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Fourth Draft Recommendation XX

Consultation Approaches

**Best Practices in Trade and Government Consultation
on Trade Facilitation Matters**

SOURCE: Consultation Models Project Team
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STATUS: Fourth Draft

Recommendation No. XX

Consultation Approaches

Best Practices in Trade and Government Consultation on Trade Facilitation Matters

INTRODUCTION

As conceptualized by the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), the key principles for trade facilitation are simplification, standardization, harmonization and transparency. When working towards the realization of these principles, consultation across government agencies and participation of private sector stakeholders is a necessary condition. Legislators and government agencies will find that the operational experience of the companies and organizations that work in their respective fields constitutes an invaluable source of information for designing appropriate approaches and suitable solutions for trade facilitation. Trade will find that taking part in consultation gives them an opportunity to voice concerns and proposals for improvement and build understanding for the conditions of trade. Trade's inclusion in consultations will also better prepare them for changes in practice or legislation.

Although the importance of consultation has long been recognized, experience shows that establishing concrete methodologies and best practices is needed to ensure effective consultation. Even when consultation is granted by law and supported by existing consultative procedures, measures have to be taken to ensure a transparent and accountable dialogue that takes into consideration the differences in mindset and culture as well as the capacity of public and private sector agencies to participate. This underlying concept is also stated in UNECE Recommendation No.4, National Trade Facilitation Bodies, “*The needs of all parties, both private and public sectors, must be identified before solutions can be found and those best placed to explain their needs are those directly involved in the transaction chain.*” Only by taking the time to understand the specific needs and pain points of the different parties can one hope to achieve a best practice model that is premised on trust and collaboration on all sides.

In that context, it is worth noting that different private sector operators may not always have the same interests. Importers and exporters, users and providers, larger and smaller companies, producers and traders, may all have different needs and priorities when it comes to trade facilitation reforms. Similarly, government will have needs that will diverge with private sector interests, and different government agencies will also have divergent priorities. Despite these complexities a dialogue must be initiated so that interests can be explored and balanced, and a foundation can be established for well informed decisions. There is a dual responsibility of the parties, trade and government, to identify issues impacting the facilitation of trade, respectively. While trade must be willing to coalesce the issues that need to be brought forward to government for discussion government must also identify critical issues that need to be brought before trade, as well as providing the process by which these issues can be discussed. This process must include identifying impacted stakeholders (including other government agencies), and providing timely opportunity for consultation.

In the context of consultations, a transparent and accountable dialogue can be defined as an iterative process that begins with the early availability of information for all stakeholders and provides that engagement on a continuum, as opposed to a singular event, thereby establishing a process that is inclusive, participatory, collaborative and responsive to all impacted stakeholders. This is essential to ensuring the development of trade policy that is beneficial and acceptable to both government and trade.

Although the challenges for partnerships between trade and government are manifold and include sustainability, trust, and the prioritization of different stakeholder needs, the benefits of establishing a collaborative process that is inclusive of all stakeholders will help to bridge the existing gaps and will ensure the development of trustworthy information flows and of coordinated policies that are less cumbersome to trade while still beneficial to government.

PURPOSE

The purpose of this recommendation is to advise governments and the business community on how to approach effective consultations that will be transparent, fair, accountable and participatory. This recommendation addresses issues such as information sharing, preparations necessary before consultations, and measures that aim at building a trust-based dialogue. Where available, best practices in the field of consultation are provided.

Preparations before consultations are necessary to foster a collaborative culture and achieve concrete results. The preparations may be different in nature depending on whether the party concerned is, for instance, a government agency, a traders' association or a chamber of commerce, but there are best practice processes that will be recurrent in most of these preparations.

The United Nations Centre for Trade Facilitation and Electronic Business encourages governments to develop a consultative approach for trade facilitation that is inclusive of trade and government stakeholders. This approach must include a process by which the interests of all concerned parties may be voiced and addressed.

SCOPE

This recommendation primarily envisages consultations at a national level between key stakeholders in trade and border crossing. However, many of the basic principles and ideas can be equally applied to local, sub-regional and regional levels.

