

IV. Pathways for negotiating sustainability provisions in RTAs

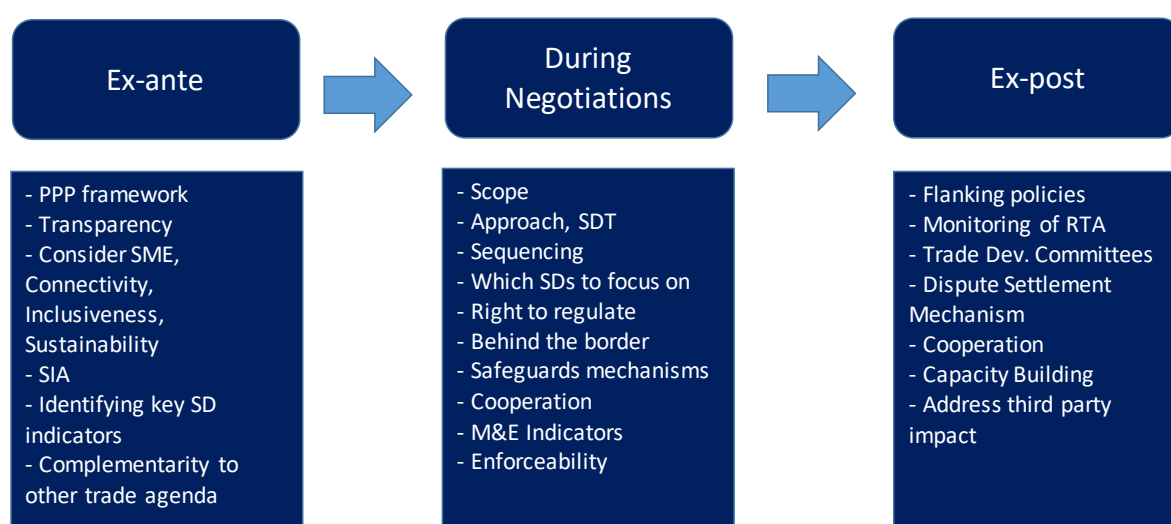
IV.1 Introduction

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.

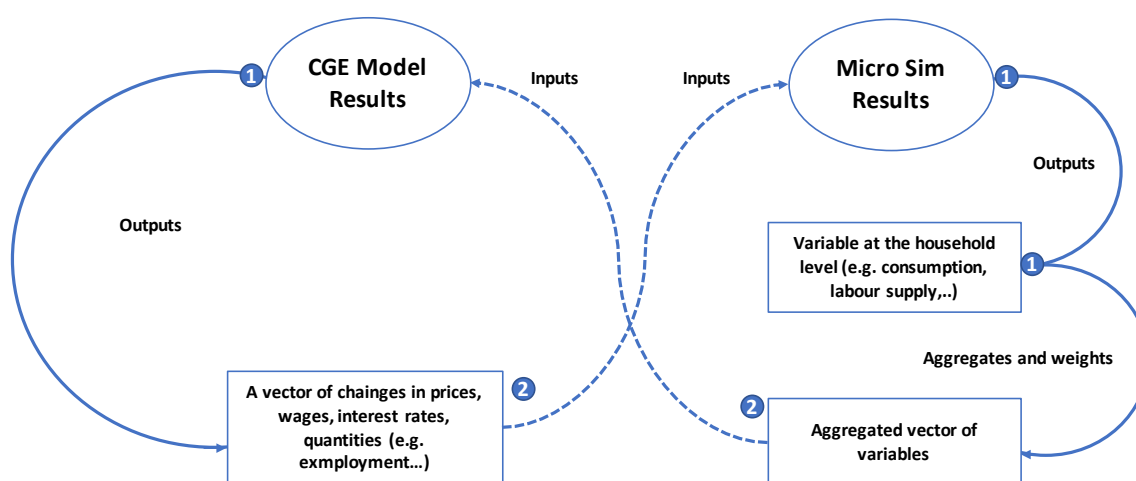
IV.2 Ex-ante process

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:

