

EU Trade Sustainability Impact Assessments: Revisiting the Consultation Process*

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1 Introduction

Trade policy is one of the most thoroughly analysed policy areas of the European Commission (Nilsson, 2018). The overall evaluation mechanisms employed by the European Commission (EC) are complex and multi-layered. A key instrument used in the evaluation of trade and investment agreements is the ex-ante sustainability impact assessment (SIA). SIAs are a DG Trade-specific tool for supporting major trade negotiations. They are intended to provide the Commission with in-depth analysis of the potential economic, social, human rights, and environmental impacts of a given trade negotiations. SIAs are also an instrument through which stakeholders in the EU and in EU partner countries can share their views with negotiators. More specifically, as stated on the DG Trade website, SIAs have several purposes, including feeding information into and helping steer the negotiations, assessing the changes that are likely to be caused by a preferential trade agreement (PTA), helping to identify possible trade-offs, ensuring that the related policy choices are optimised and more generally contribute to sound, evidence-based and transparent trade negotiations.¹

The specific objectives, process and methodologies employed in SIAs have been formalised in two editions of the Handbook for Trade Sustainability Impact Assessment (European Commission, 2006, 2016). In these handbooks, a trade SIA is defined as a study comprising two main parts: an evidence-based analysis of the potential economic effects of a trade agreement and a broad consultation process (CP) with stakeholders and the general public. The objective of this paper is to provide an overview of the evolution of the EU SIA and associated consultations over time, assess its effectiveness and provide recommendations to improve the process.² The focus is mainly on the role of CP within trade SIAs but some of the discussion and recommendations extend to the overall SIA process, complementing previous findings in Rojas-Romagosa (2020) regarding the evidence-based analytical methodology used in SIAs.

The EU trade SIAs are not only the main tool in the overall evaluation process of prospective trade and investment agreements, they are also an instrument through which a broad cross-section of different stakeholders and the general public can express their view. Therefore, assuring that the CP is effective and inclusive is important for the EC to communicate, inform and

¹See: ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/.

²For full disclosure, we note that one of the authors (Joseph Francois) has been involved in the preparation of several EU trade SIAs.

seek feedback and support for an agreement from stakeholders. The success of the CP has varied across negotiations and agreements. The process has been less effective for some of the "bigger" trade agreements that were/are expected to have the largest economic impacts – e.g. the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US and the Comprehensive Economic and Trade Agreement (CETA) with Canada. Heightened public awareness and sensitivity to trade agreements partially reflects public debate and controversy surrounding the negotiation process and parliamentary approval of trade agreements. Ever since the collapse of the WTO Ministerial Conference in Seattle in 1999, there has been greater scrutiny and an element of public hostility to trade agreements and the consequences of greater trade openness. Conflicting views on the benefits and disadvantages of trade liberalisation reflect differences in interests – political, economic and ideological – across heterogeneous socio-economic groups regarding either particular agreements or trade liberalisation generally.

The main objective of ex-ante trade SIAs and the associated CP is to provide a channel for communication and feedback between the EC and the general public.³ The importance of effective communication and information exchange around PTA negotiations has led the EC to highlight the need for SIAs and the CP to be transparent and of high quality to ensure credibility and legitimacy (European Commission, 2016). Ideally, the CP should provide fluid and transparent two-way communications between the EC and key stakeholders, ensuring that controversial topics are analysed and considered. The end-result of the process should inform the trade negotiations and ease the eventual approval of the outcome of negotiations – the completed draft trade agreement – by the Council and the European Parliament.

SIAs have been revised substantially over time, including changes to the consultation mechanism. In this paper, we compare changes in SIAs before, between and after the publication of the first SIA handbook (European Commission, 2006) and its second edition (European Commission, 2016). Our review makes clear that the transparency and inclusiveness of the process has increased, but at the potential cost of a lack of clarity regarding the relative importance to stakeholders of the issue areas considered in the CP and the relevance of trade policy for concerns raised by different stakeholders. We distill several recommendations from our review that could make the SIA and the CP more useful to negotiators as well as the political bodies – the Council and the European Parliament – that ultimately are charged

³See Orbie et al. (2016) for a discussion of the motivations underlying meetings with civil society in the context of specific trade agreements.

with considering the pro's and con's of a proposed PTA.

One suggestion is to do more to ensure that the CP occurs before the main SIA analysis is conducted, and preferably, before negotiations start. Many stakeholders have expressed dissatisfaction with the practice of doing the CP in parallel with the SIA analysis while negotiations are in practice already ongoing. The legitimacy and effectiveness of the CP would be enhanced if the opinions and concerns of stakeholders can be considered from the very beginning of the negotiating process. Engaging in negotiations in parallel with the SIA and the CP can give rise to a perception that the CP is more in the nature of a public relations instrument that is not intended to feed into the design of the PTA being considered. Whether true or not, if the SIA and CP are not perceived to be inputs into the negotiating process, this may greatly reduce the value of the exercise.

Another recommendation is that the SIA and the CP would be more useful if these mechanisms identified more clearly those issues considered most salient for a broad cross-section of stakeholders, both economic actors and nongovernmental organizations, and did more to quantify how trade – or provisions of a PTA – will impact on nontrade policy objectives. The heterogenous and group-specific inputs, concerns and prospective effects of trade agreements – and trade policy changes more generally – are important to understand, as they reflect underlying political, economic and social interests. In this respect, an important characteristic of EU trade SIAs is that they have been expanding their thematic scope, reflected in a substantial increase over time in the number of non-trade topics covered. An example is the inclusion in the SIA analysis of human rights and gender equality issues (Rojas-Romagosa, 2020). By expanding the number of topics analysed in SIAs, it has been implicitly presumed that these topics are now addressed. However, the inclusion of a long list of nontrade issues that must be analysed in each SIA, inevitably many of these topics end up being only superficially treated, reducing rather than increasing the legitimacy and credibility of the analysis and CP. To a greater or lesser extent many SIA reports end up "ticking the box" for some of policy areas, providing limited information and input into the overall process.

In part, this feature of the SIA process reflects the heterogeneity of trade agreements, reflected in major differences in economic development levels of EU partner countries. This affects the bilateral trade and investment potential of a treaty, in turn a function of the degree of liberalisation that is being pursued. It is important to recognise the specific characteristics of each trade negotiation and the heterogenous effects for different socio-economic groups in both the EU and in the partner countries. This suggests

the CP should focus more on specific impacts for particular groups instead of a broad all-encompassing evaluation of the many possible trade policy effects. Highlighting the importance of a relatively small set of effects that are of significant interest to many stakeholders could increase the usefulness of SIAs. Narrowing the thematic scope of the CP can generate more policy-relevant outcomes by helping to identify how and how much particular stakeholders could potentially be affected by a PTA.⁴ Greater specificity would also help to identify areas to negotiate and instrumentalise effective – and achievable – flanking and compensation mechanisms in instances where a PTA may adversely impact on certain socio-economic groups or a nontrade issue.

A shift in focus on a limited set of agreement-specific topics would have implications for the evidence-based analysis of the SIA. The economic modelling framework that is employed to generate estimates of the potential effects of an agreement – generally a computable general equilibrium (CGE) model – should be geared towards providing topic-specific quantitative results by using extended and/or complementary tools. These modelling extensions should provide quantitative estimates of the direct potential impacts for the specific set of focal topics of interest. This will entail a shift away from the current practice of generating a very broad thematic coverage within the SIA analysis that by and large is not based on direct and quantitatively measured outcomes. The use of indirect and induction-based analysis greatly decreases the quality and usefulness of SIAs, with negative knock-on implications for their credibility.

The remainder of the paper is organized as follows. In Section 2 we summarize changes in the trade SIA consultation process objectives and methodologies over time, in part as a response to stakeholder feedback. Section 3 evaluates the CP methodology. Section 4 discusses the treatment of nontrade policy objectives – European values including human rights and sustainability – in the CP. Section 5 makes several suggestions how the CP could be adjusted to generate more specific guidance to negotiators and decisionmakers and to build a bridge between the CP and the stakeholder engagement needed to support the eventual implementation of a PTA. Section 6 concludes with a set of recommendations.

⁴More specific and detailed assessment was also one of the main recommendations of SIA evaluations done by European Economic and Social Committee (2011) and von Homeyer et al. (2009).

2 Evolution of the consultation process over time

In this section we first compare and analyse the definition of the consultation process in both SIA handbooks. We then survey the CP outcomes as reflected in the SIA final reports.

