

Strategic Environmental Assessment for Free Trade Agreements, A generic approach¹

1. Introduction

This document proposes a generic approach to Strategic Environmental Assessment (SEA) for the establishment of Free Trade Agreements (FTA). An FTA is a policy instrument for international trade, known to have large environmental, social and economic impacts, both negative and positive. The SEA approach that is outlined here aims to integrate environmental, economic and social considerations into the FTA policy and negotiation process.

The generic SEA approach is based on recent experiences with impact assessment of trade related policies contributed by experts from the following organizations:²

- The Impact Assessment Research Centre (IARC; University of Manchester) specialises in the integrated assessment of the impacts on sustainable development of national, regional and international policies. Its current research programme includes sustainability impact assessment (SIA) of global and regional trade agreements.
- *Recursos e Investigación para el Desarrollo Sustentable* (RIDES) is a Latin American centre of excellence for applied policy research, with an academic and scientific perspective.
- The Commission for Environmental Cooperation (CEC), created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation, was established to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law.
- AIDenvironment is a non-profit consultancy, with ecological expertise, as well as experience with strategic instruments and networks in the social, public and private sectors.

These experiences have been combined with recent insight in key principles of SEA *e.g.* following the OECD DAC³ and NCEA⁴ experience, to come to the present proposal for a generic SEA approach for FTAs.

In the next section, the objectives of an FTA and those of SEA are described. Following this, the paper sets out the key components of the FTA SEA approach, and explains each in more detail.

¹ For reference to this document: Netherlands Commission for Environmental Assessment, 2007, Strategic Environmental Assessment for Free Trade Agreements, A generic approach. (draft) Utrecht, The Netherlands.

² The expert group consisted of the following members: Colin Kirkpatrick, University of Manchester, UK; Jan Joost Kessler, AIDenvironment, the Netherlands; Chantal Line Carpentier, Commission for Environmental Cooperation Canada; and Hernán Blanco, RIDES Chile; The NCEA secretariat team consisted of: Klaas Jan Beek; Rob Verheem, Ineke Steinhauer and Johan Brons

³ The OECD DAC experience is documented in the 'Good Practice Guidance on Applying Strategic Environmental Assessment (SEA) in Development Cooperation'. This document is the result of the work of the DAC Network on Environment and Development Cooperation (ENVIRONET) Task Team on Strategic Environmental Assessment, led by the UK and the UNDP.

⁴ The Netherlands Commission for Environmental Assessment (NCEA) has a statutory role in the EIA and SEA-regulation in the Netherlands. The NCEA advises government authorities on TOR for EIA and SEA and provides independent quality reviews of EIA/SEA. On developing countries the NCEA is involved in both independent advisory services and capacity development.

2. Objectives of an FTA and an SEA

FTA objectives

In general terms, the objectives of an FTA are to expand trade and improve economic efficiency as a means to increase economic welfare growth. A general assumption behind FTA negotiations is that economic efficiency improves by increased access to markets. Within these general FTA objectives one can distinguish:

- primary objectives related to trade liberalisation and access to markets, and
- associated objectives such as developing regional trade blocks and development cooperation (non multilateral).

Environmental and social objectives are commonly also included in international trade negotiations. These objectives are described in the negotiating parties' policy documents, such as country programs for sustainable development and long term policies for trade and development cooperation.

In addition, both policy makers and the public will bring their own expectations concerning the possibilities and purposes of an FTA to the negotiations. These expectations should be made as explicit as possible making sure that these are clear to all right from the start.

SEA objectives

SEA objectives can be separated into process and outcome objectives. As to process, the SEA aims to create a constructive dialogue between environment and trade-related sectors. The SEA raised important issues to the negotiators and also provides them with answers to their own questions. During the negotiation process the SEA seeks to inform on environmental and social consequences of negotiated options and to contribute to sufficient transparency of the negotiation process. Lastly, the SEA should also develop sufficient capacity of stakeholders on assessment, advocacy and negotiation skills.

