

Getting FTA Institutions Right: Ten Insights from a TaPP Workshop

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For Free Trade Agreements (FTAs) to work in practice, they need to be implemented successfully. This includes a range of activities *before* the FTA comes into force (e.g., making necessary legislative changes, preparing new tariff systems, or developing notification mechanisms) and many more *after*, on an ongoing basis, to ensure that governments meet their commitments and are able to work together to secure the FTA's uptake by businesses and other stakeholders. FTAs include a raft of institutional provisions that are intended to assist with implementation, ranging from inter-governmental committees, to working groups, inter-agency dialogues, and stakeholder advisory groups. While these institutional arrangements are important for realising the practical gains from FTAs, they are resource-intensive and are not always effective.

On 26th April, TaPP held a virtual workshop that brought together academics and policymakers to discuss how to ensure that institutional provisions are useful in practice and identify recommendations for UK government. This discussion focused on the following questions:

- When are the various institutions created by FTAs (committees, stakeholder dialogues, regulatory cooperation etc) most helpful in practice, and why? When are they least helpful, and why? What lessons can be learned?
- Given that FTA institutions (committees, stakeholder dialogues, regulatory cooperation etc) take substantial time and financial resources to convene, where should government focus its energies?
- Which institutions should be kept, and which should be dropped, and why? Are there ways of working that can help improve the efficacy of committees, dialogues etc? How frequently should the committees, etc. be convened, and how should this be determined?
- What does this mean for the drafting of institutional provisions in FTAs? Are specific changes needed?

The following speakers presented on this topic: Kathleen Claussen (Professor of Law, Georgetown University), Greg Messenger (Associate Professor in Law, University of Bristol), Christian Delev (Lecturer in International Economic Law, University of Bristol), Gabriel Siles-Brugge (Professor in Global Governance & Public Policy, University of Bristol), Lorand Bartels (Professor of International Law, University of Cambridge), Emily Reid (Professor of International Economic Law and Sustainable Development, University of Southampton)

The subsequent discussion was held under the Chatham House rule to enable a frank discussion. This note summarises the main take-aways from the workshop and presents ten insights for making FTA implementing institutions effective.

FTA implementation is effective when....

(1) Institutional design is demand-led and adaptive

FTA bodies are expected to last for many years, like the FTAs themselves. They entail high levels of government time and resource, yet often relatively little thought is put into their design. In many cases, past practice is simply copied and pasted from one trade agreement to the next. This can result in governance arrangements that are redundant or out of sync with the underlying trade relationship. For instance, an FTA agreed twenty years ago might not have envisaged the need to address digital trade. Governance structures may be ill-designed for addressing challenges that unexpectedly arise during FTA implementation and for capitalising on new opportunities that emerge.

The most effective institutional designs are demand-led (i.e. respond to a need) and adaptive (updated as the trading relationship evolves). In principle, a very simple structure (e.g. a Joint Council and Committee) might be all that is needed to maintain dialogue on a treaty and its implementation. Some agreements, including

the EU-Mexico Global Agreement have lasted many years with a very simple structure. More elaborate institutional arrangements are only warranted when there are pressing regulatory cooperation needs to be addressed (e.g. to deliver on cooperation and market integration commitments). Beyond establishing specialist committees, *ad hoc* working groups can be created for a specific task and closed when that task is achieved. One example of this is the [whisky working group](#) established under the Australia-India FTA (through side letters) which is tasked with addressing specific market access barriers.

Institutional provisions should be (and often are) drafted in ways that enable governance arrangements to be demand-led and adaptive, the key is to make sure this happens. The various specialist committees and working groups usually report into the joint trade committee, which in many cases is given the power to revise these institutional structures. One interesting example comes from the UK-Singapore FTA, which was a roll-over of the EU-Singapore FTA. While all the pre-existing institutional structures (committees, working groups etc) were carried over, the treaty provided that at the first meeting of the joint trade committee, the work of the various committees and working groups would be suspended and reviewed, with a view to streamlining the treaty's institutional structure (Article 7).