2.1 The first SIA handbook

In the first edition of the EC's SIA handbook (European Commission, 2006) the consultation process is sub-divided between internal and external consultations. The internal process involves exclusively EC institutions with DG-Trade acting as the leader. Comments and suggestions on preliminary and final reports are collected and then passed on to the consultants that were externally contracted to carry out the SIA study. In addition, there is a steering committee – consisting exclusively of EC representatives from different departments – that should guide and ensure the relevance of the SIA process. Other non-EU actors are involved in the CP with the objective of disseminating the results of the SIA analysis and to increase the transparency and accountability of the process. An additional goal is that stakeholders gain a better understanding of the SIA methodology, which in turn can enrich the process of consultations.

The set of stakeholders is very large and diverse. It includes three main groups. First, the private sector: corporations and businesses, business associations, professional bodies, consumer groups, individual business leaders, financial institutions and think tanks. Second, the public sector: ministers and advisors (executive), civil servants and departments (bureaucracy), elected representatives (legislative), courts (judiciary), political parties, local governments and councils. Finally, the third group includes civic society: the media, churches and religious groups, schools and universities, social movements and advocacy groups, trade unions, national and international NGOs and local communities.

In short, the consultation process is meant to be –at least on paper– an all-inclusive process that involves basically any institution and social group with direct or even very indirect interests related to trade policy outcomes. This overarching goal is partially acknowledged in European Commission (2006) by stating that the CP is a complex undertaking that requires "careful steering" to obtain a balanced output between the interest of the different stakeholders.

However, there was not much further detailed guidance on how this delicate balance can be effectively maintained while ensuring the inclusiveness of

the whole process. Instead, the following broad and very general guidelines are given to the consultants:

- Conduct an initial "thorough stakeholder analysis" that identifies all parties engaged with the (SIA) research, those who make policy and the intermediaries between these groups.
- Ensure that these parties are adequately covered in the consultation process in a balanced manner.
- Collect the inputs from these stakeholders including those by experts, but also from the general public.
- Include in each report a section detailing the quality and quantity of the contributions received and how they were addressed or incorporated into the SIA process.

Needless to say, following these general and extremely ambitious guidelines in a truly methodical and inclusive manner constitutes in itself a complex and large study involving sociological, political and institutional sub-studies, in addition to an ambitious process of data collection, quantification, qualification and filtering into practical feedback inputs that can be used for intermediate and final reports.

To complicate matters further, the European Commission (2006) handbook also envisions that the above guidelines for the consultation process are implemented in developing countries as well –in case the counterpart to the trade agreement includes such countries. In these instances, the CP should be further expanded to build capacity in these countries for civil society, and provide research and networking facilities to access (and understand) the relevant information.

The CP description in the first handbook does end, however, with a more pragmatic and achievable checklist of activities for consultants:

1. Define who should be consulted and set up an international advisory committee.
2. Determine, beforehand, what are the desired results of the CP regarding inputs and suggestions for the reports.
3. Consider which materials should be made available.
4. Select the consultation methodology that should be employed and by which communication outlets (i.e. meetings, emails, calls).

5. Suggest how the responses should be collected and recorded.
6. Determine how the inputs of the process are used to provide feedback into the reports.

This particular checklist clearly provides the consultants with ample leeway to tailor the consultation process in a more manageable manner. However, and as we comment below, it also hinders the inclusiveness and legitimacy of the process. For instance, in the Annex to this first handbook, it is stated that the consultants should, *if possible*, select civil society representatives from a list, which again is very broad and includes consumers, different producers, employers, particular social groups (indigenous and women) and other institutions. It is important to note, that it is not defined *how representative* the particular organisation that is chosen is in reality, and as such, this provides an easy "tick the box" approach to conducting the consultation process.

2.2 The second SIA handbook

The changes introduced in the second edition of the EC's SIA handbook (European Commission, 2016) were driven by feedback received by stakeholders, as well as internal EC evaluations and implementation of policies to improve the communications regarding EU trade policy (European Commission, 2015b).⁵

Some elements remained unchanged from the CP methodology outlined in the first SIA handbook. The level of ambition regarding what the CP should do remained (unrealistically) high – and arguably was increased. For instance, the second handbook states: "SIAs are highly participatory; an open, transparent and wide-ranging consultation process is at the core of SIAs' analysis... Consultations are key to ensuring the transparency, quality, credibility and legitimacy of SIAs by providing a dynamic and robust framework for interaction and dialogue with all relevant stakeholders." (European Commission, 2016). Moreover, the CP is still intended to involve *all* relevant stakeholders, which again, if taken literally can require the involvement of all social, economic and political groups in the EU and partner countries. In this regard, stakeholders to be consulted include: non-governmental organisations, businesses, social partners (including trade unions), academia, national administrations, experts from the EU and partner countries, and

⁵Some of the critical assessments of the process are mentioned in Section 3.2. See for example, the FIDH (2015) report.

international organisations. Questions regarding the selection, representativeness and level of involvement of these groups in the CP continued to remain unaddressed. Finally, the CP continued to be required to be *balanced*: "ensure an adequate and balanced coverage of all relevant interested parties during the consultation in order to be representative and avoid capture of the process by specific constituencies" (European Commission, 2016).

On the other hand, the second handbook does a much better job in defining the specific activities, communication methods and selection mechanisms. This is in contrast to the relative laxity and freedom that consultants were given in the first handbook. For instance, there are now specific communication-related directives that must be carried out by the consultants:

- Create a SIA dedicated website, which includes a home page with easily accessible summary of the stages of the SIA process, all appropriate SIA-related information and reports, and a feedback mechanism that allows users to deliver inputs, suggestions and observation.
- Use of other electronic tools – such as emails, electronic newsletters, Twitter – to inform regularly about the SIA process.
- Undertake a wide range of interviews, meetings and roundtables, in particular at an inter-professional level.
- Develop a questionnaire to make use of a general public consultation that can be used by all stakeholders to express their opinions, including directives to target SMEs and consumer surveys.
- Civil society dialogue meetings and workshops, with the specific number of meetings to be determined in each phase of the SIA process. These require the presence of the EC (DG-Trade) and are venues in which the consultants should present ongoing or final reports.

In addition, the selection mechanism is also more formalised. The consultants are now required to identify key stakeholders in close cooperation with the EC, the European Economic and Social Committee (EESC), the European Consumer Consultative Group (ECCG) and the Sectoral Social Dialogue Committees (SSDC). In addition, vulnerable groups should also be identified in cooperation with national human rights institutions. These particular changes come directly from recommendations done in the European Economic and Social Committee (2011) assessment of trade SIAs.⁶ We

⁶The EESC is directly involved in identifying key stakeholders.

note that the emphasis is on engagement with groups that are less likely to have access or to be able to provide input, but at the same time that a civil and political "rights" lens is used as opposed to one that centres explicitly on economically vulnerability and disadvantaged groups that could potentially benefit from being to exploit better (new) trade opportunities if agreements were accompanied by targeted assistance (e.g., aid for trade projects).

Finally, the CP is also required to provide *timely* and *tailored* reports. With respect to the first point, the consultants are required to generate a continuous feed between the CP and the ongoing trade negotiations throughout the whole process. Regarding the second point, all the inputs received from stakeholders should be summarised in the SIA website and, when relevant, integrated and/or addressed in the reports. Moreover, partially based on the CP inputs, the final report is required to include recommendations and proposals for flanking measures to address potential implementation and adjustment costs. Importantly, the consultant is also required to analyse the feasibility of suggested flanking measures and estimate their costs. This is an important feature of the TOR as it provides guidance for both the EC and partner countries as to what can (should) be done to better realise the potential benefits of an agreement and assist groups in society that may be negatively affected incur the associated adjustment costs. It is an inevitable feature of any trade agreement that there will be adjustment costs – this is a necessary condition to realise the overall net gains from trade liberalisation. Recognising this and putting in place credible mechanisms to assist groups that may lose is arguably one of the most important tasks for SIAs.

To summarise, the second EC SIA handbook (European Commission, 2016) formalises some of the CP elements, requiring clearer outcomes from the consultants, and provides a more streamlined process. Nevertheless, the underlying weaknesses of the CP process remain: (i) over-ambitious goals; (ii) lack of clear mechanisms to ensure representativeness in participation in the CP; and (iii) the largely unattainable objective of providing a balanced report of what will be inherently heterogeneous and conflicting outcomes.