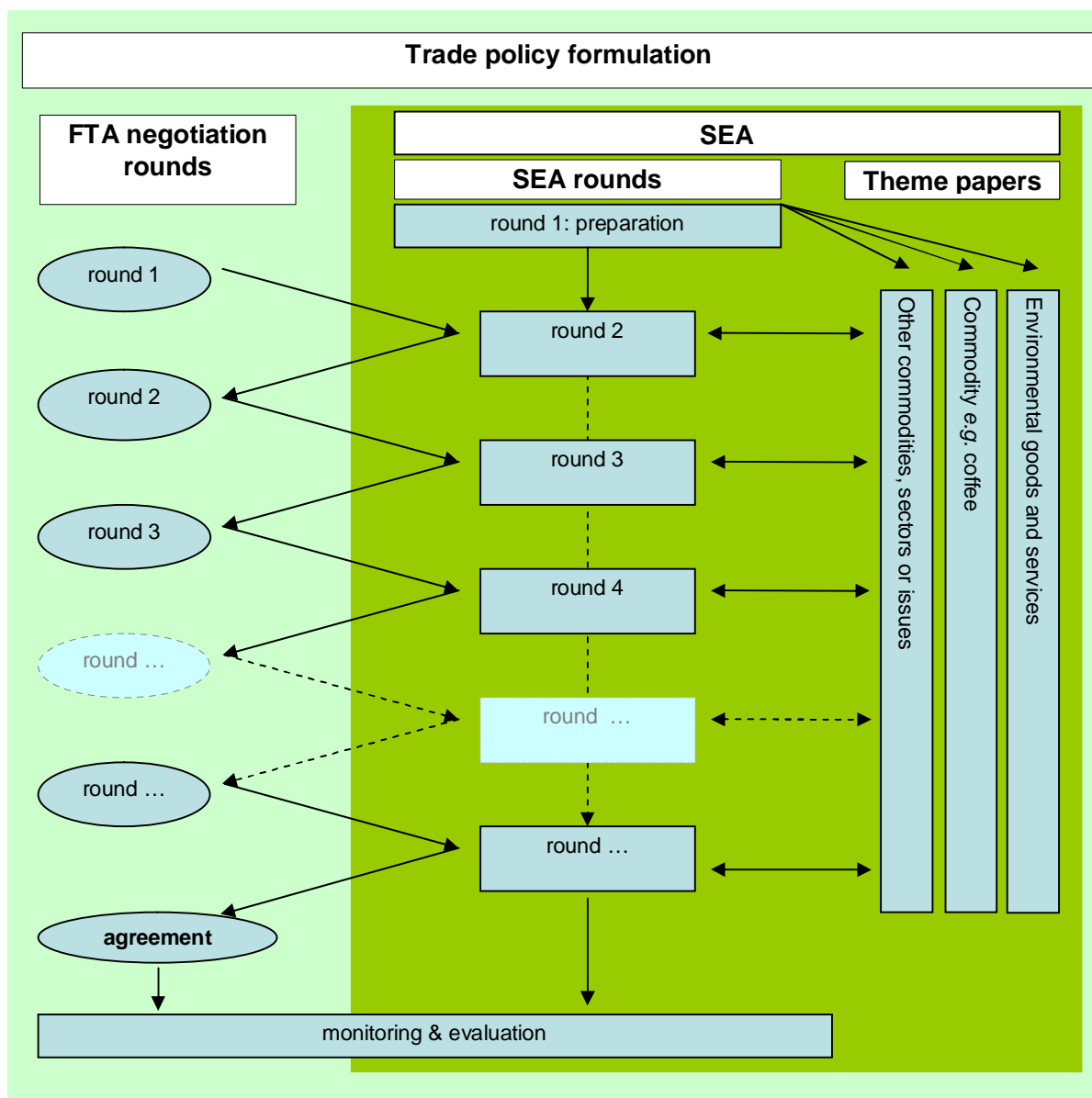
As to outcome, the SEA helps in the selection of the most important environmental and social topics to be addressed in the FTA. These topics are usually centred on commodities and services but may also concern issues as biodiversity or migration. The SEA should include an analysis of the interests of different stakeholders or sectors and indicates which groups gain and which groups are put at a disadvantage through the FTA. This gives a good indication of the support and opposition to the FTA that can be expected. Due attention should be given to minorities groups, indigenous people, women, and vulnerable groups. The analysis of social and environmental impacts should lead to the identification of opportunities and recommendations for mitigation and flanking measures. Lastly, the SEA should assess the institutional capacity required to deal with the FTA consequences.

