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**EU Trade Sustainability Impact Assessments:
Revisiting the Consultation Process**

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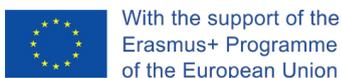
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Abstract

Trade sustainability impact assessments (SIAs) are the main tool used by the European Commission to assess the potential effects of trade policy initiatives and to engage with stakeholders. SIAs have two elements: a model-based quantitative analysis and a consultation process. Both include a focus on a broad range of non-trade issues, many of which are included in sustainable development chapters of EU trade agreements. This paper argues for making consultation processes a more useful input into the design of trade cooperation. Scaled responses to a survey with closed end questions on a broad range of non-trade policy objectives combined with deliberative polling of a representative sample of survey respondents could help identify what stakeholders in the EU and partner countries perceive to be priority non-trade objectives, as well as issue-specific baselines, performance targets and appropriate instruments to apply. Building bridges between a revamped ex ante consultation process and mechanisms that encompass public and private actors to support implementation, resolve problems and assess progress over time could further help achieve trade and sustainable development goals.

Keywords

Sustainability impact assessments, consultations, trade negotiations, non-trade issues, EU.

Introduction*

The Treaty on European Union (TEU) commits the EU to protect and promote human rights globally when developing and implementing its foreign policies (Art. 21 TEU), as do the Charter of Fundamental Rights of the EU, and commitments made by EU member states enshrined in international law – e.g., the Universal Declaration of Human Rights and the International Covenant on Civil and Political rights.¹ The Treaty on the Functioning of the European Union (Art. 207 TFEU) calls on the EU's external trade policy (the common commercial policy) to be implemented in accordance with Art. 21 TEU and to support and promote the Union's values and standards relating to human rights, environmental, health and consumer protection, and sustainable development. European Commission (EC) trade policy communications reaffirms the need to balance the pursuit of material trade interests through trade instruments with the EU's values.² The challenge of operationalizing these principles is significant, given that the performance of EU trade partners on the various values listed in Art. 21 TEU and Art. 207 TFEU will vary and be context specific.

Art 9 TEU also states that “[i]n all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies” and that EU institutions “shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action [and] maintain an open, transparent and regular dialogue with representative associations and civil society” through inter alia “broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent” (Art. 11 TEU).³ Consultative processes in which stakeholders and citizens more broadly can participate are an important instrument to identify not only how (changes in) trade policy may impact on firms and workers in different sectors of the economy but to permit them to express views on how to realize the Union's values through its trade and other external policy instruments.

The primary motivation for including provisions on values – characterized by the term nontrade policy objectives (NTPOs) in this paper – in both unilateral trade policies and reciprocal trade agreements is not because of the potential impacts of trade on the realization of NTPOs or that non-respect by a trading partner may affect trade, but that NTPOs represent values that the EU seeks to promulgate and protect. Trade is one instrument that is used to do so. An implication is that potential trade effects of NTPO provisions in EU trade policy are not relevant to their inclusion and enforcement. In this paper we argue that this has consequences

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¹ In this paper we use a broad conception of European values that encompasses the specific human rights clause included in EU framework (or trade) agreements and the social, labor, and other rights included in the Trade and Sustainable Development chapters of EU trade agreements.

² European Commission, Trade for all: Towards a more responsible trade and investment policy. Communication COM(2015) 497; Trade Policy Review - An Open, Sustainable and Assertive Trade Policy. COM(2021) 66 final.

³ Alemanno, A., Leveling the EU participatory playing field: A legal and policy analysis of the Commission's public consultations in light of the principle of political equality, 26 *European Law Journal* (2020), 114-135.

for the design of consultation processes and ex ante impact assessments of EU trade policy initiatives as well as ex post monitoring and evaluation: implying a focus is needed on whether EU trade policy instruments support attainment of NTPOs and not simply on the economic implications of (changes in) trade policies. Current approaches used by the EC put the emphasis on the latter. They do too little to identify what stakeholders regard as nontrade (sustainable development) priorities and how these could be best pursued in the framework of EU trade policy.

In this paper we discuss the role of sustainable impact assessments (SIAs) and associated consultation processes (CP) as a means of engaging stakeholders in policy design and decision-making, as called for by Arts. 9-11 TEU. Any trade agreement will have heterogeneous effects for different socio-economic groups in the EU and partner countries. Assessing the potential impacts of trade reforms on different economic activities and agents is therefore important. At the same time, it is important that SIAs and CP provide information on non-trade issues as mandated by the TEU. We argue that SIAs do too little to identify the NTPOs that are more (most) important to stakeholders in the EU *and* partner countries and the instruments that can (should) be used to attain them. One way to do so is to use tailored surveys of the population of stakeholder groups as a sampling frame for deliberative polling aimed at identifying a limited number of priority nontrade issues in a given trade negotiation context.⁴ An implication would be to recognize that priorities may vary across partner countries,⁵ and increase the salience of SIAs by focusing attention on specific NTPOs that matter most to constituencies in both the EU and partner countries and thus enhance the prospects that a trade agreement has a positive impact. Greater specificity would help inform the content and design of agreements and help identify where complementary instruments and measures are needed, increasing the coherence, effectiveness, and accountability of EU external engagement and cooperation.

The paper proceeds as follows. We first briefly describe the role of the SIA and CP in EU trade policy formation (Section 1) and contrast the (normative) purpose of consultations with practice (Section 2). We then present suggestions on how the CP can be redesigned to generate more specific guidance to negotiators and decision makers (Section 3) and connect to the 'downstream' implementation of nontrade provisions of trade agreements (Section 4). Section 5 concludes.