The recommendations on consultation approaches are not limited to a certain media or a certain organizational setup, but are looking to the whole mindset of approaches to consultations. The principles described in this recommendation are also applicable to a large number of other consultative set-ups, such as informal discussions, focus groups, formal or informal trade facilitation committees or other consultative situations.

BENEFITS

Consultation will provide stakeholders the means to voice their viewpoints, clarify issues, and engage in meaningful dialogue.

For government and public agencies consultation provides opportunities to disclose information and solicit feedback on actions taken or to be taken. This will ensure accountability, effectiveness, and improvement in the quality of decision making. For trade it provides an opportunity to voice opinions and concerns and suggest solutions to existing challenges, while allowing for timely preparations for planned legislation or reform.

Consultations will help governments and organizations to prioritize agendas and communicate results which will result in building trust between the parties, and increasing transparency in the process. Stakeholders will thus find that each party will have the time needed to prepare for new rules or regulations. This will promote successful legislation, and ensure overall compliance.

Working together the parties will be able to find innovative, effective, cost-efficient and simplifying solutions to any issue discussed. In contrast, if stakeholders work in insolation, even simple changes of rules or regulations may encounter problems not considered or anticipated without prior consultation with the impacted stakeholders. Such problems can lead to, for instance, longer waiting times at the border, corruption and loss of revenue.

RECOMMENDATION

The United Nations Centre for Trade Facilitation and Electronic Business at its XXth Plenary session in XX in Geneva agreed to:

1. **Recommend** to governments and trade a consultative approach that fosters trust, transparency as well as a timely and accountable dialogue between all stakeholders.
2. **Recommend** to governments and trade to **undertake all measures necessary to sustain and enable the consultations, including**
 - a. a focus on the importance of **transparency** as a prerequisite for building trust between the parties in consultation,
 - b. the establishment of mechanisms to allow **easy access to information** on trade facilitation matters and legislative measures,
 - c. **a continuous and inclusive process**, allowing consistent discussions and coordination of policy with all stakeholders,
 - d. the **sharing of information on both process and content** at the earliest convenient time in order to allow the private sector to prepare for consultations. This includes trade facilitation matters and suggested legislative measures,
 - e. the **timely notification of issues** that trade would like government to consider prior to consultation,
 - f. the **building of capacity and awareness of public sector agencies** to manage the consultation as well as strengthening pro-active and collaborative culture and leadership in both the private and public sectors,
 - g. the **consolidation of all public agencies of their views** prior to consultation,
 - h. the **consolidation by trade of its views** prior to consultation with government, including detailing existing differences between different kinds of operators,
 - i. a focus on **performance measuring and monitoring** in order to achieve continuous improvements.

GUIDELINES TO RECOMMENDATION NO. 40

Basic principles for consultation

The purpose of these guidelines is to present various approaches to consultations and inspire successful solutions. There is no constraint to follow all the given paths; they should be perceived as possible factors for success. Consultations are made conducted according to the legal requirements and cultural background of each country. Indeed many countries have a comprehensive legal framework for consultations and the authorities in any country will have to operate according to existing legislation. The basic principles, modes, forms and approaches presented below should serve as inspiring examples, indicative success factors and examples of best practice.

Partnership and trust

Workable solutions for efficient trade AND compliance - Change management

- A successful approach to managing change in current policy or process must include a sustained and structured method of readiness assessment across all stakeholders. In many instances, stakeholders are comfortable with the current state and want to maintain the sense of security achieved in the status quo. They may not be aware of external factors that would necessitate or require a need for change. As Government is often the lead for advocating change, Government must be equally prepared to conduct a readiness assessment of its stakeholders to undergo change. Stakeholders must be appraised of the “as is condition” as well as the “go to condition.” Government must not only communicate its intent in order to build awareness of the need for change, but must also be prepared to provide education and training so that impacted stakeholders are more willing to support the advocated changes. In addition to these “readiness” activities, Government must also be prepared to sustain the necessary changes. Sustainment may include an array of tools that include continuous process improvement, benchmarking, the identification of best practices, and business process reengineering. By undertaking these activities, stakeholders will be more willing to engage in collaboration and trust in the changes being advocated. This will result in smoother transition from the old to the new, positive perception of the changes advocated, less resistance to change, and improved cooperation.