For SEA to be effective, all parties involved should agree upon the objectives of the SEA with respect to both the process and outcomes.

3. SEA in six components

FTAs have some specific characteristics: there is large degree of uncertainty on how the negotiation process will unfold, a substantive part of the negotiations is bound to confidentiality, and the link between negotiated options and the concrete results is relatively weak. Therefore, typical SEA approaches are likely to be less effective for assessing FTAs. Therefore, the NCEA recommends to follow a dedicated SEA approach which complements the dynamics of trade negotiations. This SEA approach follows the trade policy formulation process. Figure 1 illustrates this approach.⁵

Figure 1 Overview of the components of an SEA embedded in FTA negotiations



⁵ Public participation is not explicitly mentioned because it is integrated in the SEA.

The SEA approach consists of 6 key components, which are briefly summarized below, and then further detailed in the sections 3.1. to 3.6.

- Preparations:** During the preparatory phase the following output is realized:
SEA design
- high level commitment to the SEA,
 - reservation of the necessary budget,
 - installation of an advisory group, who will in this phase:
 - design the SEA (integration into the negotiation rounds),
 - identify key issues and coordinates the theme papers,
 - identify stakeholders,
 - design and announce public participation,
 - plan the monitoring and evaluation of the SEA process.
- The preparatory phase results in a briefing document.
- Organization:** The advisory group consists of representatives of different stakeholder groups, including the FTA negotiators. The group has overall responsibility for the SEA and has a central role in the execution of the SEA. This assures that the SEA is government owned.
The advisory group
- Assessment:** The SEA is integrated into the process of negotiation for the trade agreement by including in an SEA round in each negotiation round. An SEA round includes the assessment of:
A series of SEA rounds
- results of the previous negotiation round and whether and how the SEA has influenced negotiation results
 - proposals to be discussed in the up-coming round,
 - perceptions and visions of stakeholders on these proposals
 - environmental and poverty consequences of proposals.
- On the basis of this, the SEA gives recommendations for the next negotiation round, e.g. on better options (if available), flanking measures, and on mitigation and compensation possibilities.
- Public Participation:** Public participation is an ongoing process under the responsibility of the advisory group. Stakeholders are actively sought out and interviewed. One way to organise this is to appoint a 'public liaison officer' as part of the advisory group who is responsible for taking stock of stakeholder perceptions and concerns. These are then fed back in the advisory group and – after discussion – communicated to the negotiation process during the SEA rounds.
The 'liaison officer'
- Theme Papers** Theme papers describe the potential implications of an FTA on a commodity or a sector and the resulting environmental and social impacts and opportunities. They can also include horizontal issues such as intellectual property rights or investment rules. The papers should contain specific recommendations to the advisory group.
Commodities, sectors & issues
- Monitoring and evaluation** The SEA includes overall monitoring and evaluation of
Enforcement & learning
- 1) the SEA rounds and its recommendations and 2) the actual implementation of the agreement, including:
 - enforcement of environmental and poverty measures in the agreement, and
 - the validity of the assumptions used and assessments made in the SEA (learning).

3.1. The preparatory phase

During the preparatory phase the foundation for the FTA SEA is laid down. The necessary commitment and financial resources are secured, and the advisory group put in place. This group then plans the SEA rounds, and the theme papers and announces the public participation process. Monitoring and evaluation activities are also planned in this phase. Each of these elements is further elaborated below..

High level commitment

In particular during the preparatory phase efforts should be put in assuring commitment to the SEA from the side of high level planners and decision makers and the negotiators. They need to have a common understanding of the scope, the objectives and the process of the SEA. This helps in assuring that SEA will add value to the FTA.

