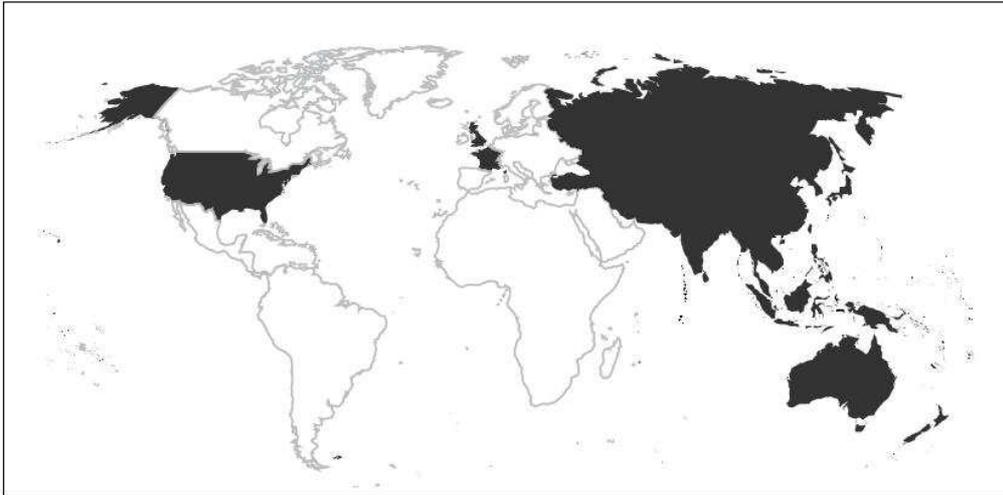


HANDBOOK ON NEGOTIATING SUSTAINABLE DEVELOPMENT PROVISIONS IN PREFERENTIAL TRADE AGREEMENTS



Prepared by
Paul R. Baker

The Economic and Social Commission for Asia and the Pacific (ESCAP) serves as the United Nations' regional hub promoting cooperation among countries to achieve inclusive and sustainable development. The largest regional intergovernmental platform with 53 member States and 9 associate members, ESCAP has emerged as a strong regional think-tank offering countries sound analytical products that shed insight into the evolving economic, social and environmental dynamics of the region. The Commission's strategic focus is to deliver on the 2030 Agenda for Sustainable Development, which it does by reinforcing and deepening regional cooperation and integration to advance connectivity, financial cooperation and market integration. ESCAP's research and analysis coupled with its policy advisory services, capacity building and technical assistance to governments aims to support countries' sustainable and inclusive development ambitions.



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Abbreviations and acronyms

3D	three dimensional
AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ACP	African, Caribbean and Pacific Group of States
AFAS	ASEAN Framework on Services Agreement
AfT	Aid for Trade
AFTA	ASEAN FTA
AGOA	African Growth and Opportunity Act
ARTNeT	Asia-Pacific Research and Training Network on Trade
ASEAN	Association of Southeast Asian Nations
ATIGA	ASEAN Trade in Goods Agreement
ATISA	ASEAN Trade in Services Agreement
BATNA	best alternative to a negotiated agreement
CCA	critical causal analysis
CEC	Commission for Environmental Cooperation
CETA	comprehensive economic and trade agreement
CGE	computable general equilibrium
CHAFTA	China-Australia FTA
CTE	Committee on Trade and Environment
DA9	Development Account Ninth Tranche
DDA	Doha Development Agenda
DFI	development finance institution
DFQF	duty-free and quota-free
EC	European Commission
ECA	Economic Commission for Africa
ECLAC	Economic Commission for Latin America and the Caribbean
EEC	Eurasian Economic Union
EGA	Environmental Goods Agreement
EIF	Enhanced Integrated Framework
ESCAP	Economic and Social Commission for Asia and the Pacific
EPA	economic partnership agreement
EU	European Union
EUVFTA	EU-Viet Nam Free Trade Agreement
FDI	foreign direct investment
FTAs	free trade agreements
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GHG	greenhouse gas
GSP	Generalized System of Preferences
GTAP	Global Trade Analysis Project
GVCs	global value chains
HIV	Human Immunodeficiency Virus
ICT	information and communications technology
IINTALC	integration index of Latin America and the Caribbean
ILO	International Labour Organization
IPRs	Intellectual Property Rights

ITA	Information Technology Agreement
ITC	International Trade Centre
KORUS	United States-Korea Free Trade Agreement
LDCs	least developed countries
M&E	monitoring and evaluation
MDGs	Millennium Development Goals
MEAs	Multilateral Environmental Agreements
MFN	most-favoured-nation
MoUs	memorandum of understandings
MRI	monitoring regional integration
MS	microsimulation
NAAEC	North American Agreement on Environmental Cooperation
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NGO	non-governmental organization
NGR	negotiation group on rules
NTMs	non-tariff measures
OECD	Organisation for Economic Co-operation and Development
PACER	Pacific Agreement on Closer Economic Relations
PCA	principal component analysis
PPP	public private partnership
PTAs	preferential trade agreements
R&D	research and development
RAMs	recently acceded members
RII	regional integration index
RTAs	regional trade agreements
SD	sustainable development
SDGs	Sustainable Development Goals
SDT	Special and Differential Treatment
SIA	sustainability impact assessment
SMEs	small and medium-sized enterprises
TDC	trade and development committee
TDCA	trade, development and cooperation agreement
TiSA	Trade in Services Agreement
TNC	Trade Negotiations Committee
TPP-12	Trans-Pacific Partnership <i>configuration prior to US withdrawal</i>
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
US	United States of America
WCED	World Commission on Environment and Development
WEF	World Economic Forum
WTO	World Trade Organization

Executive Summary

A proliferation of regional trade agreements (RTAs)¹ has been witnessed across the world but also in the Asia-Pacific region, which has contributed to its trade-driven growth. Indeed, over the last three decades,² the Asia-Pacific region has experienced export-oriented development, with economic growth closely linked to a reduction in poverty levels. This has increasingly occurred through improved integration into regional and global value and supply chains, which has been central to Asian growth. Specifically, manufacturing outsourcing, mainly in the technology and labour-intensive manufacturing sectors, made the region a prime example of the potential positive force that trade can have on the economy and society.

Nevertheless, trade-driven economic growth can also be unbalanced. Trade liberalisation in particular can cause a rise of inequality within and between countries, such that adaptation and adjustment measures are required and must be accounted for to ensure that the parties to an RTA can take advantage of the potential that trade presents. Whilst the poverty headcount dropped across the region, in many countries in Asia and the Pacific, for example those in South-East Asia, inequality remains high, particularly between urban and rural populations, and issues persist in terms of access to healthcare, education, ICT, energy, transport, etc. Moreover, some countries continue to struggle to enter global value chains (GVCs), due to high trade barriers and/or high costs to trade, or an over-reliance on exports concentrated in commodities and natural resources. Trade can also have a negative impact on the environment. A significant portion of the academic literature seems to indicate that increases in trade liberalisation might lead to higher levels of CO₂ emissions.³

The ability of international trade to provide greater societal and environmental benefits for sustainable development very much depends on the quality of the RTAs, and the public and private sector⁴ policies enacted to support it in this direction. Example of such policies include taxes on greenhouse gas emissions, rejecting the use plastic bags, amongst many others, or the establishment of a Labour Cooperation Mechanism between countries to improve labour standards, such as the provided created between the Chile and the Unites States through the Chile-US FTA in 2004.

Evidence of the existence of sustainable development provisions in RTAs

A growing number of trade agreements incorporate provisions that address sustainable development concerns, such as respect and promotion of labour standards, environmental protection, human rights and public health. The inclusion of sustainability provisions in RTAs was first conceptualised in the

¹ This handbook uses RTA as the generic term encompassing all types of trade agreements based on the reciprocal exchange of trade and investment concessions. The terms “free trade agreement”, “free trade areas”, “preferential trade agreements” and “economic integration agreement” are used interchangeably to mean the same thing as RTAs.

² Export-led growth in Asia has several phases, starting with Japan in the 1960s, moving onto the so-called Asian tigers (i.e., Republic of Korea, Taiwan Province of China, Singapore and Hong Kong, China), and then spreading to so-called newly emerging economies including China.

³ See WTO-UNEP (2009). Trade and Climate Change. WTO-UNEP Report. Geneva. However, the results of the different econometric analysis are inconclusive. As highlighted by the WTO (2013), “[broadly], the studies suggest that total pollution may increase or decrease depending on whether the technique effect overrides the scale effect. The type of pollutant is among the factors that influence the net result.” See WTO (2013). World Trade Report 2013: Factors shaping the future of world trade. World Trade Organisation, Geneva.

⁴ “Private sector policies” make reference to those behaviors and conducts adopted and implemented voluntarily by the private sector, which might go beyond what is established in the law. A typical example of such policies are private sector standards.

1994 North American Free Trade Agreement (NAFTA), which included specific environmental provisions. It has also become standard in the new generation of the European Union's trade agreements with third parties, such as those with the Republic of Korea, Canada, Colombia, Peru and Viet Nam, in the form of labour and environmental provisions. However, the inclusion of these clauses is not universal, as most RTAs either lack comprehensive commitments, or, in some cases, completely omit sustainability provisions.

For the purposes of this Handbook, the core sustainable development provisions are categorised in the following groups of provisions: (1) environment, (2) labour, (3) human rights and (4) cooperation and technical assistance.

While the coverage of sustainability provisions in RTAs differs depending on the needs and commitment of the contracting parties, certain similarities have been observed across RTA coverage of social standards, human rights and environmental sustainability. In this sense, whilst nearly all RTAs recently concluded or under negotiation have provisions for environmental sustainability, the depth of the provisions differs. In the case of human rights or labour rights, references to multilateral agreements (ILO conventions specifically) are made, although the enforceability of these provisions differs greatly. It ranges from one end of the spectrum, such as the US agreements which permit the application of sanctions in the case of non-conformity, to best endeavour language at the other end of the spectrum, as is the case in ASEAN agreements. In general, the degree of flexibility in the policy space not to adhere to provisions is greatest for agreements between developing countries.

The degree of enforceability varies across the RTAs

This Handbook analyses the enforceability framework around different uses of the term "sustainability" in the core sustainable development provisions. Overall, the presence of environmental, labour and human rights provisions in intra-Asia-Pacific RTAs is scarce. In this sense, none of the major agreements associated with ASEAN make references to these terms. The China-Australia FTA (CHAFTA) makes a vague reference to environment, whilst the Japan-Mongolia FTA addresses such areas, but mainly in terms of cooperation.

Enhancing capacity for negotiating sustainability provisions in RTAs

Important considerations for any country wishing to engage in RTA negotiations is to understand (1) how to derive more benefits from RTAs, (2) how to shape negotiations according to its priorities and (3) how to align the outcomes of an RTA with its own long-term sustainable growth ambitions. Equally significant is understanding the complementarities the country shares with potential members of the RTA, the competitive strains that may arise from liberalising some trade-related areas and the opportunities that can be captured by entering into an agreement with such partners. The political economy significance notwithstanding, the RTA must also be shown to be balanced in terms of gains for all parties. Otherwise, the RTA's sustainability and effective implementation will be in jeopardy.

The use of sustainability impact assessments (SIAs) is a preferred methodological framework to evaluate the impacts of cross-sectoral policies on development and explained at great length in this Handbook. The analytical methods underpinning SIAs are explained in detail as well.

Before the negotiations start, understanding the trade complementarities, trade obstacles and risks and opportunities linked to liberalisation with selected partners will enable a country to quickly gauge its interests or priorities in negotiating an RTA. During this process, the country can also prepare its scenarios and its “best alternative to a negotiated agreement” (BATNA). At this stage, stakeholder mapping should be undertaken and followed by extensive consultations. Preliminary modelling can be done using partial or general equilibrium models to inform the likely economic impacts arising from an agreement, according to different envisaged scenarios, from what the scope of the agreement should be to the direction of trade patterns and their impact on sustainability.

Prior to starting negotiations, modalities should be determined. During the negotiations, all countries involved will try to influence the negotiation agenda and the scope and breadth expected from the agreement. The in-country coordination with line ministries, private sector and civil society is particularly important. The impact assessment methodology can be adapted to each negotiation round outcome to keep expectations in check with reality.

The negotiations should result in a number of key provisions aligned to the sustainable development objectives of the country entering the agreement. The provisions with potential impact on sustainable development would fall under different agreement chapter topics (as summarised in Table 1).

Table 1 - Considerations for Sustainable Development in Different Chapters of an RTA

Chapter Heading	Focal Areas and Consideration of Impact on Sustainable Development
Market Access in Goods	<ul style="list-style-type: none"> ▪ Sensitive lists ▪ Flexibilities/tariff formula for cuts ▪ Transition Period ▪ MFN clauses ▪ Export taxes ▪ Asymmetric liberalisation ▪ Variable geometry with RTAs ▪ Special and differential treatment ▪ Environmental goods and services ▪ Preference erosion ▪ Treatment of third countries (non-members) ▪ Coverage of GATT Article XXIV, and consideration of the negotiations for the clarification and improving disciplines and procedures under Negotiating Group Rules (NGR), which reports to the Trade Negotiations Committee (TNC) ▪ Exceptions (e.g., GATT Art XX)
Non-Tariff Measures	<ul style="list-style-type: none"> ▪ SPS chapter ▪ TBT chapter ▪ Capacity building
Trade Facilitation	<ul style="list-style-type: none"> ▪ Flexibilities ▪ Advance rulings ▪ Publications and transparency ▪ Transit country focus ▪ Capacity building
Rules of Origin	<ul style="list-style-type: none"> ▪ Criteria needed to determine the national source of a product ▪ Level of thresholds set, or degree of transformation required
Trade Remedies	<ul style="list-style-type: none"> ▪ Safeguards, thresholds and evidence requirements ▪ Countervailing measures, including subsidies for food security ▪ Anti-dumping measures
Trade in Services	<ul style="list-style-type: none"> ▪ Mode 1 – Cross-border supply liberalisation, e-commerce and other considerations ▪ Mode 2 – Consumption abroad, travel restrictions, air passenger duties, visa requirements, etc. ▪ Mode 3 – Right of establishment and interaction with BITs and investment promotion activities ▪ Mode 4 – Movement of persons, mutual recognition of qualifications, visa requirements, repatriation of earnings, etc.

Chapter Heading	Focal Areas and Consideration of Impact on Sustainable Development
	<ul style="list-style-type: none"> ▪ Transport, logistics, distribution, e-commerce and other sector-specific services with a high impact on sustainable development dimensions ▪ Coverage of GATS Article V, and consideration of the negotiations for the clarification and improving disciplines and procedures under Negotiating Group Rules (NGR), which reports to the Trade Negotiations Committee (TNC)
Dispute Settlement	<ul style="list-style-type: none"> ▪ Rules and coverage of the agreement under dispute settlement chapter ▪ Mediation process ▪ Due process and appeals ▪ Enforceability of decisions ▪ Speed of procedures and impartiality of panel
Government Procurement	<ul style="list-style-type: none"> ▪ National treatment provisions ▪ Thresholds for procurement decisions
Competition	<ul style="list-style-type: none"> ▪ Consideration of State-Owned Enterprises
Trade Related Investment Property Rights	<ul style="list-style-type: none"> ▪ Access to medicine ▪ Cooperation on technology ▪ Geographical indications and trademarks
Environment, Labour, Development	<ul style="list-style-type: none"> ▪ Cooperation ▪ Adherence to multilateral agreements ▪ Maintaining standards (especially towards inward investment)

After the negotiations, many countries still face significant difficulties in implementing the different provisions of RTAs, particularly since in most cases, a functional and coherent institutional framework is required to do so. While technical assistance can facilitate and enhance the speed for implementing commitments, it cannot replace the effort required by the country itself. The parties to the agreement should be realistic as to what is possible and consider how to coordinate the public administration apparatus, for example through technical committees, and portfolio delegation to line ministries.

In line with the outcome of the SIA, the government should set aside, in its annual budget, resources to address adjustment concerns and implement mitigation strategies. At the same time, financing of activities to raise awareness of the RTA is necessary, as is receiving feedback on its implementation. Flanking policies, active labour-market policies and support for small and medium-sized enterprises (SMEs) should be targeted to promote trade and support those vulnerable industries from new competition, such as through reskilling of workers, assistance for relocation of workers and offering access to finance to SMEs (in a non-discriminatory manner).

It is important to discuss developmental concerns arising from the trade agreement. Many new generation RTAs do incorporate a trade and development committee (TDC) with rotating chairmanship amongst the members of the agreement. The terms of reference for the TDC should include a review of development claims, a consideration of the pace of implementation of the agreement and reasons for delays and checking that technical cooperation areas are being successfully implemented and supportive of the implementation process, in addition to dealing with any other matters that may arise.

The parties to the agreement need to set up a monitoring unit or an observatory of trade performance in order to quickly identify remaining obstacles to trade in practice, facilitate the recording of non-tariff measures in other RTA parties and use commercial diplomacy to resolve constraints faced in the multilateral trading system.