2.3 Thematic coverage and geographical emphasis of the consultation process as reported in past SIAs

Rojas-Romagosa (2020) surveys the final SIA reports and assesses the number and type of analysis done for non-trade topics in the main economic analysis of the SIA. This study found that there has been a noticeable increase in the number of non-trade topics that are included in the main analytical component of the SIA. Partly, this reflects the increase in the

number of subjects covered by trade agreements and partly it reflects the concerns raised in earlier SIAs and consultations. There is clear evidence of feedback between the CP and the socio-economic analysis, which also reflects the broader thematic coverage of more recent trade SIAs. Rojas-Romagosa (2020) also finds that the CP has become broader over time to include formal communication channels (e.g. a dedicated website for each SIA) as well as a larger number of participating stakeholders.

A key observation is that the main focus of the CP is on stakeholders in partner countries when the trade agreements involve developing countries, and on EU-based stakeholders when the agreement is with developed countries. Implicitly the prioritisation of impacts on developing countries could be justified in the case where the countries lack the domestic institutions to internally assess the potential sustainability impacts on their own. In the case of middle-income emerging economies, however, focusing the consultation process in these countries is less understandable, since they have more resources and capacity to self-evaluate the economic, social and environmental impacts of the agreement. This can create frictions with democratically elected governments and raise the question why the EC is using valuable resources in these cases.

2.4 The SIA within the overall EU trade negotiation process

The full process of negotiating and implementing a trade agreement usually takes several years. In principle it involves more than 30 different stages and all three political bodies of the European Union: the EC, the Council of the EU and the European Parliament (European Commission, 2012). All the stages (33 in total) can be divided into five main steps.⁷ The first step is preparatory, with the EC (DG-Trade) initiating the trade negotiation process, preparing a scoping report and commissioning the trade SIA. The second step is the mandate, where the EC seeks the authorisation from the Council to start negotiations and if approved, the Council provides the EC with the negotiating directives. In the third step the negotiations and trade talks are held. In this step there is fluid communication between the EC and the Council, while intermediate reports and texts are exchanged and some made public. In the fourth step the negotiations are finalised and signed. This includes the legal scrubbing and the translation of the texts. The fifth and final step is ratification by the Council and the European Parliament,

⁷The full process and all the detailed stages are described in European Commission (2012).

after which the agreement can enter full or provisional application until the final stage: entry into force.

Although the full negotiation process is described as a chronological sequence in reality the trade SIA is never concluded before the negotiations begin. In this regard, the SIA is not really part of the "preparation" process, but it is an ongoing exercise that is held *after* the mandate is given to the EC and it *overlaps or extends* beyond the negotiations. For instance, the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA was launched in June 2013 with the first negotiation round held on 7 July 2013. The tender for the contract to provide the trade SIA was only published on 24 July 2013. While the negotiations ended without a conclusion at the end of 2016, the interim SIA report was published in July 2016 and the final SIA report issued in March 2017. Similarly, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) was launched in May 2009 and the first round of negotiations started on 19 October 2009. The tender for the SIA was posted in January 2010 and the final SIA report was published in June 2011. The negotiations concluded on August 2014 and the treaty entered into force in September 2017.

Looking across different trade negotiations, it is clear that the tendering process that begins the SIA process only commences after the negotiations have been launched and usually after the first round of negotiations have been held. The SIA final report tends to be published two to four years after the negotiations have started. Although the SIA process is not part of the "preparation" stage, there is no recognition in EC descriptive documents that in practice the SIA and the negotiations overlap. This is a fundamental timing and practical inconsistency. In principle the trade SIA is fully contained in the first stage of the process, which makes sense, as the impact assessment is meant to provide guidance in the negotiations and/or to avoid negative effects of the trade agreement on social and environmental issues. Moreover, after the "preparation" stage, the trade SIA and associated CP are not mentioned again in the remaining stages of the negotiation process suggesting the process is not intended to provide feedback to the negotiations – even if this can occur in practice, in particular when the agreement lacks popular support. This reduces the legitimacy and practical impact of the SIA, since the SIA and the CP occurs in parallel to the negotiations and there are no formal feedback mechanisms between both.

3 The SIA consultation process methodology

In this section we provide a normative discussion on the impact of the SIA consultation process on the design and negotiation of PTAs, and the overall public discussion that surrounds of the PTA negotiations and the legal (political) implementation processes. We begin with an assessment of the CP methodology, and then survey different evaluations that have been undertaken by the EC, external (academic) commentators, opinion surveys and interviews with practitioners.

3.1 An impossible task?

Our reading of the literature, interviews with practitioners and experience with the CP methodology is that it is over-ambitious, lacks sufficient guidance and mechanisms to ensure inclusiveness and representativeness, and does not do enough to ensure that inputs from the CP are used in practice.

A central concern pertains to the need to identify all (direct and indirect) stakeholders and how to balance (weight) their views and inputs. The SIA methodology is not clear on the particular mechanisms that the CP requires to provide a balanced overview of positions that will reflect very different motives: direct economic impacts from the agreement on specific groups and economic activities, perceived and potential – with different level of certainty – indirect impacts, specific concerns by interest groups, ideological priors and other ex-ante views regarding international trade. An objective balancing of views is unattainable without formal representative mechanisms. As noted above, a basic characteristic of trade policy changes is that they generate heterogenous effects. These vary by economic activity (i.e. for particular industries, products and services), worker types (skilled, unskilled, informal, gender), household characteristics (level of income, dependancy to public transfers, employment levels), and geography (differences across sub-national regions). Linkages between the economic policy changes induced by a trade agreements generate very complex dynamics (both positive and negative), of different magnitudes, for different groups, organisations, regions and households.

Increased public attention for trade agreements reflects many factors. One is heightened expectations regarding the overall impacts of trade policy on the economy and on particular sector- and group-specific issues, including non-trade policy objectives that trade policy is tasked with pursuing by the Lisbon Treaty. This element is critical in understanding the intrinsic limitations of analysing the effects of changes in trade policy resulting from the

implementation of trade agreements on non-trade and non-economic topics. In this regard, shallow trade agreements that generate limited reductions in trade barriers and with a limited number of enforceable provisions will accordingly generate limited economic activity disruptions. In these cases, the expected impacts on non-trade topics will be also highly constrained.

Although trade agreements could have substantial effects on particular groups – conditional on the depth of the agreement – they could at least in theory, affect *all* groups to some degree. Therefore, analysing the economic and non-economic effects of trade agreements is a balancing act that needs to contextualise the overall economic impacts to all economic and social groups, with the potential, but maybe substantial, impacts to specific groups. In theory, the relative categorisation of the impacts should be attained by quantitative assessments, but trade effects can be complex and heterogenous enough to make this analysis very difficult, especially if these need to consider not only different economic sectors, but worker types, other factor owners, sub-national regions, particular socio-economic groups and minorities. The dichotomy between overall and group-specific impacts is further blurred by ideology, expectations and particular economic and political interests.

Basic microeconomics and public choice theory has long shown that balancing a complex array of heterogenous impacts across societal groups through simple criteria such as Pareto efficiency are of little practical use. There is an extensive analytical tradition regarding public choice and the political economy of trade policy. Public choice economics provides a large set of potential solutions to an optimal public choice, from broad but hard to implement recommendations – e.g. Pareto optimality, compensation schemes and reliance on voting systems (median voter and probabilistic voting theory) based on game theoretical Nash equilibria. The literature on the political economy of trade policy is more focused and applied to trade agreements, but also provides a broad set of possible outcomes, non of which are usually optimal from a societal point of view.⁸ These theories do not provide simple or efficient balancing mechanisms, and most rely on some (implicit) system of representative voting. Therefore, without some sort of formal voting or another truly representative mechanisms, the stated objectives of CP – i.e. to ensure transparency, quality, credibility and legitimacy of the SIA process (European Commission, 2016) – is simply not attainable. It is important that this severe intrinsic limitation in the CP and the SIA is acknowledged.

⁸For example, the median voter theory (Mayer, 1984) and lobbying models (Grossman and Helpman, 1994).

In principle, if inclusiveness and legitimacy is to be achieved, some type of voting or weighting mechanism needs to be integrated into the consultative process. This is not to ignore that in practice there is of course a politically representative mechanism: ultimately the balancing of different interests and effects is the task of the Council and the European Parliament, both of which are appointed through democratic processes in and across EU member states. But for these institutions to be able to engage in more informed deliberations and decision-making – including not only on the substance of a trade agreement but the flanking measures that should accompany it – they should be able to rely on SIAs and accompanying CP outcomes that assist them in doing so. At the moment the CP arguably does not deliver what is needed, as it does not distinguish between inputs to generate a balanced and objective "bottom line" assessment of the impact of a trade agreement – and the measures that should accompany implementation to assure that the EU's broader goals and values are attained.