Budget

A first indication of relevant budget lines is:

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|-----------------------------|--|
| - Secretariat | 0,5- 1 full-time equivalent staff member; fee and expenses |
| - Advisory group | 10- 20 members; 4-6 meetings; expenses for government officials, NGOs or community representatives |
| - Theme papers | 4-10 papers; fixed budget for each paper |
| - Public participation | Functioning of public liaison officer, meetings and the establishment of a social database; and other expenses |
| - Communication | Briefings, discussion papers, use of internet |
| - Monitoring and evaluation | To be decided |

Creation and first meeting of the advisory group

During the first meeting of the advisory group working procedures are established and the members get acquainted with the process of FTA and of SEA:

- The negotiators inform the advisory group on key commodities and key themes.
- The advisory group makes a first assessment of key environmental and social issues.
- The advisory group makes an inventory of main stakeholders and interests.
- The advisory group launches the priority theme papers.

Planning the series of SEA rounds

The SEA should proactively contribute to intermediate outputs of the negotiations, at the right time. To achieve this, one output-moment is not enough. Therefore, a series of SEA rounds are planned for the most relevant rounds of the negotiation process. In the preparation phase the following issues should be clarified: How many negotiation rounds will be held? Which are the most crucial negotiations rounds? When and where do the negotiations take place? Which topics will be dealt with?

Announcement of public participation

After design of the participation process – possibly including a liaison officer – the public is informed about:

- how information disclosure and participation is integrated in the SEA components,
- the composition and tasks of the advisory group,
- the public availability of the theme papers.

Coordination of the theme papers

The advisory group formulates the need for a limited number of themes papers on the most important issues (commodities or sectors) that may constitute important opportunities or cause potential conflicting or converging interests as a consequence of the FTA. The types of questions to discuss are:

Environmental and social	What are relevant environmental and social policies and policy objectives? What are environmental and social priority issues and how are these influenced by different options in the FTA? How do these effects relate to economic and social policy objectives? What opportunities and comparative advantages exist and how can these be exploited?
Institutional	Is there sufficient capacity to deal with negative environmental or social consequences of trade and to enforce regulation? How can institutions and governance be strengthened to adequately manage environmental and social consequences? How to coordinate and build synergies among cooperation agreements and other aid sources?
Trends	What are relevant trends and predictions to be taken into account? Have any scenario studies been undertaken, and what are the results?

Next, the terms of reference for the theme papers are established and issued to key experts. Experts may have a scientific background, but can also be sourced from NGOs and the private sector.

A plan to monitor and evaluate the SEA process

Monitoring and evaluation are organized along two lines:

- At the start of each SEA round the results achieved in the previous negotiation round are evaluated, including the extent to which SEA findings and recommendations are integrated in the FTA negotiations.
- After adoption of the trade agreement, the implementation and actual impacts of the agreement are monitored and evaluated.

3.2. The advisory group

The advisory group is responsible for the SEA. The group establishes personal relationships with key 'high level' persons, working in foreign affairs, trade and environment. The advisory group consists of 10-20 members including members of the negotiating team, government officials, experts, representatives of civil society, indigenous people and the private sector.

Within this group, stakeholder discussion and impact assessment come together. The group should have a formal mandate from the key ministries to accompany the negotiation process by issuing non-binding advice to negotiators ('act up') and disseminating to, and collecting information from, stakeholders ('act down').

The advisory group has four core objectives:

- Ensure that for each negotiation round an appropriate assessment is made, on the basis of which recommendations for the negotiators are developed to mainstream environmental and social issues in that particular round of trade negotiations.
- Define the terms of reference for the theme papers, and ensure that the results of the papers are communicated and used.

- Assure that there is a balance between confidentiality and transparency in public participation, and that the participation results are integrated into the assessments.
- Communicate the main results of the assessments and the recommendations to the relevant negotiators and the negotiation teams.

Within the advisory group different tasks are assigned:

- The advisory group needs to elect a secretary or secretariat for the daily management and a chair. The secretary could be funded from the SEA budget. The secretary communicates with the contractors for the theme papers and can be assigned additional tasks such as informing a wider audience via internet, or consultation of experts.
- The chairman and a facilitator prepare the agenda for each meeting and assure that the meetings are carried out efficiently. The facilitator should be skilled in consensus building and conflict management.
- A public liaison officer reports on results of public participation during the meetings and carries out public consultation in between the meetings.

