SAPTA)
India - Japan	India - Singapore	Kyrgyz Republic - Kazakhstan
South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan	Pakistan - Sri Lanka	Kyrgyz Republic - Armenia
Peru - China	Ukraine - Moldova, Republic of	Armenia - Moldova, Republic of
Turkey - Montenegro	Southern African Customs Union (SACU)	Ukraine - Turkmenistan
Turkey - Serbia	Common Economic Zone (CEZ)	Melanesian Spearhead Group (MSG)
ASEAN - India	Turkey - Bosnia and Herzegovina	Georgia - Russian Federation
Chile - Guatemala (Chile - Central America)	Panama - El Salvador (Panama - Central America)	EFTA - Israel
ASEAN - Korea, Republic of	Pacific Island Countries Trade Agreement (PICTA)	Faroe Islands - Norway
EU - Côte d'Ivoire	India - Afghanistan	Russian Federation - Azerbaijan
China - Singapore	EFTA - North Macedonia	Russian Federation - Tajikistan
Australia - Chile	EFTA - Jordan	Russian Federation - Uzbekistan
Peru - Singapore	Chile - Costa Rica (Chile - Central America)	Russian Federation - Turkmenistan
EFTA - Canada	Canada - Costa Rica	EFTA - Turkey
Chile - Colombia	Chile - El Salvador (Chile - Central America)	Economic Cooperation Organization (ECO)
Japan - Switzerland	Asia Pacific Trade Agreement (APTA) - Accession of China	ASEAN Free Trade Area (AFTA)
EU - Cameroon	Ukraine - Tajikistan	Southern Common Market (MERCOSUR)
Panama - Honduras (Panama - Central America)	EU - San Marino	Lao People's Democratic Republic - Thailand
Southern Common Market (MERCOSUR) - India	New Zealand - Singapore	EU - Andorra
India - Nepal	India - Sri Lanka	Global System of Trade Preferences among Developing Countries (GSTP)
EU - Papua New Guinea / Fiji	Armenia - Kazakhstan	Panama - Dominican Republic
Peru - Chile	Ukraine - North Macedonia	United States - Israel
Colombia - Northern Triangle (El Salvador, Guatemala, Honduras)	Dominican Republic - Central America	South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)
Panama - Nicaragua (Panama - Central America)	West African Economic and Monetary Union (WAEMU)	Latin American Integration Association (LAIA)
Panama - Guatemala (Panama - Central America)	East African Community (EAC)	Australia - Papua New Guinea (PATCRA)
Panama - Chile	Turkey - North Macedonia	EU - Syria
Asia Pacific Trade Agreement (APTA)	EU - Iceland	EU - Overseas Countries and Territories (OCT)
EU - Switzerland - Liechtenstein	EU - Norway	Central American Common Market (CACM)

**Note:** Source Fontagné et al. (2023). The remaining agreements in cluster # 3 are not listed. CARICOM: Caribbean Community and Common Market; ECOWAS: Economic Community of West African States; EFTA: European Free Trade Association; COMESA: Common Market for Eastern and Southern Africa; ANZCERTA: Australia - New Zealand Closer Economic Relations Trade Agreement; NAFTA: North American Free Trade Agreement; CIS: Commonwealth of Independent States; CAFTA-DR: Dom. Republic – C. America - US Free Trade Agreement; CEFTA: Central European Free Trade Agreement; CPTPP: Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

**Appendix Table 1.A.2: List of countries included in the analysis**

Albania	Egypt, Arab Rep.	Kyrgyz Republic	Russian Federation
Algeria	El Salvador	Lao PDR	Rwanda
Argentina	Eritrea	Latvia	Senegal
Armenia	Estonia	Lebanon	Serbia
Australia	Eswatini*	Lithuania	Singapore*
Austria	Ethiopia	Luxembourg	Slovak Republic
Azerbaijan	Fiji	Malawi	Slovenia
Bahrain	Finland	Malaysia	South Africa
Bangladesh	France	Maldives	Spain
Barbados	Georgia	Malta	Sri Lanka
Belarus	Germany	Mauritius	Suriname
Belgium	Ghana	Mexico	Sweden
Belize	Greece	Moldova	Switzerland
Bolivia	Guatemala	Mongolia	Syrian Arab Republic
Bosnia and Herzegovina	Haiti	Montenegro	Tajikistan
Botswana	Honduras	Morocco	Tanzania
Brazil	Hong Kong SAR, China*	Mozambique	Thailand
Bulgaria	Hungary	Myanmar*	Tonga*
Burundi	Iceland	Namibia	Trinidad and Tobago
Cabo Verde	India	Nepal	Tunisia
Cameroon	Indonesia	Netherlands	Türkiye
Canada	Iran, Islamic Rep.	New Zealand	Ukraine
Central African Republic	Iraq	Niger	United Kingdom
Chile	Ireland	Nigeria	United States
China	Israel	North Macedonia	Uruguay
Colombia	Italy	Norway	Uzbekistan*
Costa Rica	Jamaica	Pakistan	Venezuela, RB
Croatia	Japan	Paraguay	Vietnam
Cuba*	Jordan	Peru	West Bank and Gaza
Cyprus	Kazakhstan	Philippines	Yemen, Rep.
Czech Republic	Kenya	Poland	Zimbabwe
Denmark	Korea, Rep.	Portugal	
Ecuador	Kuwait	Romania	

*Note:* \* indicate those countries for which data on production is available for manufacturing only.



# MODULE 2. BENCHMARKING OF THE CONTENT OF DEEP TRADE AGREEMENTS

Alvaro Espitia, Sparsha Janardhan, Nadia Rocha,  
and Colette Van der Ven.

## 2.1 Introduction

The objective of this module is to assist governments and policy makers better understand the depth of the commitments they have made in their preferential trade agreements (“PTAs”). It is designed to ascertain the ways in which their commitments differ in comparison with PTAs that are considered to have high standards or those that are entered into by other comparator countries. Such an analysis would aid in country policy dialogue and inform efforts to design agreements as well as facilitate future cooperation and/or negotiations with trading partners. It would enable the identification of areas for further improvement and areas of convergence among different players. In essence, this exercise would provide the country with the necessary tools to further understand the opportunities and challenges that it could face negotiating deep trade agreements.

The World Bank’s Deep Trade Agreements Database codifies the content of preferential trade agreements (“PTAs”) that are currently in force and have been notified to the World Trade Organization (“WTO”). This Database can be used, inter alia, to help countries understand the depth and breadth of their PTA commitments, how these commitments have (or have not) changed over time, and how they compare to the PTA commitments of other countries.

This module provides a step-by-step overview of the methodology to be applied when preparing a country benchmarking note (“Note”), based on the World Bank’s Handbook of Deep Trade Agreements.<sup>1</sup> From the outset, it must be noted that this methodology enables countries to engage in a normative exercise, i.e., the analysis is based on countries’ commitments as reflected in the text of their PTAs. This methodology does not, however, take into consideration the country’s progress with regards to implementation of PTAs that it has signed. Moreover, this methodology is not ideological – it does not suggest that adopting additional liberalization measures is always the preferred route. Rather, the advantages and disadvantages of increasing trade liberalization with regards to specific commitments would have to be carefully assessed by each country.

The module is organized as follows. Section 2.2 provides an overview of the steps and data needed to perform a benchmarking exercise; section 2.3 provides an overview on how to conduct a horizontal benchmarking; section 2.4 provides a specific overview of the benchmarking analysis applied to three policy areas in PTAs: Sanitary and Phytosanitary (“SPS”), Technical Barriers to Trade (“TBT”), and Investment. Section 2.5 includes the methodology for drafting the concluding remarks. The module is accompanied by an interactive dashboard where users can reproduce the analysis for a specific country of interest. The examples and illustrations provided in this module are based on country notes that were developed for Indonesia, which was used as pilot country for this exercise.

## 2.1 General Overview of the Methodology

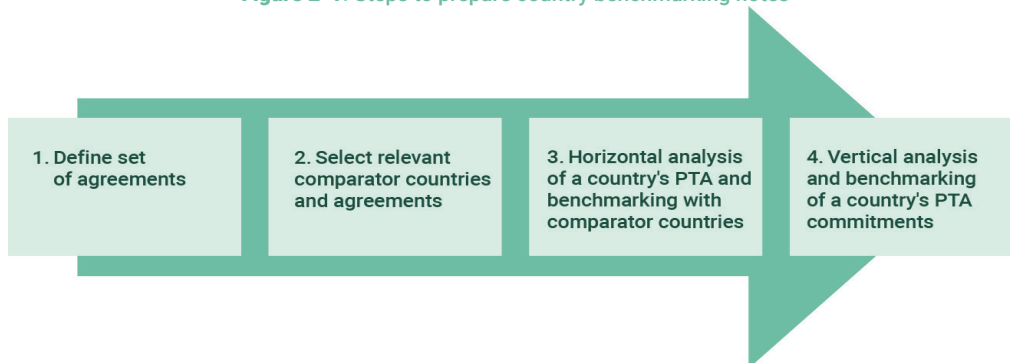
A country benchmarking note seeks to provide information about a country’s PTA commitments, how they have evolved over time, and how they compare with regards to other countries’ PTAs. When preparing a PTA benchmarking note, four steps should be followed (Figure 2-1): (i) define the set of agreements to include in the analysis; (ii) select relevant comparator countries or agreements; (iii) perform horizontal analysis and benchmarking; and (iv) perform vertical analysis and benchmarking.

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<sup>1</sup> Mattoo, A., Rocha, N., & Ruta, M. (2020).



Figure 2-1: Steps to prepare country benchmarking notes



### Step 1: Define set of agreements to include in the analysis

The first step of the exercise involves, for a certain country, the identification and selection of preferential trade agreements that will be used for the analysis. An illustration for the set of agreements that have been selected for Indonesia can be seen in Table 2-1 below.

Table 2-1: PTAs included in the Deep Trade Agreements Databases, Indonesia

Rta Name	Type	Entry into force Date
ASEAN Free Trade Area (AFTA) - 1992	FTA	28-Jan-92
ASEAN - China	FTA & EIA	1-Jan-05
ASEAN - Japan	FTA	1-Dec-08
Japan - Indonesia	FTA & EIA	1-Jul-08
ASEAN - Australia - New Zealand	FTA & EIA	1-Jan-10
ASEAN - India	FTA & EIA	1-Jan-10
ASEAN - Korea, Republic of	FTA & EIA	1-Jan-10
Indonesia - Pakistan	PSA	9-Jan-13
ASEAN - Hong Kong, China	FTA & EIA	6-Nov-19
Chile - Indonesia	FTA	8-Oct-19
Indonesia - Australia	FTA & EIA	7-May-20
ASEAN Free Trade Area (AFTA)	FTA	31-Aug-21
RCEP	Null	1-Jan-22

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Horizontal Analysis

This information can be shared with the country client at an early stage to agree on the set of agreements that will be included in the benchmarking analysis and to potentially explore if additional agreements, which are not included in the Deep Trade Agreements dataset (e.g. newly signed agreements that are in the process of notification), should be mapped. It is also important to ensure that for comparator countries (see step 2), relevant data has been codified in the Deep Trade Database. At a minimum, this will require that the comparator countries' PTAs have been codified horizontally. Full vertical

codification will only be necessary where the note will include coding comparisons between specific vertical categories in the comparator countries and the country of focus.

To update the coding for the country of focus and, where necessary, comparator countries, the methodological notes provided in the Deep Trade Agreements Handbook should be used, to ensure consistency and allow comparison across different mapping exercises.

## Step 2: Select relevant comparator countries

The second step of a benchmarking exercise involves selecting relevant comparator countries to help a country understand how their PTA commitments compare to other countries' commitments. Absent specific indication from the country for which the Note is being prepared, comparator countries could be: (i) countries that are similarly situated as the country in question, i.e., countries that have a similar in socio-economic profile, occupy a similar geopolitical role, and/or are within the same region; and (ii) countries or PTAs that represent success stories and/or best practices.

For example, if the focus is on similarly situated countries, and the country of focus is a member of ASEAN, other ASEAN countries could be relevant candidates for comparator countries. Similarly situated countries can also be identified by focusing on the country's PTAs. For example, if country A has a PTA with EFTA or the EU, and country B from the same region also has a PTA with EFTA or the EU, this could be an indicator that these countries would be suitable comparator countries.

If the focus is on (regional) success stories/best practices, and the country of focus is an Asian country, benchmarking candidates would be countries that have adopted deep and broad PTAs, including Singapore, Malaysia, and Vietnam. In addition, PTAs that are considered to contain "model" clauses, such as the Comprehensive and Progressive Transpacific Partnership (CPTPP) Agreement, or the United States-Mexico-Canada Agreement (USMCA) can also serve as relevant comparators in the analysis.

## Step 3: Horizontal analysis and benchmarking

The horizontal analysis focuses on the subjects or issues covered by the PTA (e.g., SPS, TBT, anti-dumping, services, investment, data protection, etc.). It enables a country to get a general overview of the "depth" and breadth of its PTAs in terms of the number and types of disciplines covered, and how this compares to other countries' PTAs as well as general trends.

The horizontal analysis is based on the Deep Trade Agreements database 1.0- horizontal depth. This dataset maps the coverage of 52 selected areas (see Appendix 2.A for the list of policy areas covered by the database) across PTAs notified to the WTO.<sup>2</sup> It also includes information about the legal enforceability of each policy area: a specific discipline is considered legally enforceable if the language used is sufficiently precise and committing and if it has not been excluded from dispute settlement procedures under the PTA.<sup>3</sup> Section 2.3 provides more information on how to conduct a horizontal analysis.

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<sup>2</sup> The latest version of the dataset covers 381 agreements between the years 1958 and 2021.

<sup>3</sup> For more information on the dataset coding and legal enforceability see Hofmann et al (2017).

#### Step 4: Vertical analysis and benchmarking of country's PTA commitments, focusing on a specific PTA issue area

The vertical analysis focuses on specific chapters/disciplines in PTAs, such as SPS, TBT, and anti-dumping, and specifically addresses the various categories identified by the Handbook of Deep Trade Agreements. This analysis enables countries to get a better understanding of the depth and breadth of commitments made within specific chapters across all its PTAs. The vertical analysis is based on the Deep Trade Agreements database 2.0 -Vertical Depth, which provides detailed information on the content of a subsample of policy areas most frequently covered in PTAs.<sup>4</sup>

The methodology for the vertical analysis and benchmarking is specific to the policy area that is considered. Section 2.4 provides detailed information on how to develop vertical analyses with respect to three specific chapters in PTAs: Sanitary and Phytosanitary (SPS), Technical Barriers to Trade (TBT), and Investment. For each deep dive, the section will provide an explanation of how the country Note should be structured followed by an explanation of the categories under each of the chapters.

## 2.2 Horizontal Analysis and Benchmarking

The horizontal analysis will provide a general description of the disciplines that are covered in the PTAs of specific countries and will allow comparison with other countries/agreements.

More specifically, the horizontal analysis includes two sections: the first one is an overview and some context (where relevant) of policy areas covered and legally enforceable in the country's PTAs. Table 2-2 below sets out an example of a visual illustration of the horizontal analysis for Indonesia. The solid circles identify areas that are included in PTAs with a strong and enforceable language, while half circles represent areas that are included in PTAs but not fully enforceable.

The information provided in the table will be useful to: i. assess the evolution of the coverage of Deep trade agreements over time, for a specific country; ii. understand whether the disciplines that are included in PTAs are binding in terms of their commitments or not; and iii. identify which are the policy areas that are commonly covered in the PTAs of a country. The information summarized in Table 2-2 can also be used as a prioritization tool to select the disciplines for which a vertical benchmarking will be performed.

In the case of Indonesia, the table reveals that the content of its varies significantly across agreements. Agreements such as the ASEAN Free Trade Area, ASEAN-China and Indonesia-Pakistan, are shallow and mainly focus on areas that are within the scope of the WTO's mandate such as trade facilitation and customs, public procurement, SPS, TBT, countervailing measures, anti-dumping, and services. Agreements such as Japan-Indonesia, ASEAN – Republic of Korea, ASEAN – Australia – New Zealand, EFTA-Indonesia CEPA, and RCEP are deeper and include policy areas that go beyond the WTO mandate, such as competition policy, movement of capital and visa and asylum.

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<sup>4</sup> The latest version of the dataset covers 316 agreements between the years 1958 and 2021. The set of disciplines covered in the database can be seen in Appendix A2.

Table 2-2: Policy areas covered in PTAs, Indonesia

	ASEAN Free Trade Area (AFTA) - 1992	ASEAN - China	ASEAN - Japan	Japan - Indonesia	ASEAN - Australia - New Zealand	ASEAN - India	ASEAN - Korea, Republic of	Indonesia - Pakistan	ASEAN - Hong Kong, China	Chile - Indonesia	Indonesia - Australia	ASEAN Free Trade Area (AFTA)	RCEP
	1992	2005	2008	2008	2010	2010	2010	2013	2019	2019	2020	2021	2022
FTA Industrial	●	●	●	●	●	●	●	●	●	●	●	●	●
FTA Agriculture	○	●	●	●	●	●	●	●	●	●	●	●	●
Trade Facilitation and Customs	○	○	●	●	●	●	○	○	●	●	●	●	●
Export Taxes	○	○	○	○	●	●	○	○	○	○	○	○	●
Sanitary & Phytosanitary Standards	○	○	●	○	●	●	●	○	●	●	○	●	●
Technical Barriers to Trade	○	○	●	○	●	●	●	○	●	●	○	●	●
State Trading Enterprise	○	○	○	○	○	○	●	○	○	○	○	○	○
Anti-Dumping	○	●	●	●	●	○	●	○	●	○	●	●	●
CVM	○	●	●	●	●	○	●	○	●	○	●	●	●
State Aid	○	○	○	○	○	○	●	○	○	○	○	○	○
Public Procurement	○	○	○	●	○	○	○	○	○	○	○	○	●
Services	○	○	●	●	●	●	●	○	●	○	●	○	●
Competition Policy	○	○	○	●	○	○	○	○	○	○	○	○	●
Environmental Laws	○	○	○	○	○	○	○	○	○	○	○	○	○
TRIPs	○	○	○	●	●	○	●	○	●	○	○	○	●
IPR	○	○	○	●	●	○	●	○	○	○	○	○	●
TRIMs	○	○	●	●	●	●	●	○	○	○	●	○	●
Investment	○	○	●	●	●	○	○	○	○	○	●	○	●
Labour Market Regulation	○	○	○	○	○	○	○	○	○	○	○	○	○
Movement of Capital	○	○	○	●	●	○	○	○	●	○	●	○	●
Visa and Asylum	○	○	○	●	●	○	○	○	○	○	●	○	●

○ Not covered  
 ○ Weak enforceability/best endeavor  
 ● Legal enforceability

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Horizontal Analysis

The second section focuses on comparator countries. It compares how different policy areas in different countries are covered under their PTAs. Table 2-3 provides an example of a horizontal analysis that compares Indonesia with Malaysia, Vietnam, Thailand, and the Philippines. The color coding reflects the frequency with which the policy areas are included in PTAs. Dark green represents the highest frequency, and white the lowest frequency.

The table suggests that Indonesia is lagging in terms of number and content of PTAs, especially when compared to members of CPTPP such as Malaysia and Vietnam. Indonesia's PTAs lag in WTO-related policy areas such as export taxes, state trading enterprises, state aid, and public procurement. They also lag comparator agreements in policy areas that go beyond the WTO mandate such as environmental laws and labor market regulations.

Table 2-3: Policy areas covered in Indonesia and comparator countries' PTAs

	Malaysia	Philippines	Thailand	Vietnam	Indonesia
Total PTA Participation	17	12	15	16	14
Number of Partners	51	59	49	83	53
Deepest Agreement	CPTPP	EFTA - Philippines	ASEAN - Korea, Republic of	CPTPP	ASEAN - Korea, Republic of
FTA Industrial	17	12	15	16	13
FTA Agriculture	16	11	14	15	12
Trade Facilitation and Customs	14	8	10	13	9
Export Taxes	5	4	5	5	2
Sanitary & Phytosanitary Standards	14	7	9	13	8
Technical Barriers to Trade	14	7	9	13	8
State Trading Enterprise	2	2	1	5	0
Anti-Dumping	14	8	9	13	9
CVM	13	8	9	13	9
State Aid	5	1	3	6	0
Public Procurement	1	2	4	5	2
Investment	11	6	8	9	6
TRIPs	9	6	8	11	5
Services	13	8	10	12	8
IPR	10	6	7	10	5
TRIMs	10	6	7	10	7
Anti Corruption	1	0	0	0	0
Competition Policy	7	4	5	8	4
Environmental Laws	7	4	4	6	4
Labour Market Regulation	2	1	1	3	0
Movement of Capital	8	4	5	8	4
Consumer Protection	3	0	3	3	1
Data Protection	2	0	3	3	1
Agriculture	6	2	2	4	2
Approximation of Legislation	0	0	0	0	0
Audio Visual	0	0	0	0	0
Civil Protection	0	0	0	0	0
Innovation Policies	3	0	0	0	0
Cultural Cooperation	0	0	0	1	0
Economic Policy Dialogue	4	0	2	1	1
Education and Training	4	2	2	2	3
Energy	3	3	2	4	3
Public Administration	3	2	2	6	3
Financial Assistance	0	0	0	0	0
Health	1	0	0	0	0
Human Rights	0	0	0	0	0
Illegal Immigration	0	0	0	0	0
Illicit Drugs	1	0	0	0	0
Industrial Cooperation	2	1	1	1	1
Information Society	7	2	4	8	3
Mining	0	0	0	0	1
Money Laundering	0	0	0	0	0
Nuclear Safety	0	0	0	0	0
Political Dialogue	0	0	0	1	0
Regional Cooperation	9	4	5	7	4
Research and Technology	5	1	2	3	1
SME	6	3	4	5	3
Social Matters	0	0	0	3	0
Statistics	0	0	0	1	0
Taxation	0	0	0	0	0
Terrorism	0	0	0	0	0
Visa and Asylum	6	2	2	5	3

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Horizontal Analysis

## 2.3 Vertical Analysis and Benchmarking of Chapter-specific Policy Areas

### 2.3.1 Technical Barriers to Trade (TBTs)

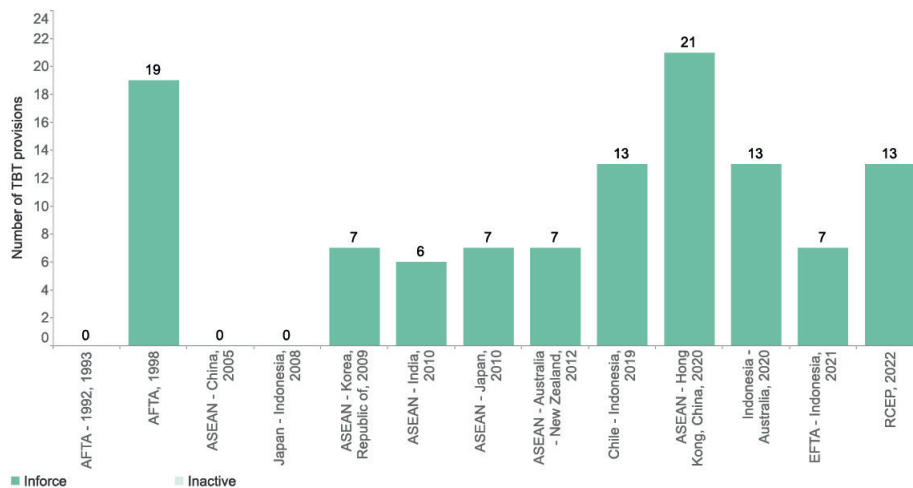
The overall objective of this vertical benchmarking exercise on technical barriers to trade is to provide a deeper understanding of the substantive and procedural commitments made with respect to TBT measures in PTAs. The deep dive on TBT will have three components: (i) an overview of the country's TBT commitments across PTAs; (ii) an analysis of specific TBT provisions in the country's PTAs; and (iii) a benchmarking analysis to better understand how a country's TBT commitments compare to the benchmarking countries' commitments. This analysis would assist policy makers in identifying and adapting trade-facilitating TBT-provisions. It would also help identify areas for further cooperation that could be beneficial.

#### 2.3.1.1 Overview of a Country's TBT Commitments across PTAs

This section focuses on TBT provisions set out in a country's PTAs and assesses the evolution of the coverage of TBT provisions across all agreements. This provides a broad understanding of how the number of TBT-related provisions have varied across time in different PTAs indicating the trends and the depth of commitments undertaken. It should:

1. Identify the number of PTAs that contain TBT chapters.
2. Map the number of TBT provisions in each of the PTAs and represent it graphically along with an explanation noting the trends over the years.<sup>5</sup> (Figure 2-2 shows the number of TBT provisions in Indonesia's PTAs.)

**Figure 2-2: Evolution of Number of TBT provisions in Indonesia's PTAs**



Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - TBT

<sup>5</sup> This analysis, while included in the general introduction section, can be finalized once the entire benchmarking exercise for all the PTAs is completed. The 'number of provisions' refers to the questions raised by the World Bank's study and counts those questions that were answered positively.

### 2.3.1.2 Analysis of Specific TBT Provisions in the Country's PTAs

The objective of this section is to provide an in-depth analysis of the substantive content of the PTAs based on the coding exercise. This section aims to understand how the country's PTAs are deeper in comparison to the WTO TBT Agreement, and the inclusion of newer and varied approaches to TBT-related issues. The aim is to capture and highlight patterns of TBT integration and common characteristics across PTAs that would provide a more complete picture for the focus country. The note should be organized in five sections, following the TBT categorization adopted in the Handbook of Deep Trade Agreements ("TBT Reference Paper"), which provides the basis for benchmarking TBT-related provisions in a PTA.<sup>6</sup> These categories are: (i) reference to WTO TBT Agreement; (ii) integration approach with respect to (a) standards, (b) technical regulations, and (c) conformity assessment procedures; (iii) transparency requirements; (iv) institutions; and (v) further cooperation among members. The section should then analyze TBT provisions in each of the country's PTAs for all the identified categories and corresponding questions in the TBT Reference Paper. The TBT Reference Paper contains detailed explanations of the scope and meaning of each of the questions to be coded under the above-mentioned categories. The analysis under each of the categories should contain the following information:

- A summary of the overall objectives and implications of the questions coded in the category followed by a detailed review and analysis of the country's commitments in its PTAs. In this regard, the Note should attempt to highlight any potential differences and similarities in approach between PTAs to provide a holistic view;
- A supporting Table containing the coding for all the relevant questions listed in the TBT Reference Paper for the relevant category mapped for each of the PTAs under consideration. As previously noted, the responses to the questions are coded as Yes/No in keeping with the overall approach of the Deep Integration project. This coding is primarily based on the text of the TBT chapters of the PTAs. It is recommended that the coding for a question is done pursuant to reading all the provisions and related annexes.

The sections below provides additional detail with regards to the methodology and approach to be adopted for each of the categories in the TBT Reference Paper.

#### (i) TBT and WTO

##### Explanation of Coding

This category is designed to identify whether the PTA is consistent with or goes beyond the provisions in the WTO TBT Agreement. It contains three questions that assess the similarities between the TBT provisions in the country's PTAs and the WTO TBT Agreement: (a) does the agreement refers to the WTO TBT Agreement?; (b) does the agreement use the same definitions as the WTO TBT Agreement? and; (c) does the agreement go beyond the WTO TBT Agreement? Some examples of how these questions are coded is set out below:

- *Reference to WTO TBT Agreement:* The ASEAN FTA was coded as 'Yes' for this question as the parties reaffirm and commit to abide by the rights and obligations under the WTO TBT Agreement in Article 73, paragraph 1. A partial incorporation of the WTO TBT Agreement with respect to "standards, technical regulations, and conformity assessment procedures" can

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<sup>6</sup> Espitia et al (2020).

be found in Article 2.11 of the EFTA-Indonesia agreement, which was therefore also coded as 'Yes'. Similarly, the RCEP agreement was coded as 'Yes' for its reference to the WTO TBT Agreement in Article 6.4, which specifically incorporates only a list of provisions from the WTO TBT Agreement.

- *Use of the same definition as the WTO TBT Agreement:* In response to this question, the Australia-Indonesia agreement was coded as 'Yes' as Article 8.1 provides that the definitions under Annex 1 to the TBT Agreement shall apply. On the other hand, the ASEAN FTA was coded as 'No' for this question, given that Article 72 provides a definition for standards and conformity assessment that differs from the definition set out in the TBT Agreement.
- *PTA beyond the WTO TBT Agreement:* Only the ASEAN FTA was coded as 'Yes' in response to this question as it incorporates sector-specific commitments in electrical and electronic equipment and cosmetics as an integral part of the agreement.

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions (e.g. relevant definitions in the TBT Agreement); (ii) include a table with the scoring of the country's PTAs with regards to the different questions on TBT and the WTO (for illustrative purposes, see Table 2-4); (iii) add relevant detail that cannot be surmised from the table. For example, the Note can highlight that some PTAs explicitly note the terms and definitions for technical regulations, standards, and conformity assessment procedures as set out in the TBT Agreement, while others are silent on the matter, or refer to a different set of definitions.

**Table 2-4: TBT provisions and the interplay with the WTO, Indonesia PTAs**

Provision	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Does the agreement go beyond the TBT Agreement?	No	Yes	No	No	No	No	No	No	No	No	No	No	No
Does the agreement refer to the WTO TBT Agreement?	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Does the agreement use the same definitions as the TBT Ag.	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - TBT

<sup>7</sup> See, AFTA, Article 78; Also see ASEAN Sectoral Mutual Recognition Agreement, available at <https://asean.org/asean-sectoral-mutual-recognition-arrangement-mras/>



## (ii) Integration Approach

### Explanation of Coding

This category examines the extent to which a country's PTA promotes integration through equivalence/mutual recognition<sup>8</sup> or harmonization. The level and type of integration is assessed separately for: (a) standards; (b) technical regulations; and (c) conformity assessment procedures. In the area of mutual recognition, the questions focus on whether countries have committed to negotiating mutual recognition agreements within a certain timeframe and if parties must participate in international accreditation agencies.<sup>9</sup> With respect to harmonization, the questions focus on whether the PTAs define a standard to which parties shall harmonize or promote the use or creation of regional standards. Provisions in this regard highlight a country's commitment towards the use of international or regional standards for their technical regulations and consequently reduce the barriers to international trade. Some examples of how these questions are coded are below:

- *Standards*: In response to the question on whether there are specified existing standards to which countries shall harmonize, the Indonesia-EFTA agreement was coded as 'Yes'. In this regard, Article 74, paragraph 4 provides that harmonization of existing national standards should be based on "Adoption of International Standards as Regional or National Standards," as contained in the ISO/IEC Guide 21 or its latest edition. In response to the question of whether the use of international standards is promoted, the RCEP agreement was coded as 'Yes' as Article 6.7 provides that the use of international standards, to the extent provided in the WTO TBT Agreement, should be used as a basis for technical regulation. The ASEAN FTA in Article 75 of the agreement provides that the members are required to base their technical regulations on international standards or national standards that are harmonized to international standards and was accordingly coded as 'Yes'.
- *Technical Regulations*: The Chile-Indonesia agreement was coded as 'Yes' for whether the burden of justifying non-equivalence was on the importing country as Article 7.7 of the agreement a party shall "explain the reasons why it has not accepted a technical regulation of the other Party as equivalent". Similarly, the RCEP agreement was coded as 'Yes' for this question as Article 6.7, paragraph 4 provides that the burden of justifying is on the party that does not accept the technical regulation of another party as equivalent to its own.
- *Conformity assessment procedures*: In response to whether mutual recognition is in force, the ASEAN FTA was coded as 'Yes' as such agreements are in force for a few sectors such as electronics, cosmetics and pharmaceuticals. Other agreements such as the RCEP in Article 6.8 provides that mutual recognition agreements for the results of conformity assessment procedures are one of the methods that parties may use depending on the situation and specific sectors involved and has also been coded as 'Yes'.

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions (e.g. relevant definitions in the TBT Agreement such as conformity assessment procedures, standards, and technical regulations"); (ii) include a table with the scoring of the country's PTAs with regards to the different questions on integration (for illustrative purposes, see Table 2-5); (iii) add relevant detail that cannot be surmised from the table. For example, in the case of Indonesia, the AFTA integrates sectoral agreements on conformity assessments – which is different from other agreements and not covered by the coding.

<sup>8</sup> Please note that for all three measures, i.e., standards, technical regulations, and conformity assessment procedure, the equivalence/mutual recognition means a reference to positive consideration towards equivalence or an identification of mutual recognition as one of the ways in which parties may achieve further integration.

<sup>9</sup> Supra Note 5, p. 350.

Table 2-5: TBT Integration approach, Indonesia PTAs

Classification Benchmark	Provision	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia -	Chile - Indonesia,	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
		Standards	Is mutual recognition/equivalence in force?	No	No	No	No	No	No	No	No	No	No	No
	Is there a time schedule for achieving mut..	No	No	No	No	No	No	No	No	No	No	No	No	No
	Is the burden of justifying non-equivalence..	No	No	No	No	No	No	No	No	No	No	No	No	No
	Are there specified existing standards to ..	No	Yes	No	No	No	No	No	No	No	Yes	No	No	No
	Is the use or creation of regional standard..	No		No	No	No	No	No	No	No	Yes	No	No	No
	Is the use of international standards prom..	No	Yes	No	No	No	No	No	No	No	Yes	No	No	No
Technical Regulations	Is mutual recognition/ equivalence in force?	No	Yes	No	No	No	No	No	No	No	Yes	Yes	Yes	No
	Is there a time schedule for achieving mut..	No	No	No	No	No	No	No	No	Yes	Yes	No	No	Yes
	Is the burden of justifying non-equivalence..	No	No	No	No	No	No	No	Yes	Yes	No	Yes	No	No
	Are there specified existing standards to ..	No	No	No	No	No	No	No	No	No	No	No	No	No
	Is the use or creation of regional standard..	No	No	No	No	No	No	No	No	No	No	No	No	No
	Is the use of international standards prom..	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	No
Conformity Assessment	Is mutual recognition/ equivalence in force?	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes
	Is there a time schedule for achieving mut..	No	No	No	No	No	No	No	No	No	No	No	No	Yes
	Is the burden of justifying non-equivalence..	No	Yes	No	No	No	No	No	Yes	No	Yes	No	No	Yes
	Are there specified existing standards to ..	No	No	No	No	No	No	No	No	No	No	No	No	No
	Do parties participate in international or r..	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	No
	Is the use or creation of regional standard..	No	Yes	No	No	No	No	No	No	No	Yes	No	No	No
	Is the use of international standards prom..	No	Yes	No	No	No	No	No	No	Yes	Yes	No	No	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - TBT

## (ii) Transparency Requirements

### Explanation of Coding

This category focuses on the transparency and notification requirements of PTAs. These provisions are significant in cases where parties to a PTA have different standards which are not recognized as equivalent. Transparency provisions also minimize the trade-distorting effect of different standards as exporters can ensure conformity without any additional costs. The coding captures whether the PTAs provide for longer time periods for comments on proposed TBT measures until its entry into force, compared to the WTO TBT Committee Recommendation of a 60-day time period.<sup>10</sup> Some examples of how these questions are coded is set out below:

• *Notification*: In response to whether specific time periods were allowed for comments, the ASEAN FTA was coded as 'Yes' as Article 75 of the agreement provides that comments need to be presented within 60 days of notification of standards. However, none of Indonesia's PTAs provide that the time period for comments should be longer than 60 days and were therefore all coded as 'No'. For example, the RCEP agreement in Article 6.11 requires parties to allow 60 days from the date of notification to the WTO to provide comments in writing and does not provide for a longer time frame.