Similar to the EU, each partner country will counterbalance differing views, perceptions and concerns with respect to a particular trade negotiation through national institutional and political mechanisms. These can vary by country, depending on their specific political and legal systems (e.g. through parliamentary hearings and debates, creation or use of existing committees, polls and referenda), and the degree of public and academic engagement in such debates. In this respect, it is not clear how the SIA consultation mechanism fits within the country-specific institutional arrangements. In this regard, a parallel semi-formalised and pseudo-representative SIA consultation process can be a superfluous undertaking (i.e. in authoritarian regimes) or it can be steered to complement and strengthen the existing institutional arrangements. This is particularly important in developing countries with less structured and well-engrained institutions. However, the effectiveness and public impact of the SIA's consultation process is hardly observed in these cases.

What this points to is that the CP process would benefit from adding an element that is designed to go beyond identifying issues, concerns and preferences to rank-order and prioritise issues. Mechanisms to do this include the creation of bodies that bring together representatives of key social groups and analysts with expertise across the salient areas, or to use deliberative democracy approaches to distill what stakeholder groups consider to be of first order importance for specific trade agreements. We return to this in the penultimate and final sections of this paper.

3.2 EC and external evaluations

The broadening of consultation mechanisms commenced before the publication of second edition of the SIA handbook. An example is a July 2015 consultation meeting in Brussels that occurred in parallel with an online public consultation (European Commission, 2015b). Some of the main conclusions of this meeting included:

- A positive view of inclusion of human rights in consultations.
- Support for a commission/body that monitors that EU companies investing in the partner country comply with all human rights, environmental and labour laws.
- Doing the SIA before negotiations are launched, so the consultation process can be taken into account during the negotiations.

The timing of the SIA and the CP in particular has often been pointed out a weakness.⁹ As mentioned in Section 2.4, the SIA process is only launched *after* negotiations have started and the final SIA report is generally finished several years after the negotiations started. This timing concern was highlighted in the online evaluation of the SIA handbook (see European Commission, 2015b) and by Brando et al. (2015). In general, they question the legitimacy and practicality of the CP if recommendations are not considered by the negotiators and/or reflected somehow in the final negotiated agreement.

The European Economic and Social Committee (2011) influenced some of the changes included in the second edition of the SIA handbook – in particular creating more formal mechanisms to identify key stakeholders, improving communication mechanisms at different stages of the SIA process and broadening the number of topics analysed (e.g. gender equality). However, other recommendations were not included. For example, including monitoring mechanisms after the agreement is signed, ex-post SIAs and more analytical methods besides the main CGE modelling framework. They also recommended the prioritisation of topics to be analysed, instead on relying mainly on overall effects for each sustainability topic.

Other challenges have been raised in the literature. For instance, von Homeyer et al. (2009) define five main goals for public participation in policy

⁹This particular criticism has been a recurring one in most CP evaluations. In the July 2015 meeting this point was stressed by inter alia the International Alliance of Catholic Development Agencies (CIDSE).

making: credibility, legitimacy, trust, ownership and improved policy performance. Each of these goals requires high levels of public knowledge, well established formal and informal participation mechanisms, and the proper linkages for these mechanisms to inform policy. The authors stress the intrinsic complexities of distilling trade policy impacts on economic and non-economic variables of interest (social, labour, environment) and that this complicates achieving all five public participation goals. They recognise improvements in the CP, citing the importance of the use of umbrella organisations and/or multinational networks to identify and contact stakeholders and government officials in partner countries and argue a ‘stakeholder database’ using networks of government organisations, NGOs and civil society organisations (CSOs) can greatly facilitate the process. Criticisms include the lack of formal systems to evaluate the quality or sufficiency of participation in CP, unclear participation objectives, weak links to the negotiation process and the technical (knowledge and capacity gaps) and logistical obstacles to effective public participation. These limitations are also present in more recent EU SIAs. They conclude that the consultation process should rely on a set of realistic and regionally tailored objectives and formal mechanisms to integrate the process into the negotiations.¹⁰

Dudley and Wegrich (2016) and Marx and Van der Loo (2020) emphasise the importance that transparency as gained in the whole IA process over time. The OECD, for example, recommends the application of the principles transparency and open participation in the the regulatory process. This includes meaningful opportunities (including online access) for the public to participate and contribute in the whole process (OECD, 2009). Therefore, to ensure the effectiveness of the SIA process in general, and the CP in particular, that transparency should be present in all phases of the process. However, although some elements of the latest consultation process European Commission (2016) do include some of these recommendations –i.e. enhanced access to documentation, meetings and online participation– some other elements : determining the analytical goals, evaluating alternative means to reach and to enforce these goals. Within the EU trade negotiations, Marx and Van der Loo (2020) acknowledge the tensions between transparency and secrecy, which are required to make the process successful. On the one hand, secrecy is required in some parts of the negotiations, while transparency and adequate communications are important to

¹⁰For example, public participation could unblock negotiations in topics related with cultural or normative concerns, which are usually difficult to quantify and can benefit from more intense and deliberate public consultation outcomes.

garner broad public support for the agreement.

Even though transparency is regarded as a desirable component of the impact assessment process, it is not evident that it actually increases the quality of the process. Dudley and Wegrich (2016) analyse impact assessments used in regulatory procedures in the US and the EU, and conclude that further research is needed to effectively estimate the impact of transparency on regulatory quality. In particular, to evaluate the effectiveness of transparency procedures it is necessary to account for the incentives and opportunities of the different stakeholder to 'game' the procedure. Kirkpatrick and George (2006) find that the CP was most effective when there already existed a strong stakeholder network that had a relatively high level of expertise in sustainable development topics. Although this might be the case within the EU and other OECD countries, it is less likely in developing countries. Thus, the effectiveness of CP may be substantially reduced when dealing with developing countries. This negative impact could be mitigated by supporting the development of such networks in these countries.

On the other hand, it has also been argued that open communication and broad consultation processes are not a means to an end, but the end-objective itself (Torriti and Löfstedt, 2012). In other words, openness is generated by stakeholder pressure to participate in the process.¹¹ But it also serves the evaluating agency's purposes (i.e. DG-Trade), to assert that a broad set of opinions has been taken into account before the final policy decision is made. Applying this to the case of trade SIAs – where this openness principle constitutes the second main component of the assessment – it can be argued that the open consultative process is as if not more important than the analytical component.

The FIDH (2015) report heavily criticises several elements of the CP: "In general, only one workshop is conducted at a local level, with only 20 to 50 participants. This is not sufficient to obtain the necessary input. The one- or two-day workshops are more informative in nature than presenting real opportunities for informed dialogue on potential impacts, and there is no evidence that local consultation is conducted at each phase. Additionally the number of participants is so small that a true representation of those impacted cannot be ensured. Human rights interests are either absent or not adequately represented. Finally, the selection process in respect of who can participate remains opaque. Affected people are not systematically reached.

¹¹For example, Kirkpatrick and George (2006) details how, already in the initial years of the SIAs (1999-2006), civil society was strongly involved and how it maintained pressure to influence the whole process.

The most vulnerable and indigenous people are not consulted, for example, and documents are not provided in appropriate languages."

This critical assessment of the consultation process is echoed in other studies. This criticism highlights the problems and limitations regarding the selection of organisations consulted, the lack of information and depth in the discussions, and hence, its limited capacity to create adequate feedbacks into the rest of the SIA process. Key to the assessment in the FIDH report, is that it exposes the magnitude and complexity of a CP that truly follows the directives from the handbook to make the CP a genuinely inclusive process that reflects the opinion and concerns of a very broad and heterogenous group of stakeholders. It raises the difficult practical question already noted above for consultants, within a given budget and strict timeline, to involve all stakeholders and civil society organisations to generate a properly represented (and balanced) overview of the concerns, suggestions and recommendations.