The advisory group meets as often as necessary, and in particular directly before or after each negotiation round. In exceptional cases, depending on circumstances, a part of the meetings may remain confidential, while the non-confidential part can be combined with public consultation or seminars. The group shares relevant information with the negotiating teams at three distinct moments:

- prior to the meetings of the advisory group (to brief the advisory group on key issues),
- prior to the negotiation round (to brief the negotiators on recommendations),
- after negotiation rounds (to evaluate and plan next actions).

3.3. The series of SEA rounds

The SEA is designed such that each (or a selected number) of negotiation rounds is informed by a short tailor made SEA round. In each SEA round the advisory group comes together. The preparations of this meeting consist of making a synthesis of available theme papers and a briefing on the negotiation results thus far, and an overview of the issues for the next round. In addition public consultation takes place during the preparations, and the outcome is brought in the meeting of the advisory group. This meeting then results in recommendations for the negotiators and information (public disclosure). Each next SEA round starts with an evaluation to what extent earlier recommendations have been included in the negotiations and what new topics have arisen. It is possible that the advisory group decides that new theme papers are required on new arising issues,

Each SEA round consists of four steps: scoping, assessment, recommendations, and sensitivity analysis.

Scoping

The objective of scoping is to identify and agree on key issues on the basis of the available theme papers, questions by negotiation teams, and the outcomes of public consultation. The advisory group should justify priority issues, identify any gaps in information, and decide how to deal with these gaps.

Assessment

The purpose of assessment is to analyse existing trends (e.g. as to poverty or environmental quality) and develop scenarios of what might happen as a result of negotiated options. Using a mix of qualitative and quantitative methods is

recommended. Up-to-date expert judgement as well as existing scenario studies and case studies will support evidence (provided in the theme papers). Due attention to risks as well as opportunities is needed; typically environmental and social issues will offer both. Emphasize win-win options and trade offs between short term and long term profits.

The types of scenarios, including sensitivity analyses, that can be used are:

- development without an FTA (what might happen if proposals will not be adopted),
- development with the FTA (what happens if proposals will be adopted),
- development with an FTA plus flanking measures (including opportunities or impact mitigation).

Flanking measures may not concern the trade agreement itself, but can also be implemented in other sectors, for example in case compensation measures are proposed. The development of the scenarios for flanking measures may be based on existing sustainability policies and strategies in countries or regions, the compensation of disadvantaged groups, or the exploitation of new economic opportunities through international trade (comparative advantages).

Links should be clarified with existing trade agreements and ongoing (trade) negotiations, which influence similar key issues or restrict possibilities through potential cumulative impacts.

The SEA briefing to the negotiators should include an explanation of how the assessment outcomes are to be interpreted and how weights can be given to different outcomes. This may be done by natural resource valuation, or by comparing risks.

Recommendations

In case potential consequences are less desirable, the SEA should suggest adjustments of the FTA or flanking measures.

Recommendations are best given in a format of 'traffic lights' for the negotiators: the do's and don'ts from a sustainability perspective. Use a mix of 'do more good' and 'do no harm' recommendations. These will depend upon country characteristics. For example, countries with abundant natural resources can focus on opportunities; countries with many environmental problems can focus on impact mitigation and flanking measures. To involve the private sector, win-win situations may be identified for example in the production of renewable energy.

Sensitivity analyses

A sensitivity analysis is done to test the robustness of recommendations in the light of uncertainties. These uncertainties in scenarios and recommendations should be discussed and options defined to deal with situations when the actual consequences are different from predicted consequences.

3.4. Theme papers

The application of theme papers has been used in the *ex post* environmental assessment of NAFTA by the Commission for Environmental Cooperation. The advisory group issues designated Terms of References for the theme papers, making sure the theme papers together provide a complete set of information on key issues of trade related environmental and poverty issues. Theme papers should be available as early as possible in the SEA, but the negotiations dynamics also require a flexible planning of

the theme papers, and intermediate or ad hoc theme papers may be needed. The number of theme papers should be limited to 4-10 papers, but most important is that they should provide concise and adequate information to the advisory group.