Mutual benefits

- Consultation is an opportunity for both Trade and regulators, but it is also an investment in time and money for both parties. There needs to be some level of return on investment for both sides. Trade needs to feel that their input and point of view is taken into account and acted upon. Regulators need to feel that Trade’s participation is not only in individual interests, but in the greater interest of the nation. If either side feels that it is not receiving adequate return on investment, it will most likely result in discontinuity of that time or financial investment in consultation.

Equal partners – not a place for instructions or compliance controls

- Insofar as possible, both Trade and regulators should come to the table as equal partners in the framework of consultation. In some cases, regulators may approach consultation as enforcers preaching compliance and instructions; this would be counter-productive to encourage Trade’s input. If Trade feels that any input they provide will become a source of control later on, they will most likely not share their experiences. Likewise, if Trade comes to the table as a large company highly active in

national investment and try to force their point of view on regulators, it would also be counter-productive. Trade needs to understand regulators' point of view and the greater picture of national interests.

- **Building trust takes time - ruining just a moment**
- **Learning about your partners' needs**
- **Results oriented**

Accountability

- Results of consultation should be published and made available to all interested parties. Both sides (Trade and regulators) should be held accountable for producing tangible results of consultation. For example, regulators should be able to justify that Trade's input was taken into consideration and how.

Managing differences of opinion and interests

- In the process of trade facilitation consultations many different voices will be heard. It is in the nature of the question and the activities concerned. It can be expected that freight forwarders, express carriers or customs agents have differences in views and perspective. Also different government departments and authorities may have different instructions and priorities. Dividing lines will not always be as clear cut. There can be cross cutting issues where for instance small businesses of all sorts have a different view than larger businesses, traders trading in specific goods have the same views or where a set of authorities have a similar view as a set of companies, diverting from other parts of government. The goal of the process is to highlight the issues, possibilities and consequences and the different interests of the stakeholder in a particular process or proposed legislation.
- Research on modern trade patterns often describes the role of global value chains. This can be summed up as the exchange of tasks and goods that are committed in order to create a final product. It's an assembly line spread out all over the world, it's an intricate ecosystem where small parts can uphold larger structures. From a policy perspective this ought to be reflected. As in all aspects of governance there is a risk for bias, a system shaped to cater the needs for some whilst being unable to cater to the needs of others. In political science this risk is often called "the tyranny of the majority", where the interests of the majority is placed well above those of an individual or the minority. It is therefore adamant that in the construction of this mechanism it reflects upon this potential for bias and upholds a holistic view on trade.
- Weighing interests against each other is the core functioning of government. Very few issues decided are truly political; the vast majority are about differences of interest: economic, social and practical. The overall goal of simplification needs to be kept in mind during the consultation process and well informed decisions should be an intermediate goal.
- The fact that so many actors are to be coordinated can be daunting. At the same time stakeholder's organisations can be of great help, provided that they can hold informed

discussions with their membership. The prerequisite for this is transparency, see below. At the same time the difficulties should not be exaggerated. In many countries consultations covering 80 % of the trade, in volume or in value, can be achieved by talking to a relatively low number of stakeholders. Governments will find that supporting civil society and especially trade organisations will pay off. This can be made for instance by legislation routinely being sent for comments to larger organisations, thus providing them with a stronger argument of influence available through the membership. **More ideas on models for civil society?**

- Covering the larger parts of trade it is important not to forget the importance of protection of the minorities or even individual companies. The process aims at depicting the consequences of changes, and the impact on a few companies can be very important. What seems like a minority in a consultation might speak for a larger group of companies. The minority can also play a key role in the economy or in the distribution channels.