Such a monitoring and evaluation framework should be instrumental for measuring not only how different contracting parties are doing on the implementation of sustainable development provisions,

but also the impact of the overall trade agreement on areas such as environment, labour, human rights, etc. Therefore, considering sustainable development as a multi-dimensional element, the framework would adopt a “holistic” approach.

Introduction

Sustainable development is a development framework that links economic growth with welfare in a bid to preserve and promote greater human wellbeing, safeguard the environment and strengthen social progress across different generations. Over the last couple of decades, the role that trade plays in sustainable development and economic growth has come under greater scrutiny. Unprecedented globalisation and trade liberalisation has gone hand-in-hand with a significant reduction in extreme global poverty, whilst at the same time, income inequality and unequal access to opportunities within countries have often grown at the global level and even more so at the developing country-level. Inequality can stifle economic growth by lowering growth rates and shortening the duration of growth spells. It certainly excludes large segments of the population from benefiting from the full development gains and can undermine social cohesion and stability (United Nations ESCAP, 2018). It is within this context that this Handbook sets out to explore how trade agreements can be complementary to sustainability and to look at how trade agreements can contribute positively to the achievement of sustainable development.

The Handbook provides guidance on how to negotiate sustainability and cooperation provisions in RTAs with the aim of assisting developing countries to foster the benefits that such agreements offer in terms of sustainable and inclusive development through further economic and social development, improved market access and further development of productive and supply capacity.

This extends to the benefits for all groups and individuals within countries from inclusive and equitable results such as enhanced employment opportunities, positive impacts on gender equality, the elimination of child labour and enhanced contribution to general welfare, in particular for marginalised and excluded groups.

This also includes a strengthened understanding of RTA provisions and their impacts on socio-economic outcomes.

The target beneficiaries are government officials and trade negotiators from developing countries in Asia and the Pacific in particular. The Handbook can also prove beneficial to those in other developing countries around the world, as well as to the wider policymaking community.

This Handbook is comprised of the following five chapters:

Chapter One, on the relevance of sustainability and cooperation provisions, looks at what is meant by the concept of sustainable development and what role trade has to play in the achievement of the Sustainable Development Goals (SDGs).

Chapter Two, the prevalence of sustainability and inclusiveness in preferential trade agreements, reviews the presence of sustainability provisions in current trade agreements, whilst investigating the impact of unilateral preferential schemes and how trade policy frameworks handle sustainable development provisions with examples taken from the Asia-Pacific region.

Chapter Three, on dispute settlement and enforcement, addresses the legal basis and language used in trade agreements and the current mechanisms for enforcement of sustainability provisions in trade agreements, before going on to introduce proposals for change.

Chapter Four, on ways to approach the negotiations of RTAs, before, during and after, delves into the questions of analysis and impacts, as well as the integration of sustainability provisions in the negotiations.

Chapter Five concludes with a proposal for monitoring and evaluation of RTAs for sustainability.

I. Relevance of sustainability provisions in trade

I.1 What is understood by sustainable development?

The concept of sustainable development emerged from the field of environmental sciences as a way to bring together the spheres of human development and of environmental sustainability. In this context, the term “sustainable development” was defined by the Brundtland Commission (formerly, the World Commission on Environment and Development, or WCED) as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED, 1987).

Such vague wording meant that “in the North [sustainable development referred] to issues of environment and eco-development, [whilst in the South] it was taken as poverty alleviation and development focussed” (Spangenberg, 2000). The focus on physical sustainability was in recognition of the fact that any economic and social development must account for the use and limits of natural resources. Thus, sustainable development’s three pillars, namely economic development, social development, and environmental protection, are considered interdependent and mutually reinforcing (Toubeau, 2015).

Nowadays, the concept has morphed into somewhat of a catch-all as it became a core driving principle for policymaking around the world, encompassing everything related to human and society’s wellbeing (i.e., women’s empowerment, gender equality, promotion of decent jobs, labour rights, better access to education, health, environmental safeguards, disability rights, social inclusiveness and ban of child labour). This approach has been seen most recently in the renewal of the African-Caribbean-Pacific and European Union (ACP-EU) partnership, which brings human rights, fundamental freedoms and democratic principles firmly under the umbrella of sustainable development (European Commission, 2017).

Whilst broadening the focus to cover all areas concerning wider human development can be a force for good, it also brings challenges. Specifically, the main challenges arise from creating a lack of clarity about (1) where to focus one’s resources if it becomes difficult to weigh different trade-offs and (2) what issues should be prioritised and what would be their sequencing. However, using the wider definition of sustainable development also provides a more realistic portrait of all of those factors that in fact contribute to sustainable development and greater human wellbeing. It also elevates them to the level of political and international attention. As part of the social dimension, sustainable development has extended to measures surrounding trade facilitation, such as connectivity and equality of access to markets and opportunities, which are as vital to sustainable human development as trade development. All of these can serve the wider purpose of sustainable economic and social development if paired with well-designed, complementary national-level policies focused upon inclusiveness and social protection (ECLAC, 2014).

I.2 Link between trade and sustainable development

Across the world, trade has been a source of development and the driving force for economic growth and in turn poverty reduction. This is due, in part, to the deepening and widening of integration

processes championed by different regional initiatives. Nowhere has this been observed more widely, than in parts of Asia and the Pacific, particularly East and South-East Asia.

The benefits of increased international trade include bringing about a rationalisation of resources and economies of scale, as well as technology transfer. Increased trade also affects relative prices, most often downwards, whilst increasing availability of goods and services, which in turn affects the country's consumption patterns. Trade also affects overall patterns of supply and demand in goods markets, jobs, wages, household income and general social welfare standards. International trade can, therefore, have a positive impact on economic growth by raising wages and creating jobs, increasing productivity (especially for exporting firms) and allowing access to competitively priced inputs and consumer goods (ECLAC, 2014). Beyond poverty reduction, economic growth has the potential to spill over into other areas of society, impacting positively on human welfare and development, such as in the health and education sectors, making it a force for social good.

In Asia, it has been observed that export-oriented strategies have been closely followed by reductions in poverty rates, with the number of people living in extreme poverty significantly reduced.⁵ Between 1981 and 2013, the poverty headcount in East Asia and the Pacific region dropped from just over 80 per cent to 3.68 per cent of the population (World Bank, 2017). In just a decade and for the Asia-Pacific region defined as ESCAP membership, incidence of extreme poverty declined from 29.7 per cent in the early 2000s to 10.3 per cent in the early 2010s. Despite such progress, some 400 million people in the region still live in extreme poverty.

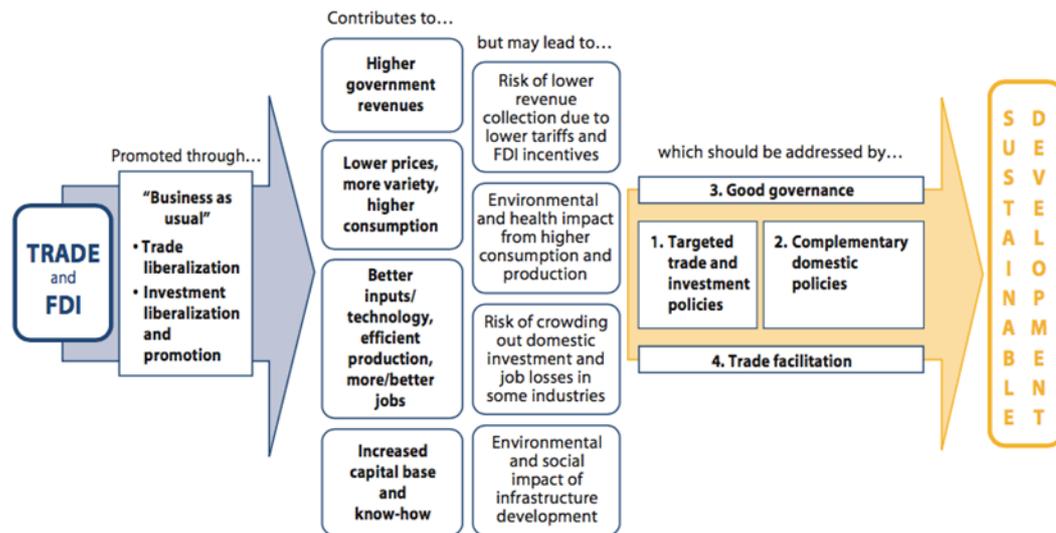
Moreover, for many of the countries in the region inequality remains high, particularly between urban and rural populations, and issues persist in terms of access to healthcare, education, access to markets, etc. The latest World Inequality Report 2018 (2017), finds that “since 1980, income inequality [has] increased most rapidly in North America, China, India, and Russia. Trade also has had no obvious impact on gender equality” (in-text citation).

Therefore, benefits of trade-driven economic growth can be very unevenly distributed. Flanking measures and adaptation policies are required to ensure that the economy can take advantage of the potential that trade offers, as well as facilitate the movements of factors of production and transferability of skills across sectors.

Whilst trade is not a panacea to sustainable development, there is no denying its importance, with its role enhanced or constrained depending on the myriad of policies supporting it. The ability of international trade to not only provide economic, but also the greater societal and environmental benefits for sustainable development very much depends on the quality of the public and private policies enacted to support it in this direction (see figure 1).

⁵ Defined as living on less than USD 1.90 per day as per 2011 PPP prices. See more at: World Bank (2017). PovcalNet. Available at: <http://iresearch.worldbank.org/PovcalNet/povDuplicateWB.aspx>; Roser, M. and Ortiz-Ospina, E. (2017). Global Extreme Poverty. Published online at: <https://ourworldindata.org/extreme-poverty/>

Figure 1 - A Framework for Channelling Trade and Investment into Sustainable Development



Source: United Nations ESCAP (2017)

I.3 Trade and the SDGs

The Sustainable Development Goals (SDGs) were adopted in September 2015 by 193 countries and became a part of the 2030 Agenda for Sustainable Development. The SDGs comprise 17 interconnected goals with 169 sub-targets covering economic, social, educational, health and environmental issues in a bid to achieve global inclusiveness that rests on the alleviation of poverty, protection of the environment and achievement of peaceful and democratic governance (UNDP, 2017). They build on and replace the Millennium Development Goals (MDGs), going a step further by emphasising their “integrated and indivisible” (UNDP, 2017) nature to achieve the three pillars of sustainable development: economic, social and environmental.

Figure 2 – United Nations Sustainable Development Goals



Source: UNDP, 2017

Trade is a means to achieve the SDGs if it is inclusive and sustainable, and whilst this is recognised by the 2030 Agenda, there is no trade-specific SDG. Instead, there are several trade indicators linked to SDG 17, *Partnerships for the Goals*, in 17.10, 17.11 and 17.12 where there are various mentions of trade-related targets, including the promotion of the rules-based multilateral trading system, significantly increasing the exports of developing countries with a doubling of their export market share and implementation of duty-free and quota-free (DFQF) market access for all least developed countries (LDCs). In this sense, rather than a goal in itself, trade is “an important means to reach the goals” (Helble and Shepherd, 2017).⁶

However, many indirect effects of trade are evident across almost all of the SDGs in some way or another (although of course it could be argued this is not enough, with too much business as usual), and particularly in the following:

- **Goal 2: Zero Hunger**. Correct and prevent trade restrictions and distortions in world agricultural markets (eliminate all agricultural export subsidies and export measures) that deny poor countries much-needed export revenue and would allow for better food security (Martin and Anderson, 2012, in Hoekman, 2017). Also, abolish tariffs on products which are important in the consumption basket of poor households (Nicita, Olarreaga and Porto, 2014).
- **Goal 5: Gender Equality**. Trade creates opportunities for the employment and economic development of women.
- **Goal 8: Decent Work and Economic Growth**. The importance of Aid for Trade (Aft) for LDCs via the Enhanced Integrated Framework (EIF) is recognised, as is the importance of targeting improved regional infrastructure to improve connectivity for both the formal and informal sector (Brenton, Portugal-Perez, and Regolo, 2014).
- **Goal 9: Industry, Innovation and Infrastructure**. The importance of cross-border connectivity and infrastructure, which allows for increased integration of SMEs into GVCs and markets.

Goal 17: Partnerships for the Goals

Strengthen the means of implementation and revitalise the global partnership for sustainable development:

17.10: Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization (WTO) including through the conclusion of negotiations within its Doha Development Agenda;

17.11: Significantly increase the exports of developing countries, in particular with a view to doubling the share of LDCs’ global exports by 2020;

17.12: Realise timely implementation of DFQF market access on a lasting basis for all LDCs consistent with WTO decisions, including by ensuring that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.

⁶ There is also a debate about whether or not the benefits trade can bring to sustainable development have been properly captured by the SDGs and their targets. This debate is parallel to the one on how to make trade sustainable. Messerlin (2017) argues that including trade dimensions into SDGs more obviously could have brought “the realisation of how a well-designed trade policy can improve domestic regulations” The lack of explicit mention of trade and how it can indeed be leveraged to achieve the SDGs also somewhat reflects the context in which the SDGs were negotiated. As Messerlin (2017) points out, whilst the previous MDGs came about within a favourable context of support for trade and the opening of markets during the mid-1990s, the SDGs were negotiated against a background of an increasingly powerful anti-free-trade NGO context, as well as waning support and interest from Western businesses for multilateral trade negotiations, attributable to their slowness and recent failures (represented by the unsuccessful Doha Round). Therefore, in the SDGs, exports are the focus as opposed to a holistic approach to trade – imports and exports both – and challenges concerning competitiveness, governance or the overall business enabling environment are given little attention (Hoekman, 2017).

- **Goal 10: Reduced inequalities**. Highlights the importance of special and differential treatment (SDT) for developing countries, as per WTO agreements.
- **Goal 14: Life Below Water**. Calls on disciplining and reducing fishery subsidies particularly in more developed countries.

Therefore, trade is expected to act as a means to achieving the SDGs, through the facilitation of public and private financial resources, capacity building and transfer of environmentally sound technologies for example (UNCTAD, 2016, and WTO, 2018).

This indirect referencing of trade is reflected in the work of several international agencies and the approach they have chosen to take. The International Trade Centre (ITC) is working to address ten of the SDGs (namely, Goals 1, 2, 4, 5, 8, 9, 10, 12, 16, 17) through a number of programmes aimed at SME internationalisation directly targeting women, youth, the poor, marginalised and displaced people, including the Empowering Poor Communities to Trade Programme, the *SheTrades* Initiative and the ITC Youth and Trade Programme's Trade Accelerator model (ITC, 2016). ITC is also directly addressing environmental issues and climate change mitigation via its Trade and Environment Programme and Sustainability Network, both of which promote inclusive and green value chains (ITC, 2016). Furthermore, ITC works to promote and foster diversification, value addition, youth employment, women's economic empowerment and sustainability, all of which contribute to the objectives of the SDGs through the lens of trade. In another such signal, the World Bank strategy 2011-2021 is the first such trade strategy of the Group and sees the focus move from trade liberalisation towards the promotion of trade for development, by supporting diversification, lowering costs to trade, improving access to finance and focusing upon the impact on poverty (World Bank, 2011).

Trade and investment have proven to be essential to the growth and development of the Asia-Pacific region and such "success shows that trade and investment will play a critical role in pursuing the SDGs going forward" (United Nations ESCAP, 2017). However, ensuring that trade policy affects sustainable development positively is no easy task. That trade and the SDGs go hand-in-hand is not a given, with the interlinkages between the two not always easy to map (UNCTAD, 2016). As mentioned previously, ensuring space at the national level for strong domestic policy to complement trade policy is important to ensure that openness to trade leads to inclusive development. However, national-level trade policy should also be designed with the SDGs in mind.

Trade policy directly affects market access conditions for a country, determining how liberalised a market is, or not as the case may be, through the application of taxes and tariffs for example, as well as non-tariff measures (NTMs) which can restrict imports and exports. Tariffs can be used to increase public revenue, which can in turn enable increased spending on public goods for greater social welfare. However, tariffs also have the ability to distort the market (quantities of supply and demand through impact on relative prices) affecting social welfare negatively, particularly for the most vulnerable in society (UNCTAD, 2016). For example, trade policy can directly affect access to medicines and medical instruments. A clear example of trade affecting healthcare has been seen in regard to agreements concerning intellectual property rights (IPRs) and access to HIV treatment (UNCTAD, 2016). Equal access to markets, and therefore goods and services, is vital if trade is to provide the means to achieving the SDGs. Therefore, trade policy must be designed with the aim of facilitating trade and wider connectedness.

I.4 Addressing sustainable development through the multilateral trading system

Multilateral attempts to address social and environmental sustainability concerns within the GATT/WTO framework appear in the Preamble of the Marrakesh Agreement Establishing the WTO and the Doha Development Agenda, which has a strong emphasis on sustainable development. WTO members have also made various commitments addressing concerns such as public health, environment and labour standard concerns (see Box 1). In this sense, the 10th Ministerial Conference held in Nairobi in December 2015 recognised the WTO's crucial role towards the achievement of the SDGs (WTO, 2018).