• *Contact points*: In this regard, the question pertains to whether the PTA has established contact points for exchange of information. The ASEAN FTA was coded as 'No' in response to this question. Article 77 of the agreement provides for the establishment of post market surveillance systems that require the relevant authority to ensure compliance of products placed in the market with applicable sectoral mutual recognition or harmonization agreements. However, no specific contact points are established for the purposes of the chapter. On the other hand, the Chile-Indonesia agreement was coded as 'Yes' as Article 7.14 of the agreement provides for the establishment of such contact points.

## Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs in regards to the different questions on transparency (for illustrative purposes, see Table 2-6); (iii) add relevant detail that cannot be surmised from the table. For example, this can be highlighting that a PTA requires the publication of information on standards and technical regulations in electronic form, or in a specific language, or that a PTA mandates a party to notify the importer when it detains a consignment at the point of entry due to non-compliance.

**Table 2-6: TBT Integration approach, Indonesia PTAs**

Provision	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP 2022
Is the time period allowed for comments specified?	No	Yes	No	No	No	No	No	No	No	Yes	No	No	Yes
Is the time period allowed for comments longer than 60 days?	No	No	No	No	No	No	No	No	No	No	No	No	No
Contact points/consultations for exchange of information	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - TBT

## (iii) Institutions

### Explanation of Coding

This category captures the institutional and administrative structures set up by a country's PTAs, including dispute settlement. According to the TBT Reference Paper, it includes "questions on (a) whether PTAs establish regional committees, bodies, or consultation platforms for the administration

<sup>10</sup> Supra Note 5, p. 352.

of the agreement; (b) how disputes are resolved; (c) whether there is a dispute settlement body; and (d) to what extent countries are required to comply with technical recommendations".<sup>11</sup> Some examples of how these questions are coded is set out below:

- *Establishment of a regional body*: In response to whether a regional body is established under the PTA, the ASEAN FTA agreement was coded as 'Yes' as Article 78 of the agreement provides for the monitoring and effective implementation of the agreement in respect of standards, technical regulations and conformity assessment procedures by the ASEAN Consultative Committee for Standards and Quality. On the other hand, the RCEP agreement was coded as 'No' as the RCEP agreement does not create a separate institutional structure, and instead requires that any arrangements that parties may enter into to be reported to the Committee on Goods.<sup>12</sup>
- *Dispute settlement*: In response to whether recourse to dispute settlement for technical regulations is disallowed, the Chile-Indonesia agreement was coded as 'No' as dispute settlement procedures can be accessed under Article 7.10. On the other hand, the Indonesia-Australia PTA was coded as 'Yes', as it provides: "given the cooperative nature of the WTO plus elements of the TBT Chapter, the Parties decided that dispute settlement would not apply to the chapter".<sup>13</sup>

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions (e.g., explain dispute settlement); (ii) include a table with the scoring of the country's PTAs with regards to the different questions on dispute settlement (for illustrative purposes, see Table 2-7) (iii) add relevant detail that cannot be surmised from the table. This could include highlighting that a PTA carves out recourse to dispute settlement in cases that exclusively allege a violation of provisions of the WTO TBT Agreement, reflecting a preference to use the WTO dispute settlement system, or that, due to the fact that TBT+ elements of the chapter focus on cooperation, the parties to the PTA decided not to apply dispute settlement to the TBT Chapter.

**Table 2-7: TBT institution-related provisions, Indonesia's PTAs**

Provision	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Are recommendations mandatory?	No	No	No	No	Yes	Yes	No	No	No	Yes	No	No	No
Are there regional consultations foreseen to resolve disputes?	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Is a regional body established?	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Is the recourse to the DS for technical regulations disallowe..	No	No	No	No	No	No	Yes	No	No	No	Yes	No	Yes
Is there a mechanism to issue recommendations?	No	Yes	No	No	Yes	Yes	No	No	No	Yes	No	No	No
Is there a regional dispute settlement body?	No	Yes	No	No	No	No	No	No	No	Yes	No	No	No

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - TBT

<sup>11</sup> Supra Note 5, p. 352.

<sup>12</sup> See, RCEP, Article 6.13.

<sup>13</sup> Committee on Regional Trade, Comprehensive Economic Partnership Agreement between Indonesia and Australia (Goods and Services), Questions and Replies, 20 October 2021, WT/REG446/2.

## (iv) Further Cooperation among Members

### Explanation of Coding

TBT provisions in PTAs often set out further areas of collaboration between the parties. This category “contains information on whether the TBT aspects of the PTAs include provisions aimed at promoting common (regional) policymaking on standards beyond trade-related objectives, as well as provisions related to metrology and commitments for technical assistance”.<sup>14</sup> By including provisions on cooperation, technical assistance and metrology-related provisions, parties are encouraged to enter into deeper integration on standards, technical regulations and conformity assessment procedures. Some examples of how these questions are coded is set out below:

- *Cooperation*: The Chile-Indonesia agreement was coded as ‘Yes’ as it includes cooperation provisions that focus on the exchange of information, consideration of sector-specific proposals, and cooperation between conformity assessment bodies, among others.<sup>15</sup> The ASEAN-Hong Kong, China agreement was also coded as ‘Yes’ as it provides for cooperation in relevant regional and international bodies in the development and application of standards and conformity assessment procedures.<sup>16</sup> However, the ASEAN FTA was coded as ‘No’ as agreement does not include any specific provisions on cooperation between parties.
- *Metrology*: In the context of trade, metrology includes technical procedures concerned with the measurement and maintenance of accuracy to ensure quality and credibility of ascertaining official controls on trade, health, safety, and the environment.<sup>17</sup> In the case of Indonesia, all agreements except for the ASEAN FTA were coded as ‘No’ as they do not contain any provisions on metrology. Under the AFTA, member states are encouraged to cooperate among National Accreditation Bodies and National Metrology Institutes, including relevant legal metrology authorities, to facilitate the implementation of mutual recognition agreements in regulated and non-regulated sectors.<sup>18</sup>

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country’s PTAs with regards to the different questions on “further cooperation” (for illustrative purposes, see Table 2-8); (iii) add relevant detail that cannot be surmised from the table. This could include providing more detail on the types of cooperation provisions set out (i.e., do they focus on the exchange of information, the consideration of sector-specific proposals, conformity assessment bodies, advice and technical assistance, standard development, etc.).

**Table 2-8: TBT cooperation-related provisions, Indonesia’s PTAs**

Provision	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP 2022
Common policy/standardization programme (beyond trade-rela..	No	Yes	No	No	Yes	No	No	No	Yes	No	Yes	Yes	Yes
Technical Assistance	No	Yes	No	No	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes
Metrology	No	Yes	No	No	No	No	No	No	No	No	No	No	No

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - TBT

<sup>14</sup> Supra Note 5, p. 352.

<sup>15</sup> See, Chile-Indonesia PTA, Article 7.11.

<sup>16</sup> See, ASEAN-Hong Kong, China, Chapter 6, Article 8, paragraph 2(c).

<sup>17</sup> See Dictionary of Trade Terms, available at [http://www.sice.oas.org/dictionary/TBT\\_e.asp](http://www.sice.oas.org/dictionary/TBT_e.asp).

<sup>18</sup> See, AFTA, Article 73, paragraph 2(d) and Article 76, paragraph 5.

### 2.3.1.3 TBT Benchmarking Analysis

Having completed an analysis of TBT commitments in a country's PTAs, the next step of the analysis is to ascertain how the country's PTAs compare with the comparators' PTAs. This enables the country to identify challenges and opportunities, while drawing lessons from the experience of other countries. As mentioned in Section 2.2, there are two possible approaches for the benchmarking: one that proceeds country-by-country and another that focuses on relevant plurilateral agreements considered as best practice models in terms of international commitments. For each of these approaches, the categories identified by the Handbook of Deep Trade Agreements could broadly be used as a basis for drafting the comparator country analysis.

In terms of presentation, the analysis could either:

- Focus on specific TBT categories and provide a tabular representation of the commitments for all or a set of agreements of the country of interest and the comparator countries/agreements. An illustration of the comparison of TBT transparency provisions between selected agreements for Indonesia and selected comparator agreements is provided in Table 2-9.

**Table 2-9: TBT cooperation-related provisions, Indonesia's PTAs**

Provision	ASEAN - Japan, 2010	CPTPP, 2018
Contact points/consultations for exchange of information	Yes	Yes
Is the time period allowed for comments longer than 60 days?	No	No
Is the time period allowed for comments specified?	No	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - TBT

- Generate a summary table of the main observations of the comparative analysis, highlighting for instance information of the agreements that include deep commitments across the different TBT categories. Table 2-10 provides an illustration on the main observations of the comparative analysis of all TBT commitments of Indonesia and comparator countries.

Table 2-10: Overview of TBT commitments in comparator countries and Indonesia

	Indonesia	Malaysia	Philippines	Thailand	Vietnam
<b>General Observations</b>	Indonesia has 12 PTAs, out of which 6 are ASEAN+1 agreements	Malaysia has 16 PTAs, out of which 6 are ASEAN+1 agreements.	Philippines has 11 PTAs, out of which 6 are ASEAN+1 agreements.	Thailand has 14 PTAs, out of which 6 are ASEAN+1 agreements.	Vietnam has 15 PTAs, out of which 6 are ASEAN+1 agreements.
<b>Structure</b>	All PTAs except for Japan-Indonesia refer to the WTO TBT Agreement, and reaffirm their rights and obligations with respect to each other.	All PTAs refer to the WTO TBT Agreement, and reaffirm their existing rights and obligations with respect to each other.	Both the EFTA-Philippines and Japan-Philippines agreements refer to the WTO TBT Agreement. However, the Japan-Philippines is structured in a slightly different manner as it contains a chapter on 'Mutual Recognition', that deals with the registration of conformity assessment bodies and the procedures for products or processes covered by the sectoral annex. <sup>19</sup>	All PTAs except for Lao-Thailand and India-Thailand agreements refer to the WTO TBT Agreement and are largely based on the same rules as the TBT Agreement. <sup>20</sup>  Further, the Japan-Thailand PTA is structured similar to the Japan-Philippines PTA, as it contains a chapter on 'Mutual Recognition'. <sup>21</sup>	All PTAs refer to the WTO TBT Agreement, and reaffirm the rights and obligations of the parties with respect to each other.
<b>Standards</b>	Indonesia's PTAs do not contain any deep commitments with respect to standards.  The AFTA is the only exception as it provides that harmonization of existing national standards should be based on international standards contained in the ISO/IEC Guide 21.	Malaysia's PTAs do not contain any deep commitments with respect to standards. There does not appear to be any integration in terms of mutual recognition agreements.	Philippines' PTAs do not contain any deep commitments with respect to standards.	Thailand's PTAs do not appear to contain any deep commitments on standards.	Vietnam's PTAs do not appear to go beyond the WTO in terms of its commitments on standards.
<b>Technical Regulations</b>	Indonesia's recent PTAs encourage parties to give positive consideration towards equivalence and places the burden of justifying the non-acceptance of such equivalence on the importing country.	Most PTAs encourage parties to give positive consideration to equivalence of technical regulations. The India-Malaysia PTA establishes a timeline of 6 months to conclude decision on equivalence and also includes an Annex with a list of products for which equivalence of technical regulations has been accepted. <sup>22</sup> The agreement also contains a separate provision on labelling. <sup>23</sup>  With the exception of Pakistan-Malaysia and Turkey-Malaysia PTAs, other PTAs place the burden of justifying non-equivalence on the importing country.  Malaysia and Japan have endeavored to work towards harmonization of their technical regulations. <sup>24</sup>	The EFTA-Philippines PTA specifically makes reference to the standards issued by International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and the Codex Alimentarius Commission (CAC) to be used as a basis for technical regulations. <sup>25</sup>	The New Zealand-Thailand and Australia-Thailand PTAs encourages parties to work towards harmonization of technical regulations and give positive consideration to accepting the equivalence of each other's regulations. Integration in the form of consideration for equivalence of technical regulations can also be found in the Chile-Thailand PTA. <sup>27</sup>	The obligation to provide positive consideration towards accepting as equivalent the technical regulations of the other party can be found in Korea-Vietnam and the Chile-Vietnam PTA. The EEU-Vietnam PTA contains a provision on marking and labelling, wherein the parties note that technical regulations may contain such requirements and commit to abide by the provision of the WTO TBT Agreement in this regard. <sup>29</sup>

<sup>19</sup> See, Japan-Philippines PTA, Chapter 6.

<sup>20</sup> See, India-Thailand Framework Agreement, Article 6, which only provides for cooperation on mutual recognition agreements, conformity assessment, accreditation procedures, and standards and technical regulations, without any reference to the WTO TBT Agreement.

<sup>21</sup> See, Japan-Thailand PTA, Chapter 6.

<sup>22</sup> See, India-Malaysia PTA, Article 7.7.

<sup>23</sup> See, India-Malaysia PTA, Article 7.12.

<sup>24</sup> See, Japan-Malaysia PTA, Article 61.

<sup>25</sup> See, EFTA-Philippines PTA, Article 5.4.

<sup>26</sup> See, Australia-Thailand PTA, Article 705; New Zealand-Thailand PTA, Article 7.5.

<sup>27</sup> See, Chile-Thailand PTA, Article 7.8.

<sup>28</sup> See, Korea-Vietnam PTA, Article 6.5; Chile-Vietnam PTA, Article 7.7.

<sup>29</sup> See, EEU-Vietnam PTA, Article 6.6.

<p><b>Conformity Assessment Procedures</b></p>	<p>Mutual recognition of conformity assessment procedures is encouraged in a number of recent PTAs.</p> <p>The AFTA, however, is the only agreement that appears to contain such agreements currently in force in sectors such as electronics, cosmetics, and pharmaceuticals.</p>	<p>While mutual recognition of the results of conformity assessment procedures is encouraged, none of the PTAs appear to have any agreements in force.</p> <p>The Turkey-Malaysia PTA obligates the parties to provide non-discriminatory treatment in this regard, to the extent of each other's obligations under the International Laboratory Accreditation Cooperation and the International Accreditation Forum.<sup>30</sup></p>	<p>Provisions on Conformity Assessment forms the core of obligations in the Japan-Philippines PTA. Obligations pertain to registration and withdrawal of registration of conformity assessment bodies. Parties have also agreed to a sectoral annex of electric products, which applies to conformity assessment procedures for such products, and lists the applicable laws and regulations in this regard.<sup>31</sup></p>	<p>Most of Thailand's PTAs seeks to enhance the acceptance of the results of conformity assessment procedures of the other parties. In particular, the Australia-Thailand PTA provides for the implementation of the "APEC Mutual Recognition Arrangement for Conformity Assessment of Electrical and Electronic Equipment with respect to the other Party," while the New Zealand-Thailand PTA encourages parties to participate in mutual recognition agreements developed within the APEC.<sup>32</sup></p> <p>The Japan-Thailand PTA also contains detailed obligations pertaining to registration and withdrawal of registration of conformity assessment bodies. Parties have also agreed to a sectoral annex of electrical products, which applies to conformity assessment procedures for such products, and lists the applicable laws and regulations in this regard.<sup>33</sup></p>	<p>Provisions on Conformity Assessment can be found in Korea-Vietnam and Chile-Vietnam PTAs. The Korea-Vietnam PTA further encourages parties to endeavor to promote exchange of information on "APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment".<sup>34</sup> However, Vietnam does not appear to have entered into any deep commitment in its PTA with regards to conformity assessment procedures.</p>
<p><b>Transparency Requirements</b></p>	<p>Indonesia's PTAs do not appear to contain obligations that go beyond the WTO obligations on transparency. None of the agreements provide for more than 60 days for comments on proposed notifications.</p>	<p>While most PTAs contain transparency provisions, none of them go beyond the WTO obligations in terms of providing more than 60 days for comments on a proposed notification.</p> <p>The Malaysia-Chile PTA includes a non-binding obligation encouraging the parties to allow interested persons of the other party to participate in public consultative process.<sup>35</sup></p>	<p>Neither the EFTA-Philippines nor the Japan-Philippines PTAs contains any specific provisions on transparency related to TBT matters.</p>	<p>The Chile-Thailand PTA contains transparency provisions specific to TBT matters, but it does not go beyond the WTO TBT Agreement in terms of providing more than 60 days for comments on proposed notifications.<sup>36</sup></p>	<p>Most of Vietnam's PTAs contain transparency provisions in their TBT Chapters. However, they do not go beyond the WTO agreement in terms of the 60-day time-period for comments on proposed notifications.</p>
<p><b>Institutions</b></p>	<p>Most of Indonesia's PTAs, with the exception of ASEAN-China, Japan-Indonesia, ASEAN-Korea, Indonesia-EFTA and RCEP establish a regional body in the nature of a TBT Sub-Committee to oversee the implementation of the commitments.</p> <p>Recourse to dispute settlement is disallowed only in three agreements, i.e., ASEAN-Japan, Indonesia-Australia, and RCEP.</p>	<p>All agreements except for Pakistan-Malaysia PTA establish a separate sub-committee to monitor the implementation and administration of the chapter.</p> <p>Recourse to dispute settlement is not allowed only in the case of the Japan-Malaysia PTA.</p>	<p>The EFTA-Philippines PTA does not establish any separate institutional structure. The Japan-Philippines PTA, on the other hand, establishes a Sub-Committee on Mutual Recognition responsible for exchanging information on standards and conformity assessment procedures, reviewing the implementation of the agreement, among others.<sup>37</sup></p> <p>Further, it appears that both agreements allow for recourse to dispute settlement.</p>	<p>While the Australia-Thailand and New Zealand-Thailand PTAs provide for technical cooperation through contact points, the Chile-Thailand PTA provides for the establishment of a Committee on TBT.<sup>38</sup> The Japan-Thailand PTA, on the other hand, establishes a Sub-Committee on Mutual Recognition responsible for exchanging information on standards and conformity assessment procedures, reviewing the implementation of the agreement, among others.<sup>39</sup></p> <p>Further, recourse to dispute settlement is allowed in all those PTAs that contained detailed obligations.</p>	<p>A Committee on TBT is established under the Korea-Vietnam PTA, Japan-Vietnam and Chile-Vietnam PTAs to monitor and administer the implementation of the chapter. This is to be achieved through competent authorities and contact points in the EEU-Vietnam PTA.</p> <p>Recourse to dispute settlement is disallowed only in the case of Japan-Vietnam PTA.</p>

<sup>30</sup> See, Turkey-Malaysia PTA, Article 7.7; Also see, India-Malaysia PTA, Article 7.8, which states that the parties agree to "consider how to make best use of international standards for accreditation and international agreements involving the Parties' accreditation bodies, for example, through the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement ("ILAC MRA") or the International Accreditation Forum Multilateral Arrangement ("IAF MLA")."

<sup>31</sup> See, Japan-Philippines PTA, Annex 4.

<sup>32</sup> See, Australia-Thailand PTA, Article 706; New Zealand-Thailand PTA, Article 7.6.

<sup>33</sup> See, Japan-Thailand PTA, Annex 4.

<sup>34</sup> See, Korea-Vietnam PTA, Article 6.6.

<sup>33</sup> See, Japan-Thailand PTA, Annex 4.

<sup>34</sup> See, Korea-Vietnam PTA, Article 6.6.

<sup>35</sup> See, Chile-Malaysia PTA, Article 7.9.

<sup>36</sup> See, Chile-Thailand PTA, Article 7.10.

<sup>37</sup> See, Japan-Philippines PTA, Article 64.

<sup>38</sup> See, Australia-Thailand PTA, Article 707; New Zealand-Thailand PTA, Article 7.8.

<sup>39</sup> See, Japan-Thailand PTA, Article 66.



### 2.3.2 Sanitary and Phytosanitary Measures (SPS)

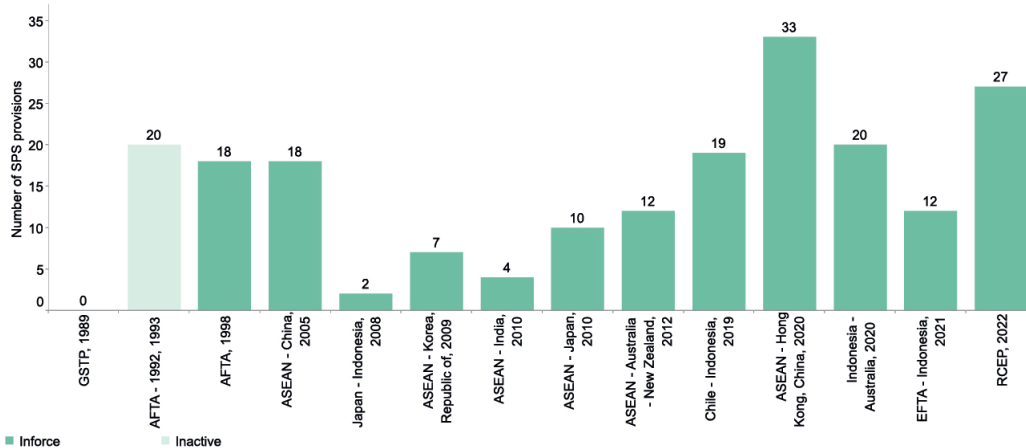
The overall objective of this vertical benchmarking exercise on SPS is to provide the focus country with a deeper understanding of the substantive and procedural commitments made with respect to SPS measures in its PTAs. The vertical analysis and benchmarking for SPS disciplines has three components: (i) providing an overview of the country's SPS commitments across PTAs; (ii) carrying out an analysis of specific SPS provisions the country's PTAs; and (iii) engaging in a benchmarking analysis that seeks to better understand how the country's SPS commitments compare to the benchmarking countries' SPS commitments. This analysis would assist policy makers in identifying and adapting SPS measures that would reduce trade costs. It would also enable the identification of areas of further cooperation that would be beneficial to the focus country.

#### 2.3.2.1 Overview of a Country's SPS Commitments across its PTAs

This section focuses on the SPS provisions set out in the country's PTAs and provides an assessment of the evolution of the coverage of SPS provisions across all its agreements. This provides a broad understanding of how the number of SPS-related provisions have varied across time in different PTAs, potentially indicating the trends and the depth of commitments. It should specifically:

1. Identify the number of PTAs that contain SPS chapters.<sup>40</sup>
2. Map the number of SPS provisions in each of the PTAs and represent them graphically along with an explanation noting the trends over the years.<sup>41</sup> Figure 2-3. shows the number of SPS provisions in Indonesia's PTAs represented graphically.

**Figure 2-3: Evolution of Number of SPS provisions in PTAs, Indonesia**



Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

<sup>39</sup> See, Japan-Thailand PTA, Article 66.

<sup>40</sup> In the case of Indonesia, twelve of its PTAs were analyzed for their SPS commitments. These include ASEAN-China, Japan-Indonesia, ASEAN-Japan, ASEAN Free Trade Area, ASEAN-Australia-New Zealand, ASEAN-India, ASEAN-Korea, Chile-Indonesia, ASEAN-Hong Kong, China, Indonesia-Australia, Indonesia-EFTA and RCEP.

<sup>41</sup> This analysis, while included in the general introduction section, can be finalized once the entire benchmarking exercise for all the PTAs is completed. The 'number of provisions' refers to the questions raised by the World Bank's study and counts those questions that were answered positively.

### 2.3.2.2 Analysis of Specific SPS Provisions in the Country's PTAs

The objective of this section is to provide an in-depth analysis of the content of the PTAs based on the coding exercise. This section aims to comprehensively understand how the country's PTAs are deeper in comparison to the WTO SPS Agreement, and the inclusion of newer and varied approaches to SPS-related issues. The aim is to capture and highlight patterns of SPS provisions that are strongly promoted in agreements, determine the degree to which these provisions are binding, and identify areas for further cooperation and integration across PTAs that would provide a more complete picture for the focus country.

The Chapter on Sanitary and Phytosanitary Measures in the Handbook on Deep Trade Agreements (“SPS Reference Paper”) provides the basis for benchmarking SPS-related provisions in a PTA.<sup>42</sup> It classified SPS commitments into the following eight categories: (i) SPS and WTO; (ii) standards; (iii) risk assessment; (iv) audits/control inspection; (v) transparency; (vi) institutions; (vii) international regulatory cooperation more generally; and (viii) other areas of cooperation. The Note should proceed to analyze the SPS provisions in each of the country's PTAs for all the identified categories and corresponding questions in the SPS Reference Paper. The SPS Reference Paper contains detailed explanations of the scope and meaning of each of the questions to be coded under the above-mentioned categories, and should therefore be used throughout the coding exercise. The analysis under each of the categories should be structured as follows:

- A brief summary of the overall objectives and implications of the questions coded in the category followed by a detailed review and analysis of the country's commitments in its PTAs. The Note should attempt to highlight any potential differences and similarities in approach between PTAs to provide a holistic view.
- Supporting Table containing the coding for all the relevant questions listed in the SPS Reference Paper for the relevant category mapped for each of the PTAs under consideration. As previously noted, the responses to the questions are coded as Yes/No in keeping with the overall approach of the Deep Integration project. This coding is primarily based on the text of the SPS chapters of the PTAs. It is recommended that the coding for a question is done pursuant to reading all the provisions and related annexes.

The methodology and approach to be adopted for each of the categories in the SPS Reference Paper is provided below along with illustrations of coding and examples on how to structure the analysis.

#### (i) SPS and WTO

##### Explanation of Coding

This category tracks the degree to which the WTO agreement is recognized in the country's PTAs. This includes an examination of detailed references to the WTO SPS Agreement across five questions, namely: (a) whether there is an SPS chapter or provision; (b) whether the PTA refers to the WTO SPS Agreement; (c) whether the PTA makes reference to the same definitions as the WTO SPS Agreement; (d) whether the agreement uses the same rules as the WTO SPS Agreement; and (e) whether any specific annexes of the WTO SPS Agreement have been adopted by the PTA. These questions can be coded easily based on a reading of the SPS chapter or provisions in the PTA.

<sup>42</sup> Stone, S., & Casalini, F. (2020). Sanitary and Phytosanitary Measures. In A. Mattoo, N. Rocha, & M. Ruta, *Handbook of Deep Trade Agreements*. Washington DC: World Bank. Retrieved from <https://openknowledge.worldbank.org/handle/10986/34055>.

Illustrations of coding:

- Presence of SPS chapter of provision: In response to whether there is an SPS chapter or provision in the PTA, the Indonesia-EFTA agreement was coded as ‘Yes’ as Article 2.12 contains disciplines on SPS measures. Similarly, the RCEP agreement was coded as ‘Yes’ as chapter 5 of the agreement concerns SPS-related provisions. On the other hand, the ASEAN-India agreement was coded as ‘Yes/No’ as article 8 of the agreement refers to non-tariff measures in which parties have reaffirmed their rights and obligations under the WTO SPS agreement. However, the agreement does not otherwise contain a separate provision or chapter dealing with SPS measures.
- Adoption of specific annexes of the SPS agreement: In response whether any of the specific annexes of the WTO SPS agreement were adopted in the PTA, the Australia-Indonesia agreement was coded as ‘No’ as none of the provisions adopt any of the WTO SPS annexes specifically. On the other hand, the RCEP agreement was coded as ‘Yes’ as Article 5.1 adopts Annex A of the WTO SPS agreement.

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country’s PTAs with regards to the different questions on the interaction with the WTO SPS Agreement (see Table 2-11); (iii) add relevant detail that cannot be surmised from the table. For instance, the Note could include an explanation of the implication of the lack of a reference to the WTO SPS definition in a PTA (such as whether suggests that the PTA has adopted a different definition that deviates from the WTO SPS agreement), and which of the specific annexes of the SPS agreement have been adopted.

**Table 2-11: SPS provisions and the interplay with the WTO, Indonesia PTAs**

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Is there an SPS chapter or provision?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Are any specific Annexes of the SPS Agreement adopted?	No	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	No	Yes	Yes
Does the Agreement refer to the WTO SPS Agreement?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Does the Agreement make reference to the same definitions..	No	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	No	Yes	Yes
Does the Agreement use the same rules as the SPS Agreement?	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

## (ii) Standards

### Explanation of Coding

This category is aimed at understanding the nature of cooperation on standards – equivalence, mutual recognition or harmonization – provided in the country's PTAs. It also attempts to “capture the degree to which an agreement distinguishes between standards that are existing or new; international, regional, or domestic; or whether the agreement intends to develop new standards based on specific criteria”.<sup>43</sup>

The SPS Reference Paper provides additional guidance on how to identify the “equivalence” or “mutual recognition” of standards. It makes a distinction between these two concepts for the purposes of coding as recognizing the “equivalence of a standard” implies that it is more or less the same whereas the concept of “mutual recognition” captures “the idea of separate but equal” – meaning that a product that is lawfully produced in an exporting country is accepted in the importing country.<sup>44</sup> Finally, harmonization-related questions are to be coded if parties have agreed that they will all apply the same standards or adopt the same regulation.<sup>45</sup>

Illustrations of coding:

- *Adaptation to regional conditions:* The provision aims to establish a balance between potentially conflicting interest of an exporting member (maintaining trade in case of a disease outbreak) and importing member (protecting its territory against SPS risks). If an FTA does not allow for regionalization, it means that disease outbreaks could have significant trade implications for the entire country (although WTO Members would still be required to comply with regionalization provisions set out in the WTO SPS Agreement). If a country does allow for the adaptation to regional conditions, it means the SPS measure can be adapted to that particular pest or disease infected region from which the product originates and to which the product is destined, instead of applying them uniformly to the whole country. In response to whether parties recognize the adaptation to regional conditions, the ASEAN-Hong Kong, China agreement was coded as ‘Yes’ as Article 6 of the agreement provides for the same. Similarly, Article 5.6 of the RCEP agreement provides that parties recognize the concept of regional conditions including pest- or disease-free areas. Mutually agreed determinations of regional conditions should be reported to the Committee on Goods under the agreement. On the other hand, the Indonesia-EFTA agreement does not contain any provisions on the adaptation to regional conditions and was accordingly coded as ‘No’.
- *Recognition of equivalence:* While Article 4 of the WTO SPS Agreement requires Members to recognize equivalence provided that the appropriate level of SPS protection is achieved through PTAs, parties can reinforce these commitments, and/or make stronger commitments. Thus, if a PTA includes a recognition of equivalence, it signals that parties recognize that different standards can provide the same level of protection. As a result, recognition of equivalence – either of a specific product or categories of product – can promote trade by reducing the regulatory barriers between parties. If the PTA does not contain equivalence provisions, it signals no additional commitments by the parties in this area. The RCEP agreement contains detailed provisions on equivalence. The agreement provides that an importing Party “shall recognize equivalence” if the exporting Party

<sup>43</sup> Supra Note 42, p. 374.

<sup>44</sup> Supra Note 42 p. 375.

<sup>45</sup> The SPS Reference Paper notes that in respect of harmonization, the common standard could be an international standard or a national standard or a regional standard that is commonly applied. See Supra Note 42, p. 375.

objectively demonstrates to the importing Party that the exporting Party's measures achieve the same level of protection, or if the exporting Party's measure has the same effect in achieving the importing Party's objective.<sup>46</sup> The Indonesia-Australia CEPA was also coded as 'Yes' in response to this question as Article 7.5 of the agreement provides for the same.

- *Mutual recognition*: With respect to whether mutual recognition is recognized, two of Indonesia's PTAs - ASEAN FTA and ASEAN-Australia-New Zealand - were coded as 'Yes'. The ASEAN FTA provides that each Member state shall "enter into consultations with the aim of achieving bilateral and/or regional recognition arrangements of the equivalence of specified sanitary or phytosanitary measures" upon request.<sup>47</sup>

## Elements to include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs with regards to the different questions on standards (see Table 2-12); (iii) add relevant detail that cannot be surmised from the table. This could include highlighting how the provisions on equivalence also include the concept of 'effect' of the measure (if the exporting party's measures have the same *effect* in achieving the importing party's objectives) as compared to the WTO SPS provisions which do not focus on effects. Reference to following specific international standards such as the Codex Committee on Food Import and Export Inspection and Certification Systems, International Plant Protection Convention and the World Organization for Animal health in the context of conducting import controls could also be mentioned.

**Table 2-12: Overview of provisions relevant to standards, Indonesia's PTAs**

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea,	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Are Parties encouraged to take into account other parties' stand..	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Are there specified existing standards to which countries shal..	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Do parties recognise the adaption to regional conditions (including r..	No	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	Yes
Do parties reference international standards?	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	No	Yes
Is equivalence recognised?	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	No	Yes
Is mutual recognition recognised?	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No
Is the burden of justifying non-equivalence on the importing..	No	No	No	No	No	No	No	No	No	No	Yes	No	No	Yes
Is the creation of concerted/regional standards ref..	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Is there a time schedule for achieving mutual recognition?	No	No	No	No	No	No	No	No	No	No	No	No	No	No

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

<sup>46</sup> Article 5.5, RCEP.

<sup>47</sup> See, AFTA, Article 84, paragraph 3.

### (iii) Risk Assessment

#### Explanation of Coding

This category reviews how risk assessment is addressed in the country's PTAs. Under the WTO SPS agreement, SPS measures may be implemented based on an assessment of risk to human, animal or plant life, or health. The questions under this category, such as allowing the participation of interested parties like technical experts and businesses, go beyond what is provided in the WTO SPS agreement. The question on reference to international standards or procedures could include parties' acceptance of the OECD's Principles of Good Regulatory Practices.<sup>48</sup>

Illustrations of coding:

- *Recognition that SPS measures should be based on scientific evidence:* Most of Indonesia's PTAs recognize that SPS measures should be based on documented and scientific evidence in line with the risk assessment provisions in the SPS Agreement. For example, the Indonesia-Australia agreement was coded as 'Yes' as Article 7.4 of the agreement provides that "the Parties also recognize the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific evidence in accordance with the SPS Agreement".
- *Reference to participation of interested parties:* If this question is coded as 'Yes', interested parties may participate in the risk assessment procedure conducted by the national authorities. It also means that parties would be required to adopt the necessary administrative procedures as a result of the PTA to provide for such participation of interested persons. In response to the question of participation of interested persons, the RCEP agreement was coded as 'Yes'. It is the only PTA in the case of Indonesia that references the participation of interested parties in the risk assessment, giving them an opportunity to comment on the risk analysis conducted.<sup>49</sup>
- *Reference to international standards:* Specific references to following international standards in carrying out a risk assessment can be found in two PTAs, namely, the RCEP and Chile-Indonesia CEPA. In Article 6.8 of the Chile-Indonesia agreement, parties have agreed to "take into account Decisions and Recommendations adopted by the WTO Committee on SPS and international standards, guidelines and recommendations from Codex, OIE and IPPC".

#### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs with regards to the different questions on risk assessment (see Table 2-13); (iii) add relevant detail that cannot be surmised from the table. For instance, this can be highlighting that the PTA requires the importing party to update the exporting party on the progress of a specific risk analysis, and that an ongoing risk assessment cannot be the sole basis for restricting imports.

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<sup>48</sup> Supra Note 42, p. 378.

<sup>49</sup> RCEP, Art. 5.7.2.

Table 2-13: Risk assessment provisions, Indonesia's PTAs

Provision	GSP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea,	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Do the parties recognise that SPS measures are based on document..	No	Yes	No	Yes	No	No	No	Yes	No	Yes	Yes	Yes	No	Yes
Is the burden of evaluating risk on the exporting country?	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Is the participation of interested parties referenced?	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Is there reference to international standards/procedures?	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

#### (iv) Audits/Control Inspection

##### Explanation of Coding

Audit and control inspection provisions in PTAs seek to ensure that SPS-related border controls do not unnecessarily hinder trade. This category relates to coding for audits and controls in the context of conformity assessment procedures. The questions specifically distinguish between mutual recognition, equivalence, and harmonization. Further, they also capture which party bears the burden of proof in cases of non-equivalence relating to the audit or inspections processes.

Illustrations of coding:

RCEP and Indonesia-EFTA are the only Indonesian PTAs that contains provisions on audits and control inspection. The parties to the other PTAs that are not party to RCEP are bound by Annex C of the SPS Agreement which sets out control, inspection, and approval procedures.

- *Mutual recognition:* In response to whether the importing party has the right to audit the exporting party's competent authorities and inspection systems, both of the above-mentioned agreements were coded as 'Yes'. In the case of the RCEP agreement, the importing country is granted the right to audit the exporting party's competent authorities to assess the effectiveness of regulatory controls. However, both the RCEP agreement and the Indonesia-EFTA agreement was coded as 'No' for whether mutual recognition for audit and control procedures was in force.

- *Harmonisation:* If the response to these questions is 'Yes', it signals that the parties have agreed to harmonize their audit/control inspection procedures which would facilitate trade by addressing concerns of unjustifiable delays and bureaucracy through the use of similar standards. On the other hand, if coded 'No', it signals that parties do not agree to harmonize their control and inspection procedures, which could create additional obstacles to trade. Both the RCEP agreement and the Indonesia-EFTA agreement do not promote the use or creation of regional standards. However, both these agreements promote the use of international standards. The Indonesia-EFTA agreements refers to the Codex Alimentarius Commission (CAC), including Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS), International Plant Protection Convention (IPPC) and the World Organization for Animal Health (OIE) for import controls.<sup>50</sup> In the case of RCEP, Article 5.10 of the agreement promotes the use of international standards.

<sup>50</sup> Article 2.12, Indonesia-EFTA agreement.

## Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs with regards to the different questions on audit/control inspection (see Table 2-14); (iii) add relevant detail that cannot be surmised from the table. In the case of Indonesia, as mentioned above, only the RCEP and Indonesia-EFTA agreements contained relevant provisions and are therefore the only agreements included in the table. Additional information can include highlighting how a PTA contains obligations such as notifying the importer in case of non-compliance with SPS standards and discussing remedial actions in case of significant or recurring non-compliance. Procedural requirements such as timely notifications and clearance decisions could also be further explained in the Note.

**Table 2-14: Audits and control inspection provisions, RCEP and Indonesia-EFTA**

Provision	EFTA - Indonesia, 2021	RCEP, 2022
Are there provisions for advance rulings?	No	No
Are there provisions for pre-certification processes for exporting firms?	No	No
Are there specified existing standards to which countries shall harmonize?	Yes	No
Does the importing party have the right to audit the exporting party's competent authorities, inspection systems, or production procedure?	Yes	Yes
Is mutual recognition in force?	No	No
Is the burden of justifying non-equivalence on the importing country?	Yes	Yes
Is the participation of interested parties referenced?	No	No
Is the use of international standards promoted?	Yes	Yes
Is the use or creation of regional standards promoted?	No	No
Is there a provision on control and inspection?	Yes	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

## (v) Transparency

### Explanation of Coding

Transparency provisions can play an important role in enabling signatories to gain rapid access to each other's markets and also facilitate the process of convergence of the rules. The SPS Reference Paper makes a distinction between transparency and exchange of information. The latter captures provisions in the PTA that go beyond what is specified in Annex B of the WTO SPS agreement.

Illustrations of coding:

- *Transparency provision:* The Chile-Indonesia agreement was coded as 'Yes' as Article 6.5 of the agreement confirms parties' commitment to implement the transparency provisions set out in Article 7, Annex B to the SPS Agreement and the relevant Decisions and Recommendations adopted by the WTO Committee on SPS. On the other hand, the Indonesia-EFTA agreement was coded as 'No' since the agreement only contains a general transparency provision in Article 1.7. Since the SPS Reference Paper states that the "the coding applies only to those issues covered in individual SPS chapters and does not cover SPS-related issues contained in other chapters", this question was accordingly coded as 'No' for the PTA. In response to whether parties have to notify each other prior to the entry of force of a new standard or regulation, only three of



Indonesia's PTAs contained such a provision. For instance, the RCEP agreement was coded as 'Yes' as Article 5.12, paragraph 4 of the agreement provides as follows:

"Each Party shall notify proposed measures or changes to sanitary or phytosanitary measures that may have a significant effect on the trade of other Parties through the online WTO Sanitary and Phytosanitary Measures Notification Submission System, the contact points designated under Article 5.15 (Contact Points and Competent Authorities), or already established communication channels of the Parties".

• *Derogation clause for notification period in case of emergency.* If the response to this question is 'Yes', the parties can derogate from the notification period requirements in case of emergency, thus providing some flexibility, whereas 'No' indicates that derogations in the case of an emergency is not an option. In this regard, the Indonesia-Australia PTA was coded as 'Yes' as Article 7.8, paragraph 4 of the agreement provides that in cases where urgent problems of human, animal or plant life or health arise, the general obligations on transparency and notification otherwise contained in the provisions are subject to flexibilities provided in Annex B of the SPS Agreement. The ASEAN FTA was, however, coded as 'No' as the agreement does not contain any such provision.

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs with regard to the different questions on transparency (see Table 2-15); (iii) add relevant detail that cannot be surmised from the table. For example, the nature of obligation on electronic publications, providing notifications in a particular language, or notification to the other parties in case of significant change in regulations could be included in the Note.

**Table 2-15: SPS-related Transparency provisions, Indonesia's PTAs**

Provision	GSSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Do parties have to notify each other prior to the entry into force ..	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes	No	No	Yes
Does the Agreement allow the participation of interested partie..	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Does the agreement specifically reference the participation of reg..	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Is there a derogation clause on notification period for emergency?	No	No	No	Yes	No	No	No	No	No	Yes	Yes	Yes	No	Yes
Is there a duty to translate the document in the language of the ..	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Is there a limitation to the obligation to notify, for reasons o..	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Is there a provision on electronic publication?	No	No	Yes	No	No	No	No	No	No	No	Yes	No	No	No
Is there a provision on exchange of information?	No	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes
Is there a specified minimum time period for comments?	No	Yes	No	Yes	No	No	No	No	No	No	Yes	Yes	No	Yes
Is there a transparency provision?	No	No	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

## (vi) Institutions

## Explanation of Coding

The category collects information on structures that are created as a result of the PTA. It makes a distinction between committees and other forms of organization established under the PTA. The coding also “explores the degree to which a committee is open by noting the existence of a provision allowing the possible participation of other groups or public interaction”.<sup>51</sup> The questions under this category also determine if established bodies can have more formal interaction such as issuing decisions. Finally, the availability of recourse to dispute settlement is also recorded under this category.

Illustrations of coding:

- *Establishment of SPS Committee:* Most of Indonesia’s PTAs establish an SPS Committee. For instance, the Indonesia-Australia CEPA was coded as ‘Yes’ in response to this question. The agreement also provides for periodical meeting of the SPS Committee in Article 7.11, paragraph 2 which provides that the SPS Sub-Committee “shall meet within one year of the date of entry into force of this Agreement and annually thereafter”. On the other hand, the RCEP agreement was coded as ‘No’ as the agreement does not establish any separate institutional structure and requires parties to communicate with the agreement’s Committee of Goods.
- *Establishment of working groups:* In response to whether the parties establish a working group, the Australia-Indonesia agreement was coded as ‘Yes’ as Article 7.11, paragraph 3 provides that the “SPS Sub-Committee may set up subsidiary working groups, as agreed between the Parties”.

Table 2-16: SPS related institutions, Indonesia PTAs

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Do parties establish a SPS committee?	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No
Do parties establish a working group?	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	Yes	No	No
Do parties establish SPS contact/enquiry points?	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Is a body for administering the Agreement established?	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No
Is the recourse to the DS for SPS chapter disallowed?	No	No	No	No	No	No	No	Yes	Yes	No	No	Yes	No	Yes
Is the SPS Committee open?	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Is the SPS Committee the designated first place for dispute ..	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No	No
Is there a fixed periodical meeting for the committee?	No	Yes	No	No	No	Yes	No	No	No	Yes	Yes	Yes	No	No
Is there a mechanism mandated to issue administrative decisions?	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Is there a mechanism to issue recommendations?	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

<sup>51</sup> Supra Note 42, p. 380.

## Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions (e.g., explain dispute settlement); (ii) include a table with the scoring of the country's PTAs with regards to the different questions on the institutional framework (see Table 2-16); (iii) add relevant detail that cannot be surmised from the table. This could include highlighting how often an SPS Committee within the PTA is required to meet or the kind of decisions that a Committee may recommend. With respect to dispute settlement, the Note could highlight whether such a provision is subject to review at a future date.

### (vii) International Regulatory Cooperation more generally

#### Explanation of Coding

This category aims to identify mechanisms that support regulatory cooperation.<sup>52</sup> Regulatory cooperation and focused technical assistance provisions such as sharing of technical information, SPS programs and treatments may enable signatories to move towards the integration of the SPS regulations. Towards this end, the questions under this category are as follows: (a) whether there is a general provision on regulatory cooperation; (b) whether there is a provision on technical assistance; and (c) whether there is a provision on technical consultations/cooperation.

Illustrations of coding:

- *General regulatory cooperation*: Most of Indonesia's PTAs contain a provision on regulatory cooperation. For instance, the Indonesia-Australia CEPA was coded as 'Yes' as it provides that each party "shall explore opportunities for further cooperation, collaboration and information exchange with the other Party" on SPS matters of mutual interest, and "endeavor to coordinate with regional or multilateral work programs with the objective of avoiding unnecessary duplication".<sup>53</sup> The Chile-Indonesia agreement was also coded as 'Yes' as parties have agreed to explore opportunities for further cooperation on SPS measures of mutual interest.<sup>54</sup>
- *Technical assistance*: In response to whether there is a provision on technical assistance, the RCEP agreement was coded as 'Yes'. Article 5.13 of the agreement on cooperation and capacity building provides that parties may explore cooperation on capacity building and technical assistance on SPS measures of mutual interest. No such provision or reference to technical assistance can be found in the Chile-Indonesia agreement, and it was therefore coded as 'No'.

## Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs with regards to the different questions on international regulatory cooperation (see Table 2-17); (iii) add relevant detail that cannot be surmised from the table. This could include providing more detail on the recognized objectives of such cooperation or the nature of technical assistance that may be agreed to in the PTA.

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<sup>52</sup> Supra Note 42, p. 381.

<sup>53</sup> See, Indonesia-Australia CEPA, Article 7.9.

<sup>54</sup> Indonesia-Chile agreement, Article 6.12.

Table 2-17: SPS-related International regulatory cooperation provisions, Indonesia PTAs

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Is there a general IRC clause/Common policy/standardiz..	No	Yes	No	Yes	No	No	No	Yes	Yes	Yes	No	Yes	No	Yes
Is there a provision for technical consultations/cooperation?	No	Yes	Yes	No	No	No	No	No	Yes	No	Yes	Yes	No	Yes
Is there a provision on technical assistance?	No	Yes	Yes	Yes	No	No	No	Yes	No	No	Yes	Yes	No	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

### (viii) Other Areas of Cooperation

#### Explanation of Coding

This category pertains to other forms of cooperation that may be included in the PTA. For example, a provision on making test data available or coordinate or joint participation in international fora fall under this category.

Illustrations of coding:

- *Provision on certifications*: Only two of Indonesia's PTAs namely, the RCEP agreement and the Indonesia-EFTA agreement include a provision on certification. Under the Indonesia-EFTA agreement, for example, parties have agreed to reduce the number of model-SPS certificates and follow international standards. Further, when a new certificate is introduced or modified, it should be notified in English as early as possible. The provision further mandates the Parties to "explain and justify introduction or modification of a certificate," and the exporting country "shall be given sufficient time to adapt to the new requirements".<sup>55</sup>
- *Coordinated participation in international fora*: In response to this question, the RCEP agreement was coded as "Yes" as Article 5.13, paragraph 3 of the agreement provides that "the Parties shall endeavor to coordinate with bilateral, regional, or multilateral work programs, with the objective of avoiding unnecessary duplication and maximizing the use of resources".

#### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs with regards to the different questions on "other areas of cooperation" (see Table 2-18); (iii) add relevant detail that cannot be surmised from the table. For instance, reference can be made to provisions that allow demonstration of SPS compliance through measures other than certificates or the requirement to notify in a particular language when a certificate is modified, or a new certificate is introduced.

#### 2.4.2.3 SPS Benchmarking Analysis

Having completed an analysis of SPS commitments in a country's PTAs, the next step of the analysis is to ascertain how the country's PTAs compares with the comparator countries PTAs. This enables the country to identify challenges and opportunities, while drawing lessons from the experience of other countries. As mentioned in Section 2.2, there are two possible approaches for the benchmarking: one that proceeds country by country and another that focuses on relevant plurilateral agreements

<sup>55</sup> See, Indonesia-EFTA CEPA, Article 2.12, paragraph 4.

Table 2-18: Other areas of cooperation relevant to SPS, Indonesia PTAs

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Is coordination for participating in international or regional accreditation...	No	No	Yes	Yes	No	No	No	No	No	No	Yes	Yes	No	Yes
Is testing data to be made available?	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No
Is there a provision on certifications?	No	No	No	No	No	No	No	No	No	No	Yes	No	Yes	Yes
Is there a provision on labelling, marking, and packaging?	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Is there a provision on special/preferential treatment?	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No
Is there a provision on traceability?	No	No	No	No	No	No	No	No	No	No	No	No	No	No

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

considered as best practices models in terms of international commitments. For each of these approaches, the categories identified by the Handbook of Deep Trade Agreements could broadly be used as a basis for drafting the comparator country analysis.

In terms of presentation, the analysis could either

- Focus on specific SPS categories and provide a tabular representation of the commitments for a set of agreements of the country of interest and the comparator countries/agreements. An illustration of the comparison of the standard category in SPS provisions between selected agreements for Indonesia and selected comparator agreements is provided in Table 2-19.
- Generate summary tables of the main observations of the comparative analysis, highlighting for instance information of the agreements that include deep commitments across the different SPS categories.

Table 2-19: SPS standards provisions: comparison between Indonesia and comparator agreements

Provision	ASEAN - Japan, 2010	CPTPP, 2018
Are Parties encouraged to take into account other parties' standards when elaborating new standards?	No	No
Are there specified existing standards to which countries shall harmonize?	No	No
Do parties recognise the adaption to regional conditions (including regionalisation, zoning and/or compartmentalisation)	No	Yes
Do parties reference international standards?	No	Yes
Is equivalence recognised?	No	Yes
Is mutual recognition recognised?	No	No
Is the burden of justifying non-equivalence on the importing country?	No	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - SPS

Table 2-20 provides an illustration on the main observations of the comparative analysis of SPS commitments of Indonesia with comparator countries. As can be seen in the table, the observations need not be for each PTA that the comparator country has entered into. General observations can be made in terms of the trend of the comparator country. Further, the analysis can specifically highlight those PTAs that seem to include deep commitments. The categories identified by the Handbook of Deep Trade Agreements are used as a basis for drafting the comparator country analysis. For example, relevant categories that were included in the comparator analysis of SPS provisions for Indonesia were general observations, standards, audits/control inspection, transparency requirements and institutional structure.

**Table 2-20: Overview of SPS commitments in comparator countries and Indonesia**

	Malaysia	Philippines	Thailand	Vietnam	Indonesia
<b>General Observations</b>	Malaysia has 16 PTAs, out of which 6 are ASEAN+1 agreements.	Philippines has 11 PTAs, out of which 6 are ASEAN+1 agreements.	Thailand has 14 PTAs, out of which 6 are ASEAN+1 agreements.	Vietnam has 15 PTAs, out of which 6 are ASEAN+1 agreements.	Indonesia has 12 PTAs, out of which 6 are ASEAN+1 agreements
<b>Structure</b>	All the PTAs refer to the WTO SPS Agreement, and largely contain the same rules as the SPS Agreement.	All PTAs refer to the WTO SPS Agreement and are largely based on the same rules as the SPS Agreement.	All PTAs except for Lao-Thailand RTA refer to the WTO SPS Agreement and are largely based on the same rules as the SPS Agreement.	All PTAs refer to the WTO SPS Agreement, and largely contain the same rules as the SPS Agreement.	All PTAs refer to the WTO SPS Agreement. With the exception of Japan-Indonesia, they all contain the same rules as the SPS Agreement.
<b>Standards</b>	All PTAs except for Malaysia-Japan recognize the principle of equivalence.		While the language is weak, Thailand-Australia PTA requires the parties to endeavor towards harmonization of SPS measures and other agricultural and food standards and the creation of regional standards.		Most of Indonesia's PTAs, with the exception of EFTA-Indonesia, recognize the principle of equivalence.
<b>Audit/Control Inspections</b>	Audit and control provisions are generally absent from most of Malaysia's RTAs with the exception of India-Malaysia. The right of the importing party to audit the exporting party's competent authority is specifically provided in only in the India-Malaysia and New Zealand-Malaysia RTAs.	The Philippines-EFTA PTA contains detailed provisions on import checks, certificates, and inspection systems.	Thailand-Australia RTA is the only agreement containing a provision of control and inspection. Almost all agreements, except for Lao-Thailand RTA contain either a transparency or exchange of information provision.	Audit and inspection provisions are present in EEU-Vietnam PTA. The agreement also contains a provision on "documents confirming safety," under which parties may also develop bilateral documents for confirming the safety of specific products.	Audit and inspection provisions are present in RCEP and EFTA-Indonesia. The EFTA-Indonesia CEPA and RCEP contains detailed provisions on import checks, specified standards to be followed during import inspection, among others.
<b>Transparency requirements</b>	The duty to translate the document into the language of the other party is provided under Malaysia-Australia and India-Malaysia PTAs.	All adopted SPS regulations need to be published and available on the internet in the Philippines-EFTA PTA. While the Japan-Philippines PTA does not establish an SPS contact/enquiry points, the PTA with EFTA does establish them.	The obligation to notify prior to the entry into force of a new standard is present in Thailand-Australia. Thailand-Australia PTA establishes an expert group that acts as a consultative forum to strengthen cooperation.	All PTAs include a provision on either transparency or exchange of information.	RCEP, AFTA and ASEAN-China FTA contain deep transparency provisions, as they include provisions on notifying the other party prior to the entry into force of a new standard and provide a specified time period for comments.
<b>Institutions</b>	Chile-Malaysia is the only agreement which establishes a body for administering the agreement.  Recourse to dispute settlement for SPS claims is not allowed in Japan-Malaysia, Malaysia-Australia, Pakistan-Malaysia, and Turkey-Malaysia.		Recourse to dispute settlement for SPS claims is not possible in Thailand-Australia.	Recourse to dispute settlement for claims arising under the SPS Agreement is disallowed in Japan-Vietnam, and Korea-Vietnam.	Most of Indonesia's PTAs establish an SPS Committee.  Recourse to dispute settlement is disallowed in the case of Indonesia-Australia, RCEP, in addition to a few ASEAN+1 agreements.

Similarly, table 2-21 provides an illustration on the main observations of the comparative analysis of SPS commitments of one of Indonesia's agreements, the CPTPP with the agreement between Vietnam and the EU. with comparator countries.

Table 2-21: Overview of two comparator agreements: the CPTPP and EU-Vietnam

	CPTPP	EU-Vietnam FTA
<b>General Observations</b>	The CPTPP SPS Agreement is one of the most advanced SPS Agreements.	EU – Vietnam is important, given that it is the second comprehensive trade agreement between an ASEAN Member State and the EU. Thus, it could serve as a model for Indonesia as it is negotiating an RTA with the EU. That said, it appears that negotiations for the SPS Chapter have been finalized.
<b>Structure</b>	<p>The CPTPP entered into force in December 2018. Its members include Canada, Australia, Brunei Darussalam, Chile, Japan, Mexico, Peru, New Zealand, Singapore, Malaysia, Vietnam and Singapore.</p> <p>The CPTPP has a Chapter on SPS measures, which comprises 18 different provisions and is 16 pages in length</p>	<p>The EU-Vietnam FTA entered into force in August 2020, between Vietnam and the EU.</p> <p>Chapter 6 sets out provisions on SPS measures. The Chapter has 15 provisions</p>
<b>Standards</b>	<ul style="list-style-type: none"> <li>• It has detailed provisions on regionalization comparable to RCEP</li> <li>• It likewise has detailed provisions on equivalence that go beyond the WTO and are compatible to the provisions in RCEP.</li> </ul>	<ul style="list-style-type: none"> <li>• The Agreement provides provisions on procedures for listing of establishments.</li> <li>• There are detailed equivalence provisions in the Agreement. Notably, it provides a timeframe of 3 months in which an equivalence request must be considered. It also includes provisions on how to address multiple requests of equivalence from the exporting party.</li> <li>• It provides specific provisions on compartmentalization to be applied in situations linked to animal or plant health. It provides additional guidance on what to consider when determining pest-free areas.</li> </ul>
<b>Risk Assessment</b>	<ul style="list-style-type: none"> <li>• In contrast to most of Indonesia's PTAs, it contains harmonization provisions, noting that each party shall ensure that its SPS measures "either conform to the relevant international standards, guidelines or recommendations" or that they are based on a risk assessment.</li> <li>• It provides additional guidance on how to conduct a risk assessment, noting that the parties shall ensure that each risk assessment is appropriate to the circumstances and takes into account "reasonably available and relevant scientific data" including qualitative and quantitative information.</li> <li>• Similar to RCEP, it focuses on the importance of selecting a risk management option that takes into account technical and economic feasibility.</li> </ul>	N/A
<b>Audit/Control Inspections</b>	<ul style="list-style-type: none"> <li>• The CPTPP has detailed provisions on both audits and import checks. It establishes that Parties have the right to audit the exporting Party's competent authorities. It also notes that the audited Party must be given the opportunity to comment on the findings of the audit. It also includes provisions regarding the cost of the audit.</li> <li>• Regarding import checks, it contains a large number of provisions, that explain what the Parties can and cannot do. For example, the importing party shall, on request, provide information about the analytical methods, quality controls, sampling procedures and facilities that the importing Party uses to test a good. It further notes that the importing party shall maintain physical or electronic documentation regarding the identification, collection, sampling, and storage of test samples.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a detailed section on import requirements and procedures. It notes that each party shall only adopted measures that are scientifically justified, consistent with the risk involved and result in minimum impediment to trade.</li> <li>• It also established the right of the importing party to carry out import checks associated with SPS imports.</li> <li>• It further establishes the right of the importer to carry out verifications visits and provides detail on how such visits must take place.</li> <li>• It also contains a provision setting out a procedure for the listing of establishments.</li> </ul>
<b>Transparency requirements</b>	<ul style="list-style-type: none"> <li>• There are a large number of transparency provisions in the CPTPP, focusing on notification of SPS measures, a period to comment from the other Party and other typical transparency provisions. It encourages parties to publish its SPS measures preferably by electronic means, and aims for a 6-month period between the publication of a measure and the date it enters into effect.</li> </ul>	<ul style="list-style-type: none"> <li>• The EU-Vietnam SPS Chapter requires that the Parties exchange information on matters related to the development and application of SPS measures, including progress on new scientific evidence that is relevant.</li> </ul>
<b>Institutions</b>	<ul style="list-style-type: none"> <li>• It also notes that when matters arise under the agreement they are encouraged to be resolved through administrative procedures that the other party's competent authority have available. In a situation where recourse to administrative procedures does not resolve anything, Parties may have recourse to Cooperative Technical Consultations.</li> </ul>	<ul style="list-style-type: none"> <li>• It provides for the establishment of a Special SPS Committee, which can propose the establishment of working groups which shall identify and address technical and scientific issues relevant to SPS measures.</li> <li>• Parties have recourse to dispute settlement</li> </ul>
<b>Further cooperation</b>	<ul style="list-style-type: none"> <li>• In contrast to RCEP, dispute settlement applies to the SPS Agreement.</li> <li>• CPTPP contains a cooperation provision noting that the Parties shall explore opportunities for further cooperation on SPS-related matters. It also contains a provision to further the exchange of information between the parties.</li> <li>• There is a provision on certification, that is more detailed than RCEP and EFTA-Indonesia. For example, it requires that an importing party shall limit attestations and information on the certification to essential information that is related to SPS objectives of the importing party.</li> <li>• There is also a provision highlighting cooperation to develop model certificates to accompany specific goods traded between the Parties, and a provision that sets out that Parties shall promote electronic certification.</li> </ul>	N/A

### 2.3.3 Investment

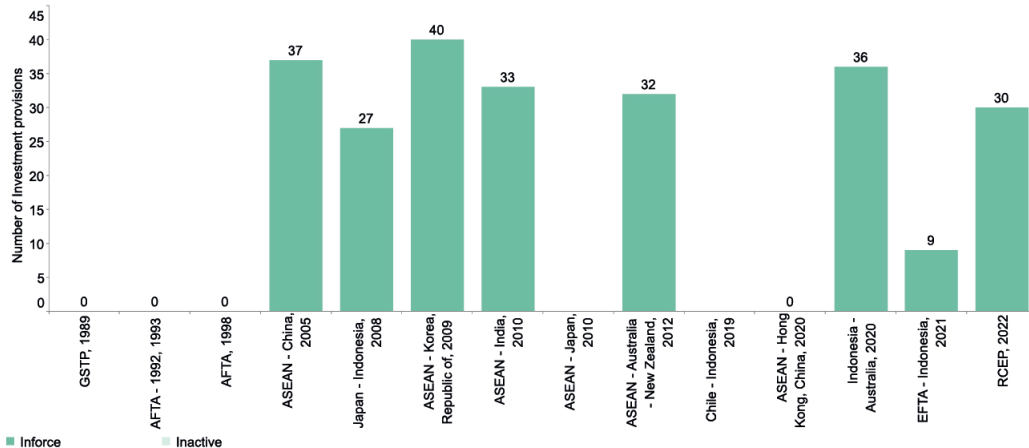
The overall objective of this vertical benchmarking exercise on Investment is to provide the focus country with a deeper understanding of the substantive and procedural commitments made with respect to investment-related measures in its PTAs. The vertical analysis and benchmarking for investment has three components: (i) providing an overview of the country's investment commitments across PTAs; (ii) carrying out an analysis of specific investment provisions the country's PTAs; and (iii) engaging in a benchmarking analysis that seeks to better understand how the country's investment commitments compare to the benchmarking countries' investment commitments. This analysis would enable policymakers to identify trends and patterns in the use of PTAs to regulate investment and also identify the impact of its approach on investment protection and liberalization. Components 1 and 2 correspond to step 4 of the methodology set out in Section II, and component 3 to section 5 of the methodology.

#### 2.3.3.1 Overview of a Country's Investment Commitments across PTAs

This section focuses on the investment provisions set out in the country's PTAs and provides an assessment of the evolution of the coverage of investment provisions across all its PTAs. This provides a broad understanding of how the number of investment-related provisions have varied across time in different PTAs, indicating the trends and the depth of commitments undertaken. It should specifically include the following information:

1. Identify the number of PTAs of the country that contain investment chapters.<sup>56</sup>
  2. Map the number of investment provisions in each of the PTAs and represent them graphically.<sup>57</sup>
- Figure 2-4 shows the number of investment provisions in Indonesia's PTAs represented graphically.

**Figure 2-4: Evolution of Number of investment provisions in Indonesia's PTAs**



Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - Investment

<sup>56</sup> In the case of Indonesia, nine of its PTAs contained investment chapters. These include ASEAN-Australia-New Zealand, ASEAN-China, ASEAN-India, ASEAN-Korea, ASEAN-Japan, Japan-Indonesia, Australia-Indonesia, RCEP, and Indonesia-EFTA.

<sup>57</sup> This analysis, while included in the general introduction section, can be finalized once the entire benchmarking exercise for all the PTAs is completed. The 'number of provisions' refers to the questions raised by the World Bank's study and counts those questions that were answered positively.



### 2.3.3.2 Analysis of Specific Investment Provisions in the Country's PTAs

The chapter on Investment in the Handbook of Deep Trade Agreement provides an "Investment Reference Paper," which is the basis for benchmarking investment-related provisions in a PTA.<sup>58</sup> It classifies investment commitments into the following five categories: (i) definitions and scope; (ii) investment liberalization; (iii) investment protection; (iv) social and regulatory goals; and (v) institutional aspects and dispute settlement. The benchmarking exercise is only applicable to provisions in the investment chapter of PTAs and not standalone agreements such as Bilateral Investment Treaties. The objective of the exercise is to map and analyze the investment chapters in PTAs to which the country is a party. The section aims to comprehensively understand how the country's PTAs provide for investment protection and liberalization on the one hand and retain policy space to pursue social and regulatory goals on the other. This would provide the focus country with a complete picture in order to discern the trends with respect to its commitments on investment. The Note should proceed to analyze the investment provisions in each of the country's PTAs for all the identified categories and corresponding questions in the Investment Reference Paper. The Investment Reference Paper contains detailed explanations of the scope and meaning of each of the questions to be coded under the above-mentioned categories that should therefore be used throughout the coding exercise. The analysis under each of the categories should be structured as follows:

- A brief summary of the overall objectives and implications of the questions coded in the category followed by a detailed review and analysis of the country's commitments in its PTAs. In this regard, the Note should attempt to highlight any potential differences and similarities in approach between PTAs to provide a holistic view;
- Supporting Table containing the coding for all the relevant questions listed in the Investment Reference Paper for the relevant category mapped for each of the PTAs under consideration. As previously noted, the responses to the questions are coded as 'Yes/No' in keeping with the overall approach of the Deep Integration project. This coding is primarily based on the text of the Investment chapters of the PTAs. It is recommended that the coding for a question is done pursuant to reading all the provisions and related annexes.

The methodology and approach to be adopted for each of the categories in the Investment Reference Paper is provided below along with illustrations of coding and examples on how to structure the analysis.

#### (i) Definitions and Scope

##### Explanation of Coding

This category delineates the nature and scope of protections offered by the investment chapter of the PTA. The questions related to the definition of "investment" determine which type of assets or enterprises are eligible to receive the protection granted and potentially shape investors' access to each others markets.<sup>59</sup> The broadest definition parties can adopt is the asset-based definition, which covers not only capital or resources that have crossed the borders to create an enterprise, but also other types of assets. By contrast, the enterprise-based definition is narrower, as it focuses only on investment as the establishment or acquisition of an enterprise in the host state.<sup>60</sup> PTAs also define investments based on "commercial presence" which includes any type of business establishment,

<sup>58</sup> Crawford, J.-A., & Kotschwar, B. (2020).

<sup>59</sup> Supra Note 63, p. 147.

<sup>60</sup> IISD, "A Sustainability Toolkit for Trade Negotiators: Trade and Investment vehicles for achieving the 2030 Sustainable Development Agenda". Available at: <https://www.iisd.org/toolkits/sustainability-toolkit-for-trade-negotiators/5-investment-provisions/5-2-definition-of-investment/>.

including through a juridical person and creation of a branch, for the purpose of performing economic activity. The scope of investment covered under this term is narrower compared to the asset-based definition, but akin to the enterprise definition.

The questions relation to the definition of “investor” determines who has access to the rights and protections accorded in the PTA. Most PTAs generally include both “juridical” persons and “natural” persons within the definition of an “investor”. Essentially, only investors who are nationals of the PTA contracting parties are eligible to seek treaty protection under the agreement. The scope of the definition of “investor” can be circumscribed in several ways such as limiting those of dual nationality to be exclusively a national of their dominant and effective nationality or by mandating entities to engage in “substantial business activities” or “real economic activity”. Finally, the scope of the investment chapter is ascertained through questions pertaining to inclusion or denial of benefits to certain parties (such as prohibiting third country nationals’ access to the protections) and related issues.

Illustrations of coding:

- *Definition of investment*: The RCEP agreement was coded as ‘Yes’ for an asset-based definition of investment as Article 10.1, paragraph (c) defined investment as every kind of asset that an investor owns or controls, including shares, stocks, bonds, rights under contract, among others. On the other hand, the Indonesia-EFTA agreement was coded as ‘Yes’ for the question pertaining to whether the agreement used the definition of a commercial presence. In this case, Article 4.2, paragraph (d) defined the term “commercial presence” to mean any type of business establishment including through a juridical person and creation of a branch for the purpose of performing economic activity.
- *Definition of investor*: The Australia-Indonesia agreement was coded as ‘Yes’ for whether the agreement contained a definition of investor as Article 14.1 defined “investor” as a natural person or an enterprise of a party that seeks to make, is making, or has made an investment. Further, the terms ‘natural person’ and ‘enterprise’ are further defined in Article 1.4 of the agreement. However, in response to the question of whether the definition limited the scope of the term “investor” or “juridical/natural persons” to entities engaging in “substantial business activities” or similar terms such as “real economic activity”, the coding was noted as ‘No’. While such a limitation existed, it was present in the Denial of Benefits clause (which is coded separately) but not in the context of the definition.<sup>61</sup>
- *Scope of the treaty*: One of the questions in this part is whether the agreement contains provisions in case the investment changes form. This was coded as ‘Yes’ for the ASEAN-Japan agreement as the definition of “investment” also states “a change in the form in which assets are invested does not affect their character as investments”.