1. Impact assessment and consultations in EU trade policy

The process of negotiating and implementing EU trade agreements involves more than 30 different stages and all three EU governance bodies: the EC, the Council, and the European Parliament.⁶ The stages can be divided into five steps: (i) a preparatory stage involving the EU institutions and Member States; (ii) authorization for the EC to pursue negotiations, based on a mandate from the Council and associated negotiating directives; (iii) pursuit of negotiations; (iv) conclusion of a draft agreement if talks are successful; and (v) ratification by the Council and the European Parliament and full or provisional application until entry into force. The

⁴ This is consistent with arguments by human rights scholars that human rights impact assessments should focus on a limited number of key areas. See e.g., C. Dommen, C. Blueprint for a Human Rights Impact Assessment of the Planned Comprehensive Free Trade Agreement between EFTA and Mercosur, 2021 (<https://www.alliancesud.ch/fr/file/58105/download?token=Jasyd4B->).

⁵ This is consistent with the recognition by the EC that more differentiation is desirable. See European Commission, Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements. Commission services non-paper, 26 February 2018.

⁶ https://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf.

process is accompanied and guided by an initial impact assessment, a trade sustainability impact assessment, and an economic analysis of the negotiated outcome.

There are two basic aspects of EU efforts to implement an external trade policy that satisfies the prescriptions contained in EU law. The first is *ex ante*: determining the design and substance of policy interventions to maximize the prospects of achieving EU non-trade goals efficiently. The second is *ex post*: associated with implementation of agreements, complementary actions (e.g., technical assistance; development aid), and monitoring and evaluation – assessment of the extent to which objectives are achieved.⁷ The main *ex ante* tool used by the EU is the trade sustainability impact assessment (SIA). Impact assessments are undertaken to inform the first stage, before negotiations commence, whereas trade SIAs are undertaken in parallel with negotiations.⁸ In most EU trade negotiations the tendering process for the SIA only starts after negotiations commence. The final SIA report tends to be published two to four years subsequent to the launch of negotiations.⁹ This arguably reduces the salience of trade SIAs in terms of providing guidance to negotiators, informing the design of agreements and its utility as a device to build public support for a trade initiative.¹⁰

The main analytical tool in the SIA is a computable general equilibrium model. These models are used to assess the overall economic impacts but also the distributional consequences of a trade agreement, the presumption being that an identification of groups that may confront significant adjustment costs should inform the substantive design of an agreement and the need for, and design of, flanking measures. In addition to a quantitative analysis of the potential economic effects of a trade agreement on European and partner country industries and consumer welfare, SIAs include a complementary consultation process. The CP is a complementary mechanism to identify possible adverse effects by providing a platform for stakeholders to express concerns regarding any of these potential negative effects of a trade agreement. The CP provides greater scope to collect information on stakeholder views on a range of NTPOs that are difficult to include in the model-based analysis that is the core of the SIA. The CP is one mechanism through which stakeholders can provide inputs and suggestions. It includes a survey questionnaire that solicits information from the stakeholders, which is complemented with interviews, meetings, and roundtables.

The SIA handbooks divide the CP into an internal and an external part.¹¹ The internal process involves exclusively EC institutions, which provide comments and suggestions to the

⁷ Harrison, J., M. Barbu, L. Campling, F. Ebert, D. Martens, A. Marx, J. Orbie, B. Richardson and A. Smith. Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda, 18 *World Trade Review* (2019), 635–57 survey the literature on *ex post* implementation and effectiveness.

⁸ See <https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/>.

⁹ 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. The negotiations ended without a conclusion at the end of 2016, before the final SIA report was 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 occurred on 19 October 2009. The tender for the SIA was posted in January 2010 and the final SIA report was published in June 2011.

¹⁰ Marx, A., N. Brando and B. Lein. Strengthening Labor Rights Provisions in Bilateral Trade Agreements. The Case of Voluntary Sustainability Standards', 8 *Global Policy* (2017), 78–88 questions the legitimacy and practicality of the CP if recommendations are not considered by the negotiators and/or reflected in the final negotiated agreement. This is a common critique in the literature – see e.g., Lamy, P., G. Pons, I. Garzoni and L. Kauffmann. Sustainable Development in EU Trade Agreements, Delors Institute Policy Paper, 2020.

¹¹ European Commission. Handbook for Trade Sustainability Impact Assessment, 2006; European Commission, Handbook for Trade Sustainability Impact Assessment. Second edition. Luxembourg: Publications Office of the European Union, 2016.

consultants that are contracted to carry out the SIA work, guided by a steering committee comprising EC representatives. The external element spans interactions with a diverse set of stakeholders, including the private sector, Member State authorities, legislatures, the media, religious organizations, academia, trade unions, and more broadly, civil society organizations (CSOs). The CP is to be implemented both within the EU and in partner countries if a negotiation is with a developing nation. To reflect and balance the universe of stakeholders the handbooks call for contracted SIA consultants to conduct a "thorough stakeholder analysis" to identify all parties concerned with a trade agreement and ensure they are consulted in an evenhanded manner, engaging with both experts and the public. The European Commission SIA handbook notes that the goal is to "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" and requires consultants to identify key stakeholders in close cooperation with the EC, the European Economic and Social Committee, the European Consumer Consultative Group and the Sectoral Social Dialogue Committees and to cooperate with national human rights institutions to identify vulnerable groups.¹²

A recent expert survey asked practitioners whether consultation of stakeholders influence the design of trade agreements.¹³ One half (49%) of respondents agreed this was the case, and 25% disagreed or strongly disagreed. Many of the respondents with negative views were affiliated with two groups that are key to the CP: trade union representatives and members of civil society organizations. Respondents affiliated with EU institutions had the most favorable views. Interviews with consultants responsible for EU SIAs undertaken in drafting this paper are consistent with the survey results. Interviewees believed the CP influenced the design of SIAs, but most did not believe the CP influenced the negotiating process.¹⁴ Many interviewees echoed the policy research literature indicating that the consultation process should precede the economic analysis in the SIA.

2. Consultation processes: principles and practice

Arts. 9-12 TEU provide a clear legal and policy framework for public consultations as an instrument of participatory democracy and that EC practice departs from – and conflicts with – the principle of political equality by not assuring opportunities for access to policymakers.¹⁵ Open communication and broad consultation processes are critical inputs for the legitimacy of trade policy initiatives.¹⁶ Homeyer et al. define five goals for public participation in policy

¹² European Commission, 2016, op. cit.

