

Assessing the 'sustainable' impact of EU trade deals

T&E's response to the European Commission's public consultation on the handbook on Sustainability Impact Assessment

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A response by  **TRANSPORT & ENVIRONMENT**

1. Sustainability Impact Assessments (SIAs) have two complementary components:

- A quantitative and qualitative analysis of the potential economic, social, human rights, and environmental impacts that a trade agreement could have, in the EU, in the partner country(ies) and other relevant countries;
- A wide consultation of stakeholders inside and outside the EU.

Commission question:

1.1. Do you agree that this is the right approach?

T&E answer: Yes

1.2. Are the components of an SIA adequately balanced?

T&E answer: No

1.3. Please let us know if you have any comments or suggestions: 2,000 character(s) maximum

We maintain that integrated impact assessments are essential in order to properly examine the economic, social, human rights and environmental effects that trade agreements have. From a methodological point of view, we understand that various attempts to adapt economic assessment methods to environmental and social concerns can be built upon, but so far no perfect solution has been found.ⁱ

The precautionary principle, enshrined into EU law by the Lisbon Treaty, (Article 191, Paragraph 2) has become a general principle of EU law, beyond only environmental policy, through its application in case law.ⁱⁱ As such it is surprising that the principle is not mentioned in SIA handbook. The principle is the bedrock of the EU's social, health and environmental protection in EU policymaking. What might be deemed to be the most trade cost-effective might be in contradiction to the precautionary principle.

As part of the trade negotiation launch the Commission sub-contracts an economic impact assessment, modelling the various negotiation outcomes. Thus, the SIA handbook proposal for a separate economic category could lead to some duplication of work. Instead, we recommend that the economic element should be fully integrated into the proposed SIA categories. For example, 'competitiveness' or 'administrative costs' should not be part of the stand-alone economic category, but integrated in all categories. The administrative effort for environmental policy is extremely small; research done in the

context of the so-called ‘Stoiber group’ shows that EU environmental law comprises only 0.6% of the total administrative effortⁱⁱⁱ.

The inclusion of SMEs within the SIA handbook is rather surprising, while they make up a significant part of the EU economy, they are also a key component of the economic impact assessment undertaken by the Commission at the launch of negotiations. This doubling up of focus and effort is disproportioned. As such we would suggest that SMEs are not included in the SIA. Instead, focus and attention should be placed on public health. We would support the creation of an additional public health category.

2. Themes

Commission question:

- 2.1. Do you consider the themes outlined in the revised SIA Handbook relevant for assessing the impacts of a trade agreement?

T&E answer: No

- 2.2. If No, please explain: 2,000 character(s) maximum

The handbook lacks clear and detailed guidelines as to how themes and categories will be addressed. It is very difficult to understand what to expect from the outcome of the SIA if categories are as broad as ‘Transport’ or ‘Air and climate’. This is not the case for the Economic category: in this realm, Macro-economic and Labour-market categories are very well defined. In the area of environment, more clearly defined parameters and indicators would ensure a consistent approach.

For instance, on the assessment of transport, we believe that all SIAs must examine the effects of trade on transport (aviation, maritime, road and rail). In particular, we call for assessments that establish existing transport links between the EU and the proposed trading partner, mapping the status quo by:

- freight weight
- greenhouse gas emissions (GHG)
- air quality (sulphur, nitrogen oxides and particulate matters)
- noise (dense urban areas, motorways and airports).

Following on from the assessment we would expect to see how the expected increased trade flows would impact the transport sector and its environmental footprint.

CO₂ emissions from international shipping and aviation were about 950 megatonnes (MT) and 705MT respectively in 2012; maritime emissions account for as many emissions as generated by Germany, the sixth world’s largest emitting country, and aviation would rank seventh on the table of top CO₂ emitters. GHG emissions from both sectors are now expected to increase by up to 250% and 270% for shipping and aviation respectively by 2050.^{iv} These figures do not account for the potential impact of the Commission’s ambitious trade agenda. For Europe to maintain its climate commitments, particularly that of keeping the increase in global temperature below two degrees, it must understand how its trade agenda will increase CO₂ emissions and allow for European regulatory development to absorb or mitigate their impact.

The Institutional category needs to be updated to reflect the increasing push by the Commission to include Regulatory Cooperation within agreements, as can be seen by the Canada-EU agreement (CETA). This would also support our suggestion (see below) for joint SIA between trade partners.

2.3. Are there other issues SIAs should examine?

T&E answer: Yes

2.4. If Yes, please specify which issues: 2,000 character(s) maximum

We believe there is a better way to embed scientific discipline more deeply into the SIA process. We recommend establishing more detailed guidance for impact assessments, using established parameters, objectives, values, economic scenarios and assumptions. This is an area where independent scientists should take part – giving methodological advice to ensure quality, balance and consistency, while removing outdated data, information and assumptions. A number of member states have already developed such guides, which could quickly settle issues like the (very high) discount rate used in the impact assessment on energy efficiency, which made the cost/benefit analysis of the policy much worse than if the accurate value had been used.