The theme papers, no more than 8,000 words (about 20 pages), should have the following content:

Problem statement and hypothesis

A theme paper is about a single commodity (*e.g.* coffee, bananas) or sector (*e.g.* fisheries) because tradable commodities are the main topic of an FTA. Horizontal themes such as services, investment, intellectual property rights, non-tariff barriers, etc. are increasingly important and have huge impacts and could also be the topic of a theme paper. Additional themes (*e.g.* biodiversity) may also be eligible, but care should be taken to avoid overlap between theme papers. Each theme papers should also include an inventory of the present and required institutional capacity to deal with the environmental consequences of the FTA.

Based on the input from the SEA preparatory phase, the theme paper elaborates problem statement and some hypotheses about linkages between trade and the environment. The *ex post* evaluation of the NAFTA made use of hypotheses drawn from highly polarized positions that had emerged during the negotiation process. These hypotheses reflected positive as well as negative effects of trade on the environment and facilitated an integrated discussion with a focus on key linkages between the two.

Methodology and information sources

The theme papers rely on a combined use of qualitative and quantitative data and information sources. In general different methods support each other:

- an analysis of trends may provide useful baseline reference for comparison of scenarios,
- the outcomes of quantitative models (*e.g.* Computable General Equilibrium or partial Equilibrium models) allow for comparison across multiple sectors of different effects that can be further explained by sector experts,
- existing scenario studies, predictions and case studies support additional evidence and provide relevant insights and arguments for communication.

While macro studies tend to present aggregated data on trends and income distribution, theme papers should provide more insight into the consequence of the FTA on (sub)groups of winners and losers. Questions should be answered such as: What would be the costs of compensation of stakeholders who lose income opportunities as a consequence of the FTA? How does the FTA influence the economic position of specific vulnerable groups? Which areas are particularly affected by the FTA?

In some cases the effects of trade liberalization can be illustrated without sophisticated data and the collection of primary and secondary data may not be needed. Practical experience shows that there is relatively abundant data available on land use, the state of nature, trade figures, and income distribution. Yet the varying quality and geographic specificity of the available data often makes it difficult to compare indicators across countries and periods. The indicators should provide additional information on hypotheses regarding expected development with or without a trade agreement. In case of a regional trade agreement (several countries involved), existing national data, case studies and scenarios will need to be made comparable at the regional level.

The baseline description consists of an exploration of the current situation regarding the sector or commodity. It describes core sustainability indicators, for example:

- environmental: biodiversity indices, level of natural resources and environmental quality indicators;
- social: the MDG indicators, number of conflicts, Gini index;
- economic: level of employment, income level, level of migration;
- institutional: legislation, property rights.

Analysis, conclusion and recommendations

The theme papers present the analysis preferably in the same structure as the briefing papers that come out of the SEA rounds: scoping of key issues, assessment, recommendations, and sensitivity analysis. Recommendations should be broken down into national and regional issues to emphasize the need for cooperation on various issues that become part of the cooperation agenda (e.g. domestic policies, flanking measures, etc.).

Recommendations should be as specific as possible to indicate:

- the sensitive topics that potentially lead to major risks or changes in welfare, environment, natural resources, or social groups at risk;
- potential solutions that could be feasible in the short and long term (how to refine policies to avoid risks or to identify alternatives);
- (missed) opportunities;
- what else, if applicable, would be needed to make an informed decision;
- which options are advisable (the do's) and which are not feasible (the don'ts).

The theme papers are to a certain extent comparable with the output of the SEA rounds. To avoid confusion, table 1 recapitulates the main differences between the theme papers and the SEA rounds and shows how both components should be complementary.

Table 1 Synergy between theme papers and SEA rounds

Theme papers	SEA rounds
<ul style="list-style-type: none"> • Sector / commodity / thematic focus • Use of existing data and studies 	<ul style="list-style-type: none"> • Inter-sector focus • Use of theme papers and additional data to fill gaps
<ul style="list-style-type: none"> • No additional research, use of existing scenario work if available • Done by experts or working groups with sector expertise (NGOs, research institutes, ...) 	<ul style="list-style-type: none"> • Use of generic / comprehensive framework, possibly including scenarios • Done by the advisory group
<ul style="list-style-type: none"> • Evidence-based (i.e. to give optimal overview of available data) • Structured along the lines of the guidelines given (logical structure, two-page summary for public distribution) 	<ul style="list-style-type: none"> • Objectives-based (i.e. to inform negotiators) • Structured to serve above objectives (logical and communication purpose)

3.5. Public participation

Public participation builds widespread understanding of the agreement as well as commitment to the outcomes. Public participation as part of the SEA is organized throughout the negotiation process and should be complementary to the public participation already included in the negotiation process.. It is integrated in the set-up of the SEA by adequate representation of different stakeholder groups within the advisory group. In addition, the public liaison officer is responsible for organizing the participation of stakeholders outside of the advisory group.