Respect for time and timing

- The path to managing change is not a fast one nor is it always smooth. However, knowing this in advance will facilitate the mitigation of expectations. The process is often times slow but it must be deliberate in its respect for time and timing. Stakeholders must be provided with adequate opportunities to digest the changes that will be forthcoming and must also be allowed to discuss and comment on their concerns or recommendations. Discussions should not be a singular event but must be approached as systematic; this means routine “check ins” with stakeholders to ensure that all parties are being kept abreast of planned changes at all stages. Communication flows must therefore be consistent and comprehensive to increase the probability of change success and minimize the risk of changes that need to be backed out due to insufficient stakeholder awareness or preparation. Adequate time must also be provided to ensure that all parties have the necessary documentation and training prior to the implementation of any change. Providing a continuous record of the changes to be implemented will also provide greater accuracy of impact assessment, assist with and shorten problem determination time, and ensure accountability for all changes identified. Sensitivity to time and timing will achieve significant benefits for all stakeholders including trust in the advocated changes, containment of risks/costs associated with change and reduction in the time needed to implement changes. Collectively, these good faith efforts will serve as motivators and provide a path to progress.

Transparency

- Transparency is one of the basic pillars of trade facilitation. Transparency is a communications issue, but involves more than the concept of communication. Transparency is ultimately an attitude and a strategy aiming at an open dialogue and trust. Transparency can hardly be a singular event, but must be a continuous process and strategy whereby an organization displays its goals, values, plans and thoughts. A mature transparent organization is ready to share ideas that are in an early stage of development and will accept comments on the content.
- In the context of consultations, a transparent and accountable dialogue can be defined as an iterative process that begins with the early availability of information for all stakeholders. Transparency will permit stakeholders to prepare for consultation,

having the time to familiarize themselves with the issues, ideas and plans of other stakeholders in the consultation and comparing them with their own needs, goals and priorities. Also the feasibility can be assessed within the own organization.

- Transparency calls for an attitude that provides the engagement to openness continuously, as opposed to a singular event. The repetition of consultative meetings for which information is provided openly, continuously and without prejudice establishes a process that is inclusive, participatory, collaborative and responsive to all impacted stakeholders. Transparency is not a one way communication process, but requires qualified and mature response in order to encourage a continued dialogue. All parties in consultations need to be transparent about their reasoning and priorities in order to foster a collaborative participation.

Stakeholder analysis

- In order to initiate consultations the lead agency or organization will need to identify the stakeholders that are concerned by a certain issue, proposal or change of procedure. It is important to involve stakeholders at the right level and also to have a clear idea of what stakeholders are concerned. Stakeholder Analysis is an important tool to do this. The approach is a methodological and structured way to map organisations and companies with an interest in the issue at hand. It consists of identifying end users, agents, organisations and grouping them into direct and secondary stakeholders. The mapping continues describing the stakeholders' needs, interests, organization, capacities and so on. For larger stakeholders it can be relevant to do this also at a level where departments, groups and individuals are identified. In addition to knowing

Forms of consultation

- Consultations can take many forms. In fact various approaches are often combined and in the continuous process all stakeholders will find reasons to change the forms from time to time to best capture the nature of the issues at hand or the circumstances in society and trade at that time. Many of the older consultations bodies, like Swedish SWEPRO, have had many legal forms over the years and also a variety of stakeholders represented. To choose one of the forms suggested below will probably not be sufficient to cover all needs for dialogue at a given time. Consultation will be ongoing in different fora and formats parallelly. Also many imaginable forms have not been covered here. These are examples of existing forms that have been in frequent use. They should not limit new, innovative approaches.
- Consultations will also be done in different modes; that is they can be oral or written, conducted in physical meetings or virtually in telephone conferences or on the internet. The circumstances and resources of the stakeholders joining forces will indicate what the best mode is. Some issues are well suited for written consultations, for instance when there need to be time for well-prepared answers and the issues are complex and the details vital and many. In other circumstances oral deliberations might serve the purpose better, for instance when it is important to keep the issues to a limited number of stakeholders and the discussions need to be kept discreet.
- A generic consultation model is described below. It is intended as an illustration of the need for preparations and transparency and of the iterative nature of consultations. Hopefully this illustration can be applied to most forms of consultations.

Conferences

- A special form of consultations is a conference repeated for instance annually. It can be aimed at trading companies directly or at another set of stakeholders. It has the advantage that the information from the organizing stakeholder or other participants can be given to a large number of stakeholders and companies. The backside of the coin is that it can be hard to have a dialogue where all present have a say. In some such conferences there have been separate sessions of round tables with selected stakeholders or larger companies.