Another important contribution of SIAs is that, since they are publicly available at all stages of the process, they provide developing countries (and their negotiators) with valuable information. Given that governmental capacity is much lower in developing countries, sometimes the EC's trade SIA can be the only information source of the expected impacts of the trade agreements in these countries. In the case where the EU is negotiating trade agreements with developing countries, the communication openness engrained in the SIA process may benefit the partner country more than the EU itself. The fact that the consultation process is also carried out in the partner countries increases the potential value added of the SIAs in contributing to the awareness and internal political and social debate in the partner country. While many middle-income emerging economies do have the domestic capacity and institutions to undertake their own sustainability assessments, this may not be a priority for partner governments. Although the CP may create frictions with partner governments, this feature of the process is important insofar as it helps to identify groups that are aligned with EU values and preferences and areas/issues where flanking measures will be needed.

Most trade SIAs do not explicitly assess the country-specific results for each of the now 27 EU member states. In principle, the CGE model can be set to provide this level of detail at the EU member-state level, but so far, only two SIAs (for CETA and TTIP) have presented these results. The main reason is that for many trade agreements the impacts on the EU as a whole are negligible and thus there is no expectation that any particular country will have any non-marginal impacts as well. However, in some cases

the impacts can be more substantial (if still relatively small) and here it can be interesting to corroborate that this also holds for each EU member-state. In general, presenting these detailed country-specific results can increase the transparency of the whole SIA process.

3.3 Additional insights from surveys and interviews

In this section we present other sources –surveys and interviews– that provide additional evaluations of the consultation process.

3.3.1 The RESPECT survey instrument

A practitioner survey implemented as part of the RESPECT project (Fiorini et al., 2019) provides additional information regarding perceptions about the SIA’s consultation process. Question 2 in this survey is of particular interest. This survey question states: "The design of trade agreements is efficiently informed by consultation of stakeholders." They find that 49% of respondents agree or strongly agree with this statement, while 25% disagree or strongly disagree with it. There seems to be, therefore, a favourable view on the consultation process by most stakeholders and other institutions included in the survey, such as think-tanks, academics and EU institutions.

However, the survey also finds very negative views from two groups that are key to the consultation process. Of the trade unions consulted (5), 60% disagree or strongly disagree with the statement and none of them agree with it. Moreover, of the 20 NGO’s consulted, 50% disagree with the statement and 30% agree with it. International organisations (19) also have a more negative view (47.5%) than positive (37.5%). On the other hand, and not surprisingly, the EU institutions consulted (39) have the most favourable views, while EU business associations (21) and firms (small, medium and large) have a majority of positive views regarding the consultation process.

Although the overall reaction to the question directly related to the consultation process has a majority of positive reviews, it is clear that both trade union and NGO respondents disagree that the trade agreements are efficiently informed by this process. This directly questions the effectiveness and inclusiveness of the CP and the SIA instrument.

3.3.2 Interviews with SIA consultants

Within the RESPECT consortium we interviewed consultants that took part in past SIA consortiums. In this regard, the consultants interviewed participated directly in 59 percent of all EU trade SIAs done until 2019.

We asked these consultants a series of questions regarding the interaction between the CP and their analytical work. The questions and a summary of their answers is provided below.

What was the influence, if any, of the CP on the SIA reports you were part of? The evolution of the SIA methodology, as stated in both editions of the EU's SIA handbook, directly reflects the discussions and concerns of stakeholders that were previously identified within the CP. Thus, although the parallel CP for a particular trade agreement may not be explicitly considered, they have definitely influenced how subsequent SIAs and negotiations were carried. In particular, by increasing the number of topics covered under SIAs. Thus, the long-term effect of the CPs has been to directly or indirectly influence the coverage and methodology of the SIAs over time.

The emphasis and the importance of the CP was evident when negotiating TTIP. It was the first "big" agreement that the EC had in some time, and DG-Trade did not properly take into account the concerns of several stakeholders. In addition, there were many mis-leading claims and a great deal of misinformation about TTIP circulating.¹² The EC was too technocratic and did not tackle in time these false claims and misinformation. They should have addressed directly anti-globalisation forces, invited NGOs to meetings where they could bring facts to the discussion and should have discredited studies regarding TTIP that lacked a proper economic analytical framework.

After TTIP, the emphasis on the CP was greatly expanded, in part because of the negative public opinion backlash from the way this particular agreement was negotiated and communicated to the public and to the stakeholders.

Did the CP influence negotiations? This was usually not considered to be the case, but some examples were mentioned of CPs directly influencing the negotiating process. In particular, the CP regarding CETA made it clear that the investor-state dispute settlement (ISDS) had to be changed for it to be acceptable for several stakeholders.

¹²In particular, there was an abundance of misinformation regarding issues related to regulatory harmonisation and other non-tariff measures: e.g. chlorine chicken and genetically modified food.

Any other type of interactions between the quantitative analysis and the CP? Some consultants had to directly participate and answer questions in specific CP sessions related to interim/draft reports before the delivery of the SIA final report. After these sessions, DG-Trade specifically asked for changes to the report based on the outcomes of these sessions. For example, include additional tables with specific information that was requested by stakeholders. On the other hand, after the negative experiences of DG-Trade with TTIP, DG-Trade was more directly interfering with the editing of the SIA final report; to such an extent that they were doing track changes to the text originally written by the consultants. Clearly, this directly violates one of the mandates of the SIAs being done by independent consultants.

Recommendations to improve the consultation process The legitimacy and representativeness of the CP might be questionable in some cases. Due to the selection process regarding specific stakeholders and representative of civil society that participate, which ones effectively are present and active on the CP and how different opinions are weighted within the process. However, the CP must be viewed as an instrument that provides direct feedback to DG-Trade (and their negotiators), but which also complements more formal and legal consultations that are done before a treaty is finally ratified. This includes primarily the ratification by local, national and/or supra-national parliaments. In addition, there should be better public explanations regarding the strategic and technical reasons why the draft negotiations texts are not made public to allow the stakeholders to assess whether the main objectives and goals of the negotiations were being addressed.

It was also mentioned that the more recent SIAs (after the publication of the second edition of the SIA handbook in 2016), became more like "ticking boxes" when it related to analysing impacts on human rights and other topics that are not directly covered by the CGE model. The main suggestion is that SIAs should be more realistic on what they can measure and what they cannot. It was also acknowledged that in some instances, the consortium provided sub-standard qualitative analysis on some of these topics.

In this respect, the overall quality of the economic modelling behind the SIAs can greatly benefit from bringing together different CGE frameworks and different parametrisation of similar CGE models within the same SIA. This will provide cross-checks, standardisation and peer-reviewing on to the economic modelling process. For instance, DG-Trade can commission two or three CGE studies where they provide the baseline scenario and the

trade policy shocks to be modelled, and then the results of the models are compared based on the different technical approaches and assumptions from each model. The end-result will be a synthetic and/or broadly agreed upon model or a range of potential economic effect that can be used as the basis for the broader SIA analysis.

It was also suggested that the selection of CP participants should be formalised and made more representative. It should include NGOs, employer organisations, unions and labour representatives, as well as government officials. Something similar in nature to the Social and Economic Council of the Netherlands (SER), which can become a permanent body that is formally consulted when a trade negotiation is launched. Moreover, a more representative CP can provide binding or semi-binding mandates related to the topics on which the SIA must focus on. Preferably, there should also be direct and clear preferences regarding the quantifiable indicators and/or analysis that should be employed. Finally, echoing both evaluations and the policy research literature, a key recommendation was that the consultation process should be done before the beginning of the economic analysis and ideally, also before negotiations start.

4 Nontrade policy objectives and European values

Including an assessment of the impacts of trade agreements on a broadly defined set of human rights and sustainability variables as part of the SIAs and their CP has been highlighted by civil society groups and academic commentators as one important improvement in the SIA methodology.¹³ The expansion of the thematic coverage of SIAs to include these European values reflects both EU law, for instance, Article 21 of the Treaty on European Union, the Charter of Fundamental Rights of the EU, and EU guidelines to promote human rights through its external actions¹⁴ and commitments enshrined in international law – e.g. the Universal Declaration of Human Rights and the International Covenant on Civil and Political rights.¹⁵

The SIA mandate to analyse the effect of trade agreements on human

¹³In this section we use a broad conception of the European values dimension of trade agreements that encompasses the specific human rights clause included in EU framework (or trade) agreements and the social, labour and other rights that are addressed in the Trade and Sustainable Development chapters of EU trade agreements.

¹⁴(Council of the European Union, 2012).