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country’s PTAs with regards to the different questions on the definition of investor, investment, and scope of the investment chapter (see Table 2-22); (iii) add relevant detail that cannot be surmised from the table. This could include highlighting, for instance, the extent of overlap or the difference between an “enterprise-based” definition in a PTA as compared to the “asset-based” definition in another PTA, and whether the denial of benefits clause contains any further explanation of what constitutes “substantial business activity”.

<sup>61</sup> Denial of Benefits provision under Article 14.13 of the Australia-Indonesia agreement provides that a party may deny benefits if the enterprise has no substantive business activities in the territory of the other party.

Table 2-22: Definition and scope of investment chapters, Indonesia PTAs

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Does the agreement contain a denial-of-benefits provision?	No	No	No	Yes	Yes	Yes	Yes		Yes	No	Yes	No	Yes	
Does the agreement contain provisions in case investment changes form?	No	No	No	Yes	Yes	Yes	Yes		Yes	No	Yes	No	Yes	
Does the agreement cover both national and subnational levels?	No	No	No	Yes	No	Yes	Yes		Yes	No	Yes	No	Yes	
Does the agreement include a definition of "investor"?	No	No	No	Yes	Yes	Yes	Yes		Yes	No	Yes	No	Yes	
Does the agreement use a broad, Asset-based definition of investment (ie the type of definition found in most BITs, in which investm.	No	No	No	Yes	No	Yes	Yes		Yes	No	No	No	Yes	
Does the agreement use a definition of investment based on "commercial presence"?	No	No	No	No	No	No	No		No	No	No	Yes	No	
Does the agreement use a definition of investment that combines elements of both the "asset based" and "enterprise based" definiti..	No	No	No	No	Yes	No	No		No	No	Yes	No	No	
Does the agreement use an "enterprise-based" definition of investment, that applies only to a business or professional establishment in whic.	No	No	No	No	No	No	No		No	No	No	No	No	
Does the definition limit the scope of the term "investor" or "juridical/natural person" to entities engaging in "substantial business act.	No	No	No	Yes	No	No	No		No	No	No	No	No	
Does the definition of investment exclude portfolio investment?	No	No	No	No	No	No	No		No	No	No	Yes	No	
Does the definition of investor cover permanent residents or those who have a "right of abode" (or other similar rights)?	No	No	No	Yes	No	Yes	No		Yes	No	Yes	No	Yes	
Does the definition of investor limit those of dual nationality to be exclusively a national or his or her dominant and effective nationality?	No	No	No	No	No	No	No		No	No	No	No	No	

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - Investment

## (ii) Investment Liberalization

### Explanation of Coding

This category captures obligations in investment chapters to liberalize regulatory regimes with respect to foreign investment.<sup>62</sup> For instance, the question on national treatment and MFN determines if protection is extended to the establishment/acquisition phase of the investment. Prohibition on performance requirements, i.e., regulatory conditions imposed by host States that require investors to achieve certain economic or social goals related to their investment<sup>63</sup>, and the ability of the investors to appoint senior management positions further highlight potential restrictions on foreign investment.

Finally, questions related to scheduling commitments (whether a positive-list or negative-list approach is adopted) indicates the overall objective of liberalization of investment. Under a positive-list approach, countries list the sectors and sub-sectors in which they wish to undertake liberalization commitments. This gives countries the policy space and advantage to curate their obligations with respect to selected sectors. By

<sup>62</sup> Supra Note 63, p. 150.

<sup>63</sup> Jus Mundi, Performance Requirements.

contrast, the negative list involves countries agreeing on a general set of obligations and listing all measures to which such obligations do not apply. Typically, the negative list approach is used when parties have ambitious liberalization commitments, whereas the positive-list approach is used when parties seek less liberalization. However, the content of the scheduling would ultimately determine the level of liberalization.

Illustrations of coding:

- *National Treatment*: The ASEAN-Japan agreement was coded as ‘Yes’ for whether the agreement provided for national treatment in the establishment/acquisition phase of the investment. This was so because Article 51.3 of the agreement provides for national treatment with respect to establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
- *Most-favored Nation Treatment*: In response to the question of whether the agreement provided MFN treatment for the establishment/acquisition phase, the Indonesia-EFTA agreement was coded as ‘No’ as it did not contain any such provision. On the other hand, the RCEP Agreement was coded as ‘Yes’ for this question as Article 10.4 provided that MFN treatment must be accorded to investors and their investment with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investment.
- *Performance requirements*: Most of Indonesia’s agreements contained a provision on the prohibition of the use of performance requirements. For instance, see Article 51.5 of ASEAN-Japan agreement, Article 14.6 of Australia-Indonesia agreement, Article 10.6 of RCEP agreement. By contrast, the Indonesia-EFTA agreement did not contain any such provision and was accordingly coded as ‘No’.
- *Senior Management/Boards*: The question in this context is whether the investment chapter allows covered investors to make appointments to senior management positions and/or and members of the board of directors without regard to nationality. The ASEAN-Japan agreement was coded as ‘Yes’ as Article 51.6, paragraph 1 provides that appointment to senior management positions can be without regard to nationality.<sup>64</sup>
- *Scheduling and Reservations*: Most of Indonesia’s PTAs follow a negative list approach to scheduling investment commitments. Indonesia-EFTA CETA appears to be the only agreement to follow the positive list approach.<sup>65</sup>

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions (ii) include a table with the scoring of the country’s PTAs with regards to the different questions on investment liberalization (see Table 2-23); (iii) add relevant detail that cannot be surmised from the table. This could include highlighting how certain PTAs delineate the contours of MFN treatment by specifying whether it applies to dispute resolution procedures or only to substantive provisions. The Note could also expound on the types of performance requirements that are prohibited by the PTA such as export of a certain percentage, transfer of particular technology, among others.

<sup>64</sup> Article 51.6, paragraph 2 of the agreement further provides that a party may require that majority of the members of the board of directors etc may be of a particular nationality “provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.” Such provisions are usually common in Indonesia’s PTAs.

<sup>65</sup> See Article 4.5 of Indonesia-EFTA agreement.

Table 2-23: Provisions related to investment liberalization, Indonesian PTAs

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Does the agreement grant exceptions to the MFN clause?	No	No	No	Yes	No	Yes	No	No	No	No	Yes	No	Yes	
Does the agreement provide for national treatment in the establishment/acquisition phase of the investment?	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	
Does the agreement provide most-favored-nation (MFN) treatment for the establishment/acquisition phase of the agreement?	No	No	No	Yes	Yes	Yes	No	No	No	No	Yes	No	Yes	
Does the investment chapter contain a provision that entitles covered investors to make appointments to senior management positions and/or ..	No	No	No	No	No	Yes	No	No	No	No	Yes	Yes	Yes	
Does the investment chapter guarantee that if another international treaty, to which the Contracting States are parties, or nat..	No	No	No	Yes	No	Yes	No	No	No	No	No	No	No	
Does the investment chapter prohibit or limit the use of performance requirements?	No	No	No	No	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	
Does the investment chapter take a negative-list approach to commitments?	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	
Does the investment chapter take a positive-list approach to commitments?	No	No	No	No	No	No	No	No	No	No	No	Yes	No	

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - Investment

### (iii) Investment Protection

#### Explanation of Coding

This section deals with disciplines that “afford investors explicit protection of their investments and recourse in case such investments are expropriated or otherwise compromised by the host state”.<sup>66</sup> In this context, the benchmarking exercise contains a number of questions related to fair and equitable treatment (FET), expropriation and compensation, protection in case of armed conflict, umbrella clauses and subrogation. In particular, the FET-related questions focus on whether such treatment is granted, and more detailed information such as whether it refers to customary international law, denial of justice, among others. The expropriation-related questions focus on whether the PTA covers direct and indirect expropriation, carve-outs for compulsory licenses, subsidies or general regulatory measures to protect public welfare. These questions have a bearing on how such provisions are interpreted by a tribunal as the specific wording of the agreement, its context and the parties’ negotiating history may influence such analysis.

<sup>66</sup> Supra Note 63, p. 151.

Illustrations of coding:

- *FET*: In response to whether the agreement grants FET and expressly includes a reference to denial and justice in this context, the RCEP Agreement was coded as 'Yes' as Article 10.5 grants FET and paragraph 2(a) further requires each party not to deny justice in any legal or administrative proceedings. Further, the RCEP Agreement was coded as 'Yes' for reference to customary international law as Article 10.5, paragraph 1, 2(c) and Annex 10-A make such a reference. In this regard, it provides that the concept of FET is to be understood in accordance with the customary international law minimum standard of treatment of aliens, and Annex 10-A further confirms the understanding of customary international law as resulting from a general and consistent practice of States that they follow from a sense of legal obligation.
- *Expropriation and compensation*: The questions pertaining to whether the agreement covers direct or indirect investment can be coded based on the language of the agreement.<sup>67</sup> In response to whether the agreement contains a carve-out for compulsory licenses, the ASEAN-Japan agreement was coded as 'Yes' as Article 51.9, paragraph 6 states that the provision on expropriation and compensation does not apply to issuance of compulsory licenses concerning intellectual property rights in accordance with the TRIPS Agreement. On whether there is a carve-out for general regulatory measures, the RCEP agreement was coded as 'Yes' as Annex 10B, paragraph 4 provides that non-discriminatory regulatory action designed and applied to achieve legitimate public welfare objectives such as the protection of public health, safety and environment do not constitute indirect expropriation.
- *Protection in case of armed conflict of strife*: The RCEP agreement was coded as 'Yes' for protection in case of armed conflict as Article 10.11 obligated parties to provide NT and MFN treatment with respect to measures relating to losses suffered by investments owing to armed conflict, civil strife, or state of emergency. On the other hand, since the Indonesia-EFTA agreement did not contain any such provision, it was coded as 'No'.

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs with regards to the different questions on investment protection (see Table 2-24 and Table 2-25); (iii) add relevant detail that cannot be surmised from the table. In the context of national treatment, this could include reference to provisions that clarify the meaning of "likeness". With regards to FET, the Note could include further information on whether the reference to customary international law is further qualified by any other explanations, and the extent of policy space available in the nature of carve-outs from expropriation-related obligations.

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<sup>67</sup> For instance, see Article 14.11 and Annex 14-B, paragraph 2(a) and 2(b) of Australia-Indonesia agreement.

Table 2-24: National treatment and minimum standard of treatment provisions, Indonesia PTAs

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Does the agreement cover the post-establishment phase of the investment?	No	No	No	Yes	Yes	Yes	Yes		Yes		No	Yes	Yes	Yes
Does the agreement grant Fair and Equitable Treatment (FET)?	No	No	No	Yes	Yes	Yes	Yes		Yes		No	Yes	No	Yes
Does the agreement provide MFN treatment in the post-establishment phase of the investment?	No	No	No	Yes	Yes	Yes	No		No		No	Yes	No	Yes
Does the FET clause expressly include a reference to a denial of justice?	No	No	No	Yes	No	Yes	Yes		Yes		No	Yes	No	Yes
Does the FET clause include an explicit clarification that the breach of another provision in the PTA or a breach of another international agreement by a..	No	No	No	Yes	No	Yes	Yes		Yes		No	Yes	No	Yes
Does the FET clause prohibit arbitrary, unreasonable or discriminatory measures?	No	No	No	No	No	No	No		No		No	No	No	No
Does the FET clause provide that the finding of an FET violation must take into account the level of development of the host country?	No	No	No	No	No	No	No		No		No	No	No	No
Does the FET clause reference customary international law?	No	No	No	No	No	Yes	Yes		Yes		No	Yes	No	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - Investment

Table 2-25: Expropriation, protection in case of armed conflict, umbrella clause and subrogation provisions, Indonesia PTAs

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Does the clause on protection in case of armed conflict or strife provide for compensation?	No	No	No	Yes	Yes	Yes	Yes		Yes		No	Yes	No	Yes
Does the clause on protection in case of armed conflict or strife provide for MFN treatment?	No	No	No	Yes	Yes	Yes	Yes		Yes		No	Yes	No	Yes
Does the clause on protection in case of armed conflict or strife provide for national treatment?	No	No	No	Yes	Yes	Yes	Yes		Yes		No	Yes	No	Yes
Does the clause on protection in case of armed conflict or strife provide for the transfer of funds?	No	No	No	Yes	Yes	Yes	Yes		Yes		No	Yes	No	Yes
Does the investment chapter cover direct expropriation?	No	No	No	Yes	Yes	Yes	Yes		Yes		No	Yes	No	Yes
Does the investment chapter cover indirect expropriation?	No	No	No	Yes	Yes	Yes	Yes		Yes		No	Yes	No	Yes
Does the provision on expropriation and compensation allow for a carve-out for compulsory licenses?	No	No	No	Yes	No	Yes	Yes		Yes		No	Yes	No	Yes
and compensation allow for a carve-out for general regulatory measures to protect legitimate public..	No	No	No	Yes	Yes	Yes	Yes		Yes		No	Yes	No	Yes
Does the provision on expropriation and compensation allow for a carve-out for subsidies?	No	No	No	Yes	No	Yes	Yes		No		No	No	No	No

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - Investment

## (iv) Social and Regulatory Goals

### Explanation of Coding

This section concerns the flexibilities incorporated for public policy through provisions or references to the protection of the environment, labour principles and human rights, compliance with corporate social responsibility standards, sustainable development, among others. In other words, these provisions are important from the perspective of the host state's ability to pursue legitimate policy objectives.<sup>68</sup>

Illustrations of coding:

- *Right to regulate*: The question in this context is whether the investment chapter reference the "right to regulate". The RCEP agreement was coded as 'No' as the investment chapter does not contain any general right to regulate or a general exceptions clause.<sup>69</sup> On the other hand, the Indonesia-EFTA agreement was coded as 'Yes' for this question as Article 4.8 provides that the right to regulate allows parties to adopt measures in public interest, such as measures to meet health, safety and environment concerns.
- *References to human rights, corporate social responsibility, sustainable development, among others*: Indonesia's PTAs generally do not contain such references in its investment chapters. However, there are a few exceptions. For instance, the Australia-Indonesia agreement was coded as 'Yes' for corporate social responsibility as Article 14.17 reaffirms the importance of encouraging enterprises to incorporate corporate social responsibility principles that have been endorsed by the party.

### Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs with regards to the different questions on social and regulatory goals (see Table 2-26); (iii) add relevant detail that cannot be surmised from the table. This could include highlighting whether the provisions on the right to regulate are self-judging or subject to review by a dispute settlement panel, and the nature of obligations – whether mandatory or hortatory – in the context of enterprises incorporating corporate social responsibility principles. The Note could also include further information on the nature of technical cooperation and capacity building that parties may have agreed to.

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<sup>68</sup> Supra Note 63, p. 152.

<sup>69</sup> While the agreement contains a security exception provision in Article 10.15, this does not refer the general right to regulate.



Table 2-26: Social and regulatory goals in investment chapters, Indonesia PTAs

Provision	GSTP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Does the investment chapter contain a reference to labor?	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No
Does the investment chapter include a commitment on capacity building?	No	No	No	No	No	Yes	Yes	No	No	No	No	No	No	No
Does the investment chapter include a commitment on technical cooperation?	No	No	No	Yes	No	No	Yes	No	No	No	No	No	No	No
Does the investment chapter refer corporate social responsibility?	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No
Does the investment chapter refer to corruption?	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No
Does the investment chapter refer to protection of human rights?	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Does the investment chapter refer to protection of the environment?	No	No	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	No
Does the investment chapter refer to sustainable development?	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Does the investment chapter reference the "right to regulate"?	No	No	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	No

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - Investment

## (v) Institutional Aspects and Dispute Settlement

### Explanation of Coding

This final category includes a set of questions aimed at identifying the type of measures that ensure transparency in the administration of investment provisions and the provision for either investor-state or state-to-state dispute settlement mechanism.<sup>70</sup>

Illustrations of coding:

- *Transparency*: In response to whether the investment chapters include commitments for prior comments, the ASEAN-Japan agreement was coded as 'Yes' as Article 51.8 provides that the parties endeavor to provide reasonable opportunity for comments by the public before adoption of the regulations. On the other hand, the RCEP agreement contained no such provisions and was accordingly coded as 'No'.

- *Dispute Settlement*: Agreements such as ASEAN-Japan (Article 51.13) and Australia-Indonesia (Section B, Articles 14.19-14.35) were coded as 'Yes' for investor-state dispute settlement mechanism as they provided for resolution of disputes through this means. In the case of RCEP, Article 10.18 notes that it has yet to discuss the inclusion of any investor-state provision.

<sup>70</sup> Supra Note 63, p. 153.

## Elements to Include in the Note

The Note should focus on three elements: (i) explain what is being coded and highlight relevant definitions; (ii) include a table with the scoring of the country's PTAs with regards to the different questions on institutional and dispute settlement provisions (see Table 2-27); (iii) add relevant detail that cannot be surmised from the table. This could include highlighting whether the PTA provides a sequential process or defines the scope of matters that may be raised in cases where both state-state dispute settlement and ISDS provisions are present. Further information could also be included on how the consultations process should take place, and the nature of obligations with respect to transparency provisions.

**Table 2-27: Institutional and dispute settlement provisions, Indonesia PTAs**

Provision	GSP, 1989	AFTA - 1992, 1993	AFTA, 1998	ASEAN - China, 2005	Japan - Indonesia, 2008	ASEAN - Korea, Republic of, 2009	ASEAN - India, 2010	ASEAN - Japan, 2010	ASEAN - Australia - New Zealand, 2012	Chile - Indonesia, 2019	ASEAN - Hong Kong, China, 2020	Indonesia - Australia, 2020	EFTA - Indonesia, 2021	RCEP, 2022
Does the investment chapter establish a committee or another type of institutional framework?	No	No	No	No	Yes	Yes	Yes		Yes	No	Yes	No	No	No
Does the investment chapter establish national inquiry points?	No	No	No	Yes	Yes	Yes	Yes		Yes	No	No	No	No	Yes
Does the investment chapter include a consultation mechanism?	No	No	No	Yes	Yes	Yes	Yes		Yes	No	Yes	No	No	No
Does the investment chapter include a mechanism for the settlement of dispute settlement covered investors and the host State (ISDS)?	No	No	No	Yes	Yes	Yes	Yes		Yes	No	Yes	No	No	No
Does the investment chapter include a state to state mechanism for dispute settlement (e.g. arbitration) between the contracting parties	No	No	No	Yes	Yes	Yes	Yes		Yes	No	No	No	No	No
Does the investment chapter include an agreement to publish laws, regulations, and investment policies that affect investment?	No	No	No	Yes	No	Yes	Yes		Yes	No	No	No	No	No
Does the investment chapter include commitments for prior comment?	No	No	No	Yes	No	Yes	Yes		Yes	No	No	No	No	No

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - Investment

### 2.3.3.3 Investment Benchmarking Analysis

Having completed an analysis of investment commitments in a country's PTAs, the next step of the analysis is to ascertain how the country's PTAs compare with the comparator countries PTAs. This enables the country to identify challenges and opportunities, while drawing lessons from the experience of other countries. As mentioned in Section 2.2, there are two possible approaches for the benchmarking: one that proceeds country by country and another that focuses on relevant plurilateral agreements considered as best practices models in terms of international commitments. For each of these approaches, the categories identified by the Handbook of Deep Trade Agreements could broadly be used as a basis for drafting the comparator country analysis.

In terms of presentation, the analysis could either:

- Focus on specific Investment categories and provide a tabular representation of the commitments for a set of agreements of the country of interest and the comparator countries/agreements.

An illustration of the comparison of the Social and regulatory goals in investment chapters, between selected agreements for Indonesia and selected comparator agreements is provided in table 2-28.

**Table 2-28: Social and regulatory goals in investment chapters: comparison between Indonesia and comparator agreements**

Provision	RCEP, 2022	CPTPP, 2018
Does the investment chapter contain a reference to labor?	No	No
Does the investment chapter include a commitment on capacity building?	No	No
Does the investment chapter include a commitment on technical cooperation?	No	No
Does the investment chapter refer corporate social responsibility?	No	Yes
Does the investment chapter refer to corruption?	No	No
Does the investment chapter refer to protection of human rights?	No	No
Does the investment chapter refer to protection of the environment?	No	Yes
Does the investment chapter refer to sustainable development?	No	No
Does the investment chapter reference the "right to regulate"?	No	Yes

Source: DTAs Toolkit - Module 2: Benchmarking of the content of DTA - Vertical Analysis - Investment

- Generate summary tables of the main observations of the comparative analysis, highlighting for instance information of the agreements that include deep commitments across the different Investment categories.

Table 2-29 provides an illustration on the main observations of the comparative analysis of Investment commitments of Indonesia with comparator countries. As can be seen in the table, the observations need not be for each and every PTA that the comparator country has entered into. General observations can be made in terms of the trend of the comparator country. Further, the analysis can specifically highlight those PTAs that seem to include deep commitments. The categories identified by the Handbook of Deep Trade Agreements could broadly be used as a basis for drafting the comparator country analysis. For example, relevant categories that were included in the comparator analysis of investment provisions for Indonesia were general observations, definitions and scope, investment liberalization, investment protection, institutional framework, transparency, and dispute settlement.

Table 2-30 sets out the main observations of the comparative analysis of the CPTPP agreement, which was chosen as a comparator PTAs in the case of Indonesia.

Table 2-29: Overview of comparator countries

	Indonesia	Malaysia	Philippines	Thailand	Vietnam
<b>General Observations</b>	Indonesia has 12 PTAs, out of which 6 are ASEAN+1 agreements.	Malaysia has 16 PTAs, out of which 6 are ASEAN+1 agreements.	Philippines has 11 PTAs, out of which 6 are ASEAN+1 agreements.	Thailand has 14 PTAs, out of which 6 are ASEAN+1 agreements.	Vietnam has 15 PTAs, out of which 6 are ASEAN+1 agreements.
<b>Structure</b>	This chapter has looked into 9 of Indonesia's PTAs that have investment chapters.	There is no specific investment chapter in the Chile agreement, the one with Turkey is not in force and the one with Pakistan has been terminated. Other agreements contain an investment chapter in its PTAs.	The EFTA-Philippines agreement contains very hallow provisions; and not much protection.  Japan-Philippines contains detailed provisions on investment.	Among all of Thailand's PTAs, only the Chile PTA does not contain an investment chapter.	Among Vietnam's PTAs, the Japan PTA does not have a specific investment chapter; and the one with Chile is not in force.
<b>Definition and Scope</b>	The definition in most of Indonesia's investment chapters is asset-based, with a few agreements contained mixed definitions. Indonesia-EFTA limits the scope of the investment chapter to commercial presence.  Only the Indonesia-EFTA agreement does not contain a Denial of Benefits provision.	Mostly asset-based with non-exclusive list; but in Japan, a mix of both; typically, with no requirement of commercial presence; some agreements such as the one with Japan specifically includes portfolio investment.  With respect to the Denial of Benefits clause, most include a requirement of substantial business operations and controlling party must be from the parties; some (India) include the levels of government within different treatment standard provisions (e.g. NT); and allow for change in the form of investment.	Broad asset-based approach with non-exhaustive list.  It defines investor to include both natural and juridical; only nationals (not PRs);  With respect to the Denial of Benefits clause, the agreement with Japan has no substantial business operations requirement; but has a strict rule on controlling party (must not controlled by non-party or denying party)	Mostly broad asset-based approach with non-exhaustive list; some have a mix approach (with Japan), varying by agreements.  Define investor to include both natural and juridical (mostly allow for Permanent Residents but not in the case of Japan); there is usually no substantial business operations requirement in the definition; in Japan Agreement, include a minimum threshold ownership of 10%.  With respect to the Denial of Benefits clause, most include a requirement of substantial business operations and controlling party must be from the parties.	Broad asset-based approach with non-exhaustive list.  Defines investor to include both natural (does not allow Permanent Residents) and juridical person with specifically defined "owned" and "control" terms.  With respect to the Denial of Benefits clause, most include a requirement of substantial business operations and controlling party must be from the parties.
<b>Investment Liberalization</b>	All PTAs include NT in pre-establishment phase.  All PTAs except EFTA-Indonesia includes provisions of prohibition of performance requirements.	Most include NT and MFN for pre-establishment by covering "establishment and acquisition" (Japan, India, NZ) but also in the definition of investor (seeking to make) in Australia.  Typically includes performance requirement prohibitions (some refer to TRIMs provisions - in India and NZ); possible carve out in reservation provisions (e.g. government procurement, subsidies, etc in India, Australia and Japan (Annex).	Pre-establishment protection for investor by defining investor to include "that seeks to make, is making..."; prohibit performance requirement.	Pre-establishment coverage of NT only; reservation: positive list approach; some include performance requirements (e.g. Japan).	Include investment promotion clause; some has no pre-establishment protection standards (Eurasia) while some has (Korea) NT and MFN by covering establishment and acquisition.  Include carve outs on subsidy and includes positive specific commitment (GATS style) in Eurasia; some include prohibition or limitation on performance requirement (Korea).
<b>Investment protection</b>					
<b>National Treatment</b>	Yes	Yes (but exclude portfolio - Japan)	Yes	Yes	Yes
<b>MFN</b>	Yes, except for Indonesia-EFTA.	Yes	Yes	Yes	Yes
<b>FET</b>	All agreements, except for Indonesia-EFTA grant FET; only Japan-Indonesia does not include a specific reference to "denial of justice; majority of the agreements refer to customary international law.	Yes, some with no further clarification (Japan); some with minimum standard of treatment/customary international law definition (India, Aus, NZ); some include explicit reference to denial of justice (Aus, NZ).	FET refers to the customary international law minimum standard of treatment of aliens with no mention of denial of justice.	Typically yes, but with varying standards. Customary international law in Japan; with no clarification in Australia PTA; NZ PTA does not have FET.	Yes; explicitly include no denial of justice (in Eurasia and Korea); and follows customary international law standard (Korea).

<b>Expropriation</b>	Only Indonesia-EFTA does not include any provision on expropriation. Other PTAs cover both direct and indirect expropriation and include a carve-out for compulsory licenses and public welfare goals.	Most include both direct and indirect; with public purpose exception subject to due process and compensation; some (India/NZ) with carve outs on compulsory license.	Both direct and indirect are covered with exception based on public purposes with due process and compensation.	Both direct and indirect; with public purpose exception subject to due process and compensation.	Both direct and indirect; with public purpose exception subject to due process and compensation; some with further clarifications on determining expropriation (in Annex for Korea); with carve outs re: compulsory license; and specific carve outs on compensation on land expropriation for Vietnam (with Korea).
<b>Armed Conflict</b>	Yes, for NT and MFN, including compensation. Only Indonesia-EFTA does not contain such a provision.	Yes, for NT and MFN, including compensation.	Yes, for NT and MFN treatment, including compensation.	Yes; some has only MFN treatment; some include also NT for compensation.	Compensation in case of armed conflict, including MFN and NT protections.
<b>Transfer</b>	General transfer clause to ensure free transfers without delay with specific carve-outs for certain areas (e.g. bankruptcy, insolvency, dealings with securities or derivatives, criminal offenses, etc).	Most include general transfer clause to ensure free transfers without delay with specific carve-outs for certain areas (e.g. bankruptcy, insolvency, dealings with securities or derivatives, criminal offenses, etc), varying by agreements.	General transfer clause to ensure free transfers without delay with specific carve-outs for certain areas (e.g. bankruptcy, insolvency, dealings with securities or derivatives, criminal offenses, etc).	General transfer clause to ensure free transfers without delay with specific carve-outs for certain areas (e.g. bankruptcy, insolvency, dealings with securities or derivatives, criminal offenses, etc), varying by agreements.	General transfer clause some with no specific carve outs; some with specific carve outs (e.g. bankruptcy, insolvency, security, criminal, etc) like in Korea.
<b>Umbrella clause and subrogation</b>	Present in only two agreements.	No umbrella clause; subrogation clause present.	No umbrella clause; subrogation clause present.	No umbrella clause; typically a subrogation clause present.	No umbrella clause; subrogation clause present.
<b>Social and regulatory goals</b>	Most PTAs include provisions on right to regulate; other provisions such as labor, sustainable development, among others, are generally absent.	Includes general and security exception clause (India); GATT XX-style exception (Australia); environmental measures (Japan, NZ).	Recognition of the right to regulate (in expropriation provision, for e.g.); specific clause relating to environmental measures – protect the environmental measures (no derogation); specific reference also to labor; also include a general exception provision (GATT XX style).	Typically no – except set as exception to expropriation (NZ FTA); Japan includes environmental measures.	Typically no – except set as exception (public purpose) in expropriation provision.
<b>Technical cooperation and capacity building</b>	Mostly no.	Mostly no; except Australia and NZ – investment promotion and facilitation including exchange of info and joint investment promotion activities and tech cooperation.	No.	Yes.	No.
<b>Institutional framework</b>	Institutional framework generally present.	Some has no such framework (India); Japan has a sub-committee on investment, and entrusting the FTA Joint commission in Australia; Committee on Investment in NZ.	Sub-committee on investment present.	Typically no; except in Japan agreement.	No.
<b>Transparency</b>	Mostly no.	Mostly no; except NZ for dispute settlement.	No transparency clause.	Typically no; except in Japan agreement.	No.
<b>State-State Dispute Settlement</b>	Yes, five PTAs provide for state-to-state dispute settlement.	Mostly no.	Subject to mutual consent; no Dispute Settlement clause.	Typically no.	Yes, for Eurasia and Korea.
<b>ISDS</b>	Yes. Indonesia-EFTA is the only agreement that does not contain an ISDS provision.	Yes, typically with ICSID and UNCITRAL or any option agreed by the parties; Japan/NZ also include KLRCA.	Subject to mutual consent; no Dispute Settlement clause.	Generally, yes.	Typically, yes.
<b>Consultation</b>	Mostly yes, except for Indonesia-EFTA.	Consultation requirement before initiate dispute.	Subject to mutual consent; no Dispute Settlement clause.	Consultation requirement before initiate dispute.	Consultation requirement before initiate dispute.

Table 2-30: Overview of CPTPP

	CPTPP
<b>Structure</b>	The CPTPP entered into force in December 2018. Its members include: Canada, Australia, Brunei Darussalam, Chile, Japan, Mexico, Peru, New Zealand, Singapore, Malaysia, Vietnam and Singapore. Chapter 9 of the CPTPP deals with 'Investment.' It is to be read with the Annexes that provide further clarifications with respect to certain provisions and its applicability to specific countries.
<b>Definition and Scope</b>	<p>The definition of "investment" combines elements of both asset-based and enterprise-based definitions. The term "investor" is defined to mean a national or investor of a party that attempts to make, is making or has made an investment.</p> <p>In terms of scope, the obligations of the chapter apply to all levels of government and does not bind a party from a situation that ceased to exist before the date of entry into force of the agreement. It also contains a denial of benefit clause tailored around ownership and control, and substantial business activity.</p>
<b>Investment liberalization</b>	<p>Article 9.4 provides National Treatment, whereas Article 9.5 provides MFN treatment to investors and covered investments. This is to be read with the Drafter's Note on the interpretation of "like circumstances". MFN treatment does not include international dispute resolution.</p> <p>Prohibition of performance requirements also includes any undertaking to "transfer a particular technology" and "purchase, use or accord a preference to, in its territory, technology of the Party". Further, appointment to senior management position can be made without regard to nationality.</p>
<b>Investment protection</b>	<p>Article 9.6 accords to investors fair and equitable treatment and full protection and security. FET includes an obligation not to deny justice, and prescribes the customary international law minimum standard of treatment of aliens as the applicable standard. The FET provision also specifically mentions that failure to take action that may be inconsistent with investor's expectations does not constitute a breach of FET.</p> <p>Article 9.7 provides for non-discriminatory treatment in case of armed conflict or civil strife.</p> <p>The provision on expropriation and compensation covers both direct and indirect investment. It carved out the issuance of compulsory licenses in accordance with the WTO TRIPS Agreement. The term "public purpose" in the context of lawful expropriation has been clarified to refer to the concept in customary international law.</p> <p>Annex 9-B provides further clarification on expropriation. In this regard, the Annex states that non-discriminatory regulatory actions designed to protect public welfare objectives do not constitute indirect expropriation. Annex 9-C entitled "expropriation relating to land" contains provisions specific to Singapore and Vietnam in relation to their domestic legislations for the purposes of expropriation.</p> <p>While the investment chapter does not contain an umbrella clause, it contains a subrogation clause in Article 9.13.</p>
<b>Social and Regulatory Goals</b>	<p>Article 9.16 allows a party to adopt or maintain any measure that "it considers appropriate" to ensure that investment activity is sensitive to environmental, health or other regulatory objectives.</p> <p>While the investment chapter does not refer to human rights, labor, sustainable development, and corruption, it contains a provision on corporate social responsibility in Article 9.17.</p> <p>The investment chapter does not contain any provisions on technical cooperation and capacity building.</p>
<b>Institutional framework and transparency</b>	The investment chapter does not provide for the establishment of separate institutional mechanism for monitoring the implementation of the chapter. It also does not contain any transparency-related provisions.
<b>Dispute settlement</b>	Section B of chapter 9 deals with detailed provisions on ISDS, including consultations and negotiations, submission of claims, conduct of the arbitration, transparency in the arbitral proceedings, among others. The chapter does not appear to provide for state-state dispute settlement.

## 2.4 Conclusion

The country benchmarking note should include a final section on concluding remarks. The purpose of the conclusion is to provide the country an assessment of its position with regards to different commitments across the various categories mapped based on the respective Reference Papers. It also assists the country to better understand its position when compared to comparator countries and PTAs enabling it to develop its negotiating positions in future agreements.

The concluding remarks should be carefully drafted to capture the broad overall trends as well as highlight any specific categories of note. It could also be drafted in terms of strengths and weaknesses of different categories. In this context, based on the instructions and guidance of the focus country, the summary could also indicate key gaps and specific policy recommendations. For instance, if the Note highlights that the focus country has adopted fewer trade or investment liberalization commitments, or if existing PTA commitments are shallow, the conclusion could highlight that there exists scope to expand and/or deepen the country's liberalization commitments. It could further include the suggestion that the country of focus conduct an impact assessment study to identify the specific sectors/areas that could benefit from further liberalization with specific markets. Moreover, the conclusion could highlight areas already agreed upon in PTAs that are poorly implemented (for example, the integration on standards and technical regulations); and focus on enforceability and dispute settlement provisions. In essence, the conclusion should provide an overview of a country's own PTA commitments and highlight gaps vis-à-vis comparator country PTAs.