Box 1 - Coverage of Sustainability Provisions under the WTO

Environmental concerns were first addressed in the 1994 Marrakesh Ministerial Decision on Trade and Environment by establishing the Committee on Trade and Environment (CTE), which mandated the CTE to “identify the relationship between trade measures and environmental measures in order to promote sustainable development; and make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system” (WTO, 1994). Following this initiative, a group of WTO countries launched negotiations in 2014 over a possible plurilateral Environmental Goods Agreement (EGA – see Section 2.4). Certain WTO members are also parties to the 2015 Paris Agreement and other United Nations Framework Conventions on Climate Change which covers, amongst others, market access in environmental goods in its second Chapter (United Nations, 2015).

Outside of the stalled Doha Round Agenda, various Ministerial agreements have paid attention to **public health sustainability concerns**. For example, the 2003 Decision of the General Council related to the TRIPS Agreement and public health waived the limitation on exports under compulsory licence to countries without the capacity to locally manufacture pharmaceuticals. The TRIPS Agreement demonstrates multilateral recognition of flexibilities needed within the current IPR regime to respond to the emergence of public health threats like the HIV epidemic, and the continued high prevalence of tuberculosis and malaria in developing countries. A flexible implementation of the TRIPS would “emphasise the primacy of public health over trade” (UNCTAD, 2016).

In the 1996 WTO Singapore Ministerial Declaration, Member States confirmed their commitment to “the observance of internationally recognised core **labour standards**” and rejected “the use of labour standards for protectionist purposes,” paragraph 4 (WTO, 1996). However, the declaration designates the ILO as the competent body for dealing with matters relating to linkages between trade, trade liberalisation and labour standards, effectively confining them outside the WTO negotiating framework, even though it notes a continued WTO – ILO collaboration.

The Doha Development Agenda (DDA) contains the most ambitious WTO commitments to social, health, financial and environmental sustainability. Unlike the WTO Ministerial Conference decision made in Singapore in 1996, which placed the discussion of labour provisions outside the WTO, the Doha Declaration is at the heart of sustainable development and positions major development concerns within the purview of the WTO. For example, the Ministers mandate both the Committee on Trade and Development and the Committee on Trade and Environment to act as a forum for identification and debate on developmental and environmental aspects of the negotiations to help achieve the objective of having sustainable development appropriately reflected. Furthermore, the Doha Ministerial Declaration recognises that:

“[Under] WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements.”

This language, drawn from GATT’s Article XX (on General Exceptions), is also found in Principle 12 of the Rio Declaration: “Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.” It is further present in Article 3.5 of the United Nations Framework Convention on Climate Change: “Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.”

II. Sustainability and inclusiveness provisions in preferential trade agreements

II.1 Introduction

A growing number of trade agreements incorporate provisions that address sustainable development concerns, such as respect and promotion of labour standards, environmental protection, human rights and public health. The inclusion of sustainability provisions in RTAs was first conceptualised in the 1994 North American Free Trade Agreement (NAFTA), which included specific environmental provisions. It has also become standard in the new generation of RTAs between the European Union (EU) and their partners, such as with the Republic of Korea, Canada, Colombia, Peru, or Viet Nam, in the form of labour and environmental provisions. However, the inclusion of these clauses is not universal, as most RTAs either lack comprehensive commitments or, in some cases, completely omit sustainability provisions. In this sense, Australia's position has been that trade provisions should be separate from environmental issues. Similarly, other developed countries, such as Japan, pay less attention to sustainable development issues in their RTAs (Draper, Khumalo and Tigere, 2017).

Box 2 - Domestic Obligations to Include Sustainable Development Provisions in RTAs

EU commitments to sustainable development and social solidarity are institutionalised in key EU legal instruments since the Treaty of Maastricht in 1992 and recently in the 2009 Lisbon Treaty, which mandates the Union to apply its trade policy under the principles of equality and solidarity: “fair trade” and “free trade”; “foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty (Article 21.2); the sustainable management of global natural resources, to ensure sustainable development; and provides EU Parliamentary oversight over trade policy (Open Europe, 2008). This institutionalisation first permeated into the EU's external trade policy when labour standards were included in the 1999 Trade, Development and Cooperation Agreement (TDCA) with South Africa. This was closely followed by clear commitments to labour standards in the 2000 Cotonou Agreement with ACP states, the 2003 FTA with Chile and the EU–CARIFORUM EPA in 2007, in a wider effort to establish an invigorated EU framework and leadership in trade and sustainable development. Beginning with the 2011 EU–Republic of Korea FTA, all “new generation” EU trade agreements contain a “trade and sustainable development chapter” (Campling and others, 2016). The chapters are institutionalised through the establishment of a joint committee – the Committee on Trade and Sustainable Development – mandated with its implementation.

The US Trade Act 2002 requires all trade and investment agreements signed by the US to ensure that trade and environmental policies are mutually supportive both domestically and internationally to achieve sustainable development (Kennedy, 2009). Beginning with NAFTA, environmental commitments are placed on equal footing with trade commitments through detailed environmental and enforcement mechanisms, such as legally binding obligations and public submission mechanisms. NAFTA includes a side agreement on environmental cooperation, the North American Agreement on Environmental Cooperation (NAAEC). Since NAFTA, subsequent American FTAs included provisions for sustainable development.

The Framework for Integrating Environmental Standards and Trade Agreements passed by the New Zealand Cabinet in 2001 mandates the incorporation of sustainability principles in trade policy negotiations. Other RTAs that did not originally have sustainability provisions have evolved to include them e.g. the EFTA, ASEAN, and the MERCOSUR agreements. Ten years after adoption, MERCOSUR Member States adopted a Framework Agreement on Environment in 2001.

Additionally, most sustainability provisions up to now have been criticised as insufficient due to their unenforceable nature thanks to either the inexistence of dispute settlement mechanisms for resolving conflicts arising in the implementation (or lack thereof) in those provisions or the existence of dispute settlement mechanisms whose decisions are usually non-binding. Moreover, there is often no framework to monitor the performance of the RTA or its contribution to sustainable development (Toubeau, 2015).

As discussed above, whilst the main objectives of trade policy and RTAs are to determine market access conditions and in turn open markets to the flow of goods, services and business opportunities, this does not guarantee sustainable, inclusive development at the country-level. In fact, in recent years, income and wealth inequality has grown at the global level and has grown even more dramatically within most countries. Therefore, targeted action would seem necessary and can be provided by including specific provisions on social, environmental and labour standards, for example, in trade agreements to ensure they are directed at sustainable development. Nonetheless, it is important that sustainability provisions are included in all future trade agreements, as it is not a given that increased trade leads to sustainable development. A 2014 study by the Economic Commission for Latin America and the Caribbean (ECLAC) notes that “international trade does not automatically contribute to inclusive economic development,” and rather inclusive development depends significantly on the quality of both private and public policies that direct and compliment it. This study emphasises the interlink between institution building, economic development and trade opening.

II.2 Sustainable development provisions in RTAs and trade policy frameworks

As highlighted before, RTAs are increasingly going beyond the mere mentioning of sustainability to include detailed sustainability provisions in the main body text, chapters, specific paragraphs or related side agreements. Sustainable development elements are incorporated through provisions for environmental/labour and labour mechanisms; reference to and respect for environmental/labour standards such as the ILO declaration, the Montreal Protocol, etc.; various procedural guarantees; and enforcement and dispute settlement mechanisms for sustainability elements, etc.

Inclusion of sustainability elements in RTAs varies and depends on the specific issues the parties intend to address, such as environmental and marine conservation or labour and human rights protection. Additionally, these provisions are normally included in the body of the RTA or in side agreements such as joint statements by the parties. Environmental provisions have been the most common of sustainability provisions across RTAs and trade policy in broad terms and serve as an example of how other sustainable development provisions can be included in RTAs and trade policy frameworks. In this sense, the Trans-Pacific Partnership (TPP-12)⁷ Agreement addresses the environment in a chapter addressing a wide range of issues related to the trade-environment nexus, such as trade in wildlife, fishery subsidies, trade in environmental goods and services and biodiversity among others. The chapter is enforceable through dispute settlement procedures that include trade sanctions on the part of violators.

⁷ TPP refers to TPP12, which was the configuration at the time of writing the Handbook (thus including the United States of America). The text of the agreement signed by 11 members as the Comprehensive and Progressive TPP has not altered the parts of the agreement relevant for this Handbook.

Box 3 - Dimensions of Sustainability Provisions in Design Frameworks of RTAs

Preambular References: In many RTAs, sustainability provisions, such as commitments to promote social wellbeing, environmental protection, or sustainable development in general, appear in the preamble (often referring to the GATT's Article XX).

References to Multilateral Environmental Agreements (MEAs): Some RTAs often make references to MEAs, such as the Montreal Protocol for the Protection of the Ozone Layer or the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora. Such clauses generally state that the obligations contained in the MEAs shall prevail in case of any 'inconsistency' between the provisions and specific trade obligations set out in certain multilateral and bilateral environmental agreements.⁸ Most RTAs which include this provision provide a specific list of MEAs concerned. Such references often include commitments by the contracting parties to ratify or implement those agreements, and at times, the MEAs are even made an integral part of the RTA, such as in the RTAs signed by the US with Colombia and Korea, *inter alia*.⁹

Trade Adjustment Provisions (safeguards, anti-dumping, countervailing measures, etc.): The majority of RTAs include provisions on safeguards and countervailing measures, aiming to impede unfair trade and avoid any damage to their national economy. However, such provisions normally reiterate the agreement by the parties to abide by the existing provisions of the WTO agreements. Some agreements, such as the China–Korea FTA, include the need to hold consultations between the contracting parties prior to the initiation of the investigation in order to find a mutually acceptable solution.

Commitments to Cooperate on Sustainability Issues: In the Republic of Korea–Colombia Agreement, parties recognise that “cooperation is essential to increase the levels of compliance on environmental and labour matters” and “agree to promote cooperation activities of mutual interest” (in-text citation).

Intellectual Property (IP) and Technology Transfer: The inclusion of Intellectual Property Provisions in RTAs has only been a recent phenomenon. In the Asia-Pacific region, only a few agreements contain IP-related clauses. In terms of technology transfer, the Peru–Korea FTA recognises the importance of technological innovation, as well as the transfer and dissemination of technological information, to the mutual advantage of technology producers and users. It, therefore, states that “the Parties will seek to develop and encourage cooperation programmes, through collaboration in science, technology, and innovation”. The Korea–Vietnam FTA also includes technology transfer as an area to cooperate through the respective IP offices.

Side Agreements: Various RTAs include cooperation commitments on environmental or labour matters through a Memorandum of Understanding (MoU), such as the MoU on Labour and Social Security Cooperation in the China–Chile FTA; the MoU on Labour Cooperation in the Hong Kong, China–China–Chile FTA; MoU on Environmental Cooperation in the China–Chile agreement; or through specific side agreements, such as the North American Agreement on Environmental Cooperation (NAAEC) set up by NAFTA.

Inclusion of a Whole Chapter on Environment, Labour or Sustainable Development: Some recent RTAs include a dedicated chapter covering all or specific sustainability issues where the parties specify their commitments to sustainable development. Examples include recent EU FTAs, such as the EU–Republic of Korea FTA; the Republic of Korea–Colombia FTA; the Hong Kong, China–China–Chile FTA; and the agreement between Viet Nam and the Eurasian Economic Union (EEU). Issues covered range from fisheries; protection of the ozone layer; conservation of biodiversity; scientific and information; forestry, aquaculture; timber; etc.

Obligations to Uphold Environmental or Labour Laws: Some RTAs include clauses that prevent the contracting parties from trying to increase trade and investment flows by weakening domestic environmental laws and regulations. Some examples include the Republic of Korea–Colombia FTA, the China–Chile FTA, EU FTAs and most recent FTAs.

Dispute Settlement: Recent RTAs also provide for dispute settlement mechanisms that allow parties to

⁸ OECD (2017). Assessing implementation of environmental provisions in regional trade agreements, Joint Working Party on Trade and Environment, Trade and Agriculture Directorate, COM/TAD/ENV/JWPTE(2016)4/FINAL.

⁹ See, for example, Article 18.2 and Annex 18.2 of the US–Colombia FTA.

request for consultations to solve matters arising out of the implementation of sustainable development obligations, for example when a contracting party tries to increase trade by weakening their domestic environmental laws or regulations.

Procedural Guarantees: Most RTAs contain provisions that require Parties to ensure that persons with recognised interest under the laws in matter have appropriate access to judicial, quasi-judicial, or administrative proceedings for the enforcement of the parties' environmental and labour laws in a fair, equitable, transparent manner. Such RTAs also provide for appropriate administrative and procedural protections in accordance with its law. Examples include the US–Australia FTA and the Republic of Korea–Colombia FTA.

Enforcement Mechanisms: Certain RTAs contain institutional arrangements for implementing their provisions. Examples include the Joint Committee on Trade and Sustainable Development, which is tasked with the implementation of sustainable development chapters in EU RTAs; the Commission for Environmental Cooperation (CEC), which was set up under NAFTA's NAAEC; and the Council on Sustainable Development in the Colombia–Republic of Korea FTA. In the Hong Kong, China–China–Chile FTA, the “Parties agree to establish a collaborative framework” and designate contact points to facilitate communication for the purposes of the Chapter on Environment.

General Exceptions: Nearly all RTAs include a general exception clause modelled on the GATT's Art. XX, specifying that actions by contracting parties “necessary to protect human, animal or plant life or health” are not inconsistent with the trade-related obligations of the treaty. Other RTAs include specific environmental exceptions in certain chapters, such as the investment chapter. In the ASEAN–Australia–New Zealand FTA, “each Party retains all authority to interpret its laws, regulations and administrative provisions pursuant to the general exceptions”.

Transparency and Public Participation: Recent RTAs require the contracting parties to provide public access to relevant sustainability issues, such as environmental policies and labour laws, etc.

Incorporation of the Right to Regulate Environmental Matters: With this set of provisions, the contracting parties want to preserve their right to go beyond the existing level of environmental protection by introducing new, more far-reaching environmental regulations.

Cooperation: Cooperation provisions usually aim to ensure that the agreement is fully implemented by all parties and that there is a communication between them on the impact of the agreement. Usually these chapters also highlight areas where deeper cooperation is expected, such as in customs, environment, IP, etc. In some RTAs, a separate cooperation or development chapter exists, which suggests areas for cooperation on a best endeavour basis.

Source: Authors; Draper, Khumalo and Tigere (2017); Axel and others (2017); and RTA texts

The level of development of partner states involved impacts whether an agreement will include sustainability provisions and where the provision is placed in the agreement, as a preambular reference, general exceptions or in the body. From this perspective, one study suggests that while developing and emerging countries are reluctant to include sustainability elements in South–South RTAs, they are more likely to agree to sustainability issues in preferential agreements with industrialised partners (Draper, Khumalo and Tigere, 2017). One reason evoked may be attributed to the benefits gained from RTAs with developed countries which often outweigh those from RTAs between developing countries.

RTAs amongst industrialised countries, such as Canada, the EU, Japan and the United States, include provisions on environmental cooperation through articles that reaffirm the party's commitments to international standards, such as environmental protection and respect to human and labour rights. For example, common reference is often made to the ILO's Declaration on Fundamental Principles and

Rights at Work and Decent Work Agenda (Engen, 2017). To ensure that partners fulfil the treaties' sustainability objectives, RTAs incorporate both enforcement mechanisms and dispute settlement mechanisms. Enforcement mechanisms oblige partner states to enforce sustainable development provisions in a transparent manner that involves information sharing and public participation. Established within most agreements, dispute settlement mechanisms are incorporated in RTAs to make their enforceability binding. However, with the exception of US trade agreements, sustainable development provisions are excluded from the general dispute settlement frameworks (see chapter III).

II.3 Similarities and differences of sustainability provisions across RTAs

While the coverage of sustainability provisions in RTAs differs depending on the needs and commitment of the contracting parties, certain similarities have been observed across RTA coverage regarding social standards, human rights and environmental sustainability.

In this sense, whilst nearly all RTAs recently concluded or under negotiation have provisions for environmental sustainability, the depth of the provisions differs. Tables 2 shows similarities and differences on how different RTAs cover social rights elements, their enforceability and dispute settlement mechanisms (if any). As Table 3 shows, homogeneity exists in recognition and coverage of international environmental standards and norms as adopted. For example, while the TPP-12 agreement focuses on the protection of the ozone layer, maritime environment and biodiversity, CETA is mainly concerned with protection of aquaculture and forests. Conservation and protection of fisheries is however important for both agreements.

Table 2 - Trends in Provision of Social Sustainability Standards in RTAs

	Main Social Provisions									Incorporation				Enforcement through Dispute Settlement*	International Standards	
	Labour Rights	Human Rights*	Transparency	Political Participation	Due Process	Privacy Rights	Preservation of Traditional Knowledge	Promotion of Public Welfare	Social Security	Preamble	General provisions	Chapter on labour rights	Chapter on SD			Side Agreements / MoU
US	•		•	•	•					•		•		•		ILO
EU	•	•	•	•	•	•					•	•				ILO
ASEAN	•		•		•					•	•					ILO
Australia	•		•	•	•						•					ILO
Japan	•		•	•	•	•					•	•				ILO
Korea, Rep. of	•		•		•		•			•	•	•				ILO
China	•		•		•			•	•	•	•			•		ILO
Viet Nam	•		•		•					•	•		•			ILO

Note: A dot represents the fact that a reference is made in at least one agreement of that country.