¹⁵For further discussion on the legal obligation of the EU to assess human rights impacts when negotiating trade and investment agreements, see Berne Declaration (2010), UN (2011) and FIDH (2015).

rights is evident in the second edition of the SIA handbook (European Commission, 2016), where the analysis of human rights topics is enshrined as one of the main analytical topics, together with economic, social, and environmental issues. Specific guidelines for how to conduct human rights impact assessment are laid out in (European Commission, 2015a). Many scholars advocate for a comprehensive analysis of human rights issues employing tailor-made human rights impact assessments (HRIAs).¹⁶

In our view, the treatment of European values and human rights topics in trade SIAs and the CP provides limited practical use for policy recommendations.¹⁷ This is not to say SIAs, especially more recent ones, do not engage seriously with the subject matter. The 2019 final SIA report in support of the negotiations for the modernisation of the trade part of the Association Agreement with Chile demonstrates this – including global analysis of economic, social, and environmental sustainability as well as impacts on human rights (including the right to health, to adequate food, and to work), SMEs, women and rural communities (European Commission, 2019). Moreover, the CP included opinion surveys, consultation dialogues and workshops with stakeholders in both the EU and in Chile, including a cross-section of NGOs. The SIA report concluded that any effects of the envisaged modernisation of the agreement would have only minor, if any, implications for the various rights and groups considered, reflecting the limited nature of the envisaged policy changes and the fact that outcomes and possible improvement in performance for the areas and issues of interest are a matter of domestic policy and institutions that are only indirectly affected by a trade agreement, if at all.

In what follows we discuss three interrelated reasons why the treatment of human rights in SIAs is not only of limited salience to trade negotiators but also does little to inform decision-makers when considering ratification of a trade agreement.

4.1 Methodological challenges

Analysing the impact of trade policy – more generally any policy – on a topic as broad as human rights (HR), is a daunting task to start with. Human rights embrace and/or are related to almost all facets of human activity: economic, political, cultural, and social. As such, the broad scope of human

¹⁶See for example Schmieg (2014); Bürgi Bonanomi (2017); Walker (2018).

¹⁷Zerk (2019) provides a complementary assessment and discussion from a legal perspective.

activity that is encompassed by the definition of human rights,¹⁸ characterises human rights as cross-cutting across several topics already considered within the SIAs. Therefore, without a clear delimitation of the topical scope – i.e. by choosing particular HR-related topics to analyse – any analysis of "human rights" effects is an extremely ambitious analytical undertaking.

Related to this, there is no systematic, evidence-based and standardised methodology to analyse the impact of trade agreements on HR-issues. These limitations are raised by Brando et al. (2015), who state that the human rights impact assessment (HRIA) methodology is still underdeveloped. Despite a growing number of toolkits and methodological guidelines, there are still very few practical applications. Moreover, given the wide range of topics and stakeholders that can be covered, serious questions remain about the overall feasibility and value added of these assessments. Indeed, even with a smaller sub-set of HR topics that can be clearly affected by trade policies, the analysis will also require the use of a well-established methodological framework. In the current SIA methodological setting as defined in the EC handbook, a clear topical delimitation and an adequate methodological framework are absent. For example, the guidelines provided in European Commission (2015a) recommend a simplistic positive, negative or neutral (+/–/0) score to assess direct and indirect effects on specific human rights, which is mostly based on induction-based links between the expected economic outcomes of the trade agreement and human rights topics. Hence, a testable and standardised evidence-based assessment of the human rights impacts of trade agreements is lacking and in practical terms, is an extremely complex task. The lack of this basic methodological framework makes the HR analysis in the current SIAs highly speculative and hypothetical, with little evidence that can be independently corroborated.¹⁹ So far, there is not a single SIA that has generated quantitative estimations that can provide –even a broad understanding– of the relative importance of the potential effects.²⁰

Moreover, by including human rights topics in the SIA methodology, it is implicitly assumed that trade agreements can affect – in a meaningful way – the HR situation in a particular country. This is a very strong assumption for many of the topics included under human rights. Many of the existing legal, political and cultural institutions that determine the prevailing HR

¹⁸For example, the 33 fundamental human rights enshrined in the UN's Universal Declaration of Human Rights, encompass social, economic, civil and political topics.

¹⁹The particular limitations of the HR analysis in EU trade SIAs are also explored and detailed in Brando et al. (2015).

²⁰We elaborate further on this topic on the following section.

situation are hard to change. The level of respect and protection of human rights in specific countries is by its own nature, domestically determined and mostly shielded from external pressures. Implicitly acknowledging this limitation, the second edition of the SIA handbook states:

"This [human rights] analysis is not intended to pass judgement on the actual human rights situation in a country, nor to decide whether the country is eligible for the conclusion of trade negotiations." (European Commission, 2016)

This directive, however, runs against one of the main arguments of human rights advocates for consideration of HR as part of an SIA: the existence of violations of civil and political rights. We expand on this point further in Section 4.3. Clearly international pressure, backed-up by economic measures, can provide some positive impact for specific cases.²¹ A trade agreement can be used as a means to incentivise internal changes in non-trade policies in the partner country. However, such scenarios raise political economy and diplomatic considerations that cannot be analysed in the SIA. For example, when trade agreements are being negotiated with authoritarian regimes with a poor human rights track record, the main analytical considerations should be given to include strong, verifiable and enforceable provisions in the trade agreement that can provide effective changes to the human rights situation in the country. As such, the main HR-effect of the agreement will be directly determined by these legal provisions. In such cases, it is hard to envisage how a SIA can include the political and diplomatic factors that can assure such an outcome. On the other hand, human rights topics that have a direct economic dimension – e.g. food security, workers rights– can more easily be included in the analysis, but as particular topics of interest that fall within the broad umbrella defined for all human rights topics.

4.2 Absence of quantification

Trade policy affects different levels of economic activity: e.g. sectoral activity, macroeconomic indicators, labour markets, public finances, income distribution. As such, these agreements will inevitably affect – in one way or another – the economic, social, political and personal human rights of

²¹This is the subject of complementary research by the RESPECT consortium. See e.g., papers by Ingo Borchert, Paola Conconi and co-authors at respect.eui.eu/publications/.

all citizens, which are directly or indirectly related to one or several of these economic levels. Therefore, the pervasive nature of trade in modern economies and the potential disruptions and opportunities that trade agreements can generate are also pervasive. More importantly, these effects are heterogenous and conditional, among others, on worker and household characteristics. Hence, many different HR-topics and specific population subsets groups can be affected to a certain degree.

The relevant question then becomes *how much* does the agreement affect particular HR-topics and/or specific target groups, instead of asking *if* the agreement will have HR effects. In other words, what is required is a quantitative assessment of the potential impacts, instead of a qualitative judgement that just establishes a link between trade policy and a particular human right issue. By the pervasive nature of both human rights and economic activities affected by trade, any inference-based analysis can easily provide such a link. In fact, many of the SIA analysis regarding human rights present highly speculative and far-fetched links.

In this respect, a quantitative analysis is required to link the depth of the agreement –in terms of the effective reduction of existing trade barriers– and the magnitude of the potential impact on particular HR topics. In general, since most trade agreements have modest economy-wide effects, the potential impacts on broad nation-wide HR topics are expected to be muted. Nevertheless, the potential impacts can be significant enough in particular economic activities and can also affect –by different degrees– heterogenous population groups. These potential impacts can be conditional on skill-level, occupation, economic activity, gender, region, socio-economic background, among others. Therefore, the combination of several sub-topics within the human rights umbrella, together with the potential impact on several sub-national population classifications, can generate a vast and unfeasible number of combinations that can be analysed. Moreover, some sub-topics do have an economic analytical framework, on which a quantitative evidence-based analysis can be conducted, but other sub-topics lack such a methodological framework. For instance, the analysis of the trade policy effects on income inequality and particular worker types has a long-standing theoretical and empirical tradition in economics. Other human rights topics, on the other hand, have scarce or not economic methodological background –e.g. physical integrity, children rights and minority protection.