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## Appendix 2.A: List of disciplines coded in Deep Trade Agreements database 1.0 and 2.0

Policy Areas mapped in DTA database 1.0 (horizontal depth)	Description of policy area	Policy areas mapped in DTA database 2.0 (vertical depth)
FTA Industrial	Tariff liberalization on industrial goods	Tariffs preferences
FTA Agriculture	Tariff liberalization on agriculture goods	
Export Restrictions	Regulation of export restrictions	Export Restrictions
Services	Liberalization of trade in services	Services
Trade Related Investment Measures (TRIMs)	Provisions concerning requirements for local content and export performance of FDI	Investment
Investment	Information exchange; Development of legal frameworks; Harmonization and simplification of procedures; National treatment; establishment of mechanism for the settlement of disputes	
Movement of Capital	Liberalization of capital movement; prohibition of new restrictions	Movement of Capital
Trade Related Intellectual Property Rights (TRIPs)	Harmonization of standards; enforcement; national treatment, most-favored nation treatment	Intellectual Property Rights
Intellectual Property Rights	Accession to international treaties not referenced in the TRIPs Agreement	
Visa and Asylum	International movement of persons; exchange of information; drafting legislation; training.	Visa and Asylum
Rules of Origin*	Protocol or chapter in the main agreement detailing and identifying the criteria that test whether a product has PTA nationality and is thus eligible for preferential tariff treatment.	Rules of Origin
Trade Facilitation and Customs	Provision of information; publication on the Internet of new laws and regulations; training	Trade Facilitation and Customs
Anti-dumping (AD)	Retention of Antidumping rights and obligations under the WTO Agreement.	Trade Remedies
Countervailing measures (CVM)	Retention of Countervailing measures rights and obligations under the WTO Agreement.	
Technical Barriers to Trade (TBT)	Affirmation of rights and obligations under WTO Agreement on TBT; provision of information; harmonization of regulations; mutual recognition agreements.	Technical Barriers to Trade (TBT)
Sanitary and Phytosanitary Measures (SPS)	Affirmation of rights and obligations under the WTO Agreement on SPS; harmonization of SPS measures.	Sanitary and Phytosanitary Measures (SPS)
Public Procurement	Progressive liberalization; national treatment and/or non-discrimination principle; publication of laws and regulations on the Internet; specification of public procurement regime.	Public Procurement
Subsidies	Assessment of anticompetitive behavior; annual reporting on the value and distribution of state aid given; provision of information.	Subsidies
State Owned Enterprises (SOE)	Establishment or maintenance of an independent competition authority; nondiscrimination regarding production and marketing condition; provision of information.	State Owned Enterprises (SOE)
Competition Policy	Maintenance of measures to proscribe anticompetitive business conduct; harmonization of competition laws; establishment or maintenance of an independent competition authority.	Competition Policy
Environmental Laws	Development of environmental standards; enforcement of national environmental laws; establishment of sanctions for violation of environmental laws; publications of laws and regulation.	Environmental Laws
Labour Market Regulation	Regulation of the national labour market; affirmation of International Labour Organization (ILO) commitments.	Labour Market Regulation
Anti-Corruption	Regulations concerning criminal offence measures in matters affecting international trade and investment.	Not mapped
Consumer Protection	Harmonization of consumer protection laws; exchange of information and experts; training.	Not mapped
Data Protection	Exchange of information and experts; joint projects.	Not mapped
Agriculture	Technical assistance to conduct modernization projects; exchange of information.	Not mapped
Approximation of Legislation	Application of EC legislation in national legislation	Not mapped
Audio Visual	Promotion of the industry; encouragement of co-production	Not mapped
Civil Protection	Implementation of harmonized rules	Not mapped
Innovation Policies	Participation in framework programs; promotion of technology transfers	Not mapped
Cultural Cooperation	Promotion of joint initiatives and local culture	Not mapped
Economic Policy Dialogue	Exchange of ideas and opinions; joint studies	Not mapped
Education and Training	Measures to improve the general level of education	Not mapped
Energy	Exchange of information; technology transfer; joint studies	Not mapped
Financial Assistance	Set of rules guiding the granting and administration of financial assistance	Not mapped
Health	Monitoring of diseases; development of health information systems; exchange of information	Not mapped
Human Rights	Respect for human rights	Not mapped
Illegal Immigration	Conclusion of re-admission agreements; prevention and control of illegal immigration	Not mapped
Illicit Drugs	Treatment and rehabilitation of drug addicts; joint projects on prevention of consumption; reduction of drug supply; information exchange	Not mapped
Industrial Cooperation	Assistance in conducting modernization projects; facilitation and access to credit to finance	Not mapped
Information Society	Exchange of information; dissemination of new technologies; training	Not mapped
Mining	Exchange of information and experience; development of joint initiatives	Not mapped
Money Laundering	Harmonization of standards; technical and administrative assistance	Not mapped
Nuclear Safety	Development of laws and regulations; supervision of the transportation of radioactive materials	Not mapped
Political Dialogue	Convergence of the parties' positions on international issues	Not mapped
Public Administration	Technical assistance; exchange of information; joint projects; Training	Not mapped
Regional Cooperation	Promotion of regional cooperation; technical assistance programs	Not mapped
Research and Technology	Joint research projects; exchange of researchers; development of public-private partnership	Not mapped
Small Medium Enterprises (SME)	Technical assistance; facilitation of the access to finance	Not mapped
Social Matters	Coordination of social security systems; non-discrimination regarding working conditions	Not mapped
Statistics	Harmonization and/or development of statistical methods; training	Not mapped
Taxation	Assistance in conducting fiscal system reforms	Not mapped
Terrorism	Exchange of information and experience; joint research and studies	Not mapped

Source: Espitia, Mattoo, Rocha, and Ruta (2021) Dashboard on Deep Trade Agreements. About Dataset and Reference Papers





# **MODULE 3.** **GOOD PRACTICES TO OPERATIONALIZE IMPLEMENTATION OF DEEP TRADE AGREEMENTS**

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## 3.1 Effective Implementation of Trade Agreements: the Need for a Guiding Framework

Deep Trade Agreements (DTAs) create a rules-based framework to govern trade relations between States, aiming to facilitate and create new business opportunities for the productive sector. In the last instance, traders and investors are the main actors that DTAs aim to serve. They are the ones who may generate exports, imports, and investments, leading to the creation of new and better jobs. Trade agreements also offer significant opportunities for signatory countries to leverage trade and investment to achieve sustainable development. However, realizing these opportunities and potential benefits depends on how effectively these agreements are implemented in practice. Such implementation requires a well-structured approach to translate the opportunities derived from DTA commitments into concrete results.

Whether or not a particular DTA becomes a milestone for development depends on the depth and breadth of detailed commitments to remove trade barriers, the extent to which DTA commitments are effectively implemented on the ground, and the extent to which governments put in place specific complementary initiatives – going beyond the text of the DTA – to ensure a smooth transition to free trade and induce greater flows of productive investment in non-traditional sectors, leading to more and better jobs.

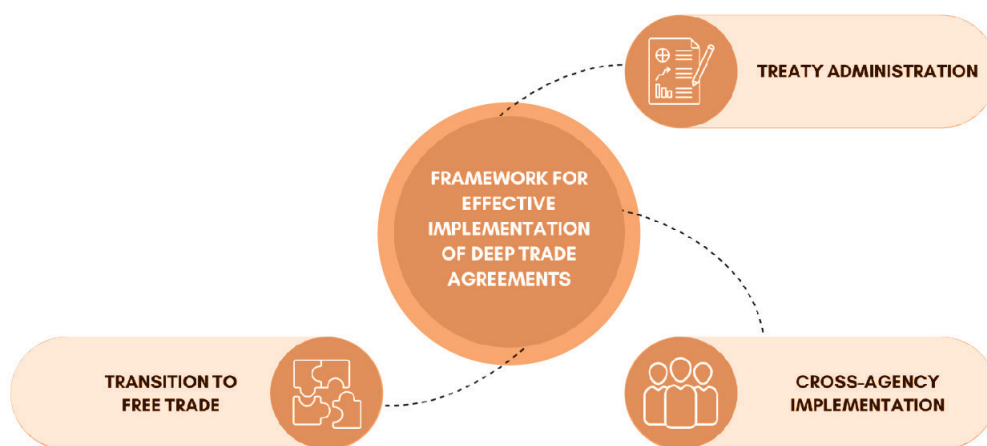
Fully implementing a trade agreement is a complex and challenging for a variety of reasons. Firstly, DTAs regulate a wide range of issues beyond the reduction of tariffs affecting trade in goods. DTAs also expand the regulatory coverage to many other aspects affecting trade in goods, such as customs procedures, rules of origin, trade facilitation, sanitary and phytosanitary standards (SPS) and technical barriers to trade (TBT), subsidies, and trade defense mechanisms. Additionally, DTAs often include more than twenty chapters regulating other key areas of trade, such as trade in services, digital trade, investment, government procurement, intellectual property, trade and environment, trade and labor, competition policy, State-Owned Enterprises (SOEs), and regulatory governance. Implementing DTAs entails addressing a multiplicity of complex topics that involve different stakeholders and types of technical and policy issues.

Secondly, in addition to the dozens of subject areas covered in a DTA, maximizing the potential benefits of each individual area also entails simultaneously undertaking actions on various fronts. “Implementing” a DTA is a term that often has a different meaning for different actors. For some, it means enacting and implementing legislation. For others, it is to have a coherent articulation among all government agencies interacting with traders and investors. And still others suggest that implementation means having a parallel agenda addressing economic bottlenecks affecting the competitiveness of the country. All these views are correct.

Fully implementing a DTA entails for instance, setting up the team of experts and organization within the government necessary to administer each chapter of the agreement, enacting domestic reforms to comply with commitments, coordinating with other government agencies to ensure effectiveness of commitments on the ground, informing and consulting the private sector and understanding their needs to be able to compete in an open market, identifying investment needs in physical infrastructure and human capital, ensuring a good business environment to attract investment, developing competitive connectivity and logistics, and so on. These are just some examples of the multiple types of complementary actions that need to be coordinated and strategically articulated to fully reap the benefits of DTAs.

Within this context, it is not easy for the ministries in charge of international trade - who are responsible and accountable for the results of the DTAs - to fully coordinate and address each of the numerous aspects that need to be addressed to fully maximize the benefits of these agreements. Experience in different parts of the developing world has shown that it is useful to have a logical framework to organize and structure the multidimensional work required to have a complete “parallel agenda” ensuring the full implementation of DTAs. The guiding framework illustrated in Figure 3-1 aims to provide a simple yet comprehensive approach to enable ministries in charge of negotiating and coordinating the implementation of DTAs to systematically organize and follow up across the different subject matters covered by the agreement, the multiple actions required to maximize the potential benefits of these treaties.

Figure 3-1: Framework for Effective Implementation of DTAs



Source: World Bank elaboration.

To assist with the implementation of DTAs, this logical framework comprises three broad pillars of action. See Box 3-1. The first pillar is **Treaty Administration**, which consists of the basic tasks that should be undertaken by the Ministries responsible for negotiating and implementing DTAs. This includes setting up the institutional structure necessary to administer the agreement, leveraging it to address practical problems affecting traders and investors doing business with the DTA partners, enacting domestic reforms to comply with commitments, and engaging with the private sector and civil society. This toolkit is centered on guiding the reader with concrete tools and best practices to facilitate the implementation of this pillar.

The second pillar of this logical framework is **Cross-Agency Implementation**, which involves establishing communication and coordination mechanisms between the ministry leading the implementation of the DTA and other government agencies that deal with the specific subject areas covered by the agreement. The point is to ensure that all government agencies perform their functions in a coherent and articulated manner according to the DTA and have the necessary means to fully perform such functions.

The third pillar of the logical framework is the Transition to Free Trade, which involves initiatives that go beyond the agreement itself and aim to support business expansion, improve competitiveness,

and promote exports and foreign direct investment. This comprises sector-specific initiatives, programs to improve infrastructure and the business environment, horizontal work on topics such as rural development, small and medium enterprises, technology transfer, and participation of vulnerable populations.

As a starting point, this Toolkit will focus on the first pillar of the logical framework, i.e. **Treaty Administration**, focusing on the specific tasks that Ministries in charge of negotiating and implementing DTAs should undertake to ensure its proper administration. Further, given the multiplicity of topics covered by DTAs, this toolkit will focus initially on three fundamental subject areas: market access for trade in goods, trade facilitation, and trade in services.

#### Box 3-1: Summary of the Logical Framework for the Effective Implementation of DTAs

##### 1. Treaty Administration

Building and developing capabilities and institutional mechanisms within the ministry leading the implementation that will enable the compliance and execution of commitments, problem-solving, economic monitoring, and “socialization” of the DTA.

##### 2. Cross-Agency Implementation

Providing support and capacity building to other agencies beyond those directly responsible for administering the agreement and establishing communication and coordination protocols.

##### 3. Transition to Free trade

Developing a complementary agenda to the implementation of the agreement, which might include sector-specific initiatives aimed at supporting business expansion; programs to improve competitiveness (e.g., infrastructure, business environment); horizontal work on areas like rural development, small and medium enterprises, technology transfer, participation of vulnerable populations; and institutional support to promote exports and attract foreign direct investment.

## 3.2 Treaty Administration: A Key Pillar for Maximizing the Benefits of DTAs

This toolkit focuses on DTA Treaty Administration. It seeks to equip policymakers within ministries in charge of foreign trade with the necessary tools to effectively and efficiently manage DTAs. The toolkit comprises a range of templates, checklists, guidance notes, and resources that are specifically designed to enhance the administration of DTAs. The aim is to facilitate policymakers and officials their understanding of different dimensions of DTA administration and make valuable contributions to achieving the agreement’s objectives of expanding business opportunities for the private sector, while also increasing trade, investment, and improved employment prospects.

The resources included in this toolkit can be found in this interactive dashboard (see also Figure 3-2). Effective administration of DTAs is essential for maximizing their benefits and it is one of the primary responsibilities of ministries of trade. As the main government agency entrusted with negotiating and implementing DTAs, ministries of trade must fully comprehend their functions and obligations to effectively administer these treaties, coordinate the work of other agencies, and properly engage stakeholders. It is their duty to ensure that trade agreements are effectively leveraged to achieve their goal of creating business opportunities for the private sector and promoting economic growth.

Treaty administration involves the establishment or strengthening of domestic institutions to administer, monitor, and enforce trade agreements. It also requires the development of protocols and procedures to leverage the operation of different DTA committees to address concerns and promote low-cost, swift, and transparent means of solving problems for traders and investors. Additionally, treaty administration requires the effective engagement of the private sector and civil society to ensure they understand how the trade agreement can contribute to diversifying exports, attracting investment, and generating more and better jobs.

Figure 3-2: Functions of Treaty Administration



Source: World Bank elaboration.

To organize these various actions, treaty administration can be divided into four main functions. As illustrated in Figure 3 2, administration of DTAs entails i) compliance and execution of commitments; ii) treaty operation and problem-solving, including dispute settlement; iii) economic analysis and monitoring; and iv) information and consultation with private sector stakeholders and civil society.

### 3.2.1 Why are these Functions Considered Fundamental for DTA Administration?

**Compliance and execution of commitments** is one of the four core elements of DTA Administration because DTAs are international agreements. This fact entails that DTAs have been approved by national parliaments, and therefore, under international law, they bind the whole state, and not only the ministry of trade. Under international law, once a treaty is duly ratified, no government can invoke its national legislation to excuse itself from fulfilling its obligations under any treaty (including DTAs). That is why, in many countries, DTAs have a higher legal hierarchy than domestic laws and regulations, and once approved by parliament, cannot be unilaterally amended by one state without the consent of the other parties to the treaty.

Within this context, it is important that each state ensures that its domestic legislation is fully compatible with its approved DTAs. Therefore, conducting an analysis to identify any potential gap between the commitments included in these agreements and the existing or proposed domestic legislation is crucial -- more important before a DTA is signed -- but in any case, also during the period while the DTA is in force.

The second fundamental element of the administration of DTAs is what can be called **treaty operation and problem-solving, including dispute settlement**. As mentioned before, trade agreements are designed to manage commercial relationships between states, with the aim of facilitating business for traders and investors. DTAs establish a framework of rules that govern a trade relationship between its parties. Such relationships are dynamic, and frequently entail a myriad of trade and investment transactions every day. In such context, there is a significant chance for potential for arising problems, misunderstandings, and even conflicts related to the application of the preferential treatment that traders and investors are entitled to receive under the applicable DTA. The more intense the trade relationship, the greater the chance for problems. The institutional framework of DTAs (comprising many instances and committees) precisely aims to allow governments to communicate with one another by establishing specific mechanisms to solve problems that for sure will arise for traders and investors in a healthy and interactive economic integration process. Therefore, it is critical for ministries of trade to understand the various mechanisms available to them under DTAs to facilitate trading relationships and work out any issues that may arise.

The third function of treaty administration is **economic analysis and monitoring**. One crucial aspect of administering a DTA is collecting and analyzing economic data to assess whether the Agreement is reaching its objective of promoting greater trade, investment, and jobs. Evidently, such data is also required to inform policy making and to properly inform perceptions of various private sector and civil society stakeholders with regards to a particular DTA and DTAs in general. Data showing whether and how a DTA is being effectively utilized by producers, in which sectors, and whether there are any emerging patterns on geography, gender, and welfare can provide invaluable insights for policy making. By leveraging this data, the ministry of trade can improve communication with stakeholders, promote the benefits of the agreement -- or correct any undesired result-- and identify areas for improvement to expand the agreement's utilization.

The fourth fundamental element of DTA administration is **information and consultation with private sector stakeholders and civil society**. To fully leverage the opportunities provided by a particular DTA, it is crucial that the private sector understands its features, how the different chapters affect their businesses, and how enterprises can leverage the agreement for growing and expanding their operations. Private sector engagement is not only crucial to ensure the main audience of the DTA fully grasps its potential, but also it is a critical source of intelligence for governments to learn about issues that arise during the DTA's implementation. Additionally, it is essential that authorities communicate the impacts of the agreement on the country's development to civil society. However, given the vast array of sectors and interests, some of which may not be organized into formal associations, communicating with the private sector and civil society can be challenging. Therefore, authorities should have access to specific techniques and tools to obtain and provide intelligence and develop effective communication strategies.

**Box 3-2: Summary of key functions in treaty administration**

- **Compliance and execution of commitments.** Undertaking gap analysis between disciplines and commitments covered in the DTA and domestic legislation and regulations, as well as follow-up on liberalization and other commitments. Mapping of the different agencies involved in treaty administration as an organizational tool. This toolkit will present templates and guidance on how to conduct gap analysis and mapping.
- **Treaty operation, problem-solving, and dispute settlement.** Leveraging the operation of the different committees and mechanisms of the institutional framework of the DTA to address and resolve concerns affecting traders and investors covered by the agreement, as well as promoting low-cost, swift, and transparent means of solving problems for traders and investors.
- **Economic analysis and monitoring.** Identifying and gathering data necessary to measure and monitor the economic and distributional impacts of the DTA on key economic variables in the country (income, trade and investment flows, jobs, poverty, and inequality), with specific attention to sectoral composition, gender, and geographic distribution.
- **Information and consultation with private sector stakeholders and civil society.** Data obtained from economic analysis and monitoring can be leveraged to: (a) facilitate dialogue between the private sector and the government regarding the results from the DTA and parallel initiatives enabling domestic businesses to properly move toward free trade in the DTA's implementation; and (b) to communicate simple, clear, and attractive messages explaining to civil society the impacts of the DTAs on the different dimensions of citizen's lives, in particular the generation of new and better jobs.

### 3.3 Compliance and Execution of Commitments<sup>1</sup>

Trade agreements establish a wide range of commitments across various disciplines, and as international agreements, they bind the state as a whole. Under international law, no country can invoke its domestic legislation to abstain from complying with its international commitments.

For developing countries, promoting compliance with trade agreements is of paramount importance, given the current global economic landscape, which is characterized by increasing protectionism, intense competition, and rapid change. Ensuring compliance with trade agreements is often the most effective means available for developing countries to safeguard their economic interests. Accordingly, fostering observance requires developing countries to ensure that they fulfill their own commitments under the treaty. Furthermore, it is worth noting that the obligations derived from DTAs play an indispensable role in empowering governments to implement domestic reforms, even in the face of political barriers.

Thus, one of the primary responsibilities of treaty administration is to ensure compliance with and execution of a country's commitments under a DTA. Ministries of trade are responsible for overseeing this process, engaging with, and coordinating with different agencies involved in compliance and execution.

<sup>1</sup> This toolkit includes a checklist comprising the specific steps governments should undertake to fully ensure compliance and execution of commitments with DTAs. This checklist can be used as a self-assessment tool to determine the extent to which the actions already being undertaken by a government comply with good practices. The checklist for compliance and execution can be found in **Appendix 3.A: Checklist for Treaty Administration: Compliance and Execution**.

One useful mechanism for organizing this work is to conduct a gap analysis between the commitments of the DTA and domestic legislation. Based on this analysis, policymakers can identify and propose specific domestic reforms necessary to bridge any gaps that have been identified. Ideally, this assessment should be carried out prior to negotiating an agreement, but it is also an ongoing task, as new bills of law may arise that contradict the terms of the DTA. Another useful tool is conducting a detailed mapping of public agencies involved in compliance and the execution of commitments, and more broadly implementation of the agreement.

This section of the toolkit provides practical recommendations and tools for compliance: organizing inter-agency work and undertaking a gap analysis between the commitments in the agreement and the applicable domestic laws, regulations, and practices existing in the country.

#### 3.3.1 Organizing Inter-Agency Work for Treaty Administration

Trade agreements encompass a wide range of topics beyond the mere liberalization of trade in goods. They establish rules regarding non-tariff barriers, trade in services, investment, and government procurement, among other areas. Implementation of such agreements requires the involvement and coordination of multiple government agencies with diverse roles, comprising different departments or ministries within the executive branch, such as customs authorities, sanitary and phytosanitary agencies, ministries of economy or agriculture; to more independent entities like competition authorities, state-owned enterprises, or economic regulators. The leadership and coordination of the Ministry of Trade are essential to ensure the effective administration of the agreement. An analogy may be useful to fully explain the importance of this task.

Governments are akin to symphonic orchestras. They comprise many different components, and as in an orchestra where different instruments generate different sounds, in governments, different agencies perform different functions. Further, as orchestras, each instrument is important, but it cannot only play solo if a symphony is to be performed. Each instrument must follow a previously agreed score which will be played and guided by the orchestra director. Similarly, in this analogy, the score or script is represented by the text of the DTA, which entails that different agencies in different chapters intervene and undertake specific tasks. Further, just like an orchestra, in the case of DTAs, the director in charge of coordinating the execution of the script is the ministry in charge of foreign trade. Just as well-coordinated orchestras play harmonious music rather than noise, well-coordinated governments implement DTAs smoothly.

Like orchestras, no government can properly function without identifying the members who will play. Thus, an important initial step that the ministry in charge of trade must undertake is to identify all relevant public institutions competent of tasks that relate to each of the subject topic covered in each of the DTAs chapters. Such mapping is critical for two fundamental reasons:

First, by mapping all competent agencies related to the different DTA chapters, the Ministry of Trade will be able to identify the key technical staff who not only should participate in the negotiations of DTAs, but more importantly, who should serve as focal points in the implementation stage of these treaties. Such officials in peer agencies are not only better versed in specific technical areas, but also are more familiar with the needs and challenges that their respective agencies have at the time the DTA may be implemented.

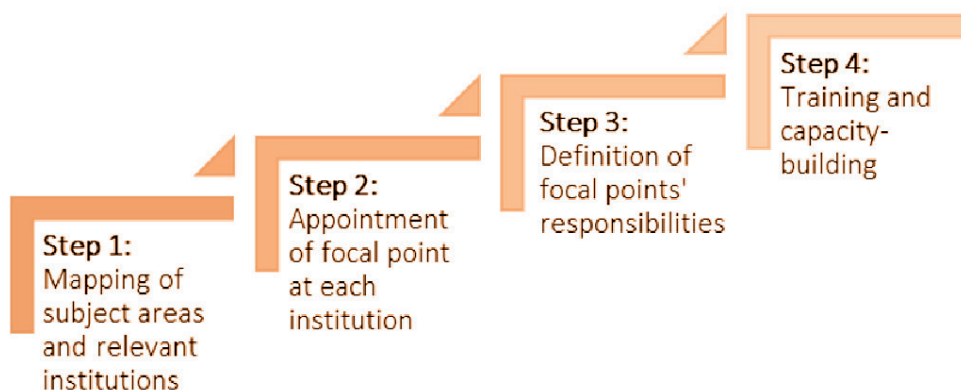
Second, the mapping of competent agencies will enable the Ministry of Trade not only to coordinate the DTA implementation, but also to explain to the private sector and civil society the “who is who”



in the administration of the different chapters of these trade agreements. For instance, customs administrations are a critical focal point for trade facilitation. The telecommunications regulatory authorities will be critical for the implementation of the trade in services chapter, just as the financial regulatory authorities will be pivotal for the implementation of financial services chapters.

To organize the mapping of this group of different government agencies, a practical and systematic methodology can be used, as illustrated in Figure 3-3.

Figure 3-3: Methodology for organizing inter-agency treaty administration work



Source: World Bank elaboration.

**Step 1:** Defining the relevant subject areas covered by the agreement and mapping the relevant institutions responsible for the application, implementation, regulation, supervision, or policymaking related to each area. The **Appendix 3.B: Template for mapping relevant public agencies for the administration of a DTA** presents a sample template to facilitate this task. When conducting this mapping exercise, it is also important to consider political economy factors that could affect engagement and coordination with these agencies.<sup>2</sup>

<sup>2</sup> Customs administration falls under the purview of finance or treasury ministries. Their primary objective is to ensure tax and tariff collection. Consequently, in many countries, custom administration officials' area mandated to focus on their oversight and audit roles. Within this context, it is easy to understand why often custom officials tend to prioritize these functions than facilitate international trade. Similarly, Sanitary and Phytosanitary authorities (SPS authorities) usually operate under the authority of agriculture ministries. SPS authorities are not only tasked with regulating and supervising procedures for imports but also with facilitating exports to all trading partners, including to markets that require high phytosanitary standards. These authorities can help local producers prepare to meet the requirements set forth by the trading partner's phytosanitary agency.

Services regulators are usually very watchful of their sector and of any measure that might attempt to debilitate or erode their powers. Their priority is to guarantee the attainment of the policy objectives established in their mandate through the exercise of their regulatory or supervisory powers. For instance, for financial services regulators, one of the main goals is to safeguard the stability and solvency of the financial sector; for public services regulators, to guarantee an adequate quality and reasonable cost for public services such as transportation, gas, and electricity. Given this focus on sectoral mandates and competencies, services regulators might overlook the broader perspective of trade openness. Trade ministries need to maintain a close dialogue with regulators to facilitate the understanding of this bigger picture that commercial flows generate. Additionally, it is vital to preserve the regulatory independence of economic regulators as trade openness will necessarily imply the entry of new operators in sectors that have often been dominated by state-owned enterprises.

**Step 2:** Appointment of focal points at the technical level for each relevant government entity.<sup>3</sup> These officials will serve as the primary point of contact between their respective agencies, the ministry of trade, and other government agencies for all matters pertaining to the administration of a specific DTA. Assigning a dedicated official to this role seeks to create a streamlined channel for coordinating daily collaborative efforts and for problem solving. Ideally, each agency will also designate a broader team of officials that will work with the focal point and support the implementation of the agreement in their area of competence.

The network of focal points from all agencies constitutes the national team responsible for implementing the agreement. Given that compliance with and monitoring of the commitments is the responsibility of the government, and not just the Ministry of Trade, establishing this team is critical to ensure that the different disciplines of the agreement are implemented successfully and that problems can be addressed and resolved effectively.

**Step 3:** Definition and agreement on the responsibilities of the focal points and their support teams. Officials appointed as focal points must have a clear understanding of their duties as part of the national team for the implementation of the DTA. Focal points are responsible for becoming experts on the treaty provisions in their areas of competence, participating in the committees of the institutional framework of the agreement, responding to information requests from the public, and addressing and collaborating to resolving problems that might arise, among other duties. A listing of usual responsibilities of focal points is illustrated in Figure 3-4.

Figure 3-4: Key responsibilities of DTA Focal points



Source: World Bank elaboration.

<sup>3</sup> Focal points and supporting teams might have been appointed for the negotiation phase of a DTA. However, it is important to confirm if these focal points are the same for the implementation phase, to verify if all relevant agencies for administration have a focal point, and to discuss and agree on the responsibilities involved in treaty administration to determine whether adjustments need to be made.

**Step 4: Training and capacity-building** for the national team of focal points regarding the specific provisions, scope, and institutional framework of the agreement, as well as their roles and responsibilities.

Modern trade policy and DTAs can be intricate and challenging areas to navigate, particularly for public officials who may lack the technical and legal knowledge required to be able to fulfill their duties in the negotiation and implementation phases. Addressing this knowledge gap is vital to ensure that officials are equipped with the skills and understanding necessary to effectively engage in DTA implementation.

To achieve this, it is essential to make available training and capacity building programs that focus on the specific provisions and scope of the agreement, as well as the institutional framework that guides DTA implementation. These programs should aim to equip officials with a comprehensive understanding of the agreement and its implications for different stakeholders. Additionally, they should provide officials with the necessary skills and tools to effectively negotiate, implement, and monitor the DTA.

In summary, a systematic approach to organizing the work of government agencies involved in implementing trade agreements contributes to effective coordination and implementation of the agreement. The appointment of focal points and support teams, defining their responsibilities, and conducting capacity-building efforts are all critical components of this process.

### 3.3.2 Verifying Compliance of Domestic Legislation with Commitments in DTAs.

Evidently, governments should ensure consistency between the commitments included in DTAs and their domestic laws and regulations. However, a clear objective is not always easy to attain over the life of the application of an international trade agreement. Gap analyses are the only way for government officials to learn whether undertaking a particular commitment is or is not compatible with the domestic legal framework.

Therefore, it is logical that such assessments be carried out prior to negotiating an international agreement, as once ratified, most DTAs being international treaties, will prevail over domestic legislation. Thus, to facilitate the approval in national parliaments, it is important to identify as early as possible in the negotiation stage the compatibility of the commitments to be undertaken with domestic laws and regulations.

Regardless of the importance of undertaking a gap analysis during negotiations, it is important to clarify that once a DTA enters into force, new laws and regulations subsequently proposed for adoption may contradict the terms of the DTA. Thus, it is critical that as part of the monitoring of the implementation of these agreements, a focal person within the Ministry of Trade is assigned to regularly revise the official gazette to identify all trade-related proposed regulations and laws and once identified, share them to the topic-specific staff of the ministry to assess, depending on the applicable chapter, the compatibility of the proposed regulation with the international commitments assumed by the country.

Undertaking a gap analysis between a DTA and national domestic legislation, albeit critical, is a detailed and time-consuming process. Therefore, it usually results from a team effort, comprised of officials from the Ministry of Foreign Trade, who will tend to be more familiar with international trade negotiations, and with officials of the sector or subject-specific agency competent for the respective chapter. As a gap analysis entails a specific comparison of each provision included in each chapter of the DTA, there is no one-size fits all gap analysis for the hundreds of DTAs signed by hundreds of countries. Therefore, in this section, this toolkit will use examples of templates illustrating how to approach a gap analysis in three specific chapters typically included in DTAs: i.e., market access for trade in goods, trade facilitation, and trade in services.

Fortunately, in addition to gap analyses, there are various resources available for governments which already examine to a great extent, the compatibility of specific commitments included in the WTO or selected DTAs with national legislation in various specific countries. Thus, in each subsection below, in addition to illustrative templates, there is a description of the different resources developed by the World Bank and other international organizations which are already available for governments to examine, to a great extent, the compatibility of their domestic laws and regulations with international agreements in these technical subjects.

#### 3.3.2.1 Market Access for Trade in Goods

Liberalization of tariffs and non-tariff barriers affecting trade in goods lies at the heart of all DTAs. Thus, most of them include not one, but several chapters establishing rules and disciplines to different aspects affecting trade in tangible products. In addition to a specific chapter on market access for trade in goods (which is the focus of this subsection) DTAs include chapters such as trade facilitation, customs procedures, origin verification procedures, sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT), subsidies, trade defense mechanisms, among others. In this subsection, the focus will be on the fundamental chapter covering the basic obligations on market access for trade in goods.

In DTAs, the market access chapter for trade in goods establishes the fundamental obligations to liberalize trade among the contracting parties. Such objective is reached through two types of commitments.

First, there is a tariff liberalization program which is negotiated by the parties classifying all the goods in different “baskets” with different periods and modalities for tariff liberalization. This is commonly known as schedule of tariff concessions which are organized product by product using the Harmonized Commodity Description and Coding System generally referred to as “Harmonized System” or simply “HS”.<sup>4</sup> Despite using the HS, the national tariff schedules of most countries often include a more disaggregated classification, often using 8-digits. As the tariff liberalization program is preferential, that is, only applies to goods from the parties in the DTA, it is complemented by a schedule establishing the rules of origin that will be used as criteria to consider a particular product as produced by the contracting parties. There are different systems and criteria for rules of origin. The approach used in a specific DTA depends on the decision of the parties. However, what is important is that both the classification used in the tariff concession schedule and the classification of the schedule of rules of origin match, so both customs and traders know which tariff preference will in fact apply to each traded product.

Second, in addition to the schedule of tariff concessions, the market access chapter for trade in goods in all DTAs includes a set of additional concrete normative commitments mandating the elimination of certain practices that can act as non-tariff barriers to trade. These commitments tend to reflect the same rules and disciplines included in the General Agreement of Tariffs and Trade (GATT 1994) of the World Trade Organization (WTO). Such commitments typically include the obligation to provide national treatment to the products of the other party (that is, a treatment no less favorable than that granted to like national products with respect to the application of domestic laws and regulations affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products), prohibition of export and import quantitative restrictions, discriminatory performance requirements, subsidies and so on. A detailed description of the different chapters on market access for trade in goods in DTAs can be found in the Handbook of Deep Trade Agreements.

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<sup>4</sup>The Harmonized System Classification is a multipurpose international product nomenclature developed by the World Customs Organization (WCO). The HS comprises more than 5,000 commodity groups, each identified by a six-digit code arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification of tangible goods. The system is used by more than 200 countries and economies as a basis for their Customs tariffs and for the collection of international trade statistics. Over 98 % of the merchandise in international trade is classified in terms of the HS. The HS is also extensively used by governments, international organizations and the private sector for many other purposes such as internal taxes, trade policies, monitoring of controlled goods, rules of origin, freight tariffs, transport statistics, price monitoring, quota controls, compilation of national accounts, and economic research and analysis. See World Customs Organization: <https://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx>

Further, the illustrative **Appendix 3.C: Gap analysis illustrative template: chapter on market access for trade in goods** includes a basic checklist that could be used to organize a gap analysis between the specific disciplines of a DTA chapter on market access on trade in goods and national laws and regulations. It organizes the text of the market access chapter of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) along the typology of provisions of the GATT 1994, which constitutes the basis for market access chapters in DTAs. For a detailed characterization of market access commitments in DTAs, please refer to the World Bank Deep Trade Agreements (DTA) database.<sup>5</sup>

As stated before, a gap analysis would entail a scan of all national laws and regulations that may affect cross-border trade in goods. Many countries already have electronic databases of all the laws and regulations published in the official gazette over time. Examining such data sources and identifying and classifying the norms using the key words included in the template referred to above would be a first step. Once such data was compiled and classified, then a matrix including the specific obligations of the specific DTA chapter under analysis (that could be organized following the template) should be prepared. Such detailed process is the way to identify whether the specific commitments included in a DTA are or are not compatible with the domestic legislation, or to identify a specific area that may be included in a DTA that has not yet been regulated by the domestic legal framework.

