



Respuestas al **Cuestionario sobre el Sistema de la Unión Europea para la Evaluación del Impacto Sostenible de las Negociaciones Comerciales**

**“Public consultation on the Handbook for Sustainability Impact Assessment
of EU trade negotiations”**

Patricia Andrea Vargas Cárdenas, Judith Schönsteiner¹

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¹ Estas observaciones fueron elaboradas en el marco del Magister en Derecho Internacional de los Derechos Humanos de la UDP.

I. Introducción

El presente documento es una propuesta de sugerencias para llevar a cabo un ejercicio de consulta ciudadana relativa a valorar el mecanismo que la Unión Europea emplea como sistema de Evaluación de Impacto Sostenible (Sustainability Impact Assessments, SIA) en sus negociaciones comerciales con terceros países, realizada a la luz de los criterios de análisis relevantes para integrar los asuntos entre empresas y derechos humanos.

El documento es la respuesta a la Consulta Pública que se encuentra realizando la Comisión Europea respecto de la revisión de la última edición de su Manual de Evaluación de Impacto Sostenible (Handbook on Sustainability Impact Assessments), disponible en el sitio web de Comercio del organismo².

II. Cuestionario

A continuación, se desarrollan las preguntas formuladas en la Consulta Pública, así como las respuestas del Centro de Derechos Humanos de la Universidad Diego Portales.

1. SIAs have two complementary components:

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

1.a. Do you agree that this is the right approach?

Yes.

1.b. Are the components of an SIA adequately balanced?

No.

1.c. Please let us know if you have any comments or suggestions

The SIA still lacks an adequate perspective focused on social and environmental issues that enhance human rights. In this way, the participation of multi-stakeholders should be considered in order to open dialogue widely, aimed on facilitating the access to the consultation process by affected communities in third countries.

² European Commission (2015) Public consultation on the Handbook for Sustainability Impact Assessment of EU trade negotiations. Disponible en: http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153399.pdf (fecha de consulta: 07 de julio de 2015)

The monitoring and evaluation process could create a traceability modeling scheme of each priority and sensitive product, in order to guarantee that the final product is being elaborated fulfilling the supply chain sustainability management, assessing social, labour and environmental conditions in a set of progress measures, including additionally measures about access to justice. .

In order to bring more accessibility and transparency, major contents in the dedicated website of SIA and principal reports should be available in the native language of the partner country. At the consultation process, in the meeting phase, the Corporate Social Responsibility policy of the main enterprises should be shared, as well as their best practices, and also, if there is a complaint process against them (pending or concluded), related to social or environmental issues at national or international level. The final report should be made known to Parliaments in countries with presidential political systems, as they may have a gap of information about the negotiations going on in the executive, but are the final instance where treaties are approved. This also could bring the main conclusions of the DG Trade's Civil Society Dialogue from Brussels closer to host states.

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

No, only in a limited way.

If No, please explain

No, because SIA still privileges an economic approach instead of a social, environmental and human rights evaluation. The SIA analysis in these kinds of themes is still only a starting point that illustrates some sections of the landscape, however, it doesn't show a real assessment of those variables, in order to allocate them in same scale of value. That is to say that the SIA needs to construct their own indicators of trade impacts in these matters, by putting in social context into the quantitative task considering some relevant issue from social, environmental and human rights in a panel data, that offers a longitudinal view from the production chain in the specific exchange of a product.

In the qualitative analysis, the stakeholder consultation could be a broad dialogue set up on a fixed agenda of conversations that can develop some arrangements and commitments in social, environmental and human rights issues.

Additionally, the procedure could consider a system of tracking in order to account for the progress and effectiveness of the measurement adopted in these dialogues, which could be incorporated in the final report. Tracking could consider a mechanism in which the consultation process could finalize in a terms of reference (TORs) elaborated in order to

assess impacts in economic, social, environmental and human rights, specially upon priority and sensitive products of the trade negotiations. These criteria could be used to assess the contribution of all the SIA process for improving trade standards, and for evaluating the future impacts of liberalization agreement in social, environmental and human rights aspects.

Furthermore, it should be included the track of measures in order to enable access to remedies when stakeholders feel mistreated, in order to deliver provisions for fixing human rights due diligence. Several Human Rights Impact Assessment tools could be helpful for this process.

2.b. Are there other issues SIAs should examine?

Yes.

If Yes, please specify which issues:

SIA should examine the prevention, mitigation and remediation measurements according to consultation process, when conditions do not satisfy a threshold defined for reaching at the assessment. In least developed countries, or with frail or corrupted institutions, SIA could consider alternative means to grant access, transparency, and accountability of the consultant process. Likewise, SIA should consider if large enterprises have their own public statements of Corporate Social Responsibility and human rights policies, that identify and declare risks, responsibilities, commitments and expectations towards its impact.

In negotiations SIA could establish an explicit study of an access to remedy, mainly in those countries where institutions are weak and there is a lack of confidence, and where there is no trustworthy complaint mechanism. Furthermore, the EU as international organization could define a specific complaint mechanism,, which would allow complainants - both states, individuals and communities, to lodge their grievances, similar to the Grievance Redress Service at the World Bank. So, in the final trade agreement the Dispute Settlement Chapter could include a special grievance body in charge of resolving complaints in social, environmental and human rights, as it happens in National Contact Points under the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development. So, SIA would explore the capability of reaching something like this. In order to ensure access to remedy, consultant process would be shared by Judges and other official of administrative justice.