The lack of a systematic and proven approach to the analysis of human right impacts is clearly reflected in the quality of the SIA analyses regarding human rights. To start, there is no methodological approach to provide a system quantitative analysis. For instance, of the 29 SIA final reports

surveyed in Rojas-Romagosa (2020), not a single SIA provides a quantitative analysis of the impact of trade agreements on any of ten human rights topics identified in that study: civil and political rights, physical integrity, women rights, human trafficking, right to food security, minority protection, children rights and right to free belief. This means that any assessment of human rights impacts, has been done by qualitative and inference-based analysis. The speculative and ad-hoc nature of these approaches has been already discussed in Rojas-Romagosa (2020).²² In the particular case of human rights analysis, most of the qualitative assessments are highly speculative and with too many hypothetical links. As an example, the SIA on the Environmental Goods Agreement, finds that the main (positive) effect of the agreement on human right was:

"Small solar lights, or renewable energy projects that bring electricity to rural areas, can allow people to work later, to enjoy leisure activities and to read and write during the night, among other benefits." (Development Solutions, 2016)

Such inference-based and arbitrary analyses, with little or no quantitative backing, are widespread through most SIAs with respect to human rights (HR) impacts. The links in these inference-based chain are sometimes stronger than others, but they remain highly subjective and speculative in nature. As such, the number of such links that could be potentially assessed (or just thought of) can be limitless. The general impression is that the particular links and HR-topics that are chosen are arbitrarily decided by the consortiums and they are mostly included as a way to provide (any) analysis of human rights in the report. Put succinctly, they are included to "tick the box" in the SIA table of contents, but provide very (if any) useful information on the actual impact of the agreement on particular HR topics, and much less, on human rights at large. Hence, although the number of HR topics analysed in each SIA has been increasing over time (cf. Rojas-Romagosa, 2020), the effective assessment of HR effects remains scattered, unquantified, anecdotal and of little practical use in policy and economic debates. Summarising, the analysis of human rights issues in SIAs completely fails the basic principle of being evidence-based, as it is clearly defined in the EU SIA methodology (European Commission, 2016).

The main contribution of such analyses is to flag specific human rights that can be affected by the agreement, and identify individuals or specific

²²For example, these qualitative analysis completely lack any estimation of the magnitude and relative importance of the impacts, and they are based on first-order effects, which can be easily overrun by second-order and indirect effects.

groups of people that are likely to be affected by the agreement. However, such goals are again fraught with the complexity of the interrelation between economic effects (at the macro, sectoral and household level) with the institutional setup of the country. Obviously, any economic disruption to economic activity will most likely affect vulnerable groups more than the general population –i.e. marginalised and/or discriminated groups or individuals (either because of their economic, racial, gender, or social status), and groups not effectively covered by national laws, such as informal workers, and groups that can not effectively use legal means to enforce their rights. The question then remains on how –and by how much– the potential negative effects brought by the initial changes in economic activity related to the trade agreement, are compared to the overall changes after the full economic effects of the trade agreement are determined. For instance, how particular workers that are displaced from an import-substituted activity, will fare after this initial shock.²³ Such an analysis will not only require the general equilibrium effects provided in the SIAs by the economic CGE model, but also detailed micro-level data on different household characteristics, and their interaction with the legal and social norms of the country. The current trade SIAs provide scarce, but usually no quantitative evidence at all, on the magnitude of these potential impacts. Therefore, the usefulness of such analysis is questionable, specially because the existent indirect and inference-based analysis in most SIAs, could be done without the use of a complex economic modelling background.

4.3 Specific human rights impact assessments

Based on the marginal or non-existent analysis of human rights in SIAs before 2016, several stakeholders proposed the implementation of specific human rights impact assessments (HRIAs).²⁴ These recommendation were considered in the second SIA handbook, but the methodology proposed by some of these advocates – e.g. Berne Declaration (2010) – relies heavily upon the same inference-based indirect analysis of the potential effects of the agreement on human rights topics. As such, these proposed HRIA face the same methodological flaws and limitation highlighted previously.

Other suggested approaches to evaluating human rights impacts are

²³In particular, will they be able to find another job, with the same, better or worse legal labour rights, will they need to relocate to another region, retrain and/or gain new skills, will they be paid more or less, etc.

²⁴See for example, Berne Declaration (2010), FIDH (2015) and European Commission (2015b).

heavily based on legal analysis and lack the needed economic dimensions to contextualise and quantify the effects. For instance, the following sentence raises a valid point regarding potential impacts on a particular provision of a trade agreement on the right of food:

"The Committee on Economic, Social and Cultural Rights has recently expressed its concern that the "TRIPs-plus" provisions concerning accession to the International Convention for the Protection of New Varieties of Plants, which are routinely included in free trade agreements, may increase food production costs, seriously undermining the realisation of the right to food." (UN, 2011)

However, without an economic analysis that includes the overall effects of the agreement on final domestic food production costs, food prices, imported food prices, and the purchasing power of different economic groups, the argument provides little guidance for policy. It does flag a potential negative link, but as explained above, such links will be by definition numerous when analysing the potential impacts of trade agreements on 33 different human rights.

Moreover, other elements of the analysis result in uncompromising evaluations. For example:

"The International Covenant on Civil and Political Rights (art. 25 (a)), implies that no trade or investment agreement should be concluded in the absence of a public debate, which in principle should be conducted by freely elected parliamentary assemblies for approval to ensure that the free expression of the will of the electors shall be fully respected." (UN, 2011).

This legal interpretation of the effects of trade and investment agreements on civil and political rights, clearly precludes the EU from negotiating such agreements with non-democratic authoritarian states. This is a political matter for decision by the Council and the EC before starting negotiations, and thus, falls outside of the scope of a trade SIA. Note however, that although a country may fail human rights criteria, it is often the case that empirically there is a trend of substantial improvement over time in economic and social well-being of its citizens, in turn associated with improvement in specific – not all – human rights (e.g., right to food and to adequate labour conditions). Countries such as China and Vietnam have

achieved major improvements in living standards and average per capita incomes in part through greater international trade and investment activities, facilitated by several trade and investment agreements. This highlights one of the main trade-offs that are present in the analysis of the impact of trade agreements on human rights.

4.4 Implications for HR analysis in SIAs

The SIA mandate to analyse the effect of trade agreements on human rights, without a well delimited scope nor a standardised methodology is clearly an over-ambitious task. Therefore, we find it imperative to narrow-down the scope and prioritise particular topics related to human rights and European values more broadly in SIAs. Additionally, a systematic and quantitative-based methodology should be designed to provide a standardised estimation of the potential effects through different agreements. Otherwise, the debate on how the agreement is affecting specific HR-related topics will remain a highly subjective matter, with scant factual evidence to guide the debate. In this regard, as recommended below and discussed in greater depth in Rojas-Romagosa (2020), employing CGE models that are integrated with a microsimulation models that incorporate household-specific data can ease some of the methodological weaknesses of the current SIA analysis.

5 Leveraging consultations and SIAs

The challenge of going beyond an approach that is limited to encouraging stakeholders to exercise voice without an attempt to identify what concerns or issues are most salient and important for a broad cross-section of representative groups in society reduces the value of the CP. Techniques to do so that build on what is now done exist and could be considered to address this weakness of the process.

5.1 Deliberative polling

One way of clarifying the preferences and prioritising concerns across stakeholders with respect to trade agreements and related nontrade regulation is to use "deliberative polling" as an element of the CP. This technique is designed to overcome both problems of rational ignorance and bias in stakeholder views when responding to surveys and identify a core set of issues that are deemed to be priorities by a majority of the groups represented. Deliberative polling brings together a representative group of stakeholders

who have responded to a survey or expressed concerns about elements of a trade agreement to discuss the issue in small groups facilitated by trained moderators and informed by accessible expert briefing materials that provide balanced information on the range of salient issues –both economic effects and noneconomic issues. The goal is to solicit the group’s views –through a poll– on the set of issues raised initially in a first round of consultations and/or survey. As long as the group is statistically representative of the relevant stakeholders, the result of the poll should reflect better the conclusions that would have been attained had the population as a whole been more informed and more engaged.²⁵

For the deliberative polling process to be effective, there must be trust on the part of both stakeholders and the general public, similarity in the objectives of stakeholders and robustness, in the sense that the information base is sufficient to assess the likely results of a trade agreement –and possible flanking measures that are available and feasible to consider. The latter is something that can be supplied by the SIA, conditional on the quality and extent of available data and methodological constraints discussed previously. This potential constraint could be addressed in part by drawing on experience with implementation of trade agreements to date and more generally by drawing on evidence on the role of trade and trade opening on both economic and non-trade issues (values) of interest.

Conceptualising the CP as a multi-stakeholder partnership that supports dialogue and informed deliberation among representatives of the set of actors most concerned with changes in trade regulation –including business, consumer groups and regulators as well as representatives of labor and actors with a specific interest in noneconomic issues– can ensure greater balancing of costs and benefits of proposed changes in trade and trade-related policies and realisation of both economic and sustainability-cum-noneconomic objectives.²⁶

Multi-stakeholder initiatives are complex to manage but offer a mechanism for governments and the business community to engage with other stakeholders and interest groups concerned to ensure that trade agreements support the public interest. An element of deliberations can be designed around a "whole of chain" approach towards assessing the effects of poli-

²⁵Fishkin (2009) provides an overview of the approach, the circumstances under which the technique can be used and examples of situations where it has been implemented. Elliott (2005) provides practical guidance on the use of the technique.