A trade and sustainability impact assessment must recognise both international and domestic commitments in order to ensure consistency and agreement with both external partners and EU law. The Commission must also ensure that any previous European environmental and climate commitments are not undermined by new strategies or initiatives. For example, proposed trade agreements with Singapore, Canada, and the United States must not undermine existing laws, such as the 7th Environmental Action Programme (EAP) and must not limit the policy space for new EAPs to be developed in the future.

An element that SIA do not currently examine is the impact of trade negotiations on EU environmental regulatory development, what we dubbed the ‘fright to regulate’ due to pressure from trading partners negotiating trade deals with the EU. In our [July 2014 report](#) we exposed how Canadian and US negotiators were using trade negotiations (CETA and TTIP) to weaken and undermine a European legislative process – the Fuel Quality Directive. It is important to understand not just how trade agreements will impact the environment but also our ability to protect the environment via our established regulatory space, especially when environmental protection measures are often challenged for being a “disguised restriction on international trade” in the World Trade Organisation.

3. Stakeholder

Commission question:

3.1. Do you agree with the approach on how to involve stakeholders in the analysis?

T&E answer: No

3.2. Please let us know if you have comments and suggestions 2,000 character(s) maximum

A high degree of participation requires a strong willingness of political institutions to accept the questioning of their own premises. It raises questions about the very notion of an SIA: is an SIA a tool for negotiations, or a consultative process? Should an SIA study be the result or just the beginning of such a process? Who owns the process? To what degree is an SIA a descriptive exercise, and to what degree should it be a self-reflexive one? How much impact does the SIA have on the negotiations and final agreement? To what

extent is the Commission accountable for following the SIA conclusions? The revised Handbook should answer these fundamental questions.

We would support a greater inclusion of all EU institutions (including Parliament and Council) and the Member States in the consultation process. This would not only give the stakeholders a voice but would also ensure that SIAs become an integral part of the political decision-making process^{vi}.

4. Consultants

Commission question:

4.1. SIAs are carried out by external consultants concurrently with trade negotiations. Following the conclusion of the study, the Commission publishes a position paper explaining how the SIA findings have or will contribute to decisions on the negotiations.

4.2. Is this the right approach?

T&E answer: Yes

4.3. Please let us know if you have comments and suggestions
2,000 character(s) maximum

In addition to requiring transparency and technical expertise of SIA consultants, the revised handbook should set guidelines to ensure that consultants are insulated against corrosive influence. We recommend the creation of a review mechanism to which the consultant will be subjected regularly throughout their engagement, and which will ensure a high degree of ethics and neutrality in the SIA process.

The revised handbook should explore the possibility of joint trade impact assessments. Similar to the Canada-EU Joint Study^{vii}, which was performed bilaterally, joint impact assessments present an option-enhancing analysis of trade and sustainable development.

We expect joint assessments to create efficiency gains as they address points of concern from both partners. For example, the consultants conducting the EU SIA propose that a joint sustainable development monitoring body should be put in place^{viii}. Ideally, such bodies would be created in advance of trade discussions so as to oversee the contracting and selection process for the SIA consultants. In order for joint assessments to function well, international standards for trade impact assessments would need to be agreed upon. The EU's SIA framework would provide a good basis for the development of such an international methodological framework.

Conducting joint SIAs would also help third party nations to assess the impacts of trade agreements, as they may not have the resources or capacity to do so^x.

5. Suggestions

Commission question:

- 5.1. Do you have any other suggestion on how to improve the guidance provided to consultants in carrying out SIAs?

T&E answer: Yes

- 5.2. If Yes, please specify 4,000 character(s) maximum

One major criticism of the current EU SIA process has been that the studies have come too late to have a real influence, or that the negotiation timetable was too tight to leave a chance for carrying out a corresponding in-depth analysis of impacts, other than the purely cost-effectiveness one. SIAs should not only inform the negotiation process, but should begin before negotiation positions are even formulated, as otherwise important decisions will already have been taken^x. Once SIAs are concluded, they should be continuously consulted by negotiators and be treated as a set of guiding principles. The Commission should also be held accountable for ensuring that the SIA recommendations and outcomes are upheld – even if the final conclusion is to stop negotiations.

Similarly to traditional Commission legislative impact assessment, the SIA should also make an assessment of the final trade agreement prior to its ratification. The SIAs should be updated and account for changes to assumptions initially held at the start the process. These pre- and post-negotiation conclusions should become part of the debate as agreements are discussed in the Council, the European and National Parliaments. Without this pre- and post-assessment update, it is impossible to anticipate the full impact of any agreement and thus make truly informed political decisions that impact the lives of 500 million Europeans.

Further information

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Endnotes

i http://www.ecologic.de/download/projekte/1800-1849/1800/6_1800_cate_sia.pdf

ii Recuerda, Miguel A. (2006). "Risk and Reason in the European Union Law". *European Food and Feed Law Review* 5

iii <http://ec.europa.eu/smart>

regulation/refit/admin_burden/docs/enterprise/documents/files/abs_development_reduction_recommendations_en.pdf

iv <http://www.transportenvironment.org/road-paris-climate-deal-must-include-aviation-and-shipping>

v Ibid i

vi Ibid i

vii http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc_141032.pdf

viii Kirkpatrick, et al. (2011)

ix <http://www.nicoahn.ca/essays/categories/research/assessing-the-environmental-impacts-of-trade/>

x Ibid i