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## Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation

Jan Orbie, Deborah Martens and Lore Van den Putte



**CLEER**



CENTRE FOR THE LAW OF EU EXTERNAL RELATIONS

**CIVIL SOCIETY MEETINGS IN EUROPEAN UNION TRADE  
AGREEMENTS: FEATURES, PURPOSES, AND EVALUATION**

**JAN ORBIE, DEBORAH MARTENS AND LORE VAN DEN PUTTE**

**CLEER PAPERS 2016/3**

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## ABSTRACT

A novelty in the new generation of European Union free trade agreements is the chapter on trade and sustainable development. This includes references to labour and environmental provisions that should be respected in the framework of the agreement as a whole. Civil society organisations have, apparently, been granted an important role in the follow-up and monitoring of these chapters. Civil society meetings have become a standard and quite prominent feature of EU free trade agreements, specifically with a view to promoting labour and environmental principles. In this CLEER Paper, we address three basic questions about these meetings: (1) how do they look like (features), (2) what are they for (purposes), and (3) how can we evaluate them (assessment)? In doing so, we take stock of current developments (empirical contribution) and propose frameworks for further examination (analytical contribution). Our empirical data are mainly based on interviews and participant observation in relation to the EU-Peru-Colombia, EU-Central America and EU-Korea agreements. Our analytical frameworks are developed in order to study the features of the civil society meetings on the one hand, and in order to make normative evaluations on the other hand. When it comes to evaluating the success of the civil society meetings, we argue that this ultimately hinges on one's perspective on civil society, democracy and development in the context of international trade. In conclusion, we express some critical concerns on the (so far) limited role of the civil society meetings, while also indicating that it would be too early to dismiss their potential relevance in the future.

## LIST OF CONTRIBUTORS

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## ABBREVIATIONS

AA	Association Agreement
ACP	African, Caribbean and Pacific
ACTA	Anti-Counterfeiting Trade Agreement
CARICOM	Caribbean Community
CARIFORUM	Caribbean Forum of African, Caribbean and Pacific States
CC-SICA	Comité Consultivo del Sistema de la Integración Centroamericana
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CSM	Civil Society Meeting
CSO	Civil Society Organisation
DAG	Domestic Advisory Group
EAC	East African Community
ECOWAS	Economic Community of West African States
EEAS	European External Action Service
EESC	European Economic and Social Committee
EP	European Parliament
EPA	Economic Partnership Agreement
EU	European Union
FTA	Free Trade Agreement
GSP	Generalised System of Preferences
ILO	International Labour Organisation
NAC	National Advisory Committee for Labour Provisions of US Free Trade Agreements
NGO	Non-Governmental Organisation
SD chapter	Chapter on Trade and Sustainable Development
T-SIA	Trade Sustainability Impact Assessment
TTIP	Transatlantic Trade & Investment Partnership
WTO	World Trade Organization



## INTRODUCTION<sup>1</sup>

A novelty in the new generation of European Union (EU) free trade agreements (FTAs) is the chapter on trade and sustainable development (SD chapter). This includes references to labour and environmental provisions that should be respected in the framework of the agreement as a whole. This should be seen in the context of the growing recognition of the linkages between trade and sustainable development. The Lisbon Treaty mentions 'fair' alongside 'free' trade as one of the Union's external policy objectives (Article 3.5 TEU) and stipulates that the EU's trade policy 'shall be conducted in the context of the principles and objectives of the Union's external action' (Article 207.1 TFEU).<sup>2</sup> The Trade for All strategy of the European Commission strongly emphasises 'values' and 'responsible trade'.<sup>3</sup>

Civil society organisations (CSOs) have, apparently, been granted an important role in the follow-up and monitoring of these chapters on trade and sustainable development. Although civil society was mentioned in previous trade agreements, it is only since the EU-Korea agreement that civil society meetings (CSMs) have become a standard and quite prominent feature of EU FTAs, specifically with a view to promoting labour and environmental principles.<sup>4</sup> While the US and Canada include to some extent civil society in their trade-labour nexus, the EU has a more specific and elaborate approach towards civil society involvement. These meetings arguably reflect the distinctive, 'cooperative' approach of the EU, which emphasises dialogue and collaboration over sanctions.<sup>5</sup> The SD chapters are excluded from the general dispute settlement system of the FTA