²⁶See Bakker et al. (2019) for a survey of the design and operation of multi-stakeholder partnerships through the lens of international business, which is the central focus of trade agreements.

cies implicated by a trade agreement for key sectors Findlay and Hoekman (2020). This ensures a focus on both upstream (e.g., raw materials, parts, components) and downstream (e.g., distribution) elements as opposed to limiting attention to production processes in a given country or location. In practice trade-related policies will affect a cross-section of firms that are linked together as suppliers or buyers in supply chains and production networks. This is distinct from the industry or product-specific focus that tends to be taken in SIAs and consultations when considering the implications of trade agreements.

5.2 Building on the SIA and CP to support downstream implementation

The SIA and CP is a distinct element of the trade agreement "project cycle". The consultations bring together a sample of stakeholders that are either identified ex-ante by the EC or that "vote with their" feet and register for and participate in the CP. The CP is an ad hoc process. The return on the effort that is put into identifying relevant actors and seeking to ensure representativeness could be increased by linking the ex-ante nature of the CP to eventual implementation of an agreement.

The SIA includes a website to provide information and enhance transparency. This feature of the SIA could become a building block for a more regular interaction between officials, business and other stakeholders by being designed as "knowledge platforms": mechanisms to promote collection, analysis, and diffusion of knowledge and experience. Rather than the EC and the partner government simply consulting with the private sector and civil society, knowledge platforms allow for sustained engagement among stakeholders. Such platforms already have been created by national governments and international organisations for a variety of policy areas.²⁷ For example, the Dutch government has established a platform on electromagnetic fields that brings together academics, regulators, government agencies and NGOs with concerns about the health effects of electromagnetic fields.²⁸

²⁷E.g., the FAO Sustainable Food Value Chains Knowledge Platform (www.fao.org/sustainable-food-value-chains/home/en/); the OECD Initiative for Policy Dialogue on Global Value Chains, Production Transformation and Development (www.oecd.org/dev/GVC_Initiative_Brochure_2015-01.pdf); the World Bank's Global Partnership for Social Accountability Knowledge Platform (gpsaknowledge.org/); and the UN Global Compact on Supply Chain Sustainability (www.unglobalcompact.org/engage-locally/manage/engagement/supply-chain-sustainability).

²⁸See the Knowledge Platform on Electromagnetic Fields and Health, at www.kennisplatform.nl/English/knowledgeplatform.aspx.

Such platforms can provide a basis both for ex-ante dialogue on the design and potential effects of a trade agreement as well as for ex-post monitoring and learning about the implementation of an agreement. This could include a focus on establishing baseline indicators on variables and areas of interest –both economic and noneconomic– and consider meaningful performance indicators and metrics that can be used as focal points for governments and stakeholders measure progress –or lack thereof– in realising the objectives of the trade agreement. This in turn could contribute to monitoring the implementation of policy reforms and the results of reforms aimed at reducing trade costs.²⁹

In a related paper prepared by the RESPECT consortium, Ashraf and van Seters (2020) note that Domestic Advisory Groups (DAGs) and joint civil society meetings were established with a view to encourage monitoring by civil society of progress in promoting sustainability dimensions of EU trade agreements with partner countries but that the lack of substantial outcomes has made stakeholders increasingly critical of the usefulness of these mechanisms. The suggestions made above would help provide a basis for sustained engagement by and with NGOs, governments and economic actors in civil society mechanisms in EU trade agreements. Some of the processes used to form DAGs –e.g., to ensure representativeness of participants– are very similar to what is needed for deliberative polling. Conversely, the SIA approach of focusing on both economic and noneconomic dimensions of a trade agreement would be beneficial to incorporate into the DAGs by going beyond the current focus on sustainability to include as well as a focus on economic dimensions.

6 Recommendations

We conclude this study by summarising the main recommendations for the improvement of the consultation process and the overall SIA process.

First, the main consultation should take place before the SIA analysis is tendered and conducted. This consultation should generate a pre-SIA mandate, which will serve two main purposes:

1. Stakeholders can explicitly state the main focal points –i.e. key and critical issues for the stakeholders– of the announced trade agreement. These focal points should include both trade-related and non-trade

²⁹Findlay and Hoekman (2020) discuss this and other institutional options for multi-stakeholder initiatives to support trade integration and achieve domestic regulatory goals at greater length.

issues, and identified for EU-based stakeholders, but also for potential impacts in the partners to the agreement. For example, these focal points can include concerns of the potential impacts of the agreement, for specific workers, societal groups and regions, but also for more general non-trade topics: climate and the environment, inequality and distributional issues, and for specific labour, civil and other human rights.

2. This will provide a limited set of focal/critical points on which the SIA analysis should be based –instead of pretending to have an all-encompassing (but shallow) analysis of all possible non-trade political objectives (NTPOs). This mandate should also provide guidance to the EC negotiators.

Second, formalise the participants and outputs of the consultation process. This can be facilitated by using pre-established councils and processes that have specific mandates. Ideally the pre-SIA mandate should be generated through a deliberative process undertaken by a multi-stakeholder partnership that includes representatives from: i) the EC plus national governments; ii) industry (employers); iii. labour-unions (employees); and iv. civil society. The last three groups should be represented through EU-wide organisations. Using the outcome of an informed deliberative polling process that is aimed to identify a core set of issue areas for analysis to define the ToR for the SIA would help target the SIA at a smaller set of policy areas that are most salient for the trade agreement at hand.

Third, during the SIA process, the CP should be based on transparent communications that provide timely and fact-based information to key stakeholders as well as the general public. This can be achieved through the SIA website, which as suggested above could be revamped to become a knowledge platform on the eventual agreement. A dedicated website providing pertinent information regarding the agreement, including non-technical explanations of the main negotiating issues and regularly updates on developments regarding the core issues of concern identified in the pre-SIA mandate is a key input for credibility and accountability. This can include information on meetings and online conferences where official EC representatives explain to the wider public and engage with specific organisations on policy issues at their request.

Such information processes and engagement with the general public should be directly coordinated by the EC and made public through the website, and involve both the EU and the partner country. In this regard, the dissemination and communication of the key elements of a trade

agreement, preliminary negotiation outcomes and main concerns from the pre-SIA mandate should be handled directly by EC officials and not by the consultants. Currently, EC officials participate in the CP, but it should be formally established that these officials should be made directly responsible for the consultation process –i.e. it should not be a task carried out by hired consultants. There are substantial technical skills and capacity required to clearly and effectively communicate the objectives and the costs-benefits of intrinsically complex trade and investment agreements. These tasks, therefore, should be carried out by experienced EC officials.

Finally, the analytical component of the SIA should be tailored to the pre-SIA mandate focal points. This will focus and concentrate the SIA analysis on a smaller set of key issues, avoiding the very general (all-encompassing, but shallow) analysis of all possible non-trade issues. A focus on a selected set of priority areas should be accompanied with a more in-depth and evidence-based (quantitative) impact assessment of those topics. In particular, the economic modelling and analysis should be based on quantitative and data-based methodologies that avoid the currently prevailing use of indirect and induction-based analyses, which in many case are highly speculative and provide very limited practical and applicable information.³⁰

To this effect, models should be employed to directly evaluate issues that are not covered in standard trade-based CGE analytical frameworks. These include extensions using environmental and climate assessments (e.g. air pollution, water and land use, energy generation, environmental taxation, adaptation and mitigation processes), and micro-simulations that can account for economic and social effects at the household level. For example, detailed poverty impacts (by groups and regions), different dimensions of inequality (income, consumption, factor incomes, regional disparities, gender gaps), impacts on particular groups (minorities, migrants and other vulnerable groups), and by different types of workers (by skills, occupation, economic activity and by level of formality). Not all these dimensions can (or should) be analysed, but narrowing down the number of analytical topics (through the pre-SIA mandate) can make a truly evidence-based quantitative assessment of specific topics a realistic enterprise.

³⁰As mentioned in Rojas-Romagosa (2020), around 85% of the topics analysed in the EU's ex-ante SIAs use these induction based analyses, which are indirectly based on a few quantitative indicators obtained from the main economic (CGE) model.

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