Another issue that SIA should examine is the discussion about movement of natural persons in order to debate the better conditions for workers on service trade (known as Mode 4 of GATS), or just for unskilled workers in vulnerable situation, SIA would include a special thematic meeting of labour mobility trends during the consultant process.

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

Yes.

3.b. Please let us know if you have comments and suggestions

In established democracies, with civil society organized, the consultant process that includes interviews, meetings and questionnaires is a structured mechanism that accomplishes its purpose. But it's very difficult to reach these objectives in different contexts, where cultural conditions, poor and vulnerable living situations, political insecurity or instability, high levels of illiteracy, high technology gaps, different dialects or indigenous languages, and economic difficulties regarding access to consultations, among others factors, configure a set of complex circumstances that SIA should be able to realize in its analysis.

Stakeholders should be integrated in all the relevant decision making process, so they need a management organization in meetings and interviews that concludes in the final report with the main achievements satisfied and a commitment statement of gradual implementation in agreed terms, and glimpse solutions for divergences discussed.

In order to engage stakeholders in the SIA process, the SIA's consultant equipment could include national group of professionals from the EU partner country, with proven skills in qualitative analysis, and confirmed knowledge in how to tackle with different kind of communities and interest groups. They could make the screening and scoping process in EU partner country, they could assist to create specific progress indicators, and after a deep impact assessment process, they could help to verify effectiveness of the measures adopted, and could support to access and broad dialogue for multi-stakeholder participation, and also could contribute to address possible measures in order to prevent and mitigate risks associated to social, environmental and human rights issues. If it is necessary, they could even guide feasible remedy mechanisms from best practices and Corporate Social Responsibility policy of large enterprises.

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

4.a. Is this the right approach?

Yes

Please let us know if you have comments and suggestions

The position paper sets out a technical and political opinion, and it serves for negotiations round and particularly for legitimate the European Commission point of view.. For this reason, it is necessary to integrate all the assessment process in some mechanism of long

term that can guarantee continuing with tracking efforts for the progress or regress in social, environmental or human rights issues developed in trade relationship.

The SIA process is an excellent tool for governments to realize how trade can impact in different aspects of the social life, integrated with an economical and prospective scrutiny. Also, Commission's position paper and SIA findings could be a first outlook for enterprises and entrepreneurs in order to incorporate in their management the sustainability impact approach.

Commission's role is significant in order to give guidance for enterprises and governments compromised in negotiations to accomplish a trade agreement; in order this agreement could be more associative, Commission play a key function to put on the round of trade negotiations the approbation of tracking and reclamation mechanism.

Trade with regards of sustainability impact assessment is a responsible and accountable way in order to fulfill the expectative of multi-stakeholders, communities affected and vulnerable groups of population.

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

Yes

If Yes, please specify (4.000)

The SIA process needs in a separate way an evaluation tool that tracks the progress measures beyond trade negotiations scheme, and that can assess different practices in the fulfilment of the commitments, the inclusion and operation of a grievance mechanisms, and the development of prevention and mitigation measures. It is important to give feedback to multi-stakeholders, communities, even media communication of all the achievements and failures of the whole process. It is also significant to provide in reports a point of view from the vulnerable and discriminated groups, from economics and social system, included groups that not even know that their rights are being infringed.

And is meaningful too that multi-stakeholders realize that SIA could be the starting point of a fundamental development in order to make Sustainability Impact Assessment in force in their own countries. The SIA improves can contribute to valorize and validate such kind of tools at entire levels in society, enhancing the exchange conditions with respect for labour, environmental and human rights issues. In this respect, it would be appropriate that the screening phase includes as a key human right issue, which is up to now missing

in the SIA: the right to water is related to a wide range of trading measures with a direct and major impact on local communities. Due to the growing stress on water resources by climate change and industrial activity, the necessary protection for the conservation, development and dissemination of partner country science and culture, the right to water must be specifically protected. As to additional qualitative and quantitative data, reliable data from regional economic organizations should be taken into account, especially, the Progress Indicators for the Measurement of the Rights contained in the San Salvador Protocol to the American Convention on Human Rights (IACHR, Organization of American States), or some others from NGO's like Freedom House, Transparency International, Human Rights Watch, Extractive Industries Transparency Initiative, etc. All of this information could be processed by following the UN Guiding Principles on Business and Human Rights (A/HRC/17/31).

Another aspect to take into account in consultation processes is to set out and guarantee the access to justice conditions for instance to go to national court seeking local remedies. The SIA could be strengthened if the impact on the social, environmental and human rights issues would be reinforced at the economic assessment of the negotiated outcome. Furthermore, at the ex post evaluations, SIA outcomes could be reassessed considering a particular mechanism in order to follow up the recommendation taken from consultation process with multi-stakeholders.

It is also important that the external consultants assure the participation of a highly proficient professional from the partner country inside their core team, because not only do they know the language, but also are they familiar with the social context of people or communities affected, and know how to contact the stakeholders and to communicate with them.

Needless to say that host states need to maintain their policy making discretion regarding the incremental rise of environmental, labour, and human rights standards. This means that stabilization clauses have to be strictly worded, and refer only to taxes and tariffs.

Finally, the EU should consider strengthening the "amendments" phase of the agreement, asking how SIAs are "fed back into" the drafting process of the agreement. Concrete measures should be taken to ensure that the rewording of the agreement is A. coherent with HR standards, and B. technically sound. Additionally, consultations should include one section of questions regarding concrete recommendations by host state experts (government, academia, stakeholders).

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