As stated before, although a gap analysis should preferably be undertaken before the negotiation of a DTA is concluded, over the period of application of a treaty, governments continue enacting new laws and regulations which may in some instances, represent inconsistencies with the terms of the market access commitments of a DTA. Thus, a good practice is to ensure that the ministry in charge of foreign trade assign at least one person to do a daily review of the official gazette where bills or announcements of new laws and regulations are published to identify different relevant bills which may have an impact on the application of any of the chapters of a DTA.

Examining the consistency of market access commitments for trade in goods in DTAs with domestic legislation is also facilitated by various existing data bases which examine the bound and applied tariffs of countries as well as list many non-tariff barriers. A detailed list of these databases is included in section 5.1. below. However, a key source of information regarding preferential tariffs to stress here is the new database on preference margins and preferential trade by the International Trade Center (ITC) and the World Bank<sup>6</sup>. A detailed explanation on this data set can be found here. With respect to non-tariff barriers, the most widely used data sets are the UNCTAD NTB database<sup>7</sup>, and the World Bank's World Integrated Trade Solution (WITs) data base on NTMs.<sup>8</sup>

#### 3.3.2.2 Trade Facilitation for Goods

Most DTAs include a chapter on trade facilitation for goods. Although some of their provisions may vary among the different agreements, most of them are based on the Trade Facilitation Agreement (TFA) of the WTO agreed in 2013 and which entered into force in 2017 following its ratification by WTO two-thirds membership. The main objective of the TFA and any chapter on trade facilitation in DTAs is to simplify required paperwork, modernizing procedures and harmonizing customs requirements affecting trade across borders with a view to reduce the costs and time needed to export and import goods. Red tape significantly increases the cost of trade, sometimes even more than the cost of tariffs liberalized under a DTA. Trade costs can be equivalent to a 134% ad valorem tariff on a product in high-income countries and a 219% tariff equivalent in developing countries<sup>9</sup>.

<sup>5</sup> <https://datatopics.worldbank.org/dta/about-the-project.html>

<sup>6</sup> [https://elibrary.worldbank.org/doi/10.1596/978-1-4648-1539-3\\_ch1](https://elibrary.worldbank.org/doi/10.1596/978-1-4648-1539-3_ch1)

<sup>7</sup> <https://unctad.org/topic/trade-analysis/non-tariff-measures>

<sup>8</sup> <https://wits.worldbank.org/tariff/non-tariff-measures/en/ntm-bycountry>

<sup>9</sup> WTO, World Trade Report, 2015. [https://www.wto.org/english/res\\_e/booksp\\_e/world\\_trade\\_report15\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf)

In addition to reduce red tape, and modernizing customs procedures, the WTO TFA and trade facilitation chapters in DTAs also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building on this subject.

Given the more operational nature of the trade facilitation chapters, contrary to chapters on market access for trade in goods, in which strong binding rules and disciplines tend to characterize most of its provisions, trade facilitation chapters in DTAs include not only hard commitments, but also various “soft” ones, in the sense that they may apply to extent that is possible or practicable. A detailed description of the different chapters on trade facilitation in DTAs can be found here. Further, the WTO website includes a detailed description on the WTO TFA Agreement.

Fortunately, given the level of convergence between most chapters on trade facilitation in DTAs and the WTO TFA, the specific checklist developed by the Global Trade Team of the World Bank can be particularly useful. Further, as a result of technical assistance projects, there are an important number of countries in which a gap analysis between the domestic legislation and the TFA has already been carried out. A detailed explanation of the gap analysis methodology undertaken by this tool, can be found here. Further, an explanation of the WBG Trade Facilitation Support Program (TSFP) can be found in its webpage.<sup>10</sup>

#### 3.3.2.3 Trade in Services

The critical importance of trade in services has led most countries to foster the liberalization of this type of trade. However, contrary to liberalization of trade in goods, where governments negotiate gradual elimination of tariffs and other charges applied to tangible things that cross borders, liberalization of trade in services entails a more complex process.

Services are not only intangible and non-storable, but they are also economic activities which tend to be highly regulated, and for good reason. While allowing services suppliers to perform their economic activities, at the same time, states have a series of legitimate public policy objectives they aim to safeguard, such as the protection of consumers, health, safety, the environment, prevention of fraud, and so on.

Thus, international agreements on services do not aim to liberalize trade at the expense of the states capacity to regulate such public policy objectives. A detailed description of the different chapters on trade in services in DTAs can be found here. Liberalization of trade in services is not synonymous with deregulation of services. Governments can maintain full regulatory control and yet fully liberalize restrictions to trade in services.

Rather than limiting states’ capacity to regulate, international disciplines on trade in services aim to commit governments to respect certain key principles when enacting and administering those regulations that affect trade in services. Thus, for instance disciplines on national treatment seek to eliminate preferential treatment granted exclusively to domestic suppliers; disciplines on most favored nation (MFN) aim to prevent discrimination among like foreign services suppliers; disciplines on market access are directed at non-discriminatory quantitative restrictions to trade, such as monopolies, or sales or service providers quotas or economic needs tests, and disciplines on issues linked to local presence aim to ensure that foreign service suppliers are not forced to establish a commercial presence in the importing markets as a pre-condition for supplying their services. It is the progressive elimination of these first four types of barriers what represents the focus of services trade liberalization in most international agreements. However, negotiation of DTAs rarely include commitments to immediately eliminate barriers to trade in services. The gradual roll-back of those restrictions is achieved over

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<sup>10</sup> <https://www.worldbank.org/en/programs/trade-facilitation-support-program>

time by specific techniques and methods included in many chapters on services in DTAs. For a more detailed explanation of how trade in services chapters gradually aim to achieve this objective, you can read the brief note in Guidance Note 3.1

Just like in the case of any of the chapters covering any topic in DTAs there is not a one-size fits all gap analysis for the myriad of DTAs with trade in services chapters with the hundreds of countries' domestic legislation. An illustrative example of a matrix template to organize such analysis can be found in **Appendix 3.D: Gap Analysis Template: Chapter on Cross Border Trade in Services**. It organizes the text of the trade in services chapter of the CPTPP along the typology of provisions on trade in services used to code the agreements in the WBG DTA database.

A typical challenge that many countries face to undertake a gap analysis for trade in services is the considerable number of laws and regulations that affect the multiple services sectors, and the difficulty to identify a restriction to trade in services as they are embedded in laws and regulations that pursue legitimate public policy objectives. Thus, it is necessary to take an overview of the universe of laws and regulations applying to the various services sectors to identify and list all those specific provisions which constitute barriers to trade in services. Such task is of titanic dimensions for many countries.

Fortunately, trade in services is one of the areas where international databases have made significant progress. Since 2013 the World Bank and the WTO have developed the joint Services Trade Policy Database (STPD) and the associated joint Services Trade Restrictions Index (STRI).<sup>11</sup> This cooperation builds upon earlier work on services trade policies by the World Bank in 2008-11. The STPD, inaugurated in 2019 consists of two components: a regulatory database and the STRI. Originally the database covered the following services: professional services (accounting, auditing, legal), distribution, financial (banking and insurance), telecommunications, and transport services (air, rail, road, and maritime); with some of the listed sectors disaggregated into more detailed subsectors. The database was significantly expanded between 2020 and 2022 and now will cover 130 countries. Sectoral coverage was also increased by adding the following services: architecture, engineering, computer, postal and courier, audiovisual, construction, health, and tourism, again with additional subsector detail in some cases.

The WBG/WTO services I TIP (Trade Intelligence Portal)<sup>12</sup> database provides regulatory information on about 500 measures affecting services supply in each economy through the various modes of supply.<sup>13</sup> The regulatory information is displayed and organized according to a classification of policies jointly developed by the WTO and the World Bank that consists of five broad categories: 1) conditions on market entry, 2) conditions on operations, 3) measures affecting competition, 4) administrative procedures and regulatory transparency, and 5) miscellaneous measures not covered by the previous four categories.

Based on the regulatory information collected, the restrictiveness of countries' policies in each of the subsectors is quantified by means of the STRI jointly developed by the WTO and the World Bank. The STRI is an index that quantifies countries' applied policies on trade in services on a scale from 0 (fully open) to 1 (completely closed to foreign services or services suppliers). Drawing from the STPD regulatory information at the individual measure level, all key restrictions affecting trade in services are individually given a score from a six-level scale of restrictiveness that ranges from 0 to 1. Then all measures thus scored at the country-subsector-model level are being combined and aggregated using an algorithm that is based on a Constant Elasticity of Substitution (CES) function. The STRI summarizes policy restrictiveness in an accessible and compact way. It thus facilitates a comparison of regulatory stances across sectors, countries and potentially over time.

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<sup>11</sup> <https://i-tip.wto.org/services/default.aspx>

<sup>12</sup> Link to the database: <http://i-tip.wto.org/services/SearchApplied.aspx>

<sup>13</sup> <https://i-tip.wto.org/services/default.aspx>

### 3.4 Treaty Operation, Problem-Solving, and Dispute Settlement

Trade relations between countries are affected by a range of factors. Specific trade transactions may be negatively impacted by simple bureaucratic errors, misunderstanding or differing interpretations regarding the rules of the agreement, or by measures designed to protect powerful interest groups in the importing country.

To anticipate and manage issues that may arise in trading relations, trade agreements establish an institutional framework comprising various committees and bodies that facilitate the management of the trade relationship among governments and provide a platform for governments to address trade-related problems within the legal framework of the treaty. Developing countries stand to benefit from understanding how to leverage this institutional structure, as it serves two main functions.

Firstly, this institutional framework helps manage the trade relationship between the parties of the agreement through a structured dialogue. Technical bodies created by the agreement meet periodically, and high-level political meetings also take place regularly to discuss the progress of the treaty. There is a shared political and economic interest among the parties to promote trade and investment through the preferential relationship established in the DTA, and thus to evaluate and monitor its performance. The institutional framework of trade agreements extends an opportunity for smaller developing countries to raise priority issues for discussion in the various instances of this preferential dialogue. It also guarantees that larger trading partners will devote time to reviewing and discussing the performance of the DTA and any issues that may arise in its implementation.

Secondly, the bodies established by the DTA offer a platform for governments to address issues and problems affecting traders and investors within the legal framework of the treaty. Technical committees and director-level groups are accountable for their activities and report to the political level, which creates incentives to solve problems at their level and not escalate them.

The institutional framework creates a preferential dialogue system that guarantees regular assessments of the DTA's performance, as well as a platform for problem-solving. The various committees created by DTAs offer an effective mechanism to address issues affecting traders and investors at a technical level, with incentives to resolve problems and minimize the need to escalate issues to the highest political level.

Leveraging this institutional framework of DTAs is strategically important for developing countries. A country that effectively operates its agreements can utilize this structure to assess whether the trade agreement is generating positive outcomes in terms of trade, investment, and employment. Furthermore, the institutional framework can be used to clarify any divergent interpretations of the treaty provisions in a timely manner. DTA committees and political instances can also play a role in swiftly and effectively resolving trade problems, as well as tracking the number and types of disputes being settled.

This section of the toolkit presents detailed information about the institutional framework of a DTA, including its different committees, working groups, mechanisms, and political decision-making instances. It also offers several tools that can be used by authorities to make the most of these mechanisms. For instance, it includes an inventory of committees and decision-making bodies customarily part of a DTA, as well as a checklist to help evaluate whether protocols and procedures are in place for the effective operation of the different committees to address and resolve concerns and problems affecting traders and investors. In addition, a guidance note focuses on the second function of the institutional framework: problem-solving and dispute settlement. Finally, a tool outlining recommended content for a periodic report on treaty administration is provided.

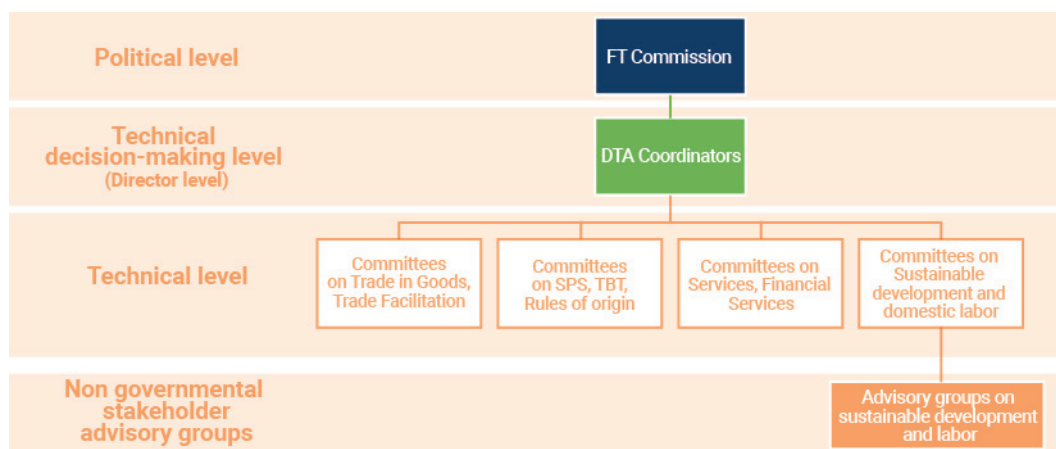


### 3.4.1 The Institutional Framework of a DTA

The institutional and governance framework of DTAs encompasses a range of committees, working groups, and decision-making bodies that operate at different levels, as shown in Figure 3-5. This structure is organized into three main levels: the political level, the technical decision-making level, and the technical level. Moreover, the institutional framework includes consultative bodies that engage with private sector and non-governmental stakeholders, allowing for a diverse range of perspectives to be considered in the dialogue among the trading partners.

This framework facilitates effective communication between the parties, fosters cooperation, and ensures swift resolution of issues that may arise. The multi-level structure of the institutional framework allows for issues to be addressed at the appropriate level, with higher-level instances being utilized only when necessary. Additionally, the involvement of non-governmental stakeholders in consultative instances promotes transparency and accountability, while also enhancing the relevance and effectiveness of the institutional framework.

Figure 3-5: Institutional framework of trade agreements



Source: World Bank elaboration.

At the highest level of the institutional framework, the Free Trade or Administrative Commission (hereinafter “the Commission”) is the central decision-making and oversight body for DTAs, composed of political representatives of the governments. This Commission is typically led by ministers responsible for matters of trade and meets periodically to review the progress of the agreement. The Commission has the power to establish other bodies to address specific areas of the agreement.

The day-to-day administration of the DTAs is typically managed by a virtual secretariat<sup>14</sup> that encompasses a national section representing each party of the agreement. The secretariat is usually coordinated by the highest technical officials, such as directors of trade, who report to their respective political authorities (vice ministers and ministers). Each national section of the secretariat coordinates and oversees compliance with the tasks assigned to the various committees created by the treaty.

At the technical level, most DTAs establish committees to address each of the major areas governed by the agreement, which meet at least once a year to monitor the implementation of their respective chapter of the DTA. Parties appoint coordinators for each committee’s work and designate focal points at all relevant competent authorities to facilitate daily coordination and communication.

<sup>14</sup> It is said it is a virtual secretariat as most DTAs do not establish a separate institution with an independent group of bureaucrats and separate premises beyond the officials already forming part of the respective trade ministries of the Contracting Parties.

The principle of verticality in decision-making applies to this governance arrangement. Under this principle, if technical committees are competent and able to reach an agreement on a specific issue, it is not presented for discussion or decision to the higher levels of the institutional framework, such as directors or ministers. Similarly, once the highest levels in the structure have reached a decision, ministers, or directors, it is not to be reopened by the lower technical levels.

Many DTAs also create consultative or advisory groups to voice views and advice on issues related to sustainable development or labor. These groups typically comprise independent organizations of civil society in a balanced representation of employers, environmental groups, unions, and labor and business organizations. Additionally, some agreements envisage a civil society forum to conduct dialogue regarding the sustainable development aspects of the trade relations between the parties. This forum typically comprises a balanced representation of environmental, economic, and social stakeholders.

To streamline the daily operations of the agreement, it is beneficial to map the different bodies established by the institutional framework of the DTA. This exercise can be accomplished by reviewing the chapter specifically devoted in many agreements for the administration of the treaty. Often, those committees are established in each of the specific chapters covering trade in goods, trade facilitation, trade in services, rules of origin, SPS measures, TBT, intellectual property, and so on. The mapping should lay out information on their composition, functions, competences, and meeting frequency. This tool can help to organize and keep track of the work of the different bodies. As a reference to facilitate the mapping of said committees, **Appendix 3.E: Deep Trade Agreements Institutional Matrix: Bodies and Main Characteristics** exhibits an inventory of committees and decision-making bodies that are customarily part of a trade agreement's institutional framework.

#### 3.4.2 Facilitating Treaty Operation and Monitoring

Leveraging the institutional framework created by DTAs to manage the trade relationship among state parties and contribute to solving trade issues is a key goal for ministries of trade in the administration of trade agreements. To achieve this objective, it is important that authorities develop protocols and mechanisms to ensure that the different committees of the agreement are meeting regularly, that trade issues brought by the private sector are being addressed and resolved by these bodies, and that the parties conduct periodic assessments of the DTAs impact on trade, investment, job creation, and other economic variables.

**Appendix 3.F: Checklist for Treaty Operation and Monitoring** aims to assist officials in reviewing the different protocols and mechanisms that are in place to facilitate treaty operation and monitoring. This checklist can be used as a self-assessment tool to determine the extent to which the actions already being undertaken by a government comply with good practices.

#### 3.4.3 Understanding the Political Economy of Trade Conflicts and Problem-Solving Best Practices and Techniques, including Dispute Settlement

Dynamic trade relationships frequently involve misunderstandings and issues, particularly concerning the preferential treatment that traders and investors should receive under a particular trade agreement. The intensity of the trade relationship often amplifies the risk of such issues.

Developing countries have long recognized the value of the rule-based system of the WTO and trade agreements in counterbalancing power-oriented diplomacy and unilateralism in resolving trade conflicts. The dispute resolution mechanisms embedded in DTAs, and the WTO are essential in maintaining stability and predictability in global trade. Nonetheless, trade-dependent developing countries, particularly those reliant on exports from small businesses, require swift, cost-effective, and efficient methods of addressing the range of trade-related problems that arise daily. Legal disputes on an international level can be both time-consuming and costly, with resolution taking up to one to two years or even more. Such

prolonged dispute resolution can have significant impacts on small and medium enterprises, potentially leading to the cessation of their operations. Therefore, it is essential for developing countries to optimize the benefits of the rule-based system while simultaneously minimizing potential costs by exploring alternative approaches, such as informal problem-solving techniques.

To support developing countries in managing trade-related disputes, Guidance Note 3.2 <PENDING LINK> offers an overview of the political economy of trade conflicts, as well as recommendations and best practices for problem-solving and dispute resolution. Its main objective is to promote low-cost, swift, and transparent means of solving problems for traders and investors.

#### 3.4.4. Periodic Reports on Treaty Administration

Given the multiplicity of areas and actions that treaty administration covers, providing periodic reports on these activities can be a valuable resource for ministries of trade, preferably on an annual basis. Periodic reports offer a comprehensive account of the efforts made to uphold treaty obligations, to manage the institutional framework of the agreement, and to address problems faced by traders and investors. Additionally, such reports monitor and analyze economic data related to the trading relationship.

These reports are valuable for several reasons. First, they help to ensure transparency and accountability in the administration of treaties. By reporting on the activities and outcomes of the treaty over the course of the year, authorities can demonstrate their commitment to fulfilling their obligations under the treaty and to keeping the public informed about its implementation. Second, annual reports can bring forward valuable insights into the effectiveness of the treaty, the challenges that may be hindering its implementation, or the type of trade problems that are most recurrent. This information can help authorities identify areas where improvements can be made.

Overall, annual reports on treaty administration are a critical component of effective treaty administration, providing important information for policymakers, stakeholders, and the public on the progress and challenges in implementing the trade agreement. These reports are also one of the tools for engaging with the private sector and civil society, Section 6 of this toolkit will dive deeper on the different types of information and consultation mechanisms.

**Appendix 3.G: Outline of an Annual Report on Treaty Administration** exemplifies recommended content for a periodic report on treaty administration.

### 3.5 Monitoring and Economic Analysis: Practical Steps to Collect Relevant Data

A key function that ministries of trade must undertake regularly as part of the administration of DTAs is the monitoring of trade-related data and the economic analysis of the impacts of those agreements on the ground. Obtaining empirical data is the only way to assess whether the DTA is delivering its expected impacts in terms of trade, investment, jobs and associated socio-economic effects in the country.

From the outset, it is important to differentiate between collecting and monitoring data on trade and investment flows generated by DTAs on the one hand, and to assess the economic impact of DTAs over different variables such as jobs, gender, as well as distributional effects across various social sectors or subnational geographic areas. This section focuses on the first aspect, that is, how can a newly established team aiming to administer DTAs set up a depository of trade-related available information in a country. The assessment of the impact of DTAs is addressed in more detail in Module 1 of this toolkit. Furthermore, for the convenience of the reader, an explanation of various relevant data

sources already available at the international level and which can be useful to assess the impact of DTAs can be found in **Appendix 3.H: Available Datasets at International Level to Assess the Impact of DTAs**. Although international databases rely on national sources of information, having access to international databases may be useful to place any national economic assessment of DTAs into context and compare evolution of these agreements in other trade partners.

Thus, this section of the toolkit aims to support government officials with some key basic steps as to how to assess the coverage and depth of relevant information available to monitor trade and investment flows generated by DTAs, which may be subsequently used for deeper economic analysis. In practice, gathering data relevant to assess the impact of DTAs usually entails various types of challenges for ministries in charge of foreign trade.

A first important point is that ministries should dedicate at least a couple of economists from its staff to focus on the collection and processing *not only of trade-related information*, but also on data on the production capacity in the country. While trade-related data may provide information about flows of exports and imports of goods and services (both resulting or not from DTAs), policy makers require to have a good understanding of the profile of the domestic producers and their capacity to supply and eventually compete in domestic and foreign markets. Given the breadth of such task, a key for a successful monitoring unit at a ministry in charge of foreign trade is the capacity of their members to establish good working relationships with various national institutions already collecting relevant data, to both organize already available information but also to work together to finetune data collection methodologies to elucidate specific questions relevant for policy making in the country.

A second fundamental step that a monitoring team at the Ministry of Trade should undertake is to map, meet peer agencies and agree on protocols of collaboration with all those institutions which may be collecting all available trade, investment and production related data for goods and services in the country. Having a clear picture of the available trade-relevant data in the country is critical, as the most typical challenge for monitoring and economic analysis of DTAs is that the information available, if any, often does not have the level of granularity required to assess the impact of these treaties on specific economic and social sectors as well as on jobs, gender, micro-small and medium enterprises (MSMEs), the environment, and subnational geography among other relevant variables.

For trade in goods, the point of departure for data gathering starts with customs authorities. Thanks to the fact that trade in tangible goods entails crossing controlled border controls, in most countries the quality of information related to trade in tangible merchandise tends to be significantly better than data regarding trade in services and foreign direct investment. Customs authorities – commonly housed within the Ministries of Finance – usually monitor all import transactions (as they have to apply different rates of tariffs depending on whether a good is covered by a preference of a DTA). In theory, this should enable the collection of data on trade in goods with a great level of granularity. In practice, however, evidently different countries may have different levels of sophistication in data processing of customs transactions. Other relevant institutions capturing data on trade in tangible goods may be the agencies in charge of sanitary and phytosanitary (SPS) controls – typically housed at the Ministry of Agriculture – and the agencies in charge of health and authorizing compliance with technical regulations and standards. A detailed list of relevant institutions to explore can be found in the In summary, each of these datasets plays a significant role in estimating the effects of deep trade agreements on trade in goods. By combining these datasets and using appropriate econometric methods, analysts can gain a comprehensive understanding of the impacts of deep trade agreements on different sectors of the economy and segments of its production systems.

Third, for trade in services and investment, availability of disaggregated data is a common challenge in most countries of the world. See **Appendix 3.H: Available Datasets at International Level to Assess the Impact of DTAs**. Intangible activities do not cross borders through border controls, nor are subject to tariff or inspections. Thus, data related to trade in services tends to be captured through balance of payments (BoPs) statistics. The challenge with this source is that BoPs statistics tend not to

disaggregate data per service sector (even less on a firm-level basis), and also only capture those transactions that get cleared through the BoPs. Thus, often information on domestic production activities carried out by foreign enterprises in the country are not captured. Often some data on that regard can be found in investment promotion agencies (IPAs), which tend to provide services and aftercare to foreign firms established in the country. However, even in that case, not all FDI firms use IPAs, and not every IPA keeps data on the features of the firms covered. So again, the quality of the data available varies significantly from country to country. More information on some potential complementary data sources available at international level can be found in **Appendix 3.H: Available Datasets at International Level to Assess the Impact of DTAs**.

Fourth, even if there were data available at the sector and firm level from national agencies, there may still be gaps in understanding the private sector profile. These gaps can include information on the size and structure of firms, their level of integration into global value chains, and their productivity levels. To fill these gaps, surveys of firms and industry associations can be conducted to collect data on private sector profiles. One could also leverage administrative data sources used by trade ministries – for example, Customs data (see Box 3-3).

By following the steps below, trade practitioners and policymakers can gather valuable information to estimate the effects of deep trade agreements on trade in goods at the national level. A more detailed checklist on the steps to follow can be found in **Appendix 3.J: Checklist on How to Gather Trade Data from National Sources**

1. Identify the relevant government agencies and stakeholders: Determine which government agencies and stakeholders are responsible for collecting and analyzing trade-related data, such as the national statistical office, trade ministries, and business associations.
2. Identify the available data sources: Determine which national databases and sources provide information on trade in goods, such as export and import statistics, tariff rates, and non-tariff measures and trade in services.
3. Assess the quality of the data: Evaluate the quality of the available data by examining its completeness, accuracy, and reliability. This can be done by checking for inconsistencies or gaps in the data and comparing it with data from other sources.
4. Determine the sectoral coverage: Identify the sectors that are most likely to be affected by the deep trade agreement and gather information on their production, export, and import activities
5. Determine the geographical coverage: Identify the regions or cities that are most likely to be affected by the deep trade agreement and gather information on their economic activities.
6. Analyze the gender dimension: Consider the gender dimension of the effects of deep trade agreements by examining the impact on women's employment, wages, and working conditions in affected sectors.
7. Monitor the distributional impacts: Monitor the distributional impacts of the deep trade agreement by examining the effects on income, trade and investment flows, jobs, poverty, and inequality.
8. Assess the impact on small and medium-sized enterprises (SMEs): Consider the impact of the deep trade agreement on SMEs, including their ability to comply with the agreement's provisions, access new markets, and compete with larger firms.
9. Consider alternative data sources: If necessary, consider alternative data sources such as surveys, interviews, or case studies to fill any gaps in the national data.

**Box 3-3: Customs Data**

While the datasets compiled by international organization offer a global overview of country-level bilateral trade on up to 6-digits product levels, measuring and monitoring the economic impacts of DTAs often require firm-level information since the aggregates or averages indicators are often not sufficient to assess its overarching impact.

Customs data on all goods imports and exports at the transaction level would be an ideal dataset to work with in order to successfully measure and monitor the impact of DTAs on trade in goods. Whether the information on exports and imports of goods comes directly from customs agencies or from the World Bank Exporters Dynamics Database (EED), which draws on datasets covering the universe of exporter transactions obtained directly from customs agencies, allowing for comparability across countries or is received as part of a paid commercial subscription service (e.g., Panjiva Trade Database), one should request the following fields to be provided in the dataset:

- Timestamp of the export/import transaction (this variable could be expressed daily, monthly, or yearly depending on its availability).
- Exporter or Importer's ID (this variable can contain either the name of the exporter or any other exporter ID – or both if possible).
- Customs office/border utilized by the exporter/importer.
- Product exported / imported (according to the HS classification at the highest level of disaggregation available).
- Destination / Origin.
- Value of merchandise exported / imported (in national currency).
- Quantities exported / imported by transaction (this could be expressed in net weight or in units)

Most of the imported goods that cross borders as a result of commercial transactions (purchases/sales), so their statistical value can be established using their customs values or contracts of sale. However, in some cases, contract of sales or customs values may not contain all the necessary information. To ensure the completeness of information, it is possible to utilize other commercial documents, such as invoices, contracts of carriage and insurance contracts. These detailed firm-level records of trade in goods are normally collected and maintained by the National Statistical Agencies or by the Customs Administrations.

**Other options**

Quite often, firm-level datasets are usually available through business registries, and surveys undertaken and maintained by the National Statistical Agency. Data requirement for this firm-level information vary according to the question one wants to study, but most commonly includes a unique firm identifier (same for customs data), year, turnover (value of sales), number of employees, value added of production, wage costs, material costs, stock of capital, fixed assets, total investment, investment in R&D etc.

## 3.6 Information and Consultation with Private Sector and Civil Society<sup>15</sup>

DTAs are designed to promote economic growth by facilitating the exchange of goods and services between countries, leading to increased exports, imports, investments, and job creation. The private sector is a central focus of trade agreements, as it is responsible for the production and distribution of goods and services, and for driving economic development. However, the benefits of trade agreements are not limited to the private sector alone. Civil society also benefits from the increased economic activity generated by trade agreements, including greater availability of goods and services, job creation, and expanded economic opportunities. Civil society organizations, including consumer groups, environmental organizations, and labor unions, play an important role in the implementation and monitoring of trade agreements. By providing feedback and engaging with policymakers, civil society can help to ensure that trade agreements are equitable, sustainable, and beneficial for all. Effective engagement with both the private sector and civil society is critical for the successful implementation of trade agreements.

To take full advantage of the opportunities offered by a particular DTA, it is essential for the private sector to have a clear understanding of its features, the ways in which its provisions impact their businesses, and how to leverage its benefits. Private sector engagement will also provide governments with valuable feedback and intelligence on any issues that may arise during the DTA's implementation. Furthermore, it is important for authorities to effectively communicate the impacts of the DTA to civil society. This not only ensures that the broader public is aware of the potential benefits and challenges of the DTA, but also fosters transparency and accountability in the DTA's implementation process.

With the goal of assisting public officials in designing and implementing effective engagement strategies with the private sector and civil society, the tools included in this section shed light on how to develop a political economy stakeholder map, as well as best practices and practical tips to engage with the private sector and civil society regarding the implementation of DTAs.

### 3.6.1 Preparing a Political Economy Stakeholder Map

Trade agreements can generate both opportunities and challenges to various stakeholders in the private sector and civil society groups. Before entering the negotiation phase, it is critical to conduct a stakeholder mapping exercise to identify the productive sectors or civil society organizations that may be affected by a specific DTA. This mapping exercise is also useful during the treaty's implementation phase.

Stakeholder mapping is a valuable tool for government officials to identify the diverse range of stakeholders involved in the implementation of DTAs. By considering different sectors, levels of influence, and potential interest in the treaty's implementation, officials can determine the purpose of engaging with each group. They can then select the most effective mechanisms to liaise with each type of stakeholder to address their information needs and expectations, minimize resistance, and facilitate collaboration toward achieving the DTA's objectives. This process can help to ensure that stakeholders are engaged and informed throughout the implementation phase, leading to greater buy-in and support for the agreement's objectives.

To aid in the development of a political economy stakeholder map for the administration of a DTA, Guidance Note 3.3

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<sup>15</sup> This toolkit includes a checklist comprising the specific steps governments should undertake to fully inform and consult private sector and civil society stakeholders on trade-related issues. This checklist can be used as a self-assessment tool to determine the extent to which the actions already being undertaken by a government comply with good practices. The checklist for compliance and execution can be found in **Appendix 3.A: Checklist for Treaty Administration: Compliance and Execution**.

### 3.6.2 Good Practices and Practical Tips for Engagement of Private Sector and Civil Society on the Implementation of DTAs

Effective information and consultation mechanisms are fundamental for engaging with the private sector and civil society throughout the implementation of trade agreements. As such, it should be a priority function of trade authorities to establish these mechanisms. By providing clear and transparent channels of communication, trade authorities can foster greater collaboration and trust with stakeholders. This engagement can also help to gather intelligence and feedback on the outcomes of the treaty.

Facilitating dialogue platforms is one way that governments can promote transparency and collaboration with stakeholders. Clear and concise messaging that translates complex information into simple and attractive messages can help to build support and trust for the government's trade agenda among the public facilitating a better understanding of the potential impacts of trade agreements. Additionally, promoting capacity-building activities for stakeholders can enhance their understanding of basic concepts and objectives of the country's international trade policy. These efforts can foster a more informed and engaged public and private sector that can better contribute to the successful implementation of trade agreements.

Guidance Note 3.4 <PENDING LINK> offers an overview of information and consultation mechanisms to engage with private sector and civil society on the implementation of DTAs.



## References

To be completed

## Appendix 3.A: Checklist for Treaty Administration: Compliance and Execution

Treaty Administration		
<b>1. Compliance and Execution</b>	<b>Y</b>	<b>N</b>
Have staff prepared matrixes (obligation by obligation, and chapter by chapter) to undertake gap analysis between FTAs and domestic laws and regulations?		
What percentage of FTAs have been covered by the gap analysis?		
In how many chapters? (see Annex 1)		
Do gap analyses specify any new regulations or legislation which need to be enacted to comply with new the FTA's normative commitments or to eliminate inconsistencies?		
Are there concrete action plans (with proposals and timelines) to execute regulatory reforms to comply with the FTA?		
Are there mechanisms to follow up execution with workplans and timelines?		
Have action plans led to enactment of new laws or regulations?		
What percentage of commitments have already been implemented?		
Is there any feedback loop mechanism with private sector (traders and investors) verifying effective application of reforms on the ground?		
Is there any mechanism to monitor the official gazette for new measures which may be inconsistent with DTAs?		
Is there any centralized tracking mechanism to document, address and resolve issues affecting the private sector arising in the home country regarding FTA domestic implementation? See section 2 below		
Are Key Performance Indicators (KPIs) in place to assess home country compliance with FTAs?		
Are Key Performance Indicators (KPIs) in place to assess the use by the private sector of the preferential treatment with FTAs?		
Are Key Performance Indicators (KPIs) in place to assess degree of satisfaction of private sector with FTAs?		
<b>SUBTOTAL</b>		

## Appendix 3.B: Template for Mapping Relevant Public Agencies for the Administration of a DTA

Maintaining an updated mapping of relevant public agencies involved in the application or implementation of the different disciplines of a DTA is a useful tool for ministries of trade, as it will facilitate the coordination required for effective treaty administration.