(2) Committees are properly resourced

FTA implementation requires resources. Funds are needed to enable delegates to attend institutional cooperation meetings but, crucially, to gather evidence, conduct analysis and work with stakeholders. Without sufficient, robust evidence and analysis, and close dialogue with stakeholders, committee meetings can become check-box exercises and yield little in the way of meaningful implementation. Moreover, external stakeholders may also need resources if they are to undertake monitoring or implementation work (e.g. for civil society organisations to assist with implementation of sustainability provisions, or support for SMEs).

Trade agreements in the US come with large-scale budgets for implementation. For example, under the USMCA (US-Mexico-Canada FTA), the US government budgeted more than US\$240 million for the first four years of implementation of that agreement for the labour and environmental obligations alone, with part of that amount allocated to funding civil society organisations doing capacity building work in Mexico to ensure Mexico could meet its obligations under the FTA.

(3) Institutions facilitate socialisation and trust-building across governments

When a challenging issue arises during FTA implementation, it is often resolved outside of the formal committee structure, through less formalised bilateral discussions at an official level to find a pragmatic solution. Regular inter-governmental committee meetings are important as they are the mechanism through which informal relationships are built and sustained. These meetings provide a forum for socialisation, networking, and the development of trusted relationships, which can then be called upon when needed. While it may be tempting to convene committees virtually to save money, in-person meetings are important for relationship building.

(4) Committees are used to catalyse the real work

The actual work of FTA implementation is rarely done through committees, but this doesn't mean that they aren't vital. Holding committee meetings at regular intervals (e.g. every six months) where progress on key initiatives must be reported on (e.g. implementing a customs single window) provides an important focal point for planning and reporting back, helping drive implementation. This helps teams in governments to identify when meetings will take place and plan ahead accordingly, including by working through cross-governmental coordination and stakeholder engagement.

(5) Politicians recognise that implementation is vital to realising gains from trade

A perennial challenge for FTA implementation is that it is not a political priority. Negotiating and signing FTAs captures political minds and political attention often wanes once an agreement is struck. Thus, while the gains from an agreement only come from implementation, this phase of an FTA is often under-resourced. There's no easy solution, but one idea for securing sufficient resources for implementation is to request that resources are allocated for implementation at the point when an FTA is signed, when there is a high level of political attention.

(6) Committees are staffed by the right personnel and embedded in wider foreign policy

Careful consideration should be paid to who sits on committees, ensuring staff have the requisite expertise and sufficient seniority to substantively deliver on implementation. Securing the participation of senior officials can be a challenge when the political spotlight is elsewhere. When there is a high turnover of officials serving on committees, the potential to develop specialist knowledge and cultivate trusted relationships diminishes, undermining implementation. The USTR has recently experimented with having officials from other government departments seconded to the trade department, as they bring specialist knowledge (e.g. officials seconded from the Department of Labor to work on the implementation of labour rights under USMCA).

As a trade agreement is only one part of a government's foreign policy relationship with another government, it is important that the work of FTA implementation committees is integrated to the work of wider foreign policy teams. Including diplomatic personnel (e.g. trade attachés) on FTA implementing committees, especially those based in the country of the partner government, can help ensure coherence.

(7) Committees have clear policy direction, mandate and the requisite power to make things happen

When a government has many FTAs, each with its own set of implementing committees, there is a real risk of policy incoherence arising during FTA implementation. In practice, this is overcome by creating thematic FTA implementation teams that service all FTAs, rather than adopting an FTA-by-FTA approach (e.g. one team overseeing the implementation of digital provisions in all FTAs). Ensuring that each area of trade policy has a set of clear objectives and priorities can help guide implementation and ensure coherence.

In some cases, the efficacy of FTA institutions is impeded because the scope of responsibilities is unclear, or committees do not have sufficient formal (or informal) power to deliver. This is a particular challenge for committees that bring in external stakeholders, under the guise of 'advisory groups' or 'stakeholder dialogues'.