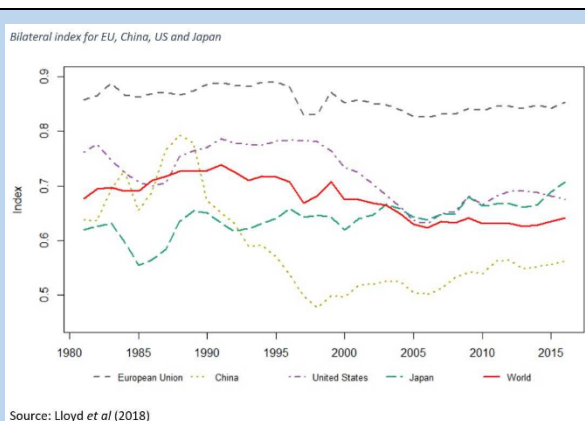
- **Good governance**, recognizing the interdependence of different policy fields and the importance of informed decision-making by addressing potential implications of planned actions at an early stage;
- **Policy integration**, focussing on identifying synergies but also potential conflicts or trade-offs 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.

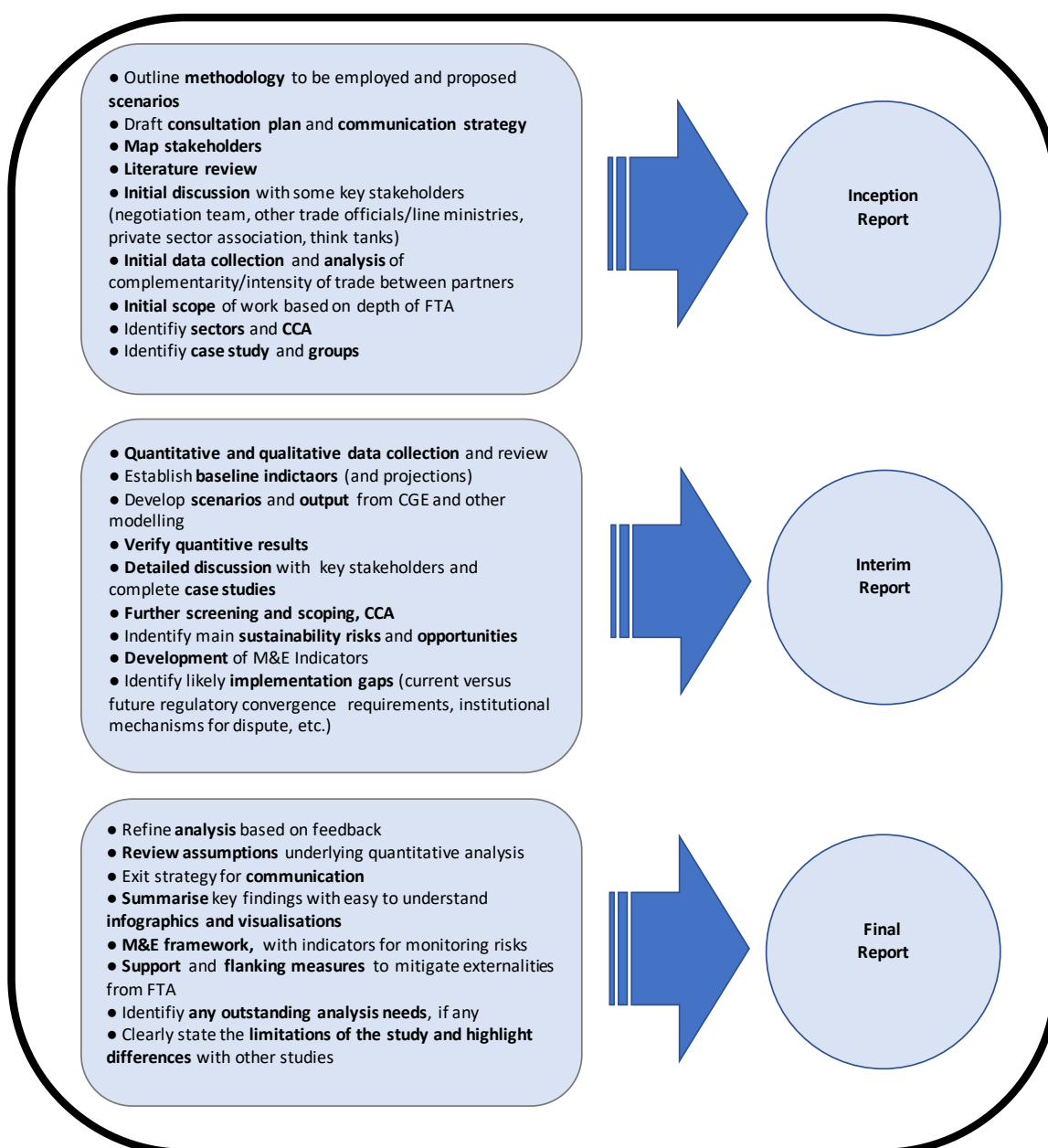
Before. An SIA is conducted before an RTA is negotiated to establish offensive and defensive interests, identify potential risks for certain sectors and identify opportunities in partner markets. The SIA conducted before an RTA is negotiated can be used to gauge the value of tying up resources in the 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.