¹³ Fiorini, M., B. Hoekman, N. Ralaison and A. Yildirim. EU trade policy and non-trade objectives: the RESPECT survey, in S. Bilal and B. Hoekman (eds.) *Perspectives on the soft power of EU trade policy*, London: CEPR Press, 2019.

¹⁴ A notable exception was the CP for the CETA negotiations, which made clear that investor-state dispute settlement was strongly opposed by many stakeholders. See Development Solutions, *A Trade SIA Relating to the Negotiation of a Comprehensive Economic and Trade Agreement Between the EU and Canada*, Report for DG Trade, Trade 10/B3/B06, 2011.

¹⁵ Alemanno, op. cit.

¹⁶ Kirkpatrick, C. and C. George. Methodological issues in the impact assessment of trade policy: Experience from the European Commission's Sustainability Impact Assessment programme, 24 *Impact Assessment and Project Appraisal* (2006), 325-34; Torriti, J. and R. Ofstedt, The first five years of the EU Impact Assessment system: A risk economics perspective on gaps between rationale and practice, 15 *Journal of Risk Research* (2012), 169-86.

making: credibility, legitimacy, trust, ownership, and improved policy outcomes.¹⁷ Each of these goals requires well designed formal and informal participation mechanisms to be effective in informing policy. Homeyer et al. point to an absence of formal systems to evaluate the quality or sufficiency of participation in EU consultation processes, unclear participation objectives, weak links to the trade negotiation process, technical (knowledge and capacity gaps) and logistical obstacles to effective public participation.

Achieving public participation goals in the case of trade policy confronts intrinsic complexities given the challenges of identifying how trade policy impacts on economic and non-economic variables of interest (social, labor, environment).¹⁸ By being able to assert that a broad set of opinions have informed policy decisions, an open consultative process is both an important (potential) input into SIA analysis and a complement to such analysis.¹⁹ It can also easily result in a kitchen sink of issues and views and a 'tick the box' exercise. Three issues arise: (i) ensuring that the CP involves and engages with a representative sample of stakeholders; (ii) weighing the views and comments expressed during the CP by participants; and (ii) analyzing how changes in trade and the provisions of a trade agreement may (can) impact on different groups in society and specific NTPOs that were brought forward in the consultations.²⁰ Our reading of the literature, interviews with practitioners and experience in implementing the CP methodology is that it lacks sufficient guidance and mechanisms to complement inclusiveness and representativeness with a methodology that identifies what most stakeholder groups consider to be priority areas for attention and action.

As discussed further below, the CP arguably does not do a very good job on these three fronts when it comes to NTPOs. It is not clear that in practice participants in consultations are representative. Even if they are, there is no explicit and transparent weighting mechanism that rank orders views and identifies a set of priority areas for action. Positions on issues taken in the CP may reflect perceptions of the direct economic impacts from an agreement on specific groups and economic activities that may not have a robust empirical basis. Views will be fraught with uncertainty as indirect second round effects may be unclear if they are considered at all. Ultimately the balancing of different interests and effects of a trade agreement 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 informed deliberations and decision-making – including not only on the substance of a trade agreement but accompanying flanking measures – they should be able to rely on the SIA and CP to assist them in doing so. As it stands the CP arguably does not deliver what is needed, as it does not generate a "bottom line" assessment of stakeholder views that involves

¹⁷ Homeyer, I. M. Collins and W. Ingwerson. Improving public participation in sustainability impact assessments of trade agreements, in P. Ekins and T. Voituriez (eds.) *Trade, globalization and sustainability impact assessment*. London: Earthscan, 2009.

¹⁸ See e.g., Claussen, K. Reimagining Trade-Plus Compliance: The Labor Story 23 *JIEL* (2020) 25. Marx, A. and G. Van der Loo, *Democratic legitimacy: Assessing the achievements and challenges of increased transparency in EU trade policy*, RECONNECT working paper, 2020 discuss the inherent tension between transparency and the secrecy that is needed when it comes to the details of an ongoing trade negotiation process, but transparency and effective communications are important to garner public support for an agreement.

¹⁹ Bunea, A. and R. Thomson. *Consultations with Interest Groups and the Empowerment of Executives: Evidence from the European Union*. 28 *Governance* (2015), 517-531 discuss how consultations during the formation of policy affect the bargaining success of the EC in the decision-making stage after new policies are put forward to legislative actors.

²⁰ Whether the strategy of linking trade agreements to NTPOs is effective is an important question we do not address here – we take as given that this a feature of EU trade policy. See Pelkmans, J. Linking 'values' to EU trade policy – a good idea? *European Law Journal* (2021) (DOI: 10.1111/eulj.12409) and Borchert, I., P. Conconi, M. Di Ubaldo and C. Herghelegiu, *The pursuit of non-trade policy objectives in EU trade policy*, *World Trade Review* (2021) (<http://hdl.handle.net/1814/66882>) for discussion of the strategy.

aggregation and weighting to identify the non-trade issues deemed most important, which are regarded as most susceptible to being addressed in a trade context, and which call for complementary measures that should accompany implementation of an agreement.

The EC handbooks call on SIAs to include analysis of human rights, social, and environmental issues in addition to economic (sectoral) effects. By including these topics in the SIA methodology, it is implicitly assumed that trade agreements can affect in a meaningful way the situation in a particular country. This is a (very) strong assumption for many of the topics included. The treatment of NTPOs and values in trade SIAs and the CP provides limited practical use for policy recommendations.²¹ This is not to say that SIAs do not seriously engage with the subject. The 2019 final SIA report in support of the negotiations for the modernization of the trade part of the Association Agreement with Chile demonstrates that significant effort is made in recent SIAs, 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.²² The accompanying CP included opinion surveys, consultation dialogues and workshops with stakeholders in both the EU and in Chile, spanning a cross-section of CSOs. The SIA report concluded that any effects of the envisaged modernization 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. There is no prioritization and little if any focus on how the trade agreement can mobilize action at the domestic level.