Source: Author interpretation of RTA texts; EU, US & Japan interpretations from Draper, Khumalo and Tigere (2017)

Table 3 - Trends in Provision of Environmental Sustainability Standards in RTAs

	Main Environmental Provisions										Incorporation				Enforcement through Dispute Settlement*	International Standards		
	Ozone Layer	Fisheries & aquaculture	Environmental Protection & Conservation	Marine Environ.	Endangered species	Sustainable use of resources	Promotion of SD	Cooperation	Biodiversity & Biotechnology	Forest & Mining	Scientific & technical information	Preamble	General provisions	Chapter on Environment			Chapter on SD	
US	•	•	•	•	•				•			•		•		•	MEAs	
EU		•	•							•	•				•		•	MEAs
ASEAN			•						•	•			•					MEAs
Australia	•		•	•	•				•			•		•				MEAs
Japan		•	•		•				•	•		•	•					MEAs
Korea, Rep. of			•			•						•	•		•			MEAs
China			•				•	•				•	•					MEAs
Viet Nam			•			•						•	•		•			MEAs

Note: A dot represents the fact that a reference is made in at least one agreement of that country.

Source: Author interpretation of RTA texts; EU, US & Japan interpretations from Draper, Khumalo and Tigere (2017)

II.4 Sustainable development in plurilateral initiatives

Plurilateral agreements present other important avenues for addressing sustainable development within and outside the WTO. Plurilateral agreements are negotiated voluntarily by WTO Members as a platform for members interested in further liberalisation of contentious or controversial issues under which a multilateral agreement is not feasible in the short-term.

The plurilateral Information Technology Agreements (ITA I and ITA II), covering information and communications technology (ICT), is an example directly related to the SDGs. Successful completion and adoption of ITA II directly supports the achievement of universal and affordable access to the internet by 2020—a target of *Goal 9: Building resilient infrastructure, promoting sustainable industrialisation and fostering innovation*. Under the ITAs, partner countries grant duty-free status for 217 electronic products including computers, semiconductors, semiconductor manufacturing and test equipment, telecommunication equipment, software and scientific equipment. The potential of the ITAs to diffuse innovation and much needed ICT products to the world depends on the domestic context of the states involved and their economic and political structures (institutions and policies, market size and sophistication and firm level managerial and technological capabilities). Reducing the price of ICT goods increases the availability of products and promotes wider use of new technologies, such as mobile phones in developing countries. Subsequently, increased access to the internet and the growth of the digital economy would increase opportunities for trade (WTO, 2017) and related economic and social benefits, such as social reforms, education and employment.

As with other trade agreements including sustainable development provisions, ITA was a project of developed countries. Initial negotiations were spearheaded by the United States, who together with other developed countries designed its agenda. With the exception of Indonesia and Turkey as the only developing countries, initial signatories were mainly developed countries. ITA became effective in April 1997 after adoption by 29 WTO member states, and it was recently updated. ITA provides MFN treatment to all WTO members, including non-signatories. As of 2017, ITA membership comprised 78 signatory countries, including 35 developing countries which are significant players in the electronics industry, such as China, Taiwan Province of China, Malaysia, Thailand and Viet Nam, as well as rising players, such as Egypt, Indonesia, Philippines and Turkey.

A significant plurilateral initiative is the Environmental Goods Agreement (EGA), launched by 14 economies,¹⁰ with the main objective of liberalising trade in environmental goods. The initiative, currently under negotiation, is an example of how to link trade policy and environment and how to positively contribute to a sustainable eco-system in a “win-win” situation by boosting global trade in green products and supporting green industry globally. It aims to become a foundational agreement for future inclusion of additional products related to exports of environmental products and to tackle related non-tariff barriers. It is expected that the agreement, once finalised, will be applied to all WTO members using the MFN Principle and gradually added to the package of WTO agreements.

Another important plurilateral initiative is the Trade in Services Agreement (TiSA), launched in 2013 by a group of WTO members named the *Really Good Friends of Services*. TiSA is, as of 2017, the biggest

¹⁰ Including Australia, Canada, China, Costa Rica, the European Union, Iceland, Israel, Japan, Republic of Korea, New Zealand, Norway, Switzerland, Singapore, Turkey, the United States. Hong Kong, China and Taiwan Province of China.

plurilateral trade agreement under discussion outside the WTO with participation of 23 geographically diverse countries. TiSA is designed to boost trade in services liberalisation beyond the outdated GATS provisions. The multilateral adoption of TiSA could unlock huge economic potential as the global economy becomes more service-oriented. In an in-depth analysis of TiSA, the OECD estimated that services accounted for 68 per cent of global GDP, 75 per cent of production and 80 per cent of employment of advanced economies. It further estimated that services represented between 40 per cent and 70 per cent of both production and employment (EU, 2015). However, despite the wide recognition of the present and future role of services in growth, employment and inclusive development, significant barriers exist to the free movement of services. Behind-the-border barriers are particularly high in emerging and least developed economies, where trade in services can play a significant role in sustainable development. In most emerging markets, significant shares of the workforce derive their income from the services sector, or around 33 per cent in India and China for example (in-text citation). The World Bank notes that services contribute more to poverty reduction than agricultural or manufacturing sectors (EU, 2015). Hence, restrictive policies not only reduce imports and limit access to domestic markets, but also impair global competitiveness of domestic companies. Other examples of addressing sustainable development provisions include the adoption of science-based international guidelines, such as the ones provided under the Montreal Protocol (UNCTAD, 2015).

Annex to Chapter II. Do unilateral preferential schemes offer more sustainability elements than RTAs?

The most ambitious unilateral preferential scheme with a wide scope for sustainable development is the EU's GSP+ scheme. GSP+ is a trade policy instrument through which the EU encourages partner developing countries to comply with core international standards. Whilst the standard GSP, with an average tariff of 4.21 per cent, grants duty-free market access to developing countries on about 66 per cent of the EU's tariff lines, GSP+ confers significant additional advantages if developing countries commit to effectively implement core international human rights, labour rights, environmental protection and good governance conventions as adopted under various treaties (EC, 2016). In this sense, the average tariff under the GSP+ scheme is 0.81 per cent, with 98 per cent of the tariff lines being duty-free.

Furthermore, beneficiaries further commit to cooperate with both the monitoring procedures developed under those conventions, in addition to GSP+ monitoring procedures. In general, for admission to GSP+, a country must (1) have ratified all 27 core international conventions listed in Annex VIII of the GSP Regulation (including 7 UN conventions on human rights, 8 ILO conventions on labour rights, 8 conventions on the protection of the environment, and 4 conventions on good governance principles); (2) have no reservations prohibited under those conventions, or inconsistent with the object and purpose of the conventions and (3) be in good standing as determined by the most recent monitoring reports of any of the conventions. Continuous eligibility is based on a binding commitment to maintain both ratification and effective implementation of the conventions.

However, unilateral preferential access appears to contribute to sustainable development in certain areas, without impacting in others. In Sri Lanka, there was scepticism on the sustainable development impacts of the GSP+. Sarvanathan and Priyanga (2008) argued that GSP+ neither contributed to "poverty reduction" nor "sustainable development" in Sri Lanka at both the macro and micro levels based on the conditions of workers and the wellbeing of their families during the first GSP+ period (mid-2005-2007) (see Box 4).

Box 4 - Sri Lanka under GSP+

Sri Lanka was among the fourteen beneficiaries of the first phase of GSP+ (2006-2008). The results show that under GSP+ Sri Lankan exports were diverted from other markets to the EU. In the apparel sector, the EU's share in Sri Lanka's apparel increased, while the US's share (previously the main export destination during GSP) was reduced, especially due to the duty-free access and tariff concessions granted by the EU. However, growth in apparel exports remained lower than the average growth in exports to the EU. This reveals that while preferential market access such as GSP+ offer more sustainability elements, overdependence on trade concessions might not always contribute to overall sustainable development in broad terms. Besides, within the same period (2006 and 2007), workers in the apparel industry received wages only marginally higher than threshold wages of the poor in 2006, and despite an increase in both EU exports and statutory minimum wages, apparel workers were receiving lower wages, which forced them to work overtime. Moreover, compulsory overnight and overtime work (regarded by ILO as forced labour) resulted in occupational health hazards to female workers who performed them. These workers were found to have greater prevalence of anaemia and were nutritionally worse off than workers in other industries. Given that female workers accounted for nearly two-thirds of the total labour force in the apparel industry, their dire health situation

presented a “sustainability crisis,” as it would not only impact their children but would also jeopardise the future labour force and generations of society.

In summary, trade diversion under GSP+, violations of various ILO conventions (whose key acceptance and implementation underpin GSP+ eligibility) and a general absence of a “better life” among workers and their families during the GSP+ period led the authors to conclude that in addition to its failure to contribute to sustainable development or poverty reduction, “the fact that [the] condition of workers in large and medium factories is worse than that in small factories is unacceptable, because presumably the former are the ones that are greater beneficiaries of the GSP+ and make higher profits.”

Source: Sarvananthan, M. and P. Sanjeevanie (2008)

The depth of coverage of sustainability elements in preferential trade arrangements granting concessions to developing countries is attributed to the bargaining power of their proponents who offer valuable market access to least developed and developing countries in return. In both GSP+ and AGOA, sustainability elements ensured that partner countries do not simply assume obligations, but rather benefit from opportunities that may outweigh certain challenges related to implementation of sustainable development obligations that come with market access. However, incorporating sustainable development standards in preferential arrangements is not without limitations and could even harm their achievement. Concerns have been raised that least developed and developing countries could be forced to prematurely adopt high and “unsustainable” standards beyond their implementation capacity and that would render them less competitive to the preference granting developed country, such as the need to implement rigid labour regulations that represent a comparative advantage for most developing countries.

As demonstrated in the Sri Lanka case, the mere inclusion of provisions in unilateral preferential schemes does not guarantee their implementation. Despite stringent GSP+ obligations and double monitoring mechanisms, Sri Lanka failed to implement its sustainability obligations. The European Commission (EC) acknowledged this in a 2017 press release announcing the reinstatement of Sri Lanka to GSP+ (which had been withdrawn in 2010 in response to human rights violations). In the statement, the Commission observed that the granting of the GSP+ “does not necessarily mean that the beneficiary country is implementing the 27 international conventions in a fully satisfactory way” (EC, 2017) but only offers an incentive to access the EU market in return for their progressive implementation. The re-introduction of Sri Lanka to GSP+ status in May 2017 followed the implementation of reforms in governance and respect for human rights, initiated at the beginning of 2015. In general, due to their strong enforcement mechanisms, unilateral preferences offer more sustainability elements and serve as important frameworks for getting reluctant partner states to commit to sustainable development.

III. Dispute settlement and enforcement of sustainability provisions in RTAs

III.1 Legal basis and language used in different RTAs

As shown above, the inclusion of sustainable development provisions has been, recently, a common denominator across many FTAs, mainly with developed countries.¹¹ However, the majority of these provisions, especially those related to hard-core sustainable development provisions, such as those tackling human rights, environment and labour, are mostly seen as ineffective due to the lack of possible enforcement.^{12, 13} In this sense, it is common understanding across negotiators that legally binding provisions are expected to be more effective than clauses drafted in non-binding language, as the former reaffirms the political will of the parties to be held accountable by such obligations, whilst the latter usually merely provides routes enabling dialogue.

Each country has a particular approach towards the enforcement of sustainable development provisions in their FTAs. In the specific case of environmental clauses, the US, Canada, and the EU represent a blend of binding obligations and non-binding principles of intent and cooperation. Particularly, most FTAs signed by the US and the EU contain the obligation of the contracting parties to adopt “high levels of environment protection,” an obligation that is often qualified by the recognition of the parties’ right to adopt their “own levels of environmental protection and environment development policies” (Anuradha, 2011).

Regarding the location of sustainability-related provisions in FTAs, the US includes specific chapters for tackling environmental and labour measures, while the EU includes a separate and dedicated sustainable development chapter. The practice in the Asia-Pacific proves to differ from this pattern.

Looking at the United States’ examples for labour provisions¹⁴

Currently, the US is one of the few countries inserting legally binding environmental and labour provisions. In NAFTA, labour provisions are included in a side agreement called the “North American Agreement on Labor Cooperation” (NAALC). Under this agreement, countries agree to enforce their own labour laws and standards and are subject to enforcement through a specific mechanism,¹⁵ placing monetary enforcement assessments limits and foreseeing the suspension of benefits. A similar

¹¹ See Section II.2

¹² As indicated by Campling, L., Harrison, J., Richardson, B., and Smith, A. (2016) quoting a reference from the *Seattle to Brussels Network*, “without credible enforcement mechanisms and the threat of sanctions, any measures to protect labour will be largely ineffectual and thus no more than rhetorical concessions.”

¹³ This situation does not mean that FTAs are not being implemented, but rather that the treaty’s provisions do not create a legal obligation. As highlighted by Bodansky (2015), the issue of an instrument’s legal form (i.e., the FTA) is distinct from the issue of whether particular provisions create legal obligations. The first one requires examining the instrument as a whole and depends on whether the instrument is in writing and is intended to be governed by international law, while the second depends on the language of the particular provision in question (for example, whether it is phrased as a “shall” or a “should”).

¹⁴ This section draws heavily from Bolle, M. J. (2016), *Overview of Labor Enforcement Issues in Free Trade Agreements*, Congressional Research Service, Washington D.C.

¹⁵ Article 29 of NAALC: “. . . [The Council shall convene an arbitral panel] where the alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards is: (a) trade-related; and (b) covered by mutually recognized labour laws.”

situation is found with the trade agreements between the US and a wide range of nations.¹⁶ In such agreements, and despite the labour provisions being embodied inside the main trade agreement, only one labour provision is enforceable. This provision states that each country “shall not fail to effectively enforce its labour laws [. . .] in a manner affecting trade between the Parties.” Unlike NAFTA, the procedures for labour and commercial disputes are very similar. However, labour disputes are subject to monetary penalties limits. Suspension of benefits, whilst available, is a “last recourse” option.

The US–Peru FTA represented a major change in the US’ practice, reflecting the bipartisan agreement reached on May 10, 2007, and improving the inclusion of labour provisions in FTAs. The aforementioned bipartisan agreement requires the inclusion of four main elements in all American trade agreements¹⁷, namely:

- (1) Fully enforceable commitment that Parties to free trade agreements would adopt and maintain in their laws and practices the ILO Declaration;
- (2) Fully enforceable commitment prohibiting FTA countries from lowering their labour standards;
- (3) Limitations on “prosecutorial” and “enforcement” discretion (i.e., countries cannot argue lack of resources or enforcement prioritization to defend failure to enforce labour laws); and
- (4) The same dispute settlement mechanisms or penalties available for other FTA obligations.

Subsequent agreements, such as the aforementioned US–Peru FTA, the US–Colombia FTA, US–Panama FTA and the US–Republic of Korea FTA, amongst others, have adopted such stance of enforceability:

Wording pre-2007	Wording post-2007
“shall strive to ensure [high labour standards] in its domestic law”	“shall adopt and maintain in its statutes and regulations, and practices thereunder”

The important difference is that rather than striving to have high standards in the law, the Parties are required to do so. In terms of sanctions, restrictions on penalties have been eliminated. “The complaining Party can remove benefits, or the offending Party can choose to pay a fine into a fund that will be used to bring the Party into compliance” (Dewan and Ronconi, 2014).

The European Union’s hard and soft approach to sustainable development

The EU is another main proponent of inserting sustainable development provisions within its FTAs. Similar to the US, the EU’s approach to sustainable development has evolved over time. In this sense, early EU trade agreements lacked references to labour standards issues and to human rights (Ebert, 2016, and Bartels, 2012).

However, the EU’s current approach is characterized by including two main components. A “hard” approach, including human rights clauses and allowing the suspensions of the agreement in the case that one of the parties violates human right of democratic principles, seems to indicate a “red line” for the EU with respect to trading under preferential rules in such circumstances. A “soft” approach,

¹⁶ Namely, Australia, Bahrain, Chile, Morocco, Oman, Singapore and the six contracting parties of the CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua).

¹⁷ See U.S. Government, “A New Trade Policy for America”, May 10, 2007. Congressional-executive branch agreement.

which includes labour and environment, are dealt mainly through cooperation, and appear to be less offensive to the EU, and can be remedied through cooperation. (Bartels, 2008).

The main core of the EU's human rights provisions is formed by a standard "essential elements" provision, which usually adopts the following form: "Respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of both Parties and constitutes an essential element of this Agreement"¹⁸ (Bartels, 2008, and Bartels, 2012). Similarly, EU agreements include the obligation to adopt any measure necessary to fulfil the parties' obligations under the agreement.

In terms of labour provisions, the EU started in the early 2000s to include certain non-mandatory requirements, mainly with reference to the ILO's fundamental Conventions. By contrast, more recent EU trade agreements incorporate comprehensive labour provisions, including obligations concerning the adherence to international instruments and the maintenance and enforcement of domestic labour legislation.