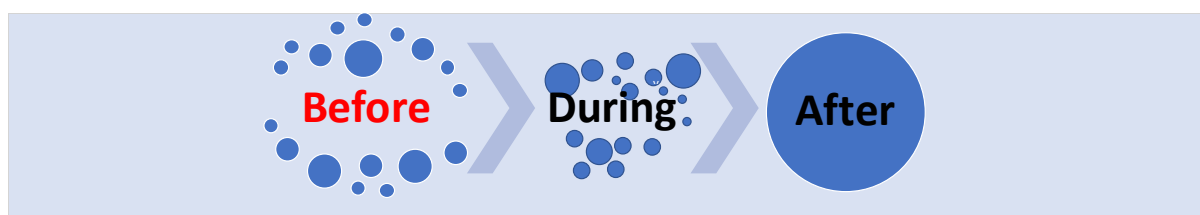
In the third phase, leading to the final report, the analysis is completed, assumptions are clearly stated, and the report is edited to ensure it can be read by non-technicians, leaving more technical parts in annexes; the proposed M&E framework should be clearly articulated. The report should highlight 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.

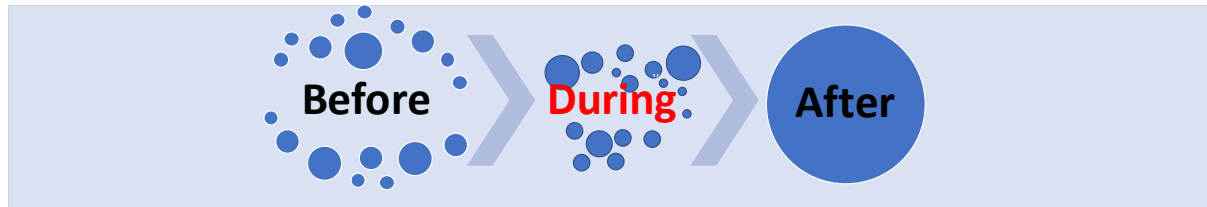
The analysis should include the assessment of the gender, poverty alleviation, environmental, labour and human health impacts of market openings. Moreover, the analysis should include the identification of the assistance to be given to domestic stakeholders to take full advantage of the market access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

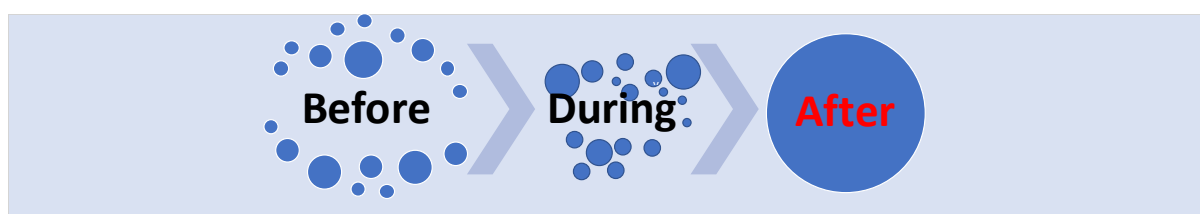
Possible Chapter Heading	Focal Areas and Consideration of Impact on Sustainable Development
Market Access in Goods	<ul style="list-style-type: none"> ▪ Sensitive lists ▪ Flexibilities and tariff formula for cuts ▪ Transition period ▪ MFN clauses ▪ Export taxes ▪ Asymmetric liberalisation ▪ Variable geometry 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.