In what follows, we use the example of human rights to discuss three interrelated reasons why the treatment of NTPOs 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. We use the example of human rights not to single out this specific issue but as an illustration of the broader challenge of impact assessment focused on NTPOs. Analyzing the impact of trade policy on human rights is not straightforward given that such rights encompass a broad array of human activity: economic, political, cultural, and social.²³ Many of the existing legal, political, and cultural institutions that determine the prevailing human right situation are difficult to change, and there is not necessarily a direct link between trade, trade policy changes and human rights outcomes. The level of protection of specific rights in specific countries is determined by domestic institutions. Trade often can and will have little bearing on the direction of change in baseline levels of non-trade outcomes of interest. 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.²⁴

Even with a clear delimitation of topical scope, any analysis of the effects on human rights of a trade agreement is an extremely ambitious analytical undertaking. Requiring an assessment of all the issue areas falling under the broad heading of social, civil and environmental protection – viz. the list of issues included in SIA consultation survey instruments – is impossible. Attempts to do so, no matter how diligently, make it difficult to

²¹ Zerk, J. *Human Rights Impact Assessment of Trade Agreements Ex ante*. London: Chatham House, 2019 provides a complementary assessment and discussion from a legal perspective.

²² European Commission. *Sustainability Impact Assessment in Support of the Negotiations for the Modernisation of the Trade Part of the Association Agreement with Chile*. BKP Development Research and Consulting, 2019.

²³ The UN Universal Declaration of Human Rights mentions 33 fundamental human rights.

²⁴ European Commission, 2016, *op. cit.*

refute allegations that this is little more than a ‘tick the box’ exercise. Matters are compounded by the absence of a systematic, evidence-based, and standardized methodology to analyze the impact of trade agreements on human rights. Many scholars advocate for a comprehensive analysis of human rights issues employing tailor-made human rights impact assessments (HRIAs).²⁵ However, a robust HRIA methodology that incorporates trade and trade policy as an instrument has not been developed.²⁶ In our view it cannot be developed because trade and trade policy are just one of many potential factors influencing non-trade variables. A more holistic analysis is called for that encompasses domestic institutions, domestic policy and domestic political economy dynamics that generally determine the non-trade performance of a country (as reflected in baseline indicators) and will affect the potential for desired changes in non-trade outcomes. Focusing on a prospective trade agreement is akin to looking for lost keys under the lamppost just because there is light there.²⁷

Given the wide range of rights and stakeholders implicated, the overall feasibility and value added of such assessments is open to question. Even if attention is limited to a sub-set of human rights topics that have a direct economic dimension – such as food security or workers’ rights – that can more easily be included in a quantitative SIA and are more likely to be influenced by trade policy. However, such an empirical analysis requires the use of a robust methodological framework. The 2016 handbook does not delimit the coverage of human rights issues, nor does it provide analytical frameworks to do so. Instead, the EC guidelines recommend using a simple positive, negative, or neutral (+/-/0) score to assess direct and indirect effects of a trade agreement on specific human rights, mostly based on induction-based links between the expected economic outcomes of the trade agreement and different rights.²⁸ The lack of a robust methodological framework makes the analysis of human rights effects in extant SIAs highly speculative and hypothetical. So far, no SIA has generated quantitative estimations that can provide even a broad understanding of the relative magnitude of the potential effects.

Trade policy affects economic outcomes by influencing relative prices of goods and services, and thus sectoral activity, labor markets, public finances, and income distribution. Trade agreements will inevitably affect one way or another the economic, social, political, and personal human rights of all citizens through these channels. Any effects will be heterogeneous and conditional, depending inter alia on worker and household characteristics. The relevant question then becomes how much an agreement affects specific non-trade outcome variables such as human rights and/or specific target groups, not if the agreement will have non-trade effects. What is required is a quantitative assessment of the potential impacts, instead of a qualitative, subjective dichotomous judgement on the existence and sign of any relationship between trade policy and a particular human right. In general, since most trade agreements have modest economy-wide effects, the potential impacts on non-trade outcomes are likely to be limited. Nevertheless, the potential impacts can be significant for specific economic activities and can also affect heterogeneous population groups differentially, conditional on skill-level, occupation, economic activity, gender, region, and socio-economic background, among others. The plethora of sub-topics within the human rights umbrella, together with the potential impact on many sub-national population groups implies many combinations to be

²⁵ See e.g., Burgi, E. Measuring human rights impacts of trade agreements –ideas for improving the methodology. 9 *Journal of Human Rights Practice* (2017), 481-503.

²⁶ Marx et al., op. cit.

²⁷ We do not argue that HRIAs are not a useful instrument. Our focus here is on how human rights (and more broadly other NTPOs) are considered in trade SIAs.

²⁸ European Commission, Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives, 2015. (http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf)

analyzed. Some aspects of human rights can be considered in an economic analytical framework, permitting quantitative analysis, but many others do not. For instance, the analysis of the trade policy effects on income inequality and particular worker types has a well-established theoretical basis and empirical tradition in economics. This is not the case for many human rights – e.g., physical integrity, children rights or minority protection.

The lack of a robust, proven methodology to analyze human right impacts is reflected in extant SIA analyses. Of the twenty-nine SIA final reports surveyed in Rojas-Romagosa, none provides a quantitative analysis of the potential impact of trade agreements on civil and political rights, physical integrity, women rights, human trafficking, right to food security, minority protection, children rights and freedom of religion.²⁹ Assessment of human rights impacts of a potential trade agreement relied on qualitative and inference-based analysis that is inherently speculative and ad-hoc in nature.³⁰ For example, the SIA on the Environmental Goods Agreement, finds that the main (positive) effect of the agreement on human rights was that:

[s]mall 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.³¹

Such findings with little or no quantitative backing, are common in SIAs. The general impression is that the specific links between trade and selected human rights topics reflect arbitrary decisions by the SIA consultants with an eye to including non-trade issues in the table of contents of the SIA report. Although the number of non-trade topics analyzed in each SIA has been increasing over time,³² the assessment of human rights dimensions is not evidence-based, contrary to what is called for in the SIA handbook but remains unquantified, anecdotal, and arguably of little practical use in policy debates. The main contribution of such analyses is to flag specific human rights-related outcome variables that *could* be affected by an agreement – without any presumption that a trade agreement is in fact salient to such outcomes – and to identify individuals or specific groups of people that may be affected. However, even such indicative analysis is highly conditional on the interrelationships between economic effects (at the macro, sectoral and household level) and the institutional setting that prevails in a partner country.