Countries in Asia and the Pacific

The analysis of sustainable development provisions in the Asia-Pacific region shows that the overwhelming majority of these clauses are mainly best endeavour (i.e., non-binding commitments). This is due to the fact that most sustainability-related provisions are phrased using terms like "endeavour, strive, maintain, or combat," which constitute non-binding commitments to the parties of the agreement.

One of the examples of such loose language is contained in many FTAs. For example, the in the 2006 Japan-Philippines FTA, Article 102 on environmental measures, specifies that "each Party *should* not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion in its Area of investments by investors of the other Party" (emphasis added). The inclusion of the verb "should" denotes a looser commitment than in the alternative (i.e., by using "shall"). A similar language is contained in Article 103, on investment and labour, which specifies that "each Party shall *strive to ensure* that it does not waive or otherwise derogate from or offer to waive or otherwise derogate" (emphasis added).

The majority of countries in Asia and the Pacific do not currently embody sustainability-related provisions in their intra-regional trade agreements. China, for example, follows the US's former practice of addressing sustainability concerns through specific side agreements. In this sense, Article 108 of the 2005 Chile-China FTA establishes that "[the] Parties shall enhance their communication and cooperation on labour, social security and environment through both the Memorandum of Understanding on labour and Social Security Cooperation, and the Environmental Cooperation Agreement between the Parties." Similarly, New Zealand's practice shows that the country usually addresses environmental and labour concerns in side agreements on cooperation, characterized by non-binding language. In this sense, New Zealand and Philippines signed a Memorandum of Agreement on Environment Cooperation within the framework of the ASEAN-Australia-New Zealand

¹⁸ Article 355(1) of the EU-Central America Association Agreement.

FTA. A similar approach has been adopted by Japan, focusing on cooperation principles to achieve the intended environmental goals, such as in the Indonesia–Japan and the Japan–Thailand FTAs, although Japan has recently started incorporating environmental provisions in its FTAs, mainly in terms of cooperation (e.g., ASEAN–Japan FTA). Australia, so far, is the only major developed country in the region arguing that sustainable development issues should be dealt separately from trade agreements (e.g., Australia–Thailand FTA).

Similarly, the ASEAN FTA (AFTA) does not make any reference to labour or environment. ASEAN countries have concluded an agreement that provides for work on transboundary haze, nature conservation and biodiversity, the coastal and marine environment, global environmental issues and cross-cutting environmental initiatives in stand-alone agreements, rather in the framework of a trade agreement. As with Australia, ASEAN has dealt with sustainable development issues separately from trade agreements.

Finally, one of the most recently concluded regional agreements, the Pacific Agreement on Closer Economic Relations (PACER Plus), does not tackle sustainability-related areas. This is also a reflection of the fact that some countries, such as Australia, are reluctant to link trade agreements and core labour and environmental standards (Cuyvers, 2014). Singapore is also reluctant of including labour and environmental standards in its FTAs.

III.2 The mechanisms for enforcement in current RTAs

In addition to whether the sustainable development provisions create a legal obligation, it is necessary to have a mechanism to enforce such an obligation. The three main ways in which FTAs address any possible conflict arising from the implementation of sustainable development issues are the following ones:

- Binding dispute resolution with remedies in the form of compensation and possible suspensions of concessions;
- Dispute resolution, with the Panel’s final report being of recommendatory nature (i.e., not mandatory implementation); and
- Institutional set up to address any possible dispute (i.e., state-state consultations and dialogue) (Anuradha, 2011)¹⁹

In order to analyse the enforceability of sustainability-related provisions in different Asia-Pacific RTAs, a scoring mechanism was designed, as detailed in Table 4.

¹⁹ For further information on the type of dispute settlement mechanisms used in RTAs, please see: Chase, C., Yanovich, A., Crawford, J.A., and Ugaz, P. (2013). Mapping of Dispute Settlement Mechanisms in Regional Trade Agreements – Innovative or Variations on a Theme?, WTO Staff Working Paper ERSD-2013-07

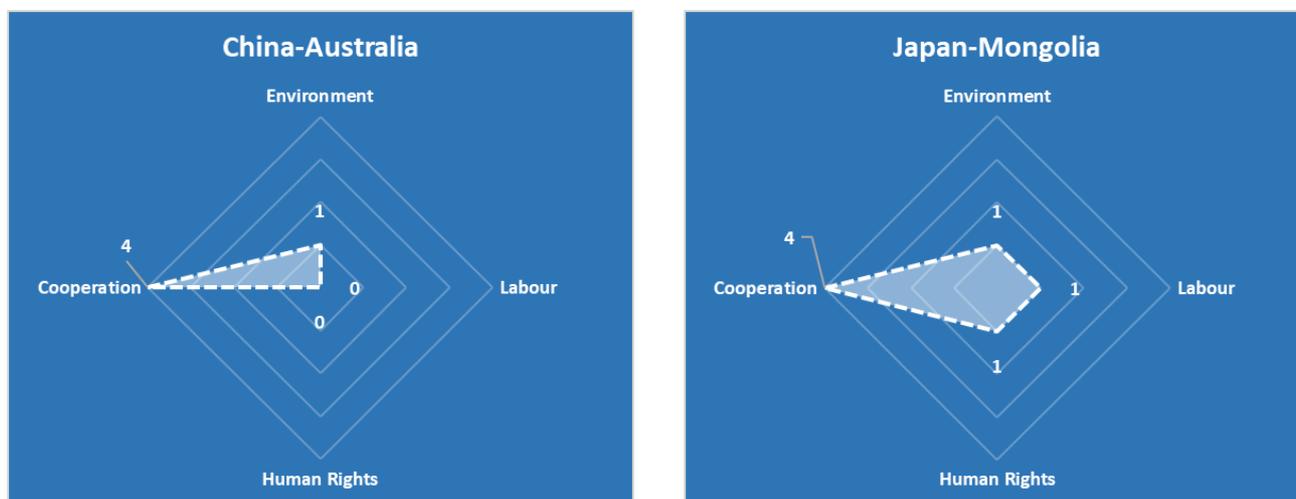
Table 4 - Enforceability Scale for Sustainable Development Provisions in RTAs

Scale	Meaning
0	No reference is made to the agreement
1	Vague reference is made, mainly in terms of cooperation
2	Topic addressed by the agreement, but mainly in non-binding terms, and it is excluded from the DS
3	Non-legally binding language, subject to chapter-specific dispute settlement, but the panel's decision is non-binding
4	Legally binding provisions, subject to the dispute settlement and sanctions are foreseen

Additionally, when analysing the content of each RTA, due to the vast scope of the term “sustainability,” we look at the enforceability of the core sustainable development provisions, namely: (1) environment, (2) labour, (3) human rights, and (4) cooperation and technical assistance in the aforementioned areas. Due to the nature of the fourth category, cooperation, the score is limited into binary terms, that is whether cooperation and/or technical assistance provisions are included in the text (for a score of 4) or not (for a score of 0).

Overall, as mentioned above, the presence of environmental, labour and human rights provisions in intra-Asia-Pacific FTAs is scarce. In this sense, neither the ATIGA, the AFAS, or the AANZFTA make references to these terms. The China–Australia FTA (CHAFTA) makes a vague reference to environment, whilst the Japan–Mongolia FTA addresses such areas, but mainly in terms of cooperation.

Figure 3 - China-Australia FTA and Japan-Mongolia EPA Enforceability of Sustainability Provisions

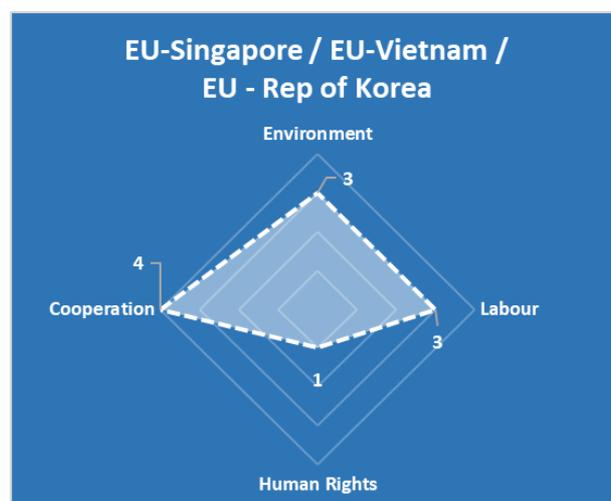


Source: Author’s calculations

The EUVFTA follows the traditional EU practice. In this sense, the sustainable development chapter does not give the parties the right of unilateral enforcement of the sustainable development obligations, nor does it allow to resort to the normal dispute settlement procedures established under the agreements (Bartels, 2012). As highlighted in Article 16 of Chapter 15, any discrepancy arising from the implementation and/or violation of the FTA by one of the parties is explicitly excluded from being addressed by the dispute settlement mechanism. In this sense, disputes arising from the Trade and Sustainable Development chapter must be addressed through government consultation, making

“every attempt to arrive a mutually satisfactory resolution of the matter” (in-text citation). In case that the dispute cannot be solved through consultations, Article 17 foresees the creation of an ad hoc Panel in charge of issuing recommendations to solve the matter at issue. However, the enforceability of such recommendations is vague, as no reference is made to the nature and/or enforceability of such recommendations. The Article only provides for the obligation of the parties to “discuss appropriate actions or measures to be implemented taking into account the Panel’s final report and the recommendations therein”. In this sense, no outcome is required from such discussions, therefore limiting the enforceability of the provisions contained in this chapter. The same provision appears in the EU–Republic of Korea FTA, in which the Panel’s report goes to the parties, which “shall make their best efforts to accommodate advice or recommendations of the Panel of Experts on the implementation of this Chapter”²⁰ (Bartels, 2012).

Figure 4 - EU’s Enforceability of Sustainability Provisions in Selected FTAs

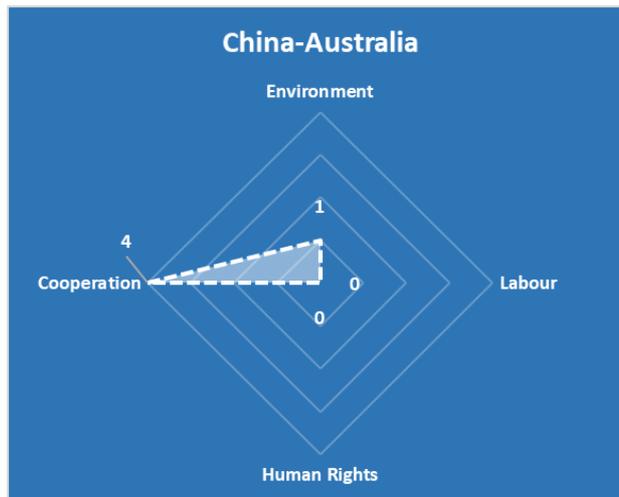


Source: Author’s calculations

Similarly, in the case of the TPP-12, parties have no obligations to enforce any environmental commitments under the Environment Chapter. Whilst the dispute settlement mechanism consists of a multi-layered process, including a panel process under Article 28.5, the panel report is merely recommendatory in value. Specifically, on the basis of the reports, parties “shall make every attempt” to reach a “mutually satisfactory resolution” (in-text citation). Therefore, even if recourse is agreed to, a requesting party may have to agree on a compromise with a serious environmental violator (Leal-Arcas, 2015). Nevertheless, the labour provisions are fully enforceable under the TPP-12’s dispute settlement mechanism.

²⁰ As in EU–Republic of Korea FTA (2011), Article 13.15 (2).

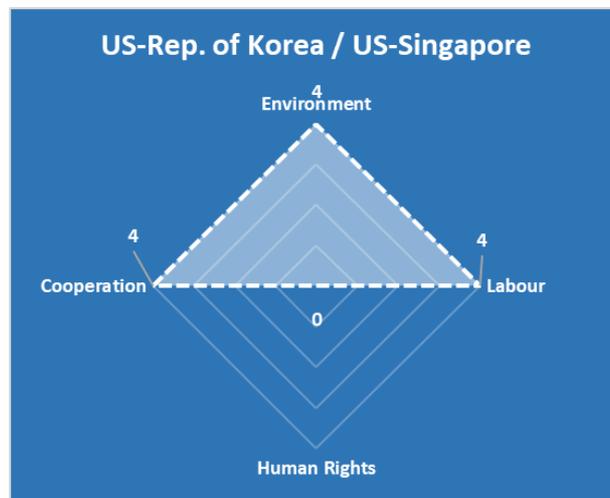
Figure 5 - Trans-Pacific Partnership Enforceability of Sustainability Provisions



Note: TPP 12 text considered
Source: Author's calculations

In the post-2007 US FTAs, dispute settlement applies to all obligations in the agreement's labour and environmental chapters instead of only domestic labour or environmental law enforcement obligations (KORUS FTA). Additionally, US FTAs allow that in case a party does not comply with the Panel's report, the prevailing party can impose trade sanctions.²¹

Figure 6 - US-Republic of Korea/ US-Singapore FTA Enforceability of Sustainability Provisions



Source: Author's calculations

Looking at unilaterally granted preferences, such as GSP, it is worth noting that they also have an enforcement mechanism, which can lead to the suspension of concessions. As highlighted by Portela and Orbie (2014), this procedure allows any EU member, including its citizens and companies, to bring to the attention of the European Commission possible violations of the GSP. The European Commission is then empowered to start an investigation, which can last over a year. If the

²¹ The changes stem from a bipartisan understanding on trade policy between congressional leaders and the George W. Bush Administration that finalized on May 10, 2007. The same approach to labour and environmental disputes is found in FTAs with Colombia and Panama. See Grimmett, J. J. (2012), Dispute Settlement in the U.S.-South Korea Free Trade Agreement (KORUS FTA), Congressional Research Service, Washington.

investigation concludes that the withdrawal is advisable, a proposal is then submitted to the European Council, which will decide on the suspension by a qualified majority. The authors further highlight that “[decisions] to withdraw trade preferences should take into account ‘available assessments, comments, decisions, recommendations, and conclusions of the relevant supervisory bodies’ including the ILO. After the suspension has been decided upon, the beneficiary is given another six months to rectify the breach or to show its commitment to do so before the suspension takes effect” (Portela and Orbie, 2014).

IV. Pathways for negotiating sustainability provisions in RTAs

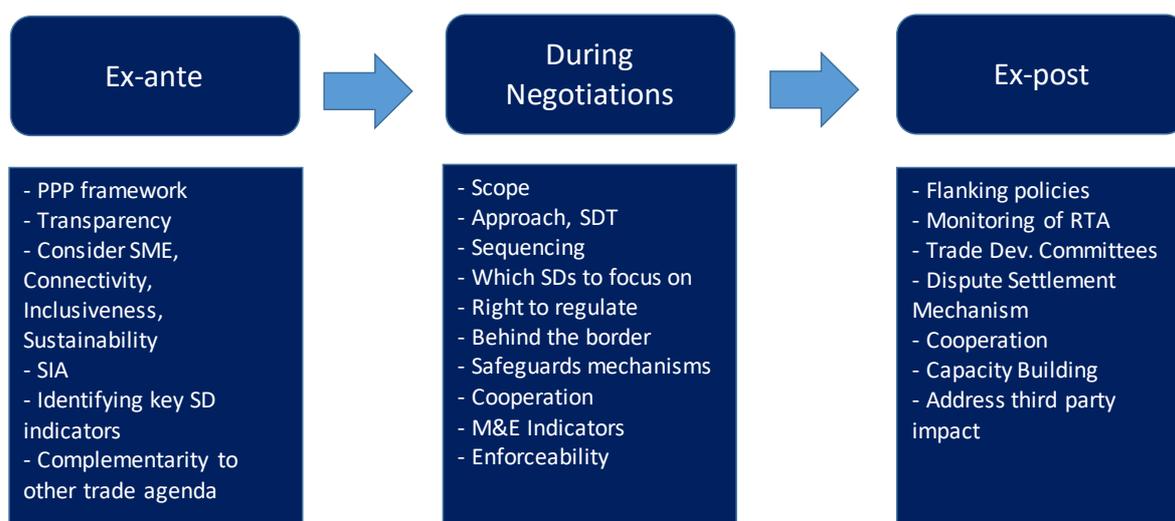
IV.1 Introduction

As highlighted in earlier chapters, the nexus between trade, economic growth and sustainability is not always self-fulfilling and often requires careful shaping of the liberalisation agenda by, for example, fully integrating sustainability into a regional trade agreement. Most importantly, the Handbook focuses on:

- 1) the need to better articulate trade and investment policies,
- 2) improve preparation of trade negotiations,
- 3) strengthen the participation of individual countries and strengthen the coordination and coherence of the group of countries engaged in negotiations, and
- 4) improve the monitoring of implementation of commitments to ensure that the agreements will deliver the results which correspond to the core principles of the sustainable development goals as presented in Chapter I.