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<sup>1</sup> The paper reflects ongoing research at the Centre for EU Studies. The authors would like to thank the two anonymous reviewers, Tamara Takács and the participants of the conference 'EU Trade Policy at the Crossroads – between Economic Liberalism and Democratic Challenges' (Vienna, 4-6 February 2016), the workshop on 'EU Contributions to Equitable Growth and Sustainable Development' (Leicester, 20 April 2016), the EU in International Affairs V Conference (Brussels, 11-13 May 2016) and in particular San Bilal, Ferdi De Ville, Annelien Gansemans, Tony Heron, John Hilary, Stephen Hurt, Mark Langan, Axel Marx, Myriam Oehri and Sophia Price for their feedback on earlier versions.

<sup>2</sup> See also W. Douma, 'The promotion of sustainable development through EU trade instruments', in L. Pantaleo and M. Andenas (eds.), *The European Union as a Global Model for Trade and Investment*, Research Paper Series No. 2016-02, University of Oslo, Faculty of Law Legal Studies 2016.

<sup>3</sup> European Commission, 'Trade for all: Towards a more responsible trade and investment policy', COM(2015)497.

<sup>4</sup> Our definition of 'civil society' follows the practice of the EU, referring to a wide range of non-state actors including most importantly labour, environmental and business groups, but also organisations working on for instance human rights, animal rights, and consumer interests. This is a wider definition than standard definitions of civil society as 'not for profit organisations' which thus exclude business associations. See P. Bouwen, 'Business Interest Representation and legitimate European Governance', in S. Smismans (ed.), *Civil Society and Legitimate European Governance* (Cheltenham: Edward Elgar 2006), 279-280.

<sup>5</sup> M. Oehri, 'Comparing US and EU labour governance 'near and far' – hierarchy vs network?', 22 *Journal of European Public Policy* 2014, 731-749; E. Postnikov and I. Bastiaens, 'Does dialogue work? The effectiveness of labor standards in EU preferential trade agreements', 21 *Journal of European Public Policy* 2014, 923-940.

as a whole. When a violation of labour or environmental provisions arises, the issue can be discussed in governmental consultations. As a last resort, a panel of experts can be established. However, no sanction is foreseen if the panel's recommendations are not followed up.

In its discourse about the new trade agreements, the European Commission never fails to emphasise the importance of the SD chapter and the CSMs it includes. In recent years, several civil society meetings have been organised in Brussels and in the EU's trading partners. For example, this has been the case for the EU-Korea, EU-Central America and EU-Peru-Colombia agreements and more recently also the agreements with CARIFORUM<sup>6</sup>, Georgia, Moldova and Ukraine<sup>7</sup>. The number of such meetings is likely to increase exponentially, as some trade agreements still need to enter into force (e.g., with Ecuador (part of Peru-Colombia agreement), Singapore, Vietnam, Canada, the West African States (ECOWAS) and the East African Community (EAC))<sup>8</sup>, some are still being negotiated (e.g., with the US, Japan and the Philippines), and some will be updated in the near future (Mexico, Tunisia) or are planned to be (re)launched (e.g., with Mercosur and Indonesia).<sup>9</sup>

Despite their unique position in EU trade agreements, their importance in EU discourse, and their recent proliferation, we know surprisingly little about the CSMs. We do not know how they work and we know even less about how successful they are. Against this backdrop, this CLEER Paper aims to better understand the CSMs. Specifically, we address three questions: (1) how do they look like (features), (2) what are they for (purposes), and (3) how can we evaluate them (assessment)?