3. Rethinking the SIA consultation process

Encouraging stakeholders to exercise voice without an attempt to identify what concerns or issues are considered most important by stakeholders in partner countries and the EU and how to best address them in the framework of a trade agreement reduces the usefulness of ex ante assessment processes. In this section we make several suggestions to revise the consultation process by improving representativeness, using surveys to rank-order issues to identify priority areas for action, identifying appropriate policy instruments and interventions that improve outcomes for agreed priority non-trade issues, and establishing (quantifying) baseline performance indicators that can be monitored over time by the authorities *and* stakeholders and provide a basis for ex post evaluation of the implementation of an eventual agreement.

²⁹ Rojas-Romagosa, H. The evolution of methodology and coverage of EU ex-ante trade sustainability impact assessments, in P. Dixon, J. Francois and D. van der Mensbrugge (eds.), *The Role of Global Policy Modelling*. Singapore: World Scientific Publishing, 2020, 371–418.

³⁰ The qualitative analyses do not estimate the magnitude and relative importance of different impacts, and are based on first-order effects, which can be easily offset by second order and indirect effects.

³¹ Development Solutions. *Trade Sustainability Impact Assessment on the Environmental Goods Agreement*. Development Solutions Europe Limited, 2016.

³² Rojas-Romagosa, op. cit.

Using the CP to solicit views from stakeholders on the provisions to incorporate into an eventual agreement could help address arguments by scholars that trade agreements have done little to improve NTPOs by focusing attention on the instruments that are appropriate and most likely to improve nontrade outcomes of interest. This includes policy measures such as technical and financial assistance and policy dialogue, as well as potential changes in the design on trade agreement provisions that pertain to NTPOs, notably the desirability on making commitments enforceable. The latter is frequently advocated by civic society and legal scholars,³³ but in practice soft law forms of cooperation may be more effective.³⁴ The consultation process could be used as one way to determine when this is in fact considered to be the case by stakeholders.

3.1 Redesigning consultation surveys

A survey with closed ended questions can provide useful information on which issues are deemed most important by stakeholders and should be prioritized, as respondents' views on NTPOs can be rank ordered. The current approach in SIA consultations utilizes a survey instrument that solicits responses to a range of questions, including non-trade issues and related outcomes. In principle this permits the collection of information on the priorities accorded to a range of sustainability/human rights concerns for specific trading partners. However, in practice it does not because the survey instrument is limited to questions whether respondents believe a trade agreement will impact on a long list of variables contained under the heading of 'social issues, including labor rights', human rights and the environment – e.g., employment, incomes, child labor, social protection, safety at work, health conditions, vocational learning, freedom of religion, freedom of assembly, the right to education, the right to family life, the right to enjoyment of the highest attainable standard of physical and mental health, water quality, climate change, air pollution, biodiversity, etc.³⁵

In principle the closed ended nature of the survey design and associated scaled responses can be used to rank order concerns expressed across these many areas.³⁶ However, because there is no information provided on how or why a trade agreement may affect the various outcome variables the exercise arguably is mis-conceived. What is needed is a set of questions that aim at identifying the non-trade issues that matter most to stakeholders, not what they believe the effects of a trade agreement might be – something on which we can expect most respondents to be rationally ignorant and uninformed (as well as possibly biased). Addressing this problem is in part a task for the SIA to address – by providing information on how trade may impact on those values and NTPOs that can be incorporated into economic analysis. But it is misconceived to focus primarily on trade and trade policy as a channel of transmission of changes in relative prices or, more speculatively, on corollary investment dynamics, as a

³³ E.g., Bronckers, M. and G. Gruni. Retooling the Sustainability Standards in EU Free Trade Agreements, 24 JIEL (2021), 25–51.

³⁴ One of the findings from the survey of practitioner views on EU external trade and cooperation in Fiorini et al. (*op. cit.*) was that most respondents regarded trade agreements – preferential access to the EU market – as a relatively ineffective instrument to achieve NTPOs. Respondents ranked a range of external cooperation tools much more highly in terms of effectiveness. See also Pelkmans *op. cit.*

³⁵ See e.g., <https://ec.europa.eu/eusurvey/runner/Sustainable-Impact-Assessment-EU-Philippines-FTA-General-survey>.

³⁶ The scaled closed ended survey design is not used in the (ongoing) open public consultation on the Trade and Sustainable Development Review, which is limited to a set of open-ended questions – see https://trade.ec.europa.eu/consultations/index.cfm?consul_id=301. In its guidance, the EC advises respondents to prepare their inputs offline and cut and paste these into the online questionnaire. This format does not allow for prioritization or rank ordering of views, which is a missed opportunity.

channel to affect nontrade indicators. A broader approach is needed that includes a focus on domestic institutions, policies, and political economy.

A common concern about efforts to prioritize specific sustainability or human rights concerns for different trading partners/agreements is that this may result in less focus on more politically 'sensitive' matters in favor of dimensions of sustainable development that are 'easier'. This worry can be addressed by leveraging the proposed survey with a process of deliberative polling to provide guidance to the EC on how and where to relax the 'blueprint' one-size-fits-all approach reflected in the inclusion of a 'standard' chapter on sustainable development in each trade agreement. Redesigning surveys to include closed ended questions on the specific NTPOs that are of concern to the EU and the appropriate (non-trade) instruments to pursue them would be consistent with one of the action points to improve the implementation of trade and sustainable development chapters in EU trade agreements, i.e.:

Based on feedback from all partners, the Commission services will identify, consider and address priorities for each partner country throughout the whole cycle of an FTA, *starting with the content-scoping phase of a future agreement*. In addition to pursuing the negotiation of a "standard" TSD chapter, this may include further specific issues of relevance for a given partner [...] The early identification of priority areas and actions should enable a more efficient implementation of commitments under the agreement and *should also provide early information on the key needs in terms of awareness and capacity building* among the stakeholders [...] [enabling] a more focused use of the various tools throughout the cycle, to step up compliance efforts.³⁷

3.2 Deliberative polling as an element of consultation processes

The results of a closed ended survey that permits rank ordering of views on the priority to be accorded to the NTPOs included in trade agreements would be of value to the EC and counterpart governments in and of itself, significantly enhancing the quality of information provided by SIA surveys. Such re-vamped surveys could also become the basis for deeper, more useful consultations by providing a pool of people representing different groups and organizations that can be sampled to generate a representative group of stakeholders. As noted previously, ensuring the representativeness of participation and inputs provided through the CP is an important question. Another challenge concerns the weighting of expressed views on different issues.