The public liaison officer participates in the meetings of the advisory group to bring in the results of public consultation. The public liaison officer carries out public consultations by visiting and interviewing stakeholders. Consultation takes place on the basis of the information in the theme papers and briefing papers (which are publicly available).

Public participation should rely on existing networks of experts and stakeholders around environmental and social issues. In order to structure the public participation, a database of stakeholders and experts should be set-up. This so-called social database can be used for addressing stakeholders and experts and for disseminating information during the public participation process. The internet can be used to give follow-up to meetings and explain how the issues raised during the public participation are further addressed.

Public participation should preferably focus on country issues, because it is at the country level that stakeholders perceive the social and environmental effects of trade liberalisation. However, in case of a regional trade agreement, it is useful to the negotiation process to combine national and international issues. This may draw the interest of the negotiation parties as well as the international community.

3.6. Monitoring and evaluation

Monitoring and evaluation takes place during and after the trade negotiations and the SEA. It looks at the achievement of results in terms of input, output, outcome and impact, and at different levels of responsibility:

- The secretariat (or technical secretary) is responsible for assessing whether the SEA efficiently brings together experts and stakeholders, whether stakeholders are adequately informed and whether the advisory group receives adequate information to develop recommendations to the negotiators.
- The advisory group is responsible for evaluating to what extent the SEA recommendations are incorporated in each negotiation round. The results should be documented.
- The competent authorities (*e.g.* ministries) are responsible for monitoring and evaluating the actual implementation of the FTA and assessing whether actual social and environmental effects are different from the predicted ones. Normally, an FTA includes a plan for monitoring and evaluation and, where necessary, the SEA should contribute to this plan.

Input

The secretariat is responsible for maintaining the overall overview of the activities carried out by the advisory group, by the public liaison officer and by the contractors of the theme papers. The secretariat also assures timely and adequate communication with the negotiating teams.

Output

Examples of outputs are progress reports, theme papers, the recommendations and conclusions by the advisory group, the results of the public consultation and other forms of briefings, policy papers, and publicity. The level of detail of these documents will depend on the available financial resources.

Outcome

The advisory group evaluates how the FTA negotiations actually take up the output of the SEA. Do the observations and the recommendations of the advisory group have a direct effect on the negotiations? This should be visible in the positions taken by the

negotiators and the points of view and perception of civil society organizations. The SEA should also be able to contribute to policy processes related to the trade negotiations (e.g. SIA by the EU) and to actively influence perception and awareness among policy makers. Finally, towards the end of the negotiations, the advisory group evaluates to what extent mainstreaming of the environment in the results of the negotiations has been successful (direct changes of the FTA content, flanking measures, etc).

Impact

Monitoring of the FTA process and the long term impact in the period after the SEA requires a designated structure under the responsibility of the competent authorities. The evaluation should concern the actual implementation of the FTA process, the social and environmental effects and impacts of the FTA on the medium and long term, and awareness on environmental and social issues among policy makers and public. The advisory group could use the theme papers to develop recommendations for indicators and for monitoring methods.

Because of the long term nature of the impacts of trade agreements, there should be an organization with a long-term mandate and an adequate budget to carry out the monitoring and evaluation of trade impacts. A balance is required between long term and sufficiently in-depth evaluation (*i.e.* once every five years) and more frequent monitoring (*i.e.* yearly) to respond to rapid changes and to generate data input for the long-term impact evaluations. The institutional capacity assessment, discussed in the previous sections, should therefore include recommendations for the necessary institutional capacity to carry out monitoring and to adequately manage the impacts of the FTA.