Developing countries are not a homogenous group. Some have had positive experience in WTO participation and in negotiating different RTAs, while some others have signed only a handful of RTAs and are either negotiating accession or are recently accessed members (RAMs) of the WTO. The latter group of countries will clearly need to gauge their limited experience and resources before engaging in negotiations or making adequate preparations for the negotiations. The breadth of experience and capacity requires a different approach by different countries. However, the key dimensions to be considered at every step by all countries is illustrated in figure 7.

Figure 7 - Steps to an RTA and the Considerations for Each Step



This chapter focuses on the way forward in preparing for negotiations, in conducting negotiations and in implementing RTAs. It starts by introducing key cross-cutting issues to consider throughout the process.

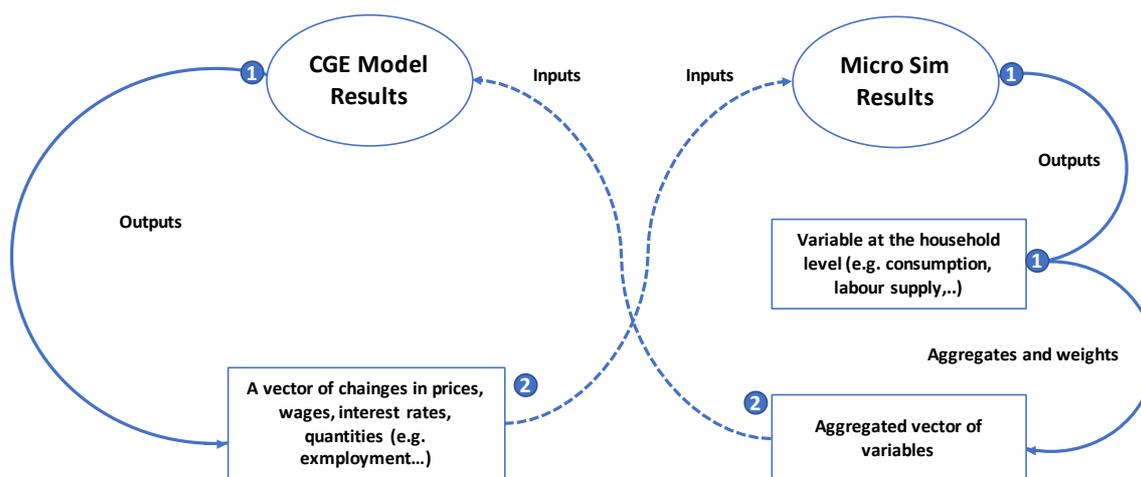
IV.2 Ex-ante process

A) Consideration of social, environmental and cross-cutting issues

Equity and poverty reduction

For the analysis of the impact of an RTA (or any trade policy reforms) on households (and hence to gain insights into the impact of RTAs on different segments of the society), a combination of microsimulation (MS) and computable general equilibrium (CGE) models are widely used. While CGE models consider market interdependencies and facilitate simulating behavioural responses and adjustments across markets and countries, microsimulation models consider the household side of the economy, which allows for more disaggregation and heterogeneity and a much more detailed mapping of the pass-through effects of policy changes on different segments of society. The combination of these two model types are complementary with each model results feeding into the other until an equilibrium point is reached (Peichi, 2008). Technical preparations to the negotiations require assessing the potential impact of the FTA using, in part, such modelling techniques. The modelling approach is illustrated in figure 8.

Figure 8 - CGE and Micro Simulation Combinations



Source: Adapted from Baker, P., Vanzetti, D. and P. L. Huong, *et al* (2017). Sustainable Impact Assessment EU–Viet Nam FTA. MUTRAP. Sept.

Note: Steps 1 and 2 are repeated over many iterations until convergence is reached at the aggregate variable level in the two models.

Another important dimension for inclusiveness is the degree of commitments made in RTAs that can facilitate access to credit, inclusiveness of MSMEs and fostering the uptake of new technologies (Meliado, 2017). Commitments in the field of trade in services can dramatically promote such accessibility, improve access to new technologies from cloud computing to analytics and provide new channels for exports, such as e-commerce. The recognition that since cross-border delivery of services is becoming an important issue, RTAs have to also introduce disciplines in e-commerce, hence the increasing inclusion of chapters on e-commerce into bilateral and regional trade agreements. New generation RTAs increasingly innovate in terms of regulating cross-border services delivery,

cooperation on ICTs, chapters on e-commerce and TRIPS plus provisions related to e-commerce (Wunsch-Vincent and Hold, 2012).²²

Employment

The relationship between trade agreements and employment is complex. A brief literature review reveals that trade liberalisation can cause both job creation and job destruction. Moreover, the impact on employment may be positive or negative in the short-term, but are expected to be positive in the long-term, as factors of production adjust to the new market conditions and efficiency gains are exploited.

It has been studied that trade openness is associated with lower rates of unemployment. In the short-term, trade liberalisation increases job turnover as workers are reallocated from shrinking to expanding sectors (Felbermayr, and others, 2009). This leads to a mixed effect on the rate of aggregated level of unemployment. However, in the long-term, with appropriate policies in place, the literature reveals that openness can be good for employment as trade promotes technological progress and the general spread of innovation (OECD, ILO, World Bank, WTO, 2010). As suggested by Felbermayr, and others (2009), a 10 per cent increase in total trade openness reduces unemployment by about 1 per cent. Also, openness helps economies to compete by offering new opportunities for sales (exports) and providing producers the widest range of inputs at the highest quality and lowest prices (imports).

One of the concerns about trade liberalisation in developing countries is its effect on some specific sectors that cannot compete with imports of more sophisticated products from developed countries (McMillan and Verduzco, 2011). In this case, job destruction outweighs job creation since not all displaced workers are necessarily absorbed by new emerging sectors. One study shows this phenomenon not to be unique to developing countries: a 1 per cent increase in import penetration reduces US manufacturing employment by 0.6 per cent (Ebenstein and others, 2009). Rodrik (2006) shows that import penetration is one of the key factors that caused the shrinkage of the manufacturing sector in South Africa since the 1990s. With a weak performance of the export-oriented manufacturing sector, job creation was in decline.

A study using cross-country developing country data with various measures of trade policy, unemployment and a variety of controls reveals that a 1 per cent decline in the unweighted tariff reduces the unemployment rate by 0.06 per cent, while a 1 per cent increase in trade flows (lagged by a year) reduces unemployment by 0.11 per cent (Dutt, Mitra and Ranjan, 2009).

To estimate the impact of RTAs on employment, one can consider the effects through three channels, namely (i) direct imports arising through extensive margins through trade creation, (ii) trade diversion occurring through relative barriers imposed against third parties, and (iii) intensive margins emerging from trade intensification. If imports from the partner country are significant, the trade creation would benefit the consumers in other members of the RTA (and the same goes for partner country

²² For example, according to Weber (2015), e-commerce related provisions typically concern the field of ICT, transparency obligations, interoperability and non-discrimination, consumer and online personal data protection, as well as the authentication, certification of electronic signatures.

consumers if there is trade creation from third markets) as more efficient producers and exporters replace inefficient producers. However, local producers in the RTA would face competition from more efficient producers (Karingi and others, 2009). While the import of capital goods may have a negative impact on employment due to competition with local capital goods producers, the import of intermediary inputs and technologies may have overall positive mixed effects. Import of sophisticated intermediary inputs from the partner country could lead to local firms becoming more competitive in exporting the finished goods. Growing competitive firms would benefit the rate of employment in the long-term.

Trade diversion refers to the amount of trade shifted from the RTA members of an existing regional block due to a new RTA between some of its members and a new RTA block (assume relatively easy to meet rules of origin). The amount of trade diverted should be calculated up to the final tariff dismantling and expressed as a percentage of the total exports. If the value is insignificant, then the RTA does not have an impact. If the volume of trade diversion is significant, producers in the regional bloc would be in competition with more efficient producers in the RTA and potentially cause less competitive local firms to lose market share in the regional market.

Trade intensification of existing exports to a partner country of the RTA under negotiation, resulting from reduced tariff and boundary costs, could affect employment positively if there is a significant increase in the exports. A study that analyses the effects of exports on employment in China reveals that a 1 per cent increase in export volume raises employment by 0.17 per cent (Karingi and others, 2005).

Such an approach has many limitations. First, quality of data is weak, and demographics of employment (and disaggregation of employment) are often not available. A second limitation is that enterprise survey data is often not recent and represents only a part of the respective sectors.

Labour and Human Rights

Some countries are becoming increasingly mindful of the need to consider the impact that trade policies can have on health and safety, human rights and adherence to core labour standards. For example, according to EU guidelines (Karingi and others, 2009), the analysis should be based on the normative framework of human rights as defined in a number of instruments in these areas, namely the core United Nations human rights conventions, the fundamental ILO conventions on core labour standards, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights (which applies to members of the Council of Europe) and other regional human rights conventions, as well as, where appropriate, customary international law. Gender equality and non-discrimination should be considered as cross-cutting issues.

The analysis of human rights impacts undertaken in SIAs should start with a screening of the trade measures under consideration. Screening is a means to narrow down the measures which need to be assessed, identifying the key human rights issues as well as the related individual elements of the policy initiative which should be focused on for further analysis. In particular, the screening of the proposed initiative aims at identifying:

- Trade measures which may have the potential for significant human rights impacts, and which specific human rights would be likely to be affected (and with respect to which population groups), and
- Whether the rights in question are absolute rights, which cannot be limited or restricted under any circumstances.

The impact should be categorised according to whether it is direct, whether it is major, whether it is short term or long-term in nature, as well as the likelihood estimates of it occurring. One may also consider the magnitude of the expected impacts or the relevance of the issue for specific stakeholders.

Reliable sources of information should be used including data available from the EU's human rights dialogues, the EU Reports on Human Rights and Democracy in the World (Country Reports), the EU Human Rights Country Strategies (HRCs) and their annual implementing reports, the Civil Society Roadmaps, the European Neighbourhood Policy (ENP) annual reports, the EU Risk Management Framework for budget support, and United Nations reports from Treaty-based or Charter-based procedures.²³

The assessment should analyse the likely impact on human rights against a baseline scenario that should explain the likely human rights developments would be if the proposed policy initiative were not implemented (i.e., the option of changing nothing). The expected significance of impacts should be assessed in terms of changes relative to the baseline.

In the case of ex ante SIAs, it may be necessary to estimate upper and lower bounds for changes in those trade measures that are expected to have a significant impact on human rights and then to work out the human rights implications associated with each. Wherever relevant, the analysis should also take account of provisions built into the proposed agreement, other ways of avoiding possible negative impacts on human rights, or of enhancing possible positive impacts. In the case of ex post SIAs, it would be important to show attribution of changes in trade policies to a deterioration or improvement in human rights.

While countries with improved labour conditions tend to have signed more RTAs than those that have not, a recent paper claims that there is little evidence to suggest that labour provisions in preferential trade agreements will lead to significantly lower levels of child labour (Posso, 2017). This is explained by the fact that the enforcement mechanisms for dealing with labour concerns in RTAs are weak. The reason those with strong labour conditions tend to sign RTAs with labour provisions, compared to those without strong labour conditions, is that these countries already have adopted stronger labour rights in their national policies.

Environment

There is an increasing realization of the powerful impact that trade can have on the environment. Moreover, there are a number of multilateral environmental agreements (MEAs), which attempt to safeguard the *aquis*. Key MEAs include:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora

²³ DG Trade (2015). *ibid*

- Framework Convention on Climate Change
- 2015 Paris Agreement
- Kyoto Protocol on Climate Change
- Montreal Protocol on ozone layer protection
- The Convention on Biological Diversity
- Stockholm Convention on persistent organic pollutants
- Rotterdam Convention on international trade in hazardous chemicals and pesticides
- Basel Convention on hazardous waste movement and disposal

Some countries include climate action in RTAs²⁴ by:

- reaffirming the commitment to implement international climate conventions;
- early opening of trade in environmental goods, including those important for mitigating climate change;
- promoting trade and investment in environmental goods and services; and
- removing non-tariff barriers to trade and investment in renewable energy generation.

CGE models can link economic activity to environmental outcomes, specifically to greenhouse gas (GHG) emissions. The augmented trade flows (and pressures on transportation demand) and increased economic output are associated with greater GHGs. Moreover, sector specific outcomes can also have specific impacts (e.g., an expanding livestock sector may raise methane levels), or increases in textiles production may be linked to greater use of chemicals with risks to the contamination of inland waterways. The outcome from the CGE modelling can shed light on the medium- and long-term impacts of environmental policies.

The ENV-Linkages model of the OECD is a recursive dynamic neo-classical general equilibrium model, based on the GTAP database, including 25 countries/regions, each with 35 economic sectors. As such, it suffers the usual aggregate bias issues related to CGE modelling. Baseline projections are estimated up to 2050 based on trends of all economic and environmental variables of the model. The baseline provides a benchmark against which policy scenarios used in the SIA can be assessed and compared to.

The outcome from CGE models can be helpful in a monitoring and evaluation framework to determine acceptable levels of emissions and pollutants and to keep track of this as the agreement comes into force. Modelling outcomes can also be used to analyse sectors that may pose graver consequences for the environment early on, and introduce preventative measures by, for example, investing in greener technologies, using renewable energies, carrying out environmental impact assessments more rigorously for new investment (and existing incumbent operations) and carrying out capacity building for SMEs to improve sustainable practices.

²⁴ See EC – Sustainable Development. Available from: http://ec.europa.eu/trade/policy/policy-making/sustainable-development/#_environmental-protection

B) Analytical framework for analysing impacts

Concerns for better and informed policy-making issues, such as increased regulatory effectiveness and efficiency on the one hand and the growing acceptance of sustainable development as an overarching guiding principle for policy-making on the other hand have boosted the use of SIAs to evaluate the impacts of cross-sectoral policies on development (Berger, 2007). The main functions of SIAs are to:

- Act as a methodological *soft* policy instrument for developing integrated policies which take into full account of the three sustainable development dimensions, including cross-cutting, intangible and long-term considerations. Similarly, in the case of trade-related SIAs, these look to integrate sustainability into trade policy by informing negotiators of the possible social, environmental and economic consequences of a trade agreement (EC, 2006).
- Establish a process for assessing the likely economic, social and environmental effects of policies, strategies, plans and programmes before they have been formulated (OECD, 2010).
- Be an instrumental vehicle in making information on the potential impacts of policies available to all actors, such as NGOs, aid donors, parliaments, business, etc. (Berger, 2007).

Additionally, SIAs have embodied a series of key principles:

- **Good governance**, recognizing the interdependence of different policy fields and the importance of informed decision-making by addressing potential implications of planned actions at an early stage;
- **Policy integration**, focussing on identifying synergies but also potential conflicts or trade-offs between policies and ways to overcome them;
- **Transparency**, making the decision-making process open and transparent, identifying underlying assumption, motivations, interests, etc.;
- **Participation**, by including a wide range of stakeholders in assessment process, room for political discussion of different points of view, policy learning and building capacities;
- **Efficiency**, ensuring that objectives of policies, plans, programmes and projects are met at the least costs, avoiding unnecessary bureaucracy, etc. (Berger, 2010); and
- **Rigorous and analytical**, by adopting methodologies aligned to the latest research in the field, with due diligence in accepting data sources and clear explanations of the limitations of the source data and methods employed.

The overall analysis in SIAs requires both quantitative and qualitative descriptive analytical approaches. The quantitative approach will rely on building classical trade indicators to analyse the trade flows between countries inside and outside membership of the RTA and to identify patterns, trends and export potential in the partner countries. It will also require building economic models to simulate the expected outcome of trade agreements in the case where agreements are still in their early stages of implementation.

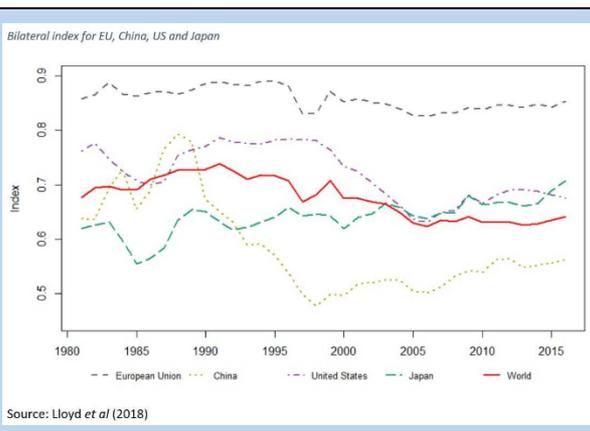
The quantitative analysis will inform on the magnitude and direction of impacts on sectors, segments of society and the environment. The analysis should also consider foreseen changes in third-party RTAs, which may alter any market access advantages in third markets. The underlying basis of the quantitative modelling in a partial equilibrium environment will be based on a comparative static approach, which examines the effect of moving from one equilibrium point to another due to the RTA in place. When employing CGE techniques, it is more useful to adopt a dynamic approach, which examines the path of the adjustment brought about by changes in the trade policy variables due to the RTA.