One way to clarify preferences and prioritize concerns across stakeholders with respect to trade agreements and related non-trade 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 many of the groups represented. Deliberative polling brings together a representative group of stakeholders who have expressed concerns about elements of a trade agreement to discuss a subject in small groups facilitated by trained moderators, informed by accessible expert briefing materials that provide balanced information on the range of salient issues, including economic effects and non-economic concerns. The goal is to solicit the group's views – through a poll — on a set of issues raised initially in a first round of consultations or a survey. If the group is statistically representative of the relevant

³⁷ European Commission. Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements. Commission services non-paper, 26 February 2018, p. 7, italics added.

stakeholders, the result of the poll should reflect better the conclusions that would have been attained had the population been more informed and more engaged.³⁸

This approach can be adapted to the CP. A first step would be for the EC consultants tasked with a SIA to develop a survey instrument that includes a set of closed end questions on both trade and non-trade dimensions of the status quo and views on how trade and a possible trade agreement could impact on a broad range of NTPOs, including issues that are not part of the 'standard' trade and sustainable development chapter of EU trade agreements. Responses to questions could use a 5- or 7-point Likert scale to capture the variance in (intensity of) respondents' views, as is done in SIA survey questionnaires, but focus more specifically on soliciting information on perceived priority non-trade issues.

It is often pointed out in the academic literature that establishing whether CSOs and business associations that participate in consultations are representative of the constituency they claim to speak for is not straightforward. This problem can be attenuated by using the set of respondents to the surveys as the sampling frame for a consultation that takes the form of a deliberative poll. This would help offset the bias that is inherent – and unavoidable – with the approach that is used currently where specialized and self-interested groups are asked to participate in an open-ended consultation process in which they are encouraged and free to provide their views. A representative group to be invited to participate in a deliberative polling process can be selected randomly from a set of survey respondents that indicate a willingness to participate in a follow-on deliberative process in which travel, and related costs are covered by the EC. Representativeness can be attained through stratification, using information provided by respondents on their professional affiliation, geographic location, gender, education, experience, etc. Basing consultations on a representative sample of survey respondents would offset potential selection bias, with stratification ensuring that specific groups of interest or concern are included.

To operationalize this approach the survey response rate should be sufficient to generate a large enough pool to create a sampling frame encompassing the salient groups in society. This can be achieved through a pro-active effort to disseminate and raise awareness of the survey among stakeholders, including in partner countries – e.g., by using contact lists maintained by the relevant EU missions, international development agencies and nongovernmental organizations with a local presence. Snowballing will help ensure that the sampling frame encompasses a broad range of respondents. Including international organizations and CSOs with expertise in different non-trade issues, country-specific knowledge and experience will help to address problems of asymmetric information and knowledge.

The advantage of a deliberative poll is that it can be designed to be (more) representative of the population than one that relies on the self-interest of different groups to participate in a CP, with engagement of groups in (large) part determined by how binding their resource constraints are. The voting element of the deliberative process, with participants responding to a poll at the beginning of their deliberations and again at the end after having engaged in an informed, facilitated discussion of the issues can help address the problem that the current CP does not include a mechanism for objectively weighing views and priorities of different groups

³⁸ Fishkin, J. *When the People Speak: Deliberative Democracy and Public Consultation*, Oxford: Oxford University Press, 2009 discusses the approach, the circumstances under which the technique can be used and examples of situations where it has been implemented. Practical guidance on the use of the technique is provided in J. Elliott, *Deliberative Polling*, in Steyaert, S. and H. Liso (eds.). *Participatory Methods Toolkit. A practitioner's manual*. Flemish Institute for Science and Technology Assessment, 2005. At https://www.regione.toscana.it/documents/10180/1393902/Deliberative_polling_materialiappr.pdf/d848c747-9371-4339-b058-f08818def206.

in society. Such weighting can be achieved by designing the polls to rank order non-trade issues as well as associated potential policy instruments that should be considered to pursue the selected NTPOs, consistent with the aim of generating early information on the key needs in terms of awareness and capacity building.³⁹

A deliberative polling process can also address the problem of ‘rational ignorance’, another source of bias. For the deliberative polling process to be effective a robust information base is required, including preliminary analysis of the potential results of a trade agreement. The latter can be supplied by the SIA, conditional on the quality and extent of available data and methodological constraints discussed previously regarding assessments of how trade reform may impact on NTPOs. This potential constraint could be addressed in part by synthesizing the experience with implementation of trade agreements and associated ex post evaluations, as well as the academic literature analyzing the relationship between trade and trade reforms on both economic and non-trade issues. The information problem can also be addressed in part through engagement with international organizations with specialized expertise and country presence/knowledge.