**Instructions:** Review each category indicated for Trade in goods and Trade in services and compile the corresponding domestic institutions, the designated focal points, and contact information. This database should be updated periodically, as officials might move to different positions or move out of the public administration.

**Appendix Table 3.B.1: Relevant Agencies for Trade in Goods and Trade Facilitation**

Category	Name of Institution	Name of Institution	Contact information (e-mail, phone number)
Trade ministry			
Customs administration			
Agriculture ministry			
Health ministry or sanitary control authorities			
Economy, industry and internal production ministries			
Phytosanitary control authorities			
Animal health authorities			
Authorities in charge of the administration of anti-dumping measures and countervailing duties			
Inspection and quarantine authorities			
Quality supervision authorities			
Technical regulations authorities			
Border control authorities			
Transportation authorities (port and airport authorities)			
Infrastructure authorities			
Consumer protection authorities			

Appendix Table 3.B.2: Relevant Agencies for Trade in Services

Category	Name of Institution	Name of Institution	Contact information (e-mail, phone number)
<b>Policy-making, regulatory and supervisory authorities</b>			
-	Financial services regulators and supervisors		
-	Telecommunications regulators and policymakers		
-	Public services regulators (energy, water, sanitation, public transport)		
-	Transport authorities (air, maritime, road freight and rail freight)		
-	Consumer protection		
-	Domestic regulation (Better regulation units)		
-	Environment authorities		
-	Audiovisual and advertisement-related authorities		
	Immigration authorities		
	Labor authorities		
<b>Professional boards</b>			
-	Legal Services		
-	Accounting, auditing and bookkeeping services		
-	Taxation Services		
-	Architectural and engineering services		
-	Medical services		
-	Dental services		
-	Veterinary services		
-	Other health-related services (e.g. midwives, nurses, physiotherapists and para-medical personnel)		

## Appendix 3.C: Gap Analysis Illustrative Template-Chapter on Market Access for Trade in Goods

[Unless otherwise provided, provisions from Chapter 2 (National Treatment and Market Access for Goods), CPTPP are cited as examples]

Typical commitment	Text of the Agreement	Status national legislation (Covered or not?)	Provisions which may represent issues of compatibility	Source: national legislation
<p><b>Schedule of tariff concessions:</b> Has the tariff liberalization and other concessions been incorporated into the national customs schedule and made public through the official gazette?</p> <p><b>Rules of origin</b> Have the rules of origin been made public through the official gazette?</p>	<p><b>Article 2.4.2</b> Unless otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule to Annex 2-D (Tariff Commitments).</p>			
<p>Have procedures for verification of origin, including investigations been established?</p>	<p><b>Article 2.16(d)</b> Each Party shall promptly publish the following information in a nondiscriminatory and easily accessible manner, in order to enable interested parties to become acquainted with it: ... (d) laws, regulations and administrative rulings of general application relating to rules of origin;</p> <p><b>Article 3.19, Chapter 3 (Rules of Origin and Origin Procedures)</b> Except as otherwise provided in Annex 3-A (Other Arrangements), each Party shall apply the procedures in this Section.</p>			
<p><b>National Treatment</b> Is there any internal tax or other charges, laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, or internal quantitative regulations requiring the mixture, processing or use of products applied to imported or domestic products so as to afford protection to domestic production?</p> <p><b>Freedom of transit:</b> Are there provisions in place providing freedom of transit pursuant GATT Art. V 1994?</p> <p><b>Drawback and Duty Deferral Programs:</b> Is there any existing program? Are they compatible with the commitments of the treaty?</p> <p><b>Performance requirements:</b> Is there any measure conditioning waiver of customs duties to performance requirements?</p>	<p><b>Article 2.3.1</b> Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994, including its interpretative notes, and to this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.</p> <p><b>CPTPP text does not have specific text, but incorporates by reference provision of GATT 1994 (See Article V.2. GATT)</b> <b>CPTPP text does not have specific text, but incorporates by reference provision of GATT 1994 (See Article XVI of GATT and SCM Agreement, footnote to Article 1.1.)</b></p>			
<p><b>Temporary Admission of Goods:</b> Is there any measure providing temporary admission of goods? If yes, is it compatible with the agreement?</p>	<p><b>Article 2.5</b> 1. No Party shall adopt any new waiver of a customs duty, or expand with respect to an existing recipient or extend to any new recipient the application of an existing waiver of a customs duty, that is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement. 2. No Party shall, explicitly or implicitly, condition the continuation of any existing waiver of a customs duty on the fulfillment of a performance requirement.</p> <p><b>Article 2.8.1</b> Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin: (a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party; (b) goods intended for display or demonstration; (c) commercial samples and advertising films and recordings; and (d) goods admitted for sports purposes.</p>			
<p><b>Re-importation:</b> Is there any measure regulating goods re-entered after repair or alteration in the country? If yes, is it compatible with the agreement?</p>	<p><b>Article 2.6.1</b> No Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of another Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.</p>			
<p><b>Commercial samples:</b> Are there any measures regulating duty-free entry of commercial samples of negligible value and printed advertising materials? If yes, are they compatible with the agreement?</p>	<p><b>Article 2.7</b> Each Party shall grant duty-free entry to commercial samples of negligible value and printed advertising material imported from the territory of another Party, regardless of their origin, but may require that: (a) commercial samples of negligible value be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or (b) printed advertising material be imported in packets that each contain no more than one copy of the material and that neither that material nor those packets form part of a larger consignment.</p>			
<p>Is there any <b>import and export restrictions</b>? If yes, have they been listed and exempted under the agreement?</p>	<p><b>Article 2.10.1</b> Unless otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.</p>			
<p>Are there any <b>import licensing procedures</b> in place? If yes, are they compatible with the agreement? Have those procedures been published?</p> <p>Are there any <b>export licensing procedures</b> in place? If yes, are they compatible with the agreement? Have those procedures been published?</p>	<p><b>Article 2.12.1</b> No Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.</p> <p><b>Article 2.13.2</b> Within 30 days of the date of entry into force of this Agreement for a Party, that Party shall notify the other Parties in writing of the publications in which its export licensing procedures, if any, are set out, including addresses of relevant government websites. Thereafter, each Party shall publish in the notified publications and websites any new export licensing procedure, or any modification of an export licensing procedure, that it adopts as soon as practicable but no later than 30 days after the new procedure or modification takes effect.</p>			
<p><b>Administrative Fees and Formalities:</b> are all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied in a manner consistent with Article III:2 of the GATT 1994, and antidumping or countervailing duties) imposed on or in connection with importation or exportation limited to the cost of services rendered? (Article VIII:1 GATT 1994)</p>	<p><b>Article 2.14.1</b> Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than export taxes, customs duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.</p>			

## Appendix 3.D: Gap Analysis Template: Chapter on Cross Border Trade in Services

### GAP ANALYSIS TEMPLATE: CHAPTER ON CROSS BORDER TRADE IN SERVICES

[Illustrative answers for Sections I (Agreement Structure) and II (Scope and Coverage) have been provided based on the CPTPP. Unless otherwise provided, provisions from Chapter 10 (Cross Border Trade in Services), CPTPP are cited as examples in Sections III-V]

Typical commitment	Answers & Text of the Agreement	Status national legislation (Covered or not?)	Provisions which may represent issues of compatibility	Source: national legislation
<b>I. Agreement Structure</b>				
<p><b>Coverage of modes of supply:</b> How is services trade contemplated in this agreement? FTAs adopt one of the following four structures:</p> <p>A) All 4 modes covered in a self-contained chapter (plus an Annex on M4, as in the GATS).</p> <p>B) All 4 modes covered in a self-contained chapter (plus an Annex on M4) and an additional Investment chapter/ protocol.</p> <p>C) Chapter on cross-border trade in services ("CBTS") (M1, M2, and M4), PLUS one chapter on investment (dealing with M3) and other annexes/chapters on movement of persons.</p> <p>D) Chapter on cross-border trade in services (M1 &amp; M2), plus an investment chapter (M3), plus a chapter on movement of persons (M4).</p> <p><b>Separate Chapters and/or Annexes:</b> Are there separate sector-specific chapters (e.g., financial services, telecommunications)?</p>	<p>Chapter 10 on CBTS contains Modes 1, 2 and 4, but not Mode 3. Additional chapters on temporary entry of business persons and investment</p> <p>Art.10.1 cross-border trade in services or cross-border supply of services means the supply of a service:</p> <p>(a) from the territory of a Party into the territory of another Party;</p> <p>(b) in the territory of a Party to a person of another Party; or</p> <p>(c) by a national of a Party in the territory of another Party, but does not include the supply of a service in the territory of a Party by a covered investment;</p>			
<p>Are there sector-specific annexes to a chapter on trade in services (such as financial services) or to a chapter on investment?</p>	<p>Yes.</p> <p><b>Chapter 11 (Financial Services) / Chapter 13 (Telecommunications) / Chapter 12 (Temporary Entry of Business Persons)</b> Telecommunications, Financial Services, Temporary Entry of Business Persons, Government Procurement, Electronic Commerce. Sector specific annexes have been provided.</p>			
<p><b>Sectoral Exclusions:</b> Are any of the following services excluded from the 1) Chapter on CBTS and/or 2) Chapter on Investment? Please indicate the chapter in the comments. Services supplied in exercise of governmental authority. Air traffic rights (cross-border air transport).</p> <p>For air transport, are there services covered beyond (1) computer reservation systems, marketing and sale services, or (3) maintenance and repair services? (e.g., specialty air services, airport operation services - please list in the comments)</p> <p><b>Policy exclusions:</b> Are any of the following policy areas excluded from the Agreement? If some of them (e.g., government procurement of services, or subsidies to service sectors) are included in chapters other than the CBTS chapter, please indicate so.</p> <p>Government procurement</p> <p>Subsidies</p> <p>Job seekers; citizenship, residence, or employment on a permanent basis.</p> <p><b>Liberalization Approach:</b> In the case of disciplines subject to scheduling/reservations (i.e., market access), what is the approach followed? A) Positive list (as in GATS); B) Negative list (as in NAFTA); C) Other (including combinations of the previous ones depending on the discipline, e.g., positive list for MA and negative list for NT)</p>	<p style="text-align: center;"><b>II. Scope and Coverage</b></p> <p><b>Article 10.2.3(c)</b> This Chapter does not apply to services supplied in the exercise of governmental authority within the territory of each respective Party.</p> <p><b>Articles 10.2.5 and 10.2.8</b> If the Annex on Air Transport Services of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.</p> <p><b>Article 10.2.5</b> (d) specialty air services; (e) airport operation services; and (f) ground handling services.</p> <p><b>Article 10.2.3.b</b> This chapter shall not apply to: ... (b) government procurement;</p> <p><b>Article 10.2.3.d</b> Subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance</p> <p><b>Article 10.2(4)</b> Chapter 10 does not impose any obligation on a Party with respect to a national of another Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.</p> <p>Negative List <b>Annexes I, II</b></p>			

<p>Does the agreement contain a standstill provision?</p>	<p><b>Annex III.1.c and Article 10.7</b>                  The Schedule of a Party to this Annex sets out in Section B, pursuant to Article 11.10.2 (Non-Conforming Measures), the specific sectors, subsectors or activities for which a Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:                  (i) Article 11.3 (National Treatment);                  (ii) Article 11.4 (Most-Favoured-Nation Treatment);                  (iii) Article 11.5 (Market Access for Financial Institutions);                  (iv) Article 11.6 (Cross-Border Trade); or                  (v) Article 11.9 (Senior Management and Boards of Directors).</p>
<p>Does the agreement contain a ratchet provision - implying all unilateral liberalization is legally bound?</p>	<p><b>Article 10.7.1.c and Annex 10-C</b>                   Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence).</p>
<p><b>Market Access:</b> How is the market access obligation defined?                  A: As defined in the GATS (by reference to 6 prohibited market access limitations)                  B: As defined in the US FTAs (by reference to 5 prohibited market access limitations, and omitting foreign equity limitations)                  C: Other (no provision on market access; used different definitions; or other reasons)</p>	<p>Obligation defined as defined in US FTAs (5 prohibited MA limitations, omitting foreign equity limitations)</p> <p><b>Article 10.5</b>                  No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that: (a) impose limitations on: (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test; (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; 3 or (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.</p>
<p><b>Additional Commitments:</b> Can parties to the Agreement agree to additional commitments?</p>	<p>N/A</p>
<p><b>III. Substantive Disciplines</b></p>	
<p><b>National Treatment</b>                  Is there any law or regulation which accords to foreign services and service suppliers more favorable than that it accords to domestic services and service suppliers?</p>	<p><b>Article 10.3</b>                  1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.                  2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.</p>
<p><b>Most-Favored Nation</b>                  Is there any law or regulation which accords to services and service suppliers of one country treatment more favourable than that it accords to services and service suppliers of any other Party or a non-Party to the treaty?  <b>Local Presence:</b> Do any laws and regulations mandate local presence or commercial presence as a pre-condition to supply services cross-border?</p>	<p><b>Article 10.4</b>                  Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or a non-Party.</p> <p><b>Article 10.6</b>                  No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.</p>
<p><b>Export Related Performance Requirements:</b> Do any laws or regulations impose export related performance requirements on services and service suppliers?</p>	<p><b>Article 9.10.1.a and .e</b>                  Neither Party may impose or enforce any of the following requirements: to export a given level or percentage of goods or services, to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment, to supply exclusively from the territory of the Party the goods that it produces or the services that it supplies to a specific regional market or to the world market</p>
<p><b>Local Content Requirements:</b> Do any laws or regulations mandate that services and service suppliers fulfill local content related performance requirements?</p>	<p><b>Article 9.10.1b</b>                  Neither Party may impose or enforce any of the following requirements: to achieve a given level or percentage of domestic content.</p>
<p><b>Technology Transfer Requirements:</b> Do any laws or regulations impose technology transfer related performance requirements on services and service suppliers?  <b>Nationality/ Residency Requirements:</b> Do any laws or regulations mandate nationality or residency requirements for senior managers and/or members of Board of Directors?</p>	<p><b>Article 9.10.1f</b>                  Neither Party may impose or enforce any of the following requirements: to transfer a particular technology, production process, or other proprietary knowledge to a person in its territory.</p> <p><b>Article 9.11</b>                  Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions individuals of any particular nationality.</p>
<p><b>State-Owned Enterprises:</b> Do state-owned enterprises enjoy legal rights and privileges in the country? If yes, are such rights and privileges compatible with the agreement?</p>	<p><b>Art. 17.2 / Chapter 17 (State-Owned Enterprises and Designated Monopolies) Chapter 16 (Competition Policy)</b>                  Chapter 17 applies to the activities of state-owned enterprises and designated monopolies of a Party that affect trade or investment between Parties within the free trade area. So, all the provisions of chapter 17 in reference to monopolies are relevant to discipline monopolies.</p>

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<p><b>Cross-Border State Flows:</b> Do laws and regulations restrict or place conditions on the cross-border flow of data? If so, are such restrictions compatible with the agreement?</p>	<p><b>Article 14.11</b>            1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.            2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.</p>
<p><b>IV. Domestic Regulations</b></p>	
<p><b>Qualification, Licensing and Technical Standards:</b> Are laws and regulations relating to qualification, licensing, and technical standards compatible with the agreement? For instance, are such standards based on objective and transparent criteria?</p>	<p><b>Article 10.8.2</b>            With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are: (a) based on objective and transparent criteria, such as competence and the ability to supply the service; and (b) in the case of licensing procedures, not in themselves a restriction on the supply of the service.</p>
<p>Do laws and regulations require a domestic licensing authority to inform the applicant of the decision concerning the application?</p>	<p><b>Art. 10.8.4.a</b>            If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application.</p>
<p>Is there a provision requiring a domestic licensing authority to provide information concerning the status of an application?</p>	<p><b>Art. 10.8.4.d</b>            If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities on request of the applicant, provide, without undue delay, information concerning the status of the application.</p>
<p>Is there an obligation to set up a single window for submission of applicants?</p>	<p>N/A</p>
<p>Are domestic licensing authorities generally under a legal obligation to make licensing decision within a certain period of time?</p>	<p><b>Art. 10.8.4.a</b>            If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application.</p>
<p>Are domestic licensing authorities under a legal obligation to administer laws and regulations in a reasonable, objective, and impartial manner?</p>	<p><b>Article 26.3</b>            With a view to administering in a consistent, impartial and reasonable manner all measures of general application with respect to any matter covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 26.2.1 (Publication) to a particular person, good or service of another Party in specific cases.</p>
<p>Do laws and regulations contain provisions on mutual recognition of educational and professional qualifications?</p>	<p><b>Article 10.9</b>            For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.</p>
<p><b>V. Transparency</b></p>	
<p>Is there a provision requiring publications of relevant laws and regulations concerning services and service suppliers?</p>	<p><b>Article 26.2.1</b>            Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.</p>
<p>Is there a legal obligation to allow interested parties an opportunity for prior comment on proposed regulation?</p>	<p><b>Article 26.2.2</b>            To the extent possible, each Party shall:            (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and            (b) provide interested persons and other Parties with a reasonable opportunity to comment on those proposed measures.</p>
<p>Are all decisions of licensing authorities subject to an appeal to an independent authority?</p>	<p><b>Article 26.4.1</b>            Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.</p>

## Appendix 3.E: Deep Trade Agreements

### Institutional Matrix: Bodies and Main Characteristics

Body	Composition	Sample functions and competences	Typical Periodicity of meetings
<b>Free Trade Commission</b>	Cabinet-level representatives of the parties to the agreement, usually ministers of foreign or international trade or their designees	<ul style="list-style-type: none"> <li>Supervise the implementation of the agreement, the work of all committees, working groups, and other bodies established under the DTA.</li> <li>Consider ways to further enhance trade relations between the parties.</li> <li>Seek to resolve disputes that may arise regarding the interpretation or application of this agreement.</li> <li>Assess the outcomes of the application of the agreement.</li> <li>Oversee the further elaboration of the agreement.</li> <li>Establish the amount of remuneration and expenses to be paid to panelists in dispute resolution.</li> <li>Establish and delegate responsibilities to ad hoc and standing committees, working groups or other bodies, and supervise their work.</li> <li>Make recommendations to the parties to consider amendments to the agreement.</li> <li>Issue interpretations of the provisions of the DTA.</li> <li>Modify, in fulfillment of the agreement's objectives, the schedules regarding the elimination of customs duties with the purpose of adding one or more goods excluded or accelerating the tariff reduction; the specific rules of origin, regulations on origin procedures developed by the parties and the format of the origin certificate; the model rules of procedure for panels and code of conduct for dispute settlement.</li> <li>Review the impacts of the DTA on micro, small and medium enterprises.</li> <li>Seek the advice of non-governmental persons or groups.</li> </ul>	In regular sessions once a year or every two years In special session within 30 days of the request of a party
<b>Agreement Coordinator</b>	Director-level officials from the trade ministry, usually the Director of Foreign Trade or Trade Agreements	<ul style="list-style-type: none"> <li>Work jointly to develop agendas and make other preparations for Commission meetings.</li> <li>Prepare and review technical files/dossiers necessary for decision-making by the Commission.</li> <li>Follow up on Commission decisions or recommendations, as appropriate.</li> </ul>	Typically meeting periodicity is not established in the DTA/ Day to day coordination and communication
<b>Contact points</b>	Representatives of the different government agencies responsible for matters covered by the agreement	<ul style="list-style-type: none"> <li>Facilitate communications between the parties on any matter covered by the agreement.</li> <li>On the request of the other party, identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting party.</li> </ul>	Day to day coordination and communication as part of the work of each committee
<b>Committee on Trade in Goods</b>	Representatives from ministries of trade, agriculture, health, customs administration, authorities on the following matters: sanitary control phytosanitary control, animal health, administration of anti-dumping measures and countervailing duties, inspection and quarantine, quality supervision, technical regulations.	<ul style="list-style-type: none"> <li>Address issues related to trade in goods, rules of origin, customs administration or trade facilitation.</li> <li>Promote trade between the countries, including through consultations on accelerating tariff elimination.</li> <li>Address issues regarding barriers to trade, especially those related to the application of non-tariff measures and amendments to the Harmonized System.</li> <li>Resolve any difference regarding the classification of goods under the Harmonized System.</li> <li>Establish ad hoc groups with specific functions.</li> </ul>	Once a year or anytime at the parties' or the FT Commission's request
<b>Committee on Trade in Services</b>	Representatives from ministry of trade, services regulators, immigration authorities, professional boards.	<ul style="list-style-type: none"> <li>Discuss issues that may arise from the implementation and operation of the parties' obligations related to services.</li> <li>Address matters concerning cross-border trade in services, investment, temporary entry, electronic commerce, and intellectual property rights related to services.</li> </ul>	Once a year or anytime at the parties' or the FT Commission's request
<b>Working group or committee on trade facilitation</b>	Representatives from customs administration authorities and ministries of trade	<ul style="list-style-type: none"> <li>Monitor the implementation and administration of relevant provisions.</li> <li>Report to the Commission on the implementation of the corresponding chapter.</li> <li>Promote joint cooperation among the parties in the development, application, execution and improvement of FC and customs provisions, including customs procedures, customs valuation, tariff regimes, customs nomenclature, customs cooperation, matters related to free zones, mutual administrative assistance in customs matters, as well as to provide a forum for consultation and discussion for such issues.</li> <li>Address questions that might arise from the chapter's provisions.</li> <li>Develop a customs or trade facilitation work program.</li> <li>Prepare an instrument or activity provided for in the agreement.</li> </ul>	Once a year or anytime at the parties' or the FT Commission's request
<b>Committee on Rules of Origin</b>	Representatives from customs administration authorities and ministries of foreign trade	<ul style="list-style-type: none"> <li>Guarantee the effective, uniform and consistent application of the rules of origin chapter and enhancing cooperation.</li> <li>Promote cooperation in this area.</li> <li>Keep updated the annex on product specific rules of origin on the basis of the transposition of the Harmonized System.</li> <li>Advise the Commission on proposed solutions to address issues of interpretation, application and administration of the chapter, calculation of the Regional Value Content; and issues arising from the adoption by either party of operational practices not in conformity with the rules of origin chapter that may adversely affect the flow of trade between the parties.</li> </ul>	On the request of a Party or the Commission



## Module 3. Good Practices to Operationalize Implementation of Deep Trade Agreements

<b>Committee on Sanitary and Phytosanitary Measures</b>	Representatives of each party who have responsibility for sanitary and phytosanitary matters (e.g. ministries of health, agriculture, and phytosanitary measures)	<ul style="list-style-type: none"> <li>• Monitor the implementation of the corresponding chapter.</li> <li>• Promote communication and exchange of information among the parties to improve the mutual understanding of sanitary and phytosanitary measures and the regulatory processes involved.</li> <li>• Provide a forum for discussions on sanitary and phytosanitary matters that affect, or may affect, trade between the parties.</li> <li>• Coordinate technical cooperation programs.</li> <li>• Enhance communication and cooperation with international organizations related to SPS matters.</li> <li>• Establish ad hoc working groups in accordance with its terms of reference, when necessary</li> <li>• Review the SPS chapter in light of developments under the SPS Agreement.</li> </ul>	Once every two years or at any time as agreed upon by the parties
<b>Committee on Technical Barriers to Trade</b>	Representatives from the following authorities: <ul style="list-style-type: none"> <li>• Inspection and quarantine</li> <li>• Animal health authority</li> <li>• PS authority</li> <li>• Health regulation authority</li> <li>• Technical regulation entity</li> <li>• Metrology entity</li> <li>• Quality supervision entity</li> </ul>	<ul style="list-style-type: none"> <li>• Facilitate and supervise the implementation and administration of the chapter.</li> <li>• Address important issues raised by a party related to the development, adoption, application of technical regulations and conformity assessment procedures.</li> <li>• Facilitate the exchange of information on technical regulations, standards, and conformity assessment procedures and strengthen cooperation in these fields.</li> <li>• Explore ways for trade facilitation between the parties.</li> <li>• Review the TBT chapter in light of developments of the TBT Agreement.</li> </ul>	Once every two years or at any time as agreed upon by the parties
<b>Contact point for Intellectual</b>		<ul style="list-style-type: none"> <li>• Facilitate communication between the parties regarding the IP chapter.</li> </ul>	
<b>Property matters</b>		<ul style="list-style-type: none"> <li>• Exchange information relevant to the other party on any IP issues.</li> </ul>	
<b>Working Group on Temporary Entry of Business Persons</b>	Representatives of the ministries or entities in charge of trade, labor, immigration, foreign affairs or public security	<ul style="list-style-type: none"> <li>• Review the application of the section on temporary entry of business persons.</li> <li>• Consider the development of measures to further facilitate the temporary entry of business persons.</li> <li>• Enhance cooperation.</li> <li>• Address other related matters of mutual interest to the parties.</li> </ul>	Once a year or anytime at the parties' or the FT Commission's request
<b>Cooperation Committee</b>	Representatives of the ministries of foreign affairs and planning or the agency in charge of international cooperation	<ul style="list-style-type: none"> <li>• Oversee the implementation of the cooperation chapter.</li> <li>• Encourage the Parties to undertake cooperation activities under the cooperation framework established in the DTA.</li> <li>• Make recommendations on the cooperation modalities and activities under the DTA, in accordance with the strategic priorities of the Parties</li> <li>• Review the operation of the cooperation chapter and the application and fulfilment of its objectives between the relevant authorities, including but not limited to the relevant government agencies, research institutes, and universities in order to foster closer cooperation in thematic areas; the review may be carried out through periodic reports from the parties.</li> </ul>	Once a year or anytime at the parties' or the FT Commission's request
<b>Committee on financial services</b>	Officials of each party's authority responsible for financial services	<ul style="list-style-type: none"> <li>• Supervise the implementation of the corresponding chapter and its further elaboration.</li> <li>• Consider issues regarding financial services that are referred to it by a party.</li> <li>• Participate in the dispute settlement procedures</li> </ul>	Once a year or anytime at the parties' or the FT Commission's request
<b>Committee on trade and labor**</b>	Representatives from the trade and labor authorities	<ul style="list-style-type: none"> <li>• Oversee the implementation of the trade and labor chapter of the DTA and review the progress achieved under it, including its operation and effectiveness.</li> <li>• Discuss any other matter within the scope of the corresponding chapter.</li> </ul>	Once a year or as often as necessary
<b>Committee on trade and sustainable development<sup>1**</sup></b>	Representatives from the trade and environment authorities	<ul style="list-style-type: none"> <li>• Oversee the implementation of trade and sustainable development chapter and review the progress achieved under it.</li> <li>• Discuss matters of common interest.</li> <li>• Discuss any other matter within the scope of the chapter as the parties jointly decide.</li> </ul>	Once a year or as often as necessary
<b>Advisory group on sustainable development and labor**</b>	Independent representative organizations of civil society in a balanced representation of environmental groups, employers, unions, labor and business organizations, as well as other relevant stakeholders as appropriate	<ul style="list-style-type: none"> <li>• Provide views and advice on issues relating to the sustainable development and labor chapters at the request of the respective committee.</li> <li>• Stakeholders may submit opinions and make recommendations on any matter related to the sustainable development chapter on their own initiative.</li> </ul>	Convened at the respective committee's request

\*\* Not all DTAs have chapters on trade and labor and trade and environment. However, most of them negotiated by the United States and the European Union provide for these provisions. A key sensitive issue for parties is whether those two chapters, which regulate subject areas that go beyond trade, should be subject to the dispute settlement mechanisms applicable to other chapters of DTAs. In many cases, these two chapters have specific provisions establishing mechanisms to assess whether a party to the agreement is complying with the applicable commitments. Thus, the committees on labor and environment act as key elements of those procedures.

<sup>1</sup> Sometimes the trade and labor committee can be part of the trade and sustainable development committee.

## Appendix 3.F: Checklist for Treaty Operation and Monitoring

	Y	N
<b>Basic internal organization</b>		
Is there a directorate or department specifically in charge of treaty implementation?		
Is the directorate or department established by law or regulation?		
How many staff does the directorate or department have?		
Are the staff mapped to a particular geographic area or trade partners?		
Are staff mapped according to topic/area?		
Are the staff in charge of topic/area also involved in international trade negotiations?		
How many topic/areas are covered? (see Annex 1)		
<b>Treaty Administration</b>		
<b>1. Compliance and Execution</b>		
Have staff prepared matrixes (obligation by obligation, and chapter by chapter) to undertake gap analysis between FTAs and domestic laws and regulations?		
What percentage of FTAs have been covered by the gap analysis?		
In how many chapters? (see Annex 1)		
Do gap analyses specify any new regulations or legislation which need to be enacted to comply with new the FTAs normative commitments or to eliminate inconsistencies?		
Are there concrete action plans (with proposals and timelines) to execute regulatory reforms to comply with the FTA?		
Are there mechanisms to follow up execution with workplans and timelines?		
Have action plans led to enactment of new laws or regulations?		
What percentage of commitments have already been implemented?		
Is there any feedback loop mechanism with private sector (traders and investors) verifying effective application of reforms on the ground?		
Is there any centralized tracking mechanism to document, address and resolve issues affecting the private sector arising in the home country regarding FTA domestic implementation? See section 2 below		
Are Key Performance Indicators (KPIs) in place to assess home country compliance with FTAs?		
Are Key Performance Indicators (KPIs) in place to assess the use by the private sector of the preferential treatment with FTAs?		
Are Key Performance Indicators (KPIs) in place to assess degree of satisfaction of private sector with FTAs?		
<b>2. FTA Committee Follow Up, Problem Solving and Dispute Settlement</b>		
<b>2.1. Domestic follow up &amp; problem solving</b>		
Is there an organizational structure in place to follow up regular operation of committees and working groups established in FTAs?		
Is there specific department staff assigned to each committee according to topic/area?		
Do department staff assigned to each committee consult regularly with peer colleagues of other national government agencies?		
Are there any protocols and procedures agreed to follow up and plan agendas at national level for international committee meetings?		
Are there mechanisms in place to explain the private sector how the FTA committees operate and how can they be leveraged to address their problems?		
Are there any tracking mechanisms monitoring the number and types of problems raised, addressed and resolved?		
Is there any regular information and consultation on operation of committees and working groups to private sector?		
Is there any KPI to measure the information and consultation with private sector regarding operation of committees?		
<b>2.2. Follow up &amp; problem solving with external trade partners</b>		
Does department staff assigned to each committee have regular communication with its peer FTA counterpart?		
Have the department staff mapped and collected the contact details of different agencies of the FTA partners which may be directly involved in the discussions of the committee?		
Are there any protocols and procedures agreed to follow up and plan agendas for international committee meetings?		
Are there working plans agreed with a view to prepare the periodic meetings of Administrative Commission?		
Is there any specific process agreed to solve problems raised by the private sector?		
Are there any tracking mechanisms monitoring the number and types of problems raised, addressed and resolved by committees?		
Do department staff have any communication with trade attaches or national diplomatic offices in the FTA counterpart country?		
Do trade attaches or national diplomatic offices provide any support to Ministry of Trade when committee meetings are abroad? Is there any protocols, procedures or practices to effectively follow up committees' discussions?		
Do committees have agreed any mechanism to assess their performance?		
Are Key Performance Indicators (KPIs) in place to assess degree of satisfaction of private sector with DTA's committees?		
<b>3. Information and Consultation with Private Sector and Civil Society</b>		
Does the Ministry have at team or at least one person dedicated to organizing, follow up and coordinating information and consultation processes with private sector and civil society?		
Is there a mapping, with contact points, of all private sector associations in the country?		
Is there a list of key enterprises or SMEs that are NOT represented by existing chambers?		
Is there a list matching the national production of goods and services with respective firms (at least main ones)?		
<b>3.1. Private Sector Engagement Information</b>		
Is there a webpage available showing basic information (text, mechanisms of information and consultation, and reports) about each DTA?		
Have specific informative documents about the content and implications for the different sectors been prepared for each DTA?		
Have sector-specific studies focused on potential for domestic producers for each DTA been prepared?		
Are conferences, workshops, and webinars periodically organized to discuss operation of DTAs?		
Has a permanent contact-point been assigned to receive and ensure the response to specific enquiries via email or letters regarding DTAs?		
Does the ministry periodically produce press conferences and releases to inform about DTA performance?		
Does the ministry periodically generate news-letters and targeted messages to specific private sector audiences?		
Is the Ministry present in mainstream social media channels?		
<b>3.2. Private Sector consultations</b>		
Is there a permanent council meeting held periodically where private sector and the Ministry can exchange views on trade policy and the trade competitiveness agenda?		
Does that permanent council include representation of consumers as well?		
Is that permanent council institutionalized in any decree or law?		
Is there any mechanism taking record of the agendas discussed and follow up of decisions?		
Is there any specific follow-up mechanism to ensure that agreements taken with the council are implemented?		
Are there periodic sector-focused consultations at technical level to discuss DTAs effects and implementation?		
Are there specific technical meetings to discuss the application of a particular chapter or subject matters in DTAs? (like trade facilitation, SPS or TBT?)		
Does the Ministry organize periodically open round tables or workshops to discuss a particular DTA or a specific subject area covered by many DTAs?		
<b>3.3. Consideration of inputs provided by private sector</b>		
Processing of data gathered during consultations: is there any mechanism in place to assess the inputs of the private sector obtained during different modalities of consultation?		
Does the Ministry inform the private sector of final decisions taken after consultations and explains whether it took into account inputs provided?		