Box 5 - Impact of RTAs on Trade Patterns

Recent analysis considers the impact that RTAs have had on the structure amongst their members and those left out of the RTA. One would expect that in order to take advantage of preferences, the relative weight of trade in products with higher level of external protection would increase under an RTA (under a trade creation effect). Lloyd et al. (2018) introduce a new Index of Bilateralism in trade between countries, which yielded results indicating little change in the shares. This result was further validated for countries that have signed few RTAs against those that have signed many. A few other important salient features arise from this and former studies, mainly:

- RTA preference margins have been eroded as a result of the spread of RTAs themselves. The preference-granting country can become a hub with multiple spokes. The preferences of preference-receiving countries have been eroded as preferences which the first country enjoyed are now shared with other countries.
- The extent of preference erosion due to intersecting RTAs is significant and rising.

Source: Lloyd, P., Mikic, M. Jacob, A., Kravchenko, A., Vsietsiipanon, P., and Markschlaeger, F. (2018). Is World Trade Becoming More Regionalised? ARTNeT Working Paper Series, No. 176, January, Bangkok, ESCAP. See also Crawford, J. (2016), Market Access Provisions on Trade in Goods in Regional Trade Agreements, in Regional Trading Agreements and the Multilateral Trading System. WTO: Geneva.



Despite the value of the quantitative analysis, all SIAs must also use a qualitative approach in order to verify assumptions made, benchmark the feedback against the data and overcome and correct limitations in the data. Our consortium presents below in greater detail the qualitative approaches which would be employed in an SIA.

The choice of methods needs to be flexible and adapted to country conditions, the answers sought, the state of the negotiations (before, during or after) and the quality of the data. In other words, the choice of methodology and the subject of the study will then determine the tools for data collection and analysis and the data sources to be accessed. The choice of tools will also depend on the data sources available. The approach to stakeholder consultation will depend on factors such as the nature of the stakeholders and the level of their interest and influence with respect to the issue at hand. Such consultation is also closely linked to communication as a means of engaging stakeholders and of disseminating study outcomes. Finally, one should apply certain research principles to each study and take steps to ensure the protection, security and confidentiality of data.

The use of SIAs can come at different stages of the negotiations process.

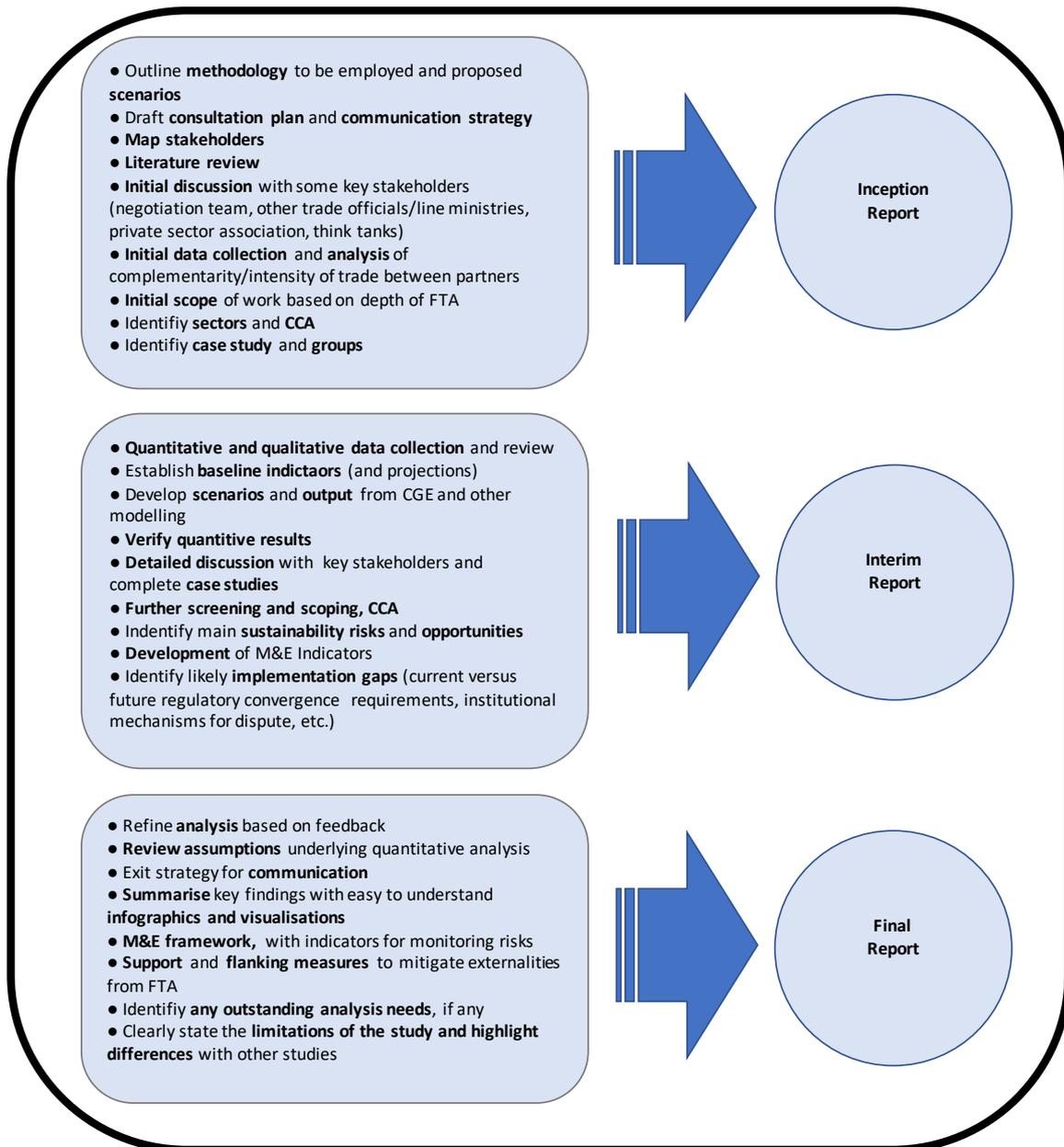
Before. An SIA is conducted before an RTA is negotiated to establish offensive and defensive interests, identify potential risks for certain sectors and identify opportunities in partner markets. The SIA conducted before an RTA is negotiated can be used to gauge the value of tying up resources in the negotiations and making a preliminary assessment of the expected impact on the goods and services markets, the potential implications for other trade-related areas (including intellectual property rights, environmental protection, employment, investment, etc., to changes in tariffs, non-tariffs, customs reforms or liberalising services). During this process, the country can also prepare its scenarios and what would be the best alternative to a negotiated agreement (BATNA).

During. SIAs can also be conducted during the negotiation to inform the negotiators on the focus areas that should be prioritised, on the degree of variable geometry needed, products or services that need excluding from taking on new commitments and the timeframe for liberalisation. It will also inform on the governance structure needed, the national institutional framework and the readiness of economic operators to expand trade links within proposed parameters of the negotiation mandate or texts. The experience of partner's signing other RTAs, as well as discussions with the negotiation teams, would inform possible scenarios. The SIA can also inform necessary flanking measures and the development chapter, as well as cooperation needed in key areas such as standard setting, mutual recognition, customs matters and/or dispute resolution. The SIA can inform the best institutional framework and the kind of indicators they could track. An SIA should primarily inform creating the necessary conditions for a balanced and mutually beneficial RTA for all parties, in order for it to be sustainable and implementable.

Box 6 - Principles for Conducting Sustainability Impact Assessments

- **Impartiality and independence** of the analysis process from the programming and implementation functions;
- **Credibility** of the analysis, through the transparent process, including wide dissemination of results by appropriately skilled and independent experts;
- **Participation of stakeholders** in the process, to ensure that different perspectives and views are taken into account; and
- **Usefulness and relevance** of the evaluation findings and recommendations, through timely presentation of relevant, clear & concise information to decision makers.

Figure 9 - SIA methodological steps.



Source: Author based in part on EU (2016). Handbook for Trade Sustainable Impact Assessment. 2nd Edition. Publication of the EU: Luxembourg; EU (2006). Handbook for Trade Sustainable Impact Assessment. 1st Edition. Publication of the EU: Luxembourg.

After. After the negotiations, it is useful to take stock of achievements, in order to feed lessons into future negotiations. It is also important to ensure implementation has been successful, and if not, evaluate why it has not. The SIA will review the institutional framework to test whether it is functional and supportive of the implementation process. The SIA will also estimate the incremental change in a variety of indicators that have arisen from the RTA, including GDP, investment, employment, pollutants, incomes at the household level, etc. The ex post evaluation can also take into considerations how well the previous SIAs managed to forecast the gains in order to feed back into future methodologies. SIAs will also inform on the need to review elements of the agreements.

The SIA process consists of a number of different steps.

In the first phase, the inception phase, the methodology is clarified, the negotiation text (if on-going) or the details of the RTA are analysed, and scenarios are proposed. Stakeholders are consulted, and others are mapped out. A full literature review to gain familiarity with the economies is carried out. Potential (preliminary) case studies and vulnerable groups are identified. The data availability and quality are assessed, and the scope of the study is agreed on.

In the second phase, leading to the interim report, the modelling work is carried, scenarios are refined, assumptions and risks of the quantitative work are elaborated, and extensive consultations are carried out with various stakeholders from civil society, line ministries, the private sector and academia. An effective communication strategy is put in place to reach out to different constituents in a non-technical way. The case studies are elaborated and initial mitigation or flanking policies to be adopted are highlighted. An M&E and institutional framework is proposed.

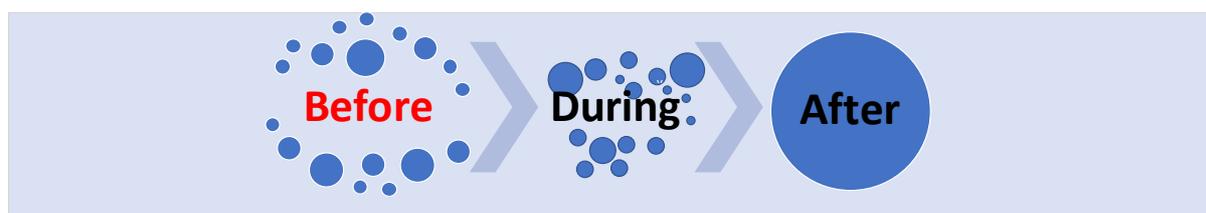
In the third phase, leading to the final report, the analysis is completed, assumptions are clearly stated, and the report is edited to ensure it can be read by non-technicians, leaving more technical parts in annexes; the proposed M&E framework should be clearly articulated. The report should highlight any potential vulnerable groups and environmental impacts, as well as propose flanking policies. Any risks to labour rights, social conditions and gender imbalances must be highlighted in the report, and mitigation measures must be proposed. Finally, the SIA should provide information on limitations of the study and suggestions for further work.

SIAs normally conclude with a section with recommendations and a “way forward,” or an implementation plan. However, whilst all those recommendations might be relevant to a particular scenario, due to lack of human capacity or financial resources, it might not be feasible for the RTA parties to implement all highlighted recommendations.

Focus groups, expert panels, workshops or the input of the policymaker can be used to test and validate the assumptions made in the SIA. Weights can also be applied to the different criteria and a review of a matrix of options can indicate the presence of dominant options or whether certain options cannot be accepted because of pure performance in relation to specific key criterion.

It is important to emphasise that SIAs should not be a one-off exercise, but rather a cyclical exercise informing the negotiations and providing the negotiators, stakeholders and the public in general, with valuable information over the direction that negotiations should take. Developments in the negotiating positions and major changes in direction should be re-entered into the modelling work to provide new results and to feed back into the process.

C) Preparing for the Negotiations



An important question any country wishing to engage in RTA negotiations is how they can derive more benefits from their RTAs, how they can shape the negotiations according to their priorities and how to align the outcomes of an RTA with their own long-term sustainable economic growth ambitions. Equally significant is understanding the complementarities they share with potential members of the RTAs, the competitive strains that may arise from liberalising some trade related areas, and the opportunities that can be captured by entering into an agreement with such partners. The political economy significance notwithstanding, the RTA must also be shown to be balanced in terms of gains for both parties. Otherwise, the RTA's sustainability and effective implementation will be questionable.

In order to answer some of these questions, one should take stock of existing trade patterns and consider whether barriers may be obstructing the potential trade that could take place between countries.²⁵ A number of analytical tools and approaches are explored by different publications to estimate the impact and benefits arising from RTAs.²⁶

The first element that countries need to have is a "RTA strategy." An RTA strategy is part of the country's overall trade policy and is therefore "owned" by the government as a whole (not just by the ministry in charge of trade) and is endorsed by major stakeholders and representatives of the society as a whole, from businesses to civil society organizations, including academia. The need for such large ownership is due to the fact that all trade matters have implications impacting large parts of the economy, the environment and society as a whole.

Establishing the priorities of the negotiations agenda, by identifying the trade topics and the establishment of national committees, on top of the regular WTO activities and Doha Round negotiation groups which bear a country interest, need to be prioritised. The respective responsibilities of the Trade Mission and Commercial attachés in embassies in the country with which a country is negotiating must be clearly established, including reporting channels. These overseas trade outposts can provide valuable information to feed into the negotiations. The EU, for example, includes all information from the EU mission trade counsellors and incorporates feedback from the European chambers with respect to investment, competition and distribution concerns, which feeds back into the negotiation agenda. The US also makes use of their commercial attachés and publishes

²⁵ A number of techniques can be used for this, from simple classical trade indicators, such as trade intensity and trade complementarity indices, to econometric models, such as the gravity equation. Simple and sophisticated models can also estimate what would be the implication of removing barriers in terms of raising trade, efficiency and welfare, such as using partial of general equilibrium models.

²⁶ See, for example, a recent publication by Gilbert, J. (2017). Analytical Approaches to Evaluating Preferential Trade Agreements. ESCAP: Bangkok.

the concerns expressed by US enterprises in third markets. All countries should better integrate the resources at their disposal to better inform what the negotiations should focus on.

This phase requires the establishment of a framework for participating in the negotiations, by setting out the communication campaign, consultation modalities and scope, and mapping out the key stakeholders and wider society, particularly with respect to sustainability concerns.

Improving participation involves improving skills and institutional capacity to analyse, take stock of, and manage the workings of existing agreements as a precondition for designing adequate positions in follow-up negotiations. Thus, cooperation with think tanks, regional organizations, international organizations and like-minded countries can also take the form of joint studies and issues analysis to maximise the national analytical capacities.

A training plan to increase the human capacities in the Ministry in charge of trade should be an inherent part of the strategy. Capacity building activities also need to be extended to other parts of the Government for matters which require their involvement (e.g. rules of origin, Trade Facilitation, TBT and SPS matters, GATS issues and Trade in Services Agreement negotiations, to mention a few). In addition, raising awareness in the private sector regarding the legal aspects of international trade (e.g., preferential rules of origin, certification systems, GSP, etc.) is also important, and some training to business organizations should also be provided in order to achieve that end. The training plan should identify sources of technical assistance, such as the Asia-Pacific Research and Training Network on Trade (ARTNeT), WTO Training Institute, World Bank Institute, Asian Development Bank Institute, etc.

Box 7 - Improving Communication in order to Better Prepare for RTA Negotiations

In addition to putting in place the proper channels of communication with key stakeholders inside and outside the government, as well as preparing a full inventory of relevant measures to ensure full knowledge of the regulatory regime and its possible shortcomings, governments need to identify opportunities and challenges for their exporters; determine the capacity building needs of the negotiators, ministries, and regulatory agencies; and assess the likely economic and social impacts of various liberalisation scenarios. These are challenging tasks even for developed country governments whose resources, human and financial, are typically far greater than those of developing countries.

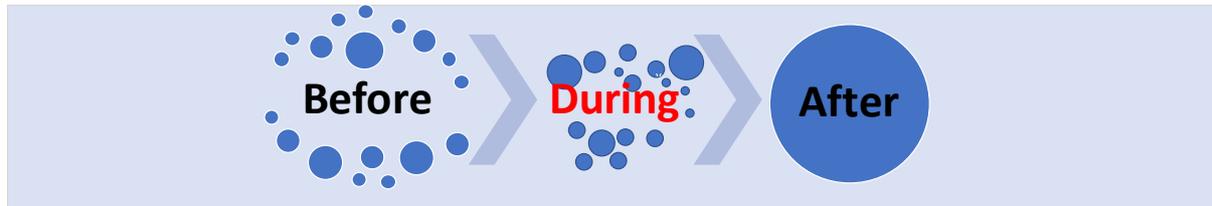
The analysis should include the assessment of the gender, poverty alleviation, environmental, labour and human health impacts of market openings. Moreover, the analysis should include the identification of the assistance to be given to domestic stakeholders to take full advantage of the market access opportunities arising from multilateral liberalisation.

In preparing for trade negotiations, an important first step is to set up a credible, transparent and efficient coordination process. Such coordination often rests with the foreign and/or trade ministries, including typically the ministries responsible for conducting the negotiations themselves. Intra-governmental coordination counts among the most crucial of negotiating inputs and is an issue of such importance that it alone is liable to determine the effectiveness of a country's participation in international negotiations.

While governments must ultimately assume the responsibility of carrying out their country's trade negotiation strategy, the legitimacy of this will only be secured if the coordination effort expands to include all key external stakeholders in the process, that is, the private sector and civil society at large.