3.3 Multi-stakeholder value chain-based partnerships

A complementary approach is to conceptualize 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 and the realization of NTPOs, including those expected to implement measures to improve nontrade outcomes in the country concerned. These actors include lead firms, suppliers, consumer groups, worker representatives, and nongovernmental groups with a specific interest in noneconomic issues. Multi-stakeholder initiatives are complex to manage,⁴⁰ but one possible element of an explicitly deliberative CP would be to pursue a value chain approach that is organized around specific sectors or economic activities.⁴¹ This can be an alternative means of identifying a representative set of stakeholders with a common interest in an economic activity that may be affected by trade policy reforms. A value chain-based approach has the advantage of focusing attention on a concrete set of activities as opposed to a more general cross-cutting discussion of trade policy and NTPOs. Organizing deliberations around several value chains that are economically significant would ensure that both upstream (e.g., raw materials, parts, components) and downstream (e.g., distribution) activities are considered, potentially helping to identify elements – including the location, composition of the associated workforce, etc. – of the production processes of goods and services that are most salient from the perspective of specific non-trade issues and NTPOs. 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, in contrast to the industry and product-specific focus that tends to be taken in SIAs. A value chain approach to consultation and engagement with stakeholders may be particularly salient looking forward given proposals for the EU to develop mandatory due diligence standards for the internal operation of international supply chains of EU headquartered companies.⁴²

³⁹ See European Commission, 2018, op. cit.

⁴⁰ Bakker, F., A. Rasche and S. Ponte. Multi-Stakeholder Initiatives on Sustainability: A Cross-Disciplinary Review and Research Agenda, 29 *Business Ethics Quarterly* (2019), 343–83 survey the design and operation of multi-stakeholder partnerships through the lens of international business.

⁴¹ Findlay, C. and B. Hoekman. Value chain approaches to reducing policy spillovers on international business, 4 *Journal of International Business Policy* (2020), 390–40; Kolben, K. A Supply Chain Approach to Trade and Labor Provisions, 5 *Politics and Governance* (2017), 60–68.

⁴² European Commission, 2021, op. cit.

4. Building bridges between consultation processes and implementation

The return on the effort that is put into identifying relevant actors and seeking to ensure participatory representativeness in the CP and using the process to identify instruments and actions to pursue prioritized NTPOs and to suggest baselines and key performance indicators would help to build a bridge between ex ante assessment and ex post monitoring and evaluation of implementation of trade and partnership agreements. As noted, most practitioners view trade agreements as relatively ineffective instruments to improve performance on non-trade variables.⁴³ One prominent explanation put forward by critics for this is that the TSD chapters of EU trade agreements and more generally the NTPOs that are pursued through trade policy instruments are not binding, enforceable commitments. Mostly they cannot be invoked in formal dispute settlement mechanisms. Those that in principle can be enforced rarely are. The case taken by the EU against South Korea on labor standards is a recent exception. Many lawyers and CSOs have called for NTPO-related provisions in EU trade agreements to be made binding.⁴⁴ In our view – and that of many practitioners⁴⁵ – this is unlikely to be the most effective method of attaining NTPOs. There is long history of failed efforts by international financial institutions to make loans and assistance conditional on domestic policy reform. This eventually led international development banks such as the World Bank and donor agencies to recognize that a precondition for successful policy reform in developing countries – and indeed any country – is “ownership”: a recognition that reforms are in the national interest. The same arguably applies to NTPOs.

Whatever one’s views on making NTPO provisions included in trade agreements binding and subject to formal dispute settlement and the threat of (trade) sanctions, a key necessary condition for making progress is monitoring the implementation and ex post evaluation of changes in nontrade outcomes and analyzing the reasons for a lack of progress in improving nontrade indicators.⁴⁶ A problem-solving approach in which attainment of jointly agreed NTPOs is the main focus – reflected in analysis and dialogue that centers on the reasons for non-implementation, or, as important, non-attainment of NTPOs despite formal implementation of commitments – is likely to be a more fruitful approach.⁴⁷ This applies independent of the per capita income or level of economic development of an EU partner country. Non-attainment of specific NTPOs may result from domestic (local) political economy forces or exogenous circumstances in any country. Cooperative mechanisms that are designed to identify the source of a problem, which may involve both public and private sector actors, and consider potential solutions can help all stakeholders to cooperate to improve outcomes in a more effective and constructive manner than a reliance on hard law, enforcement procedures and external sanctions.

One initial step to link the SIA to subsequent implementation is to make the website associated with each prospective trade agreement a building block for a more regular interaction between officials, business organizations and other stakeholders by acting as knowledge platforms: mechanisms to promote collection, analysis, and diffusion of knowledge

⁴³ Yildirim, A., R. Basedow, M. Fiorini and B. Hoekman. EU Trade and Non-Trade Objectives: New Survey Evidence on Policy Design and Effectiveness, 59 *JCMS* (2021), 556-68.

⁴⁴ Lamy et al. op. cit.; Bronckers and Gruni, op. cit.

⁴⁵ Fiorini et al., op. cit.

⁴⁶ Such analysis arguably is also important if provisions become enforceable, as disputes must be based on an assessment that a commitment has not been pursued by a partner government.

⁴⁷ This is a core dimension of experimentalist governance mechanisms. See Findlay and Hoekman, op. cit. and Hoekman and Sabel, *Open Plurilateral Agreements, International Regulatory Cooperation and the WTO*, 10 *Global Policy* (2019), 297-312 for applications to trade issues and an argument for a problem-solving approach to international cooperation on a plurilateral basis.

and experience. Rather than the EC and the partner government simply periodically 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 organizations for a variety of policy areas.⁴⁸ For example, the Dutch government has established a platform on electromagnetic fields that brings together academics, regulators, government agencies and CSOs with concerns about the health effects of electromagnetic fields.⁴⁹ Even if the specific suggestions regarding redesign of the CP are not adopted, knowledge platforms and value chain partnerships can provide a better 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 realizing the objectives of the trade agreement. This in turn could contribute to monitoring the implementation of policy reforms and progress in achieving NTPOs. The suggestion to create knowledge platforms for EU trade agreements and associated implementation projects can build on already existing local stakeholder fora when they exist, as suggested by Ashraf and Seters in their analysis of ways to bolster the effectiveness of domestic advisory groups for specific trade agreements.⁵⁰