	Y	N
<b>3.4. Civil Society participation &amp; Communication Strategy</b>		
Does the Ministry periodically seek open feedback in newspapers or mass media from any civil society organization regarding DTAs?		
Has the Ministry established regular information and consultation mechanisms with certain civil society representative bodies such as NGOs?		
Is there any capacity building or professional update initiative by the Ministry targeting, mass media editors and journalists of economic affairs on contents and impacts of DTAs?		
Does the Ministry have periodic meetings with any network with reputable columnists who can influence public opinion on DTAs?		
Does the Ministry periodically outsource public opinion surveys about international trade insertion of the country and/or DTAs?		
Are all information and consultation activities undertaken by the Ministry marketed in any mass media outlet?		
Does the Ministry have a mass media and communication strategy prepared by professionals?		
Is there any key-performance indicator to measure success of such communication strategy?		
<b>3.5 Reporting on Administration of DTAs</b>		
Does the Ministry prepare periodic reports in writing on the administration of international trade agreements (WTO and DTAs)?		
Are such reports publicly launched and diffused in public events with the presence of mass media?		
Are such reports prepared at least once a year?		
Are those reports circulated to the Parliament?		
Are those reports widely distributed by different means? (internet, USBs, etc)		
Is there a repository with all the reports prepared over the years?		
<b>4. Economic analysis and monitoring</b>		
<b>4.1. Team</b>		
Has a group of at least two economists within the Ministry being assigned with the task of undertaking data compilation and analysis?		
Does the group consult regularly with Central Bank, Statistical Office, Universities, think tanks, Investment Promotion Agency and Export Promotion Agency to assess availability of trade-related data?		
Has the team prepared an inventory of the data available in the country regarding exports and imports of goods?		
<b>4.2. Data availability</b>		
<b>4.2.1. Trade in goods</b>		
Is available trade in goods data disaggregated by sector?		
Is that data disaggregated by trade partner?		
Is there any firm-level data on exports and imports of goods?		
If there is firm-level data, is there any information on the amounts exported per firm?		
If there is firm-level data, is there any information on the destinations of the exports per firm?		
If there is firm-level data, is there any information on the amounts imported per firm?		
If there is firm-level data, is there any information on the origin of imports per firm?		
<b>4.2.2. Trade in services</b>		
Has the team prepared an inventory of the data available in the country regarding exports and imports of services?		
Does data available covers all 4 modes of supply?		
Is that data disaggregated by sector according either to the CPC or the WTO/120 classification?		
Is that data disaggregated by trade partner?		
Is there any firm-level data on exports and imports of services?		
If there is firm-level data, is there any information on the amounts exported?		
If there is firm-level data, is there any information on the destinations of the exports?		
If there is firm-level data, is there any information on the amounts imported?		
If there is firm-level data, is there any information on the origin of imports?		
<b>4.2.3. Foreign Direct Investment</b>		
Has the team prepared an inventory of the data available in the country regarding foreign direct investment ?		
Is that data disaggregated by sector?		
Is that data disaggregated by origin of the investment?		
Is there any firm-level data on foreign direct investment?		
If there is firm-level data, is there any information as to whether the investors export?		
If there is firm-level data, is there any information on the amounts exported?		
If there is firm-level data, is there any information on the destinations of the exports?		
If there is firm-level data, is there any information on the geographic location of the enterprise(s) in the host country?		
If there is firm-level data, is there any information on the number of jobs generated?		
If yes, is the jobs information disaggregated by gender?		
<b>4.2.4. Domestic market: national production and consumption</b>		
Has the team prepared an inventory of the data available in the country regarding domestic production and domestic consumption of tangible goods?		
Is there disaggregated sector-level data on volumes of domestic production? (At least at HS 6 digit level)?		
Is there disaggregated sector-level data on prices of products? (At least at HS 6 digit level)?		
Is there disaggregated sector-level data on volumes of domestic consumption? (At least at HS 6 digit level)?		
Is there any firm-level data on domestic production of tangible goods?		
If there is firm-level data, is there any information on the amounts produced?		
If there is firm-level data, is there any information on the percentage of sales in domestic market vs. external market?		
If there is firm-level data, is there any information on the geographic location of the enterprise(s) in the host country?		
If there is firm-level data, is there any information on the number of jobs generated?		

**Areas typically covered by many DTAs (Example CPTPP):**

- |   |   |   |
|---|---|---|
| 1. Initial Provisions and General Definitions     | 11. Financial Services                                | 22. Competitiveness and Business Facilitation   |
| 2. National Treatment and Market Access for Goods | 12. Temporary Entry for Business Persons              | 23. Development                                 |
| 3. Rules of Origin and Origin Procedures          | 13. Telecommunications                                | 24. Small and Medium-Sized Enterprises          |
| 4. Textile and Apparel Goods                      | 14. Electronic Commerce                               | 25. Regulatory Coherence                        |
| 5. Customs Administration and Trade Facilitation  | 15. Government Procurement                            | 26. Transparency and Anti-Corruption            |
| 6. Trade Remedies                                 | 16. Competition Policy                                | 27. Administrative and Institutional Provisions |
| 7. Sanitary and Phytosanitary Measures            | 17. State-Owned Enterprises and Designated Monopolies | 28. Dispute Settlement                          |
| 8. Technical Barriers to Trade                    | 18. Intellectual Property                             | 29. Exceptions and General Provisions           |
| 9. Investment                                     | 19. Labour  | 30. Final Provisions                            |
| 10. Cross-Border Trade in Services                | 20. Environment                                       |   |
|   | 21. Cooperation and Capacity Building                 |   |

## Appendix 3.G: Outline of an Annual Report on Treaty Administration

A useful tool for departments in charge of the administration of trade agreements is to prepare periodic reports on the implementation of the DTAs, preferably on an annual basis. Such reports are important sources of information and provide transparency and accountability to different stakeholders such as the legislative branch, other government agencies, regulators, the productive sector, and civil society.

The purpose of these reports is to bring to light all the efforts and actions undertaken by the trade authorities to administer and implement existing DTAs, report on ongoing negotiations (if any), and present an account of the work undertaken as members of the WTO system and other multilateral trade-related organizations or initiatives. Annual reports can also be helpful instruments to promote dialogue with different stakeholders regarding the results derived from DTAs and untapped opportunities. Ultimately, this document should serve as a valuable resource for policymakers, business leaders, and other stakeholders seeking to understand the performance of the country's trade and investment activities, and the implications for its long-term economic growth and development.

This document offers an example of the recommended structure for an annual report. To begin with, a comprehensive overview of the performance of trade in goods, trade in services, and total trade should be presented, accompanied by an analysis of the results of foreign direct investment.

Secondly, a detailed account of treaty administration efforts should be provided. An effective way to organize this information is by region and trading partner because it will provide a complete overview of the status of trade relations by trading partner. Under this scheme, each region and trading partner is listed, a brief explanation of the evolution of trade and investment for the year is provided, as well as an account of all actions undertaken for treaty administration.

It is also important to reflect the country's work with the WTO and other trade-related organizations, if applicable, in the annual report. This part of the report can inform about the activities pursued by the country in its participation before the organization; describe compliance with commitments (e.g. notifications); and summarize trade concerns presented to the WTO committees, the country's participation as a third party in dispute settlement cases, and dispute settlement cases underway.

A graphic depiction of this structure is provided below, and a more detailed explanation will follow.

**Appendix Figure 3.G.1: Sample outline of annual report on DTA administration**



### 3.G.1. An overview of Trade and Investment Results for the Year

In this section, a description of the year's results of trade in goods, trade in services, and total trade should be provided, along with a reference to foreign direct investment results.

### 3.G.2. For Each Trading Partner

#### 3.G.2.1 Evolution of trade and investment

For each region, it is useful to provide the following information: the list of countries included, the percentage of total trade with that region in relation to the total trade of the country; the proportion of trade for each trading partner in that region, and a chart depicting exports to and imports from each country in the region.

For each country within a particular region, a subsection can include a description of the average growth rate of trade with the trading partner, total trade, main exports and imports in percentages, an indication of main products, and graphs illustrating the trade balance of goods for the last 10 years. Additionally, it provides information on the amount and type of FDI flows from that region. Box 3.G.1 in the Annex exhibits a sample section from the annual report prepared by the Ministry of Foreign Trade of Costa Rica.

#### 3.G.2.2 Treaty administration

##### *Compliance and execution of commitments*

This section of the report provides a description of the trade ministry's efforts to promote compliance with the country's commitments among different government agencies (e.g. customs administration, sanitary and phytosanitary authorities, ministries of agriculture and economy). This includes commitments to provide notifications related to agriculture, safeguard measures, antidumping, SPS, technical regulations, quantitative restrictions, subsidies and countervailing measures, and current tariffs.

##### *Treaty operation, problem-solving, and dispute settlement*

The report should provide an update regarding the activities the trade authorities have undertaken for treaty operation, problem-solving, and dispute-settlement purposes. It should include information such as:

- *Actions carried out under the institutional framework of the DTA*: this subsection comprises activities such as the organization of Presidential or ministerial meetings; visits from authorities; informal and formal meetings of any of the FTA's committees or working groups, including the civil society forum or the sustainable development committees. Additionally, it covers actions carried out to implement decisions or plans taken by the Free Trade Commission or other committees; coordination between government agencies to promote a more effective application of the treaty (e.g. coordination between sanitary authorities to move forward in the approval of authorizations to export animal or plant-based products); monitoring of proposed legislation or regulations that might affect DTA commitments; actions undertaken in collaboration with other government agencies and/or the private sector to advocate for changes in legislation or regulations that might harm trade in goods or services; capacity-building activities organized with the trading partner; and any other action carried out to promote the effective administration of the treaty. (See Box 3.G.2 for an example of this section).

- *Number and types of consultations, requests, or claims received by the trade authorities:* This segment seeks to inform about all efforts carried out by the trade authorities to address consultations, requests, or claims submitted by users regarding any of the country's FTAs. Some countries have created information systems to register all these requests daily. These systems allow for extracting statistics that facilitate the monitoring of the actions taken over time. When such systems are in place, a summary of the number of cases received per region and country, as well as the subject matter of each case (e.g. market access, customs procedures, TBT, SPS, intellectual property, rules of origin, etc.) can be extracted to be used in this report. An extract illustrating this type of reporting is included in Box 3.G.3.

- *Efforts to defend national interests with other government authorities:* It is also important to reflect in the annual report all the efforts and actions carried out to defend national interests and ensure the effective implementation of applicable legal instruments, promoting the country's export basket and seeking to improve access conditions. A practical way to organize the information is to include tables indicating the trading partner, subject matter, a description of the case, a summary of the actions taken, and current status. Please refer to Box 3.G.4 in the Annex below for an illustration of a summary table.

- *Dispute resolution cases and procedural status:* This subsection accounts for any Investor-State or State-State dispute settlement cases underway that the country might have, providing a description of the claim, under which investment treaty it was filed (for IS cases), when and to which arbitral tribunal, as well as the procedural status of the case. It is important to also include a description of any efforts to prevent these types of disputes and their status. Boxes 3.G.5 and Box 3.G.6 present examples of reporting regarding Investor-State and State-State dispute settlement cases.

### **Engagement with the Private Sector and Civil Society on the Implementation of DTAs**

This section will highlight information and consultation efforts carried out by the trade authorities with different stakeholders. Some examples of activities are public events, workshops, seminars, and other mechanisms outlined in the corresponding Guidance Note part of this Toolkit.

### **3.G.3. World Trade Organization and Other Multilateral Trade-related Organizations**

The section regarding the WTO portrays the activities pursued by the country in its participation before this organization, such as:

- Maintaining participation and positioning of the country in the WTO and its role as an important player in the negotiations, to continue exerting influence over proposals related to the reform of the WTO.
- Actively monitoring compliance by other Members with the norms and commitments of the WTO, through the regular bodies of the WTO.
- Safeguarding and promoting the interests of the country in multilateral negotiations, in priority issues for the country.
- Participating actively in any ongoing negotiations.
- Engaging in the accession processes of new members to the WTO.
- Participating actively in the preparations for the ministerial conferences.
- Engaging in requests for consultations or defending national interests in dispute settlement cases, if applicable.
- Participating in any plurilateral negotiations, if applicable.

It also includes a description of the authorities' efforts to promote compliance with the country's multilateral commitments among different government agencies such as the ministries of agriculture and economy, and customs authorities. This includes commitments to provide notifications related to agriculture, antidumping, SPS, technical regulations, quantitative restrictions, SOEs, safeguards, subsidies and countervailing measures, and current tariffs.

Furthermore, this section refers to the country's participation in the WTO's trade policy reviews as a mechanism to promote transparency. It also provides a summary of trade concerns raised by the country in the different WTO committees due to the application of measures in certain destination markets that have impacted the country's export products. Additionally, it mentions cases in which the country participates as a third party in the WTO dispute settlement mechanism.

For other multilateral trade-related organizations (e.g. UNCTAD, Pacific Alliance, APEC, etc.), the report includes a short description of initiatives or efforts undertaken.

## Appendix 3.H: Available Datasets at International Level to Assess the Impact of DTAs

To assess and monitor the impact of DTAs, the initial stage is to prepare an inventory of the information sources available for one or more productive sectors of the economy. When estimating the effects of DTAs, it is important to consider the interplay between production, exports, and imports and how changes in trade policies may affect these variables. By analyzing trade data and monitoring changes in trade policies, policymakers and trade practitioners can assess the impact of a DTA on the domestic economy and identify opportunities for benefits from increased trade and economic growth.

The three key components for understanding the DTAs are overall values and levels of production, exports, and imports of goods and services (including foreign direct investment). Production refers to the process of creating goods and services. In the context of trade in goods, it refers to the creation of physical goods that are intended for sale in domestic or international markets. The level of production in an economy is an important indicator of its economic activity, essential to assessing the impact of a DTA on the domestic economy. Exports refer to goods and services that are produced domestically and sold to buyers in foreign markets. Exports are critical to a country's economy, as they generate revenue and create jobs. The level of exports in an economy is affected by a range of factors, including tariffs, non-tariff barriers, and market access provisions of trade agreements. Imports refer to goods and services that are produced in foreign markets and purchased by buyers in the domestic economy. Imports allow consumers and businesses to access goods and services that may not be available domestically. Similarly to exports, imports are affected by the same set of factors. For example, if a country reduces its tariffs on a particular product, it may lead to an increase in imports of that product and a decrease in domestic production of the same product. Conversely, if a country obtains better markets access conditions for a particular export, it may lead to an increase in exports of that product and an increase in domestic production of the same product.

This section profiles a variety of options for the types of data needed and examples of both sector and firm-level datasets that can be useful for conducting a comprehensive and sound analysis of the economic impact of DTAs for trade in goods and services using datasets available at international level. The analysis typically involves modeling the impacts of the trade agreement on a range of economic variables, such as trade flows, investment, income, employment, and poverty.

## 3.H.1 Trade in goods data sources

### 3.H.1.1 Trade Data

Trade data is defined as the information on the volume and value of imports and exports by product, country of origin, and destination. Trade data is essential for estimating the effects of deep trade agreements on the volume and composition of trade flows. It can also be used to measure the impacts of changes in trade costs, such as tariffs or non-tariff barriers, on trade patterns. Trade data sources include national statistical agencies, international organizations such as the WTO or UN Comtrade and private data providers such as Panjiva or ImportGenius.

The trade data are collected and organized by the United Nations Statistical Department and are reported in the COMTRADE database.

#### Box 3.H.1: Gaps in Trade Data

**When some data are missing, it can be useful to check the partner's mirror data (exports or imports) to fill in gaps of the reporting country.** Usage of mirror data is recommended when the data is unavailable for a country or if there are extreme discrepancies. Researchers have to pay attention to the potential difference in methodologies of data collection and aggregation. Major caveats include:

- (1) In UN COMTRADE, imports are recorded CIF (cost insurance and freight) while exports are FOB (free on board). This means that country A's imports from country B will be larger than country's B exports to country A. This discrepancy could be responsible for up to 20 percent of difference in values.
- (2) Despite statistical validations and data quality checks implemented on multiple levels of data processing, data quality varies among countries.
- (3) For any given reporting country, imports are usually recorded with more accuracy than exports because imports generally generate tariff revenues while exports don't.
- (4) Additionally, at a detailed level, a same good may be recorded in different categories by the exporter and the importer. In some cases, usage of mirror data is unavoidable.

### 3.H.1.2 World Integrated Trade Solution (WITS)

The World Integrated Trade Solution or WITS<sup>1</sup> is a platform that serves as a single point of access to trade data for researchers interested international bilateral raw trade data on a disaggregate product levels as well as an analytical tool that allows for data aggregation, analysis, and simulations.

WITS is a platform that serves as a single point of access to trade data for researchers interested in international bilateral raw trade data on a disaggregate product level, as well as those who need an analytical tool that allows for data aggregation, analysis, and simulations.

WITS is a project handled by the World Bank in close collaboration with its key partners: UNCTAD, WTO, UNSD and ITC. WITS disseminates the data compiled by other international organizations, such as UNSD's COMTRADE (United Nations Commodity Trade Statistics Database), UNCTAD TRAINS

<sup>1</sup> <https://wits.worldbank.org/>



(Trade Analysis and Information System), and WTO IDB/CTS (WTO Integrated Database/ Consolidated Tariff Schedule). While these databases are also available on providers' statistical portals, there are some limitations on who may access them. In contrast, WITS software is available for everyone free of charge and only requires user account registration. In addition to data on exports and imports by detailed product groups (up to HS6 digits granularity) and partner country, as well as tariff and non-tariff measures, WITS distributes products classified as "trade outcomes" indicators, that could also be helpful and provide general framework of assessing the impact of preferential trade agreements, including DTAs on the economy.

Additional benefits of WITS are related to the availability of trade outcome indicators that refer to the measurable results of trade activities between countries. These outcomes can include changes in the volume and composition of exports and imports, changes in the value of trade, changes in market access, changes in trade barriers, changes in the balance of payments, changes in prices, changes in competitiveness, and changes in trade-related economic indicators such as employment and GDP.

Trade outcomes are often used to evaluate the success of trade policies and agreements, as well as to identify areas for improvement and adjustment. By measuring trade outcomes, policymakers and trade practitioners can gain insight into the effectiveness of trade policies and agreements, as well as the potential impacts on different sectors of the economy and different groups of people.

Trade outcomes include the following key indicators:

- The **intensive margin** refers to changes in the amount of goods or services traded between two countries in existing product lines. This includes changes in the quantity or value of goods and services traded, but not changes in the types of products being traded. For example, an increase in the quantity of cars exported from country A to country B would be considered an intensive margin change. This allows for the assessment of level, growth, and market share as well as a range of issues reflecting the structure and competitiveness of the export basket before and after the implementation of the DTAs.
- The **extensive margin**, on the other hand, refers to changes in the number and types of products being traded between two countries. This includes the introduction of new products to the market, changes in the mix of products being traded, or changes in the number of markets being served. For example, if country A starts exporting a new type of consumer electronics to country B, this would be considered an extensive margin change. This segment provides tools to assess the concentration of a country's exports and the markets they serve; the degree to which the export portfolio is aligned with products and import markets that are growing in the world economy; the evolution of the market reach of specific exports.
- The **quality margin** refers to differences in the quality of goods being traded. This can include differences in product standards, technical specifications, and design features, among other factors. For example, if one country exports higher quality goods than another country, this could create a quality margin in trade between the two countries. This segment provides tools to analyze the technology; income; and factor contents of exports to test whether a country produces sophisticated and high-value products.
- The **sustainability margin** (Entry and Survival) refers to differences in the environmental and social sustainability of goods being traded. This includes factors such as the carbon footprint of goods, the use of natural resources, and the treatment of workers in the production process. For example, if one country exports goods that are produced using more sustainable methods than another country, this could create a sustainability margin in trade between the two countries.

Further methodology and documentation of trade outcomes can be accessed at the WITS page and in the manual here.

### 3.H.1.3 Industry Data

Information on the production of a nation's economy includes data on the size, composition, and productivity of different industries. Industry data is relevant for estimating the effects of deep trade agreements on specific sectors of the economy, including those that may be particularly impacted by changes in trade policy. Industry data sources include national statistical agencies, business associations, and research institutions.

UNIDO provides internationally consistent data by collecting annual data directly from all member countries through its country. The industrial data cover only the manufacturing sector and are published at two different levels of detail. The three-digit level of aggregation covers 28 manufacturing sectors: the four-digit level covers 81 manufacturing sectors. For each sector, the data on production reports yearly values either in thousands of U.S. dollars (total output, value-added, gross fixed capital formation, and average wages) or in units (number of enterprises, total number of employees, and number of female employees). The data published by UNIDO are not complete across all years or industries. Due to the general deficit of information on the detailed industry production outputs and inputs, economists and analysts might consider looking for other sources of this information including national statistics offices and private sector data providers (See Box 4 below Panjiva).

### 3.H.1.4 Firm-level Data

This includes data on the characteristics of individual firms engaged in trade, such as their size, ownership structure, and export experience. Firm-level data is relevant for understanding the behavior of individual firms in response to changes in trade policy, and for identifying the most competitive firms in particular industries. Firm-level data sources include surveys such as the World Bank's Enterprise Surveys, administrative data from customs agencies, and commercial databases such as Dun & Bradstreet.

### 3.H.1.5 Tariff Data

This includes data on the tariffs and other trade barriers that are imposed on imports and exports. Tariff data is relevant for estimating the effects of changes in trade policy on trade flows, as well as for assessing the degree of protection that different industries or products receive in different markets. Tariff data sources include national customs agencies, the WTO's Integrated Data Base (IDB), and private data providers such as the International Trade Centre's Market Access Map.

Tariff data are also available through the TRAINS database maintained by UNCTAD. TRAINS is a comprehensive computerized information system at the HS-based tariff line level that covers tariff and nontariff measures, as well as import flows by origin, for more than 100 countries.

### 3.H.1.6 Input-output Data

This includes data on the linkages between different sectors of the economy, such as the inputs and outputs of different industries. Input-output data is relevant for estimating the indirect effects of changes in trade on different sectors of the economy, as well as for understanding the potential spillover effects of changes in trade policy. Input-output data sources include national statistical agencies and research institutions. Examples of Input-Output datasets include The Global Trade

Analysis Project (GTAP<sup>2</sup>) database and the Eora global supply chain database<sup>3</sup> consisting of a multi-region input-output table (MRIO) model that provides a time series of high-resolution IO tables with matching environmental and social satellite accounts for 190 countries. It features a balanced global MRIO table documenting the inter-sectoral transfers amongst 15,909 sectors across 190 countries as well as complete timeseries for 1990-2021.

### 3.H.1.7 Household Survey Data

This includes data on household income, consumption, and expenditure, which can be used to estimate the distributional impacts of changes in trade on different segments of the population. Household survey data is relevant for understanding the distributional impacts of changes in trade policy, including the potential effects on poverty and inequality. Household survey data sources include national statistical agencies and research institutions.

## 3.H.2 Trade in services data sources

Contrary to trade in goods, the concept of trade in services is relatively new. In fact, it was not until 1995, with the conclusion of the WTO that the world first had a comprehensive international agreement on trade in services, i.e. the General Agreement on Trade in Services (GATS). For many years, trade was conceived as limited to trade in tangible goods, and the very notion of tradability of services was still subject to debate among economists. Currently, many international organizations have useful databases focused on trade in services. Box No. lists some of the most widely used ones.

Despite marked improvements in the availability of services trade data relative to the situation prevailing during the Uruguay Round, the statistical landscape governing services trade continues to exhibit important shortcomings. For instance, too few developing economies gather, compile, and publish data on bilateral services trade (on a balance of payments basis), on the activities of foreign affiliates (FATS) and on investment flows in services sectors. Such data inadequacies force recourse to mirror data to approximate the value of transactions, which is far from optimal given the many gaps in reported bilateral data. Many developing economies also confront a dearth of disaggregated data on services traded at the product level, on the value of services trade by modes of supply, on digital trade as well as on domestic services output. Initiatives to broaden the availability of the above statistical sources in developing economies, and, in particular, in LDCs, call for stepped-up funding directed to technical assistance and statistical capacity building.

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<sup>2</sup> <https://www.gtap.agecon.purdue.edu/>

<sup>3</sup> <https://worldmrio.com/>

**Box 3.H.2: Databases and sources for basic data on trade in services**

World Bank Trade in Services Database

<https://datacatalog.worldbank.org/int/search/dataset/0041416>

United Nations Conference on Trade and Development Statistics (UNCTADStat)

<https://unctadstat.unctad.org/EN/> <https://hbs.unctad.org/total-trade-in-services/>

OCED Services Trade Database

<https://www.oecd.org/trade/topics/services-trade/>

IMF BOP data

<https://data.imf.org/?sk=7A51304B-6426-40C0-83DD-CA473CA1FD52>

Trade in Services by Mode of Supply (TISMOS) data set

[https://www.wto.org/english/tratop\\_e/serv\\_e/simply\\_services\\_29nov\\_2019\\_timos\\_presentation\\_e.pdf](https://www.wto.org/english/tratop_e/serv_e/simply_services_29nov_2019_timos_presentation_e.pdf)

WTO-OECD Balanced Trade in Services Data Sets (BaTiS)

[https://www.oecd-ilibrary.org/trade/data/oecd-statistics-on-international-trade-in-services/oecd-wto-balanced-international-trade-in-services-ebops-2002-edition-2021\\_54a469fc-en](https://www.oecd-ilibrary.org/trade/data/oecd-statistics-on-international-trade-in-services/oecd-wto-balanced-international-trade-in-services-ebops-2002-edition-2021_54a469fc-en)

OECD Trade in Value-Added (TiVA)

<https://wits.worldbank.org/countrystats.aspx?lang=en>

Other useful sources for measuring trade in services:

World Bank's Services Trade Competitiveness Diagnostics Toolkit:

<https://openknowledge.worldbank.org/handle/10986/21285>

World Trade Organization Measuring Trade in Services

[https://www.wto.org/english/res\\_e/statis\\_e/services\\_training\\_module\\_e.pdf](https://www.wto.org/english/res_e/statis_e/services_training_module_e.pdf)

International Monetary Fund BPM6 Chapter 12 - Services

[https://www.imf.org/external/pubs/ft/bop/2014/pdf/BPM6\\_12F.pdf](https://www.imf.org/external/pubs/ft/bop/2014/pdf/BPM6_12F.pdf)

In responding to the above data gaps, a number of international organizations have developed experimental trade in services datasets, such as the WTO-OECD Balanced Trade in Services Datasets (BaTiS) or the Trade in Services by Mode of Supply (TISMOS) dataset. BaTiS is a comprehensive and consistent matrix of trade in services statistics (on a BoP basis) for 200 reporters and partners covering 12 services items combining available national data with a range of estimations and adjustment procedures.

**Box 3.H.3:** WTO-World Bank Services Trade Policy Database (STPD) and Services Trade Restrictions Index (STRI)

Since 2013 the World Bank and the WTO have developed the joint Services Trade Policy Database (STPD) and the associated joint Services Trade Restrictions Index (STRI). This cooperation builds upon earlier work on services trade policies by the World Bank in 2008-11. The STPD, inaugurated in 2019 (Borchert et al., 2019 and 2020), consists of two components: a regulatory database and the STRI.

The database provides regulatory information on around 500 measures affecting services supply in each economy through the various modes of supply. The regulatory information is displayed and organized according to a classification of policies jointly developed by the WTO and the World Bank that consists of five broad categories: 1) conditions on market entry, 2) conditions on operations, 3) measures affecting competition, 4) administrative procedures and regulatory transparency and 5) miscellaneous measures not covered by the previous four categories.

Based on the regulatory information collected, the restrictiveness of countries' policies in each of the subsectors is quantified by means of the STRI jointly developed by the WTO and the World Bank (Borchert et al., 2019 and 2020). The STRI is an index that quantifies countries' applied policies on trade in services on a scale from 0 (fully open) to 1 (completely closed to foreign services or services suppliers). Drawing from the STPD regulatory information at the individual measure level, all key restrictions affecting trade in services are individually given a score from a six-level scale of restrictiveness that ranges from 0 to 1. Then all measures thus scored at the country-subsector-model level are being combined and aggregated using an algorithm that is based on a Constant Elasticity of Substitution (CES) function.

The STRI summarizes policy restrictiveness in an accessible and compact way that is impossible to achieve with text-based measures; it thus facilitates a comparison of regulatory stances across sectors, countries and potentially over time; and serves as crucial input into a wide range of quantitative analyses.

Link to data: <https://i-tip.wto.org/services/default.aspx>

**Sources:** World Bank and WTO (forthcoming); Borchert et al. (2019).

**Note:** The regulatory information is collected in two ways. In the case of non-OECD economies, the data is collected through primary surveys filled out by local law firms or consultants. The information for OECD economies was sourced from the OECD STRI regulatory database whose close cooperation is gratefully acknowledged.

TISMOS was produced by the WTO and funded by the Directorate-General for Trade of the European Commission. Covering 200 economies, it provides an overall picture of international trade in services across the four modes of supply defined by the GATS. Furthermore, there are efforts to better understand the flows of goods and services in global value chains. Such flows and interactions between economies are not reflected in conventional measures of international trade. The development of Trade in Value-Added (TiVA) estimates by the OECD addresses this information gap. However, such data are rarely available for developing economies given the lack of underlying official statistics necessary to compile TiVA data, in particular supply-use or input-output tables, national accounts data by type of activity and detailed bilateral trade in services statistics.

Finally, the World Bank and the WTO have jointly developed a services regulatory database, the Services Trade Policy Database (STPD), and the associated Services Trade Restrictions Index (STRI) quantifying levels of applied policy restrictiveness in services markets. The STPD and STRI cover approximately 130 economies in 9 broad services sectors (further broken down into 34 subsectors covering approximately two-thirds of the services economy). Regulatory information is provided on some 500 measures affecting the supply of services in each economy.

In summary, each of these datasets plays a significant role in estimating the effects of deep trade agreements on trade in goods. By combining these datasets and using appropriate econometric methods, analysts can gain a comprehensive understanding of the impacts of deep trade agreements on different sectors of the economy and segments of its production systems.

## Appendix 3.I: Checklist for Economic Analysis and Monitoring

	Y	N
<b>1. Team</b>		
Has a group of at least two economists within the Ministry being assigned with the task of undertaking data compilation and analysis?		
<b>2. Map, contact and coordination with national sources of information:</b> has the group explored the data available and established a working relationship for regular data collection when applicable with any of the following institutions? Data could be related to trade (export and import), investment, production and consumption data of goods and services in the country		
Customs authorities		
Central Bank		
National statistics office		
Census bureau (if different from the above)		
Ministry of agriculture (for profile data of primary sector)		
Ministry of Economy (for profile data on manufacturing sector and micro-small and medium enterprises)		
All existing regulatory authorities in the country for services (including in the following categories of services: business and professional, communication, construction, distribution, education, energy, environmental, financial, health and social transport, professional, tourism and transport) <sup>1</sup>		
Investment promotion agency (for Foreign Direct Investment)		
Export promotion agency (for national enterprises requesting export support)		
Universities		
Think-tanks		
Chambers or producers' associations of agricultural products		
Chambers or producers' associations of manufacturing or industrial production		
Chambers or services suppliers' associations on services?		
<b>3. Data availability inventory: Has the team prepared an inventory of the data available in the country regarding to:</b>		
Trade in goods (export and import)		
Trade in services		
Investment		
Domestic market: production and consumption		
<b>4. Assessment of the quality of available data</b>		
<b>4.1. Trade in goods</b>		
Is available trade in goods data disaggregated by sector?		
Is that data disaggregated by trade partner?		
Is there any firm-level data on exports and imports of goods?		
If there is firm-level data, is there any information on the amounts exported per firm?		
If there is firm-level data, is there any information on the destinations of the exports per firm?		
If there is firm-level data, is there any information on the amounts imported per firm?		
If there is firm-level data, is there any information on the origin of imports per firm?		
<b>4.2. Trade in services</b>		
Has the team prepared an inventory of the data available in the country regarding exports and imports of services?		
Does data available covers all 4 modes of supply?		
Is that data disaggregated by sector according either to the CPC or the WTO/120 classification?		
Is that data disaggregated by trade partner?		
Is there any firm-level data on exports and imports of services?		
If there is firm-level data, is there any information on the amounts exported?		
If there is firm-level data, is there any information on the destinations of the exports?		
If there is firm-level data, is there any information on the amounts imported?		
If there is firm-level data, is there any information on the origin of imports?		
<b>4.3. Foreign direct investment</b>		
Has the team prepared an inventory of the data available in the country regarding foreign direct investment ?		
Is that data disaggregated by sector?		
Is that data disaggregated by origin of the investment?		
Is there any firm-level data on foreign direct investment?		
If there is firm-level data, is there any information as to whether the investors export?		
If there is firm-level data, is there any information on the amounts exported?		
If there is firm-level data, is there any information on the destinations of the exports?		
If there is firm-level data, is there any information on the geographic location of the enterprise(s) in the host country?		
If there is firm-level data, is there any information on the number of jobs generated?		
If yes, is the jobs information disaggregated by gender?		
<b>4.4. Domestic market: national production and consumption</b>		
Has the team prepared an inventory of the data available in the country regarding domestic production and domestic consumption of tangible goods?		
Is there disaggregated sector-level data on volumes of domestic production? (At least at HS 6 digit level)?		
Is there disaggregated sector-level data on prices of products? (At least at HS 6 digit level)?		
Is there disaggregated sector-level data on volumes of domestic consumption? (At least at HS 6 digit level)?		
Is there any firm-level data on domestic production of tangible goods?		
If there is firm-level data, is there any information on the amounts produced?		
If there is firm-level data, is there any information on the percentage of sales in domestic market vs. external market?		
If there is firm-level data, is there any information on the geographic location of the enterprise(s) in the host country?		
If there is firm-level data, is there any information on the number of jobs generated?		
<b>5. Capacity building on preparation, execution and processing of surveys</b>		
Is the team able to prepare, execute and process surveys for purposes of surveys complying with statistical good practices?		
Has the team received capacity building activities in these types of surveys from internationally recognized institutions?		
Has at least one team member received a certification or accreditation on statistics?		

<sup>1</sup> For greater certainty, please use as reference list of sectors included in WTO services classification list, MTN.GNS/W/120 10 July 1991, available at: [https://www.wto.org/english/tratop\\_e/serv\\_e/serv\\_sectors\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/serv_sectors_e.htm)

## Appendix 3.J: Checklist on How to Gather Trade Data from National Sources<sup>1</sup>

	Y	N
Has the team mapped and identified the specific government agencies and entities responsible for collecting and analyzing trade-related data, such as the national statistical office, trade ministries, and business associations?		
Has the team identified all available national databases and sources providing information on trade in goods, such as export and import statistics, tariff rates, and non-tariff measures?		
Has the team assessed the quality of data available? This can be done by examining data bases completeness, accuracy, and reliability either by existing literature or checking for inconsistencies or gaps comparing data from different sources .		
Is data disaggregated by sector in such a way to enable the team to identify those sectors most likely to expand or retract by DTAs		
Is data on sector production, export and import available?		
Is data disaggregated by subnational regions?		
Is data available providing insights on gender impact? Including effects on women's employment, wages, and working conditions?		
Is data disaggregated enough to monitor jobs and distributional impacts of DTAs, including effects on income, trade and investment flows, jobs, poverty, and inequality?		
Is there any data on impact of DTAs on small and medium-sized enterprises (SMEs): including their ability to comply with the agreement's provisions, access new markets, and compete with larger firms?		
In addition to statistics, and databases, has the team considered alternative data sources to fill information gaps in national data such as surveys, interviews, or case studies?		

<sup>1</sup> Please complement this checklist with the general checklist on treaty administration