Source: World Bank (2009)

IV.3 During the Negotiations



This phase of negotiations is the most demanding. This is because of high pressure due to holding different negotiation rounds, tying up analytical results to the negotiation mandates / process, testing outcomes of various offer list by running different modelling scenarios and then preparing new offer and requests lists based on those results. Optimising resources is therefore an important consideration to be addressed in the RTA strategy, especially for small countries. Negotiations amongst a group of countries should always imply some form of coordination of positions between like-minded countries, but it can also take the form of *ad hoc* joint actions, coalition building and participation in country groupings on a more lasting basis. It consists in also leveraging resources from international organizations, regional organizations, think tanks and the like.

Trying to influence or set the agenda is of primary importance. All too often, developed countries tend to drive the scope, breadth and depth of the negotiations, with developing countries taking a more defensive and reactionary role. In the field of sustainable development, this situation is even more acute than in traditional offer-and-request settings. While developing countries need to decide on which areas to focus on and integrate into the negotiations, the decision should be based on analytical and objective foundations, rather than it being done due to a lack of preparedness, resulting in insufficient resources being used to consider the options or concerns of implementation (which can be addressed through TA, cooperation and other channels).

Establishing the parameters of the negotiations, the negotiation modalities (e.g., formula cuts, grandfathering, sunset clauses or phase out periods), the scope of the agreement to be negotiated, and the horizon for concluding the negotiations should be prioritised by the responsible ministry. An important concept in services is whether a positive or a negative list approach should be adopted. The ASEAN Framework for Services Agreement, for example, proposes a negative list approach, while the ASEAN Trade in Services Agreement was built on the principle of a positive list approach. The distinction is significant since the latter is easier in many ways to negotiate (only those sectors that one identifies for inclusion in the agreement is included) while the former entails that every sector is covered by the agreement unless specifically mentioned as being excluded. The positive list approach often ends up being less ambitious than the negative list approach. While in theory all countries should know what their negotiation position for every sector is, in practice most countries are not in full knowledge and find a negative list approach demanding.

Enhancing domestic policy coordination and communication on the negotiations, particularly between the Ministry in charge of trade and other Departments of the Government, as well as business organizations, NGOs and other civil society organizations, on RTA matters should be an important element of the strategy. Once a strategy is in place, capacity is given to all key stakeholders to contribute to negotiations, and the necessary analysis has been conducted to establish the priority areas of interest and the best alternatives to a negotiated agreement.

Some key areas within the framework of RTAs that can influence sustainability provisions are summarised in Table 5. They have been broken down into key focal areas according to the chapters of (most) RTAs.

Table 5 - Examples of areas where sustainability can be considered in the negotiations

Possible Chapter Heading	Focal Areas and Consideration of Impact on Sustainable Development
Market Access in Goods	<ul style="list-style-type: none"> ▪ Sensitive lists ▪ Flexibilities and tariff formula for cuts ▪ Transition period ▪ MFN clauses ▪ Export taxes ▪ Asymmetric liberalisation ▪ Variable geometry with RTAs ▪ Special and differential treatment ▪ Environmental goods and services ▪ Preference erosion ▪ Treatment of third countries (non-members) ▪ Coverage of GATT Article XXIV, and consideration of the negotiations for the clarification and improving disciplines and procedures under Negotiating Group Rules (NGR), which reports to the Trade Negotiations Committee (TNC) ▪ Exceptions (e.g. GATT Art XX)
Non-Tariff Measures	<ul style="list-style-type: none"> ▪ SPS chapter ▪ TBT chapter ▪ Capacity building
Trade Facilitation	<ul style="list-style-type: none"> ▪ Flexibilities ▪ Advance rulings ▪ Publications and transparency ▪ Transit country focus ▪ Capacity building
Rules of Origin	<ul style="list-style-type: none"> ▪ Criteria needed to determine the national source of a product ▪ Level of thresholds set, or degree of transformation required
Trade Remedies	<ul style="list-style-type: none"> ▪ Safeguards, thresholds and evidence requirements ▪ Countervailing measures, including subsidies for food security ▪ Anti-dumping measures
Trade in Services	<ul style="list-style-type: none"> ▪ Mode 1 – Cross-border supply liberalisation, e-commerce and other considerations ▪ Mode 2 – Consumption abroad, travel restrictions, air passenger duties, visa requirements, etc. ▪ Mode 3 – Right of establishment and interaction with BITs and investment promotion activities ▪ Mode 4 – Movement of persons, mutual recognition of qualifications, visa requirements, repatriation of earnings, etc.

Possible Chapter Heading	Focal Areas and Consideration of Impact on Sustainable Development
	<ul style="list-style-type: none"> Transport, logistics, distribution, e-commerce and other sector specific services with a high impact on sustainable development dimensions Coverage of GATS Article V, and consideration of the negotiations for the clarification and improving disciplines and procedures under Negotiating Group Rules (NGR), which reports to the Trade Negotiations Committee (TNC)
Dispute Settlement	<ul style="list-style-type: none"> Rules and coverage of the agreement under dispute settlement chapter Mediation process Due process and appeals Enforceability of decisions Speed of procedures and impartiality of panel
Government Procurement	<ul style="list-style-type: none"> National treatment provisions Thresholds for procurement decisions
Competition	<ul style="list-style-type: none"> Consideration of state-owned enterprises
Trade Related Investment Property Rights	<ul style="list-style-type: none"> Access to medicine Cooperation on technology Geographical indications and trademarks
Environment, Labour, Development Chapter	<ul style="list-style-type: none"> Cooperation Adherence to multilateral agreements Maintaining the standards (especially towards inward investment)

Source: Author and Baker (2016).

From Table 5, one can see how many areas of the RTA can influence sustainable development, whether explicitly addressed within a specific development chapter or not. Countries should have a clearly articulated strategy for all areas of the negotiations, which can leverage on the experience of past agreements and developments in the multilateral level.

IV.4 Ex post process



The successful outcome of a negotiated agreement is only the starting point for countries to begin reaping the benefits from it. Many countries still face significant difficulties in implementing the different provisions of RTAs, particularly since in most cases, a functional and coherent institutional framework is required but missing in many cases. While technical assistance can facilitate and enhance the speed for implementing commitments, it cannot replace the effort required by the country itself. The parties to the agreement should be realistic as to what is possible and consider how to coordinate the public administration apparatus through, for example, technical committees and portfolio delegation to line ministries.

In line with the outcome of the SIA, the government should set aside in its annual budget resources to address adjustment concerns, implement mitigation strategies and undertake activities to raise awareness of the RTA and receive feedback on the RTA. Flanking policies, and support for SMEs, should

be targeted to promote trade and support those vulnerable industries from new competition, such as through reskilling of workers, promoting R&D and offering access to finance (in a non-discriminatory manner). The Government should also promote intra-industry trade with RTA parties, and the adoption of new technologies and investment from within the RTA.

Box 8 - Country Specific Institutional Capacity Constraints to Implementation of RTAs

RTA implementation is defined as government “interventions that are necessary to satisfy treaty obligations; that is, actions that must generally be taken before the agreement enters into force – unless the agreement itself includes transition phases for putting certain obligations into effect” (Gonzalez, 2009), which is frequent in practice. This is distinct from administration or enforcement of RTAs, which denotes regular management of RTAs by the dedicated national, inter-state, or supranational authorities after implementation has taken place. Drawing on a World Bank case study of 13 countries on the implementation of RTAs for development, examples of country-specific challenges that can impact implementation of RTA obligations and that should inform the design of sustainable development provisions in RTAs to ensure their implementation are found to be mainly linked to institutional capacity constraints in many low and middle-income developing countries. Institutional constraints constitute the single most important obstacle to RTA implementation and encompass among others:

- *weak government links to and communication channels with the private sector and policy recipients for civil society consultations on policy design;*
- *lack of the legal and economic expertise among government officials and regulators that is necessary to translate RTA obligations into domestic regulatory regimes and establish effective enforcement mechanisms;*
- *inadequate or non-existent administrative structures for the implementation and administration of commitments;*
- *limited numbers, poorly trained, poorly paid, or corrupt administrative staff;*
- *outdated management and communication mechanisms;*
- *limited access to information and communication technology; and*
- *insufficient financial and intellectual resources for capacity building measures and the creation of new institutions.*

These constraints can be addressed by targeted technical assistance and cooperation programmes by external donors through country cooperation agencies and international organisations.

Source: Chauffour and Kleimann (2013)

It is important to discuss developmental concerns arising from the agreement. Many new generation RTAs do incorporate a trade and development committee (TDC), with rotating chairmanship amongst the members of the agreement. The TDC will review development claims, consider the pace of implementation of the agreements and reasons for delays, ensure that technical cooperation areas are being successfully implemented and supportive of the implementation process, and deal with any other matters that may arise.

The Government should ensure it reports openly to stakeholders on implementation progress and raise awareness of the agreement of how it can be utilised and promoting trade through it. ASEAN, for example, commissions an independent evaluation of the progress made in implementing the ASEAN Blueprint using a balance scorecard approach. Such monitoring and evaluation of the implementation of commitments is important.

The parties to the agreement need to set up a monitoring unit or an observatory of trade performance, in order to quickly identify obstacles to trade remaining and facilitate the recording of non-tariff measures in other RTA parties and use commercial diplomacy to resolve constraints faced in the multilateral trading system. If a joint-technical committee between members of the RTA exists, it should be used to discuss any observed trade observations and frictions, and the sustainable development concerns that it may be generating.

The monitoring and evaluation indicators and framework is discussed in greater detail in chapter V.

V. Monitoring and evaluation of RTAs for sustainability

V.1 Introduction

With the proliferation of sustainable development provisions in trade agreements comes the need to establish systems to measure the effectiveness of such provisions (i.e., to establish the necessary tools allowing the different contracting parties to monitor and evaluate their impacts).

This monitoring exercise would normally involve the mere reporting of the agreement's implementation, ensuring that the contractual obligations contained in the agreement are being implemented. Nevertheless, monitoring can go one step further to make recommendations to correct the course of sub-par performance, by additionally including activities aimed at further propelling the development of new strategies and initiatives guiding sustainable development in a specific direction (De Lombaerde and others, 2008).

Thus, the need to implement a monitoring system is particularly convenient in order to not only assess the impact of reforms and communicate effectively across the trading partners and stakeholders, but also to measure the contribution of trade (both intra- and extra-regional) to the region's sustainable development.

The Haas Institute and the World Economic Forum (WEF) have carried out similar exercises, by looking at the broader concepts of sustainability and inclusiveness. In this sense, the Inclusiveness Index, developed by the Haas Institute at Berkeley University, analyses the following areas (De Lombaerde and others, 2008):

- Outgroup Violence;
- Political Representation;
- Income Inequality;
- Anti-Discrimination Laws;
- Rates of Incarceration; and
- Immigration/Asylum Policies.

Meanwhile, the WEF has developed a "Benchmarking Framework on Inclusive Growth and Development." The Framework looks at seven main policy areas: (1) Education and Skills; (2) Basic Services and Infrastructure; (3) Corruption and Rents; (4) Financial Intermediation of Real Economy Investments; (5) Asset Building and Entrepreneurship; (6) Employment and Labour Compensation; and (7) Fiscal Transfers (WEF, 2017). In particular, the WEF's Inclusive Growth and Development Report (2017) states that "[major] economies should undertake a coordinated effort to boost global growth by identifying and implementing the demand- and supply-side structural reforms that are most needed to activate more fully the virtuous circle of inclusive growth in their economies." Particularly, it states that:

"The international community should buttress national efforts by:

- funding a major increase in institution-building assistance for developing countries in the corresponding policy domains [...]

- reforming development finance institutions (DFIs) to support a scaling of blended, public-private financing of sustainable infrastructure [...]
- resetting the priorities of trade and investment cooperation [...]²⁷

V.2 Designing the monitoring system

Whilst there is a wide range of elements influencing the design of a monitoring system, there are two main factors that must be considered before a monitoring and evaluation (M&E) system is established.

The first of these might be the expected complexity of the indicators, an element intrinsically linked to the complexity, scope and depth of the commitments.

Therefore, the indicators can range from a simple, more project-management oriented focus to an open-ended, complex and multi-level combination of various indicators and tools existing in a multi-stakeholder environment.

The second factor to take into account will be the focus and ambition of the monitoring system. In this sense, the monitoring system can be of a compliance nature, aimed to track the implementation of sustainable development commitments in different policy or legal areas, but it can also focus, alternatively or jointly, on the implications of the commitments undertaken, the behaviour of its actors, the institutional environment, etc.

Such a framework should be instrumental on measuring not only how different contracting parties are doing on the implementation of sustainable development provisions, but also the impact of the overall trade agreement on areas such as environment, labour, human rights, etc. (see Section IV.2) Therefore, considering sustainable development as a multi-dimensional element, the framework would adopt a “holistic” approach, including areas such as human and sustainable development and also economic and trade indicators.

However, a too-comprehensive approach could be incompatible with collecting reliable information in a timely and systematic fashion. Overall, the key foreseen conceptual characteristics of the future Index are:

- (a) multidimensionality,
- (b) capacity to measure regional integration and policy effort,
- (c) relevance to the Pacific context,
- (d) comprehensiveness, and
- (e) manageability and user friendliness.

V.3 Implementing the framework

Following the conceptual design of the framework, it is necessary to tackle some of the main elements underlying the functioning of the framework *per se*:

- **System Architecture.** One of the most common ways to organise the Index is using the Three-Level Tree Structure, as used by the ACP Monitoring Regional Integration (MRI) Index. This

²⁷ See World Economic Forum (2017). The Inclusive Growth and Development Report 2017, World Economic Forum. Geneva, p. XI.

structure distinguishes between system “dimensions” (at the upper level) from the system “domains” (at the intermediate level), and the system “areas” (at the lower level). Individual indicators would be positioned (clustered) in their respective area. Another possibility is to use a simpler Two-Level Structure, as used in the Asia Pacific Regional Integration Index (RII). This Index embodies six dimensions of socio-economic categories, which are ultimately divided into 26 indicators that measure different aspects of regional integration across these six dimensions and use them to calculate the Index.

- **Individual indicators.** One of the critical elements in the design of the monitoring system is the selection of individual indicators to be included on the Index. Whilst the possibilities are almost infinite, this should be guided, for example, on the following criteria: Relevance, Quantifiability, Simplicity and Data Availability. The SIA is also expected to shed some light on the sectors (e.g., forestry resources, textiles and clothing, farming) and cross-sections of society (e.g., unskilled workers, rural areas, etc.) that should be carefully monitored.
- **Aggregation:** Another aspect that can be considered is the aggregation formula in order to compose the Index. The benefit of aggregating is that an overall value can be tracked to see progress. Nevertheless, a vector of indicators is still required to delve deeper into the areas where progress is not being achieved. The method for aggregating varies from index to index. For example, the Africa RII adopts an arithmetic average to construct dimensional and overall indexes. Thus, all components are weighted equally in the aggregation. This equal weighting works well if all indicators are uncorrelated and all dimensions have an equal number of indicators. If some indicators are highly correlated, however, combining these variables with equal weights will likely induce double counting into a composite index. On the other hand, the Asia-Pacific RII is based on a principal component analysis (PCA), which combines a set of variables to extract maximum information common across individual indicators.

Box 9 - Case Study: Integration Index of Latin America and the Caribbean

The Integration Index of Latin America and the Caribbean (IINTALC) is a multidimensional indicator to assess the progress made by each country in its respective regional integration mechanism. The tool has five dimensions: economic, political, social, cultural and environmental. Therefore, the Index, in addition to consider the region’s economic performance, also assesses aspects related to **environmental sustainability, poverty, access to basic services and life conditions.**

This approach aimed to promote the emergence of sustainable economies. Particularly, the Index’s designers highlight that “it is necessary a greater and more effective inter institutional collaboration, the intensification of job networks and the strengthening of synergies between the member countries of the integration mechanisms.” The indicators addressed in this dimension are: intensity in fertilizer use, emissions of carbon dioxide, GDP energy intensity and consumption of ozone-depleting substances.

Other regional integration indicators, such as the Africa Regional Integration Index and the Asia–Pacific Regional Integration Index do not address any sustainable development area.

Source: SELA (2016)

Although M&E tools have not been subject to an extensive performance revision on the part of donors and academia, their use is not a novelty, particularly in the area of regional integration. In this sense, a joint project carried out by the Inter-American Development Bank and UNU-CRIS (2008) mapped

and compared the different indicator systems currently present, studying their features and identifying best practices. The conclusions of this review can be summarised as follows:

1. Only a few actors seem to be involved in the monitoring exercises; participation of stakeholders, other than the designers of the system, is very scarce, if not inexistent.
2. The objectives of indicator systems are diverse [. .].
3. Only a few proposals deal with conceptual issues, leading in many cases to a lack of clarity related to the selection of variables [. .].
4. Technical choices are often linked to political choices to be made by the builders of the indicator systems [. .].²⁸

These conclusions, amongst other elements, should be carefully considered whenever an M&E framework addressing sustainable development is implemented.

²⁸ See more details in De Lombaerde, P and Saucedo Acosta, eds., (2017).

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