Case story:

Swedish Customs, Swedish Trade Federation and the Chambers of Commerce in Stockholm, West Sweden and South Sweden organize an annual event called the “Day of Customs”. The event is centrally planned and most of the content is repeated in the three venues, Stockholm, Gothenburg and Malmö. The event that is primarily aimed at compliance and customs responsibilities in importing and exporting companies is opened by the Director General of Swedish Customs and on the programme other authorities but also various trade federations will appear.

Topics for consultation, **BS, AS, BV, JB**

- Vast range of possible topics
- The right topic at the right level
- Overall policies needs to be thought through to the detail

Text giving definitions of the terms consultation, approaches, model, government, trade, and so on. **JB, MTP, BV**

Levels and parties **JB, JP, JM, BV**

- Many levels of consultation: Strategic, tactic, operational
- Intra-governmental organisation
- Co-ordination between government and its agencies, for instance Coordinated Border Management
- Many trade organisations – several “sincere” opinions
- How to handle minority interests?
- How do we represent the SME:s? There needs to be innovative and imaginative ideas to involve the SME-sector.
- Are the Chambers of Commerce included?
- 3rd sector (Labour unions, media, rural committees, NGO:s), lawyers.
- Municipalities. How is society organised, who owns the land (Vietnam)
- Results oriented (compare to Basic Principles)
- Military to be included?

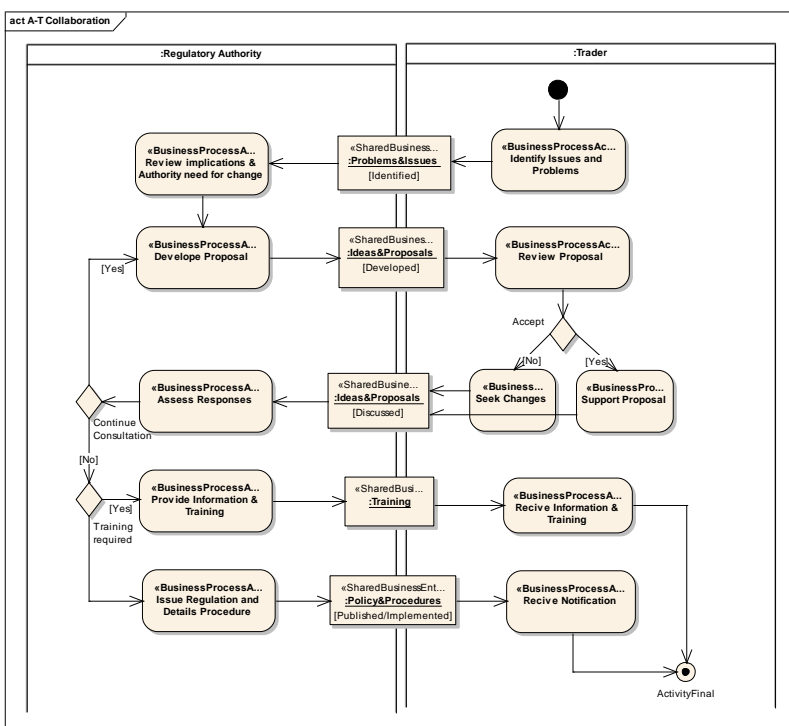
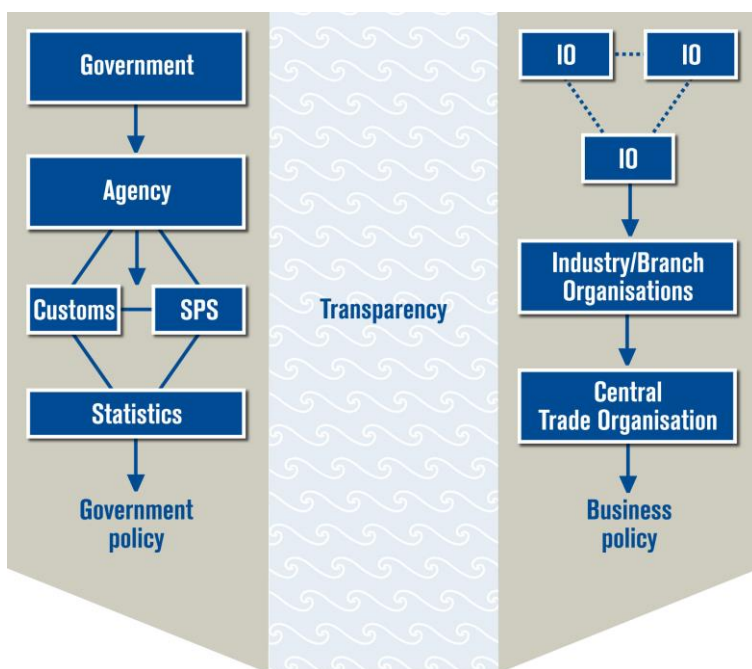
Preparations for consultations in order to promote transparency, flexibility, efficiency and Mutual understanding of business and government environment- **LT, JB, JP, BV, AS**