Committees that involve external stakeholders can really help deliver FTA implementation and they provide a structured space for a diverse range of stakeholders to engage. For instance, the Trade and Sustainable Development Domestic Advisory Group is an independent group of non-governmental stakeholders responsible for advising the UK government on the implementation of sustainable development provisions in FTAs. However, this is a broad remit, potentially covering a wide range of FTA chapters. It is unclear how the responsibilities of this advisory group intersect with those of other advisory groups. Moreover, while the mandate of such domestic advisory groups is to 'advise' government, there are divergent opinions on what the precise role of these advisory groups is. It is unclear how seriously the government is expected to heed the group's advice, particularly when that advice is politically uncomfortable (for instance, noting that the UK government is not adhering to its own FTA commitments).

Inspiration might be taken from the US, where some external bodies have been created to 'oversee' FTA implementation, rather than simply 'advise' or give input to government. For instance, the [implementing legislation](#) for USMCA stipulated the creation of an Independent Mexico Labour Expert Board comprising 12 external experts, to be appointed by Congress, and tasked with monitoring and evaluating implementation of labour provisions and reporting back to Congress.

(8) Committees provide a meaningful two-way dialogue with stakeholders

Regular dialogue with stakeholders (including firms, labour unions, and NGOs) is important for effective implementation as it provides government officials with insights into how things are actually playing out on the ground. However, stakeholder representatives become frustrated if they raise issues (and give advice for free) but receive no feedback as to whether their input was heard, useful, and acted upon. Reporting-back is vital for sustaining the good will and buy-in of stakeholders.

Similarly, while consultations with stakeholders is to be welcomed, consultation timelines are often too short for stakeholders to prepare submissions. For instance, the timelines for giving input into the recent CPTPP review were too short for many stakeholders to accommodate.

(9) Committees embrace politics

Implementing trade agreements is often political. Governments who are party to FTAs don't always see eye to eye, and societal groups are impacted in different ways, so we shouldn't expect FTA implementation to be purely a technocratic process. Stakeholder dialogues may be robust, and some groups may lobby to influence FTA implementation by, for instance, calling for implementation of a treaty commitment to be postponed. The fact that such politics occurs should be embraced, not least because it helps alert government officials to real problems and design flaws in treaty commitments. Care needs to be taken to avoid capture by politically powerful groups, including by ensuring that committees hear from a range of stakeholders, and where bodies include non-government actors, they reflect a diversity of stakeholders, and membership is periodically refreshed.

(10) Committees are (relatively) transparent

Decisions taken in FTA implementation committees are often not published, making it hard for external stakeholders and Parliament to hold the government to account. In some areas, FTA implementation is more opaque than when the UK was in the EU, as the EU FTA implementation committees have high levels of transparency. This is particularly problematic when treaty texts confer substantial powers on committees, including to interpret vaguely worded provisions. Indeed, there are concerns that governments are increasingly seeking to avoid scrutiny of trade policy through vague (and hence less politically controversial) drafting of treaty text, which defers decisions on details to the implementation phase of an FTA, when they can be agreed and implemented at committee level, away from the public eye.

Committee membership, the meeting schedule, and decisions should be made publicly available. For some FTAs, the implementing legislation requires regular reports to be submitted by different government bodies explaining what the government is doing to implement the treaty, including cooperation with treaty partners, and identifying areas where there are gaps.

Relevant Studies

Claussen, K., (2022), 'The Improvised Implementation of Executive Agreements', *University of Chicago Law Review* 89 (7), available [here](#).

Claussen, K., (2024), 'Operationalizing Package Treaties', working paper available [here](#).

Delev, C. (2024), 'Walking the Talk? Assessing EU-Latin America FTA Trade Committees as Drivers of Sustainability Action', *European Foreign Affairs Review*, forthcoming.

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Dür, A. and Gastinger, M. (2023), 'Spinning a global web of EU external relations: how the EU establishes stronger joint bodies where they matter most', *Journal of European Public Policy*, 30 (6), pp. 1072-91.

Messenger, G., (2024), 'Free Trade Agreements as Sites of Economic Diplomacy: Agreeing Common Standards for Sustainable Development', *World Trade Review*, forthcoming.