The suggestions made in the previous sub-section regarding deliberative polling and multi-stakeholder value chain partnerships that encompass the private sector (including lead firms and major EU investors) can feed into a knowledge platform.⁵¹ These types of initiatives can build on the civil society dialogue mechanisms that are organized by DG Trade and on local stakeholder fora where these already exist, enhancing local ownership.⁵² Domestic institutions and civil society mechanisms complement ex-ante SIAs and associated consultations as mechanisms to provide inputs and feedback on implementation of NTPOs in trade agreements. Domestic Advisory Groups (DAGs) are a notable example. DAGs and joint civil society meetings were conceived as mechanisms to further the goals of the trade and sustainable development dimensions of EU trade agreements by encouraging monitoring by civil society of progress in promoting sustainability objectives. A lack of substantial outcomes (impact) resulting from these mechanisms has made stakeholders increasingly critical of their usefulness.⁵³ Our recommendations may help do so by making these mechanisms more operationally relevant to key stakeholders, including businesses participating in value chain-based production. Business ultimately is the actor that engages in economic activity, generating jobs, local demand for inputs and services, as well as potential negative

⁴⁸ E.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 (<https://gpsaknowledge.org/>); and the UN Global Compact on Supply Chain Sustainability (www.unglobalcompact.org/engage-locally/manage/engagement/supply-chain-sustainability).

⁴⁹ Knowledge Platform on Electromagnetic Fields and Health, at www.kennisplatform.nl/English/knowlegdeplatform.aspx.

⁵⁰ Ashraf, N. and J. van Seters. Making it count: Civil society engagement in EU trade agreements, ECDPM Discussion Paper 276, 2020. See also Martens, D., D. Potjomkina and J. Orbie. Domestic Advisory Groups in EU Trade Agreements: Stuck at the Bottom or Moving Up the Ladder? Friedrich-Ebert-Stiftung, 2020.

⁵¹ Findlay and Hoekman, op. cit.

⁵² See <https://trade.ec.europa.eu/dialogue/>.

⁵³ See Ashraf and Seters, op. cit. and Harrison et al., op. cit.

externalities that are the focus of trade and sustainable development chapters in trade agreements and associated cooperation activities.

The challenge extends beyond *ex ante* SIAs, including not just the design but the process and conduct of negotiations, and the implementation phase with associated monitoring and evaluation. A more rigorous *ex-ante* impact assessment-cum-consultation process that becomes the basis for regular engagement between interested parties, partner governments and the EU (as well as other international organizations and bilateral economic development agencies) can help improve implementation and outcomes. Sustaining engagement and developing partnerships with stakeholders, including the business community and actors that participate in (depend on) specific international value chains, can do much to generate feedback on progress or lack thereof and identify ways in which to improve results. Steps in this direction would help attain policy coherence objectives and be more effective than the current segmented approach towards SIAs, consultations and implementation-cum-enforcement of treaty provisions. The suggestions made above would help provide a basis for sustained engagement by and with CSOs, governments and economic actors in civil society mechanisms in EU trade agreements. Some of the processes used to form DAGs 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 of trade agreements and international cooperation.

5. Conclusion

It is an inevitable feature of any trade agreement that there will be adjustment costs – this is a necessary condition to realize the overall net gains from trade liberalization. Recognizing this and putting in place credible mechanisms to assist groups that may lose is an important element of an SIA, but SIAs can also do more to identify how a trade agreement can – and cannot – be used to promote NTPOs.⁵⁴ This calls for evaluating issues that are not covered in the standard trade computable general equilibrium analytical frameworks used in SIAs. This can include extensions using environmental and climate assessments (e.g., air pollution, water and land use, energy generation, and environmental taxation, adaptation, and mitigation processes), and micro-simulations that can account for economic and social effects at the household level.⁵⁵

A necessary condition for the quantitative analysis of trade-NTPO linkages in *ex ante* impact assessments is to narrow down the number of NTPOs to focus on. The revisions to the consultation process suggested in this paper could help to provide both the guidance and the ‘head room’ needed for better evidence-based quantitative assessments of specific non-trade topics in SIAs. For consultations to be most useful in informing trade negotiations they should serve the purpose of identifying priority non-trade issues for stakeholders in the EU and the partner country and aim at identifying a limited set of NTPOs to be considered in the SIA analysis and the design of a trade agreement and associated external cooperation activities. The current wide ranging but shallow treatment of non-trade issues in SIA survey instruments,

⁵⁴ On compensation, see Kolben, K. Compensation and its Limits: Can Trade’s Losers be Made Whole? 24 JIEL (2021) 683.

⁵⁵ Rojas-Romagosa, *op. cit.* For example, detailed poverty impacts (by groups and regions), different dimensions of inequality (income, consumption, factor incomes, regional disparities, gender gaps), and information on specific groups (minorities, migrants, and other vulnerable groups) and across different types of workers (by skills, occupation, economic activity, and level of formality) can be used for analysis of possible impacts of a trade agreement on a range of NTPOs.

which solicit subjective perceptions whether a trade agreement will impact negatively on a large number of social, human rights and environmental outcome variables, does not serve the needs of policymakers seeking to improve non-trade outcomes, or generate the specificity needed for accountability, reducing the credibility of the exercise.

A consultative process that combines a closed ended survey instrument that focuses on the NTPOs that are (or could be) embodied in a trade agreement using a sampling frame that spans the groups in society of interest/concern to policymakers with a deliberative process that includes a polling mechanism to identify (rank-order) priorities and associated policy instruments would help ensure both the representativeness of the CP and deliver more useful inputs and guidance for negotiators and the analysts charged with implementing the SIA. By identifying a limited set of priority non-trade issues areas, the SIA can devote attention to a more in-depth and evidence-based (quantitative) impact assessment of these issues. Doing so would help address the weakness of indirect and induction-based analyses that in many cases are highly speculative and provide very limited information on how to design a trade agreement to realize non-trade goals. In parallel, such analysis should include a focus on alternative policy instruments as well, given that trade policy is unlikely to be a very effective tool to achieve NTPOs⁵⁶ Final SIA reports should include recommendations and proposals for non-trade policy instruments to support non-trade priorities and address potential implementation and adjustment costs.

⁵⁶ Borchert et al., op. cit. and Ferrari A., M. Fiorini, J. Francois, B. Hoekman, L. Lechner, M. Manchin, and F. Santi. EU Trade Agreements and Non-Trade Policy Objectives. EUI Working Paper RSC 2021/48.

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