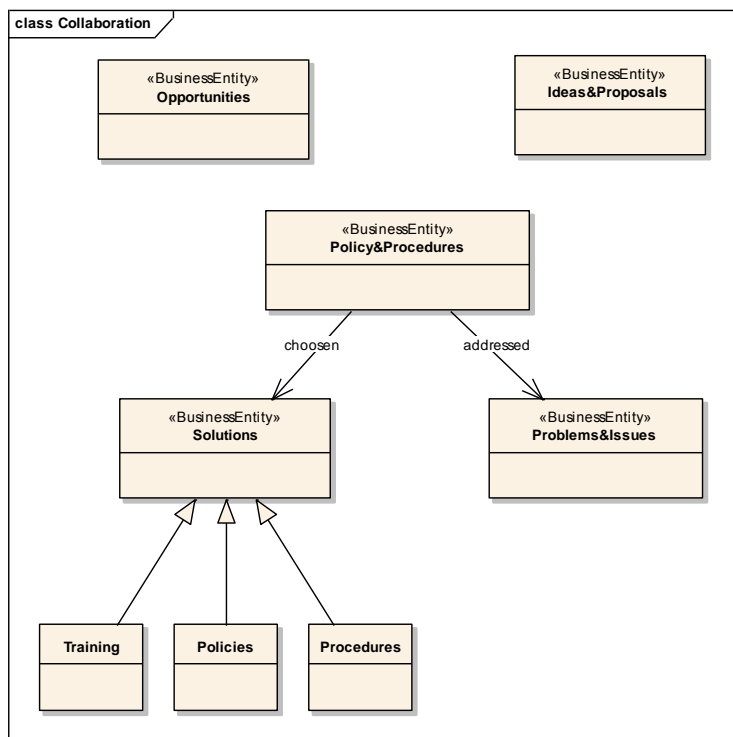
- There are different constraints in all different sorts of environments. How do we overcome that?
- Sharing of information can be difficult for all parties. How can this be at its best?
- Example of Benin: The Chamber of Commerce and Ministry of Trade have succeeded in overcoming the lack of trust that was there before. Results driven cooperation. Respect
→ Results → Building trust!

3. **Engage** in an internal assessment to determine:
 - **what** is the agency need(s) or priority?
 - **how** flexible is the agency in its ability to change or modify this need/ priority in the view of new proposals or developments?,
 - **who** are all the impacted stakeholders?
 - **how is** information to be **shared** between the parties?
 - **what** information **can** be shared, and with which stakeholders?
 - **what** is the appropriate time to share this information such that parties have the necessary time to react?

Generic Model JP, JB, LT

- **Model of consultation between government and the trading community**
- **Explanations and limitations**





The limits of consultation **JP, JB, JM, LT**

- There needs to be an awareness of the fact that consultation can seize to be consultation and become notifications.
- Feedback is very important and it needs to follow the classic model:
 $a=b \times c^2$ Acceptable = balanced, constructive and credible

Public-Private-Partnership – models for financing and beyond **LT**

ANNEX A

Annex to Recommendation No.40

Case Studies

Joint secretariat for a consultation body – can we find an example or case study on that?

Example of Benin: The Chamber of Commerce and Ministry of Trade have succeeded in overcoming the lack of trust that was there before. Results driven cooperation. Respect → Results → Building trust!

Sri Lanka – Shanta might want to contribute on this. Experience on trade consultation in Sri Lanka.

Please fill this up!