Hence, the paper has a descriptive and evaluative component. Both of these dimensions are important. First, the features of the CSMs differ from agreement to agreement. Even though they seem to be based on the same template, a closer look at the treaty provisions (*de jure*) and their implementation (*de facto*) reveals a remarkable degree of variation. As will be shown in section I, the institutional set-up of the meetings varies significantly. This complexity is likely to further increase when more EU trade agreements go into force. Second, evaluating the meetings proves to be a difficult exercise. Existing assessments diverge starkly from providing a promising avenue for civil society empowerment to being no more than a fig leaf. As we will indicate in this paper, this confusion concerning different evaluations can be traced back to fundamentally different views

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<sup>6</sup> The Caribbean Forum of African, Caribbean and Pacific States are Antigua and Barbuda, the Bahamas, Barbados, Belize, the Commonwealth of Dominica, the Dominican Republic, Grenada, the Republic of Guyana, Haiti, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

<sup>7</sup> The EU-Ukraine Deep and Comprehensive FTA entered into force on 1 January 2016. However, the CSMs have not been established yet.

<sup>8</sup> The latter two agreements do not contain elaborate provisions on CSMs in the framework of sustainable development. The Southern African Development Community does not refer to CSMs as a whole. However, one could expect the European Parliament to demand similar monitoring mechanisms as in the other agreements (as witnessed in a meeting organised by a member of the EP, Joachim Schuster, on monitoring mechanisms in the EPAs held in Brussels on 19 April 2016).

<sup>9</sup> See also EESC, 'Briefing of the EESC secretariat on the functioning of Domestic Advisory mechanisms in EU Trade Agreements', on file with the author (Brussel 19 April 2016).

on the role of civil society in the context of trade, democracy and development. Even amongst those who favour civil society involvement, different perspectives exist on what the purposes of such meetings should be.

Our contribution is both empirical and analytical. Existing analyses have in general focused on whether the ‘soft’ or ‘cooperative’ approach of the EU can be effective,<sup>10</sup> and on how this differs from the ‘hard’ or ‘sanctioning’ US approach,<sup>11</sup> but research into the potential contribution of the CSMs is quasi-absent. Empirically, we present recent and original data on the CSMs. These are based on the texts of the trade agreements, speeches and documents of relevant actors, the (limited) secondary literature available, more than 55 interviews conducted with policy-makers and stakeholders involved in the meetings in Belgium, Colombia, Peru and Costa Rica in 2014, 2015 and 2016, and participant observation during the Civil Society Dialogue Forum of the EU-Central America agreement (29 May 2015, Brussels) and the EU DAG meetings of the EU-Central America (1 March 2016, Brussels), Peru-Colombia agreement (7 April 2016, Brussels) and part of the CARIFORUM Consultative Committee (19 April 2016, Brussels). Because the majority of our empirical data relate to the CSMs organised in the context of the EU trade agreements with Korea, Peru-Colombia and Central America,<sup>12</sup> these will principally be discussed in this paper. In addition, evidence of other EU trade agreements will also be used where relevant.

Analytically, we elaborate frameworks for the comparative study of the features of the CSMs (descriptive dimensions, Figure 1) and for the assessment of their success (evaluative dimension, Figure 2). The construction of analytical frameworks is even more important than describing and evaluating the CSMs as they currently stand, since these meetings are ‘moving targets’ that will probably be altered and expanded in the next years and decades. As such, we aim not only to ‘take stock’ of current developments but also to lay the foundations for further research by providing comparative and evaluative frameworks. There have been widely diverging evaluations of the meetings – ranging from being a ‘talking shop’ legitimising free trade to ‘empowering’ marginalised groups – without however clarifying the underlying assumptions of such assessments.

Finally, we hope that this is a normative and policy-relevant contribution, not only because sustainable development is obviously important in the context of trade<sup>13</sup>, but also because we would argue that cooperative provisions in trade agreements can be successful even in the absence of enforceable provisions.<sup>14</sup>

<sup>10</sup> B. Burgoon, ‘The distinct politics of the European Union’s “Fair Trade” linkage to labour standards’, 14 *European Foreign Affairs Review* 2009, 643-661; H. Horn et al., ‘Beyond the WTO? An anatomy of EU and US preferential trade agreements’, 33 *The World Economy* 2010, 1565-1588; S. Meunier and K. Nicolaïdis, ‘The European Union as a conflicted trade power’, 13 *Journal of European Public Policy* 2006, 906-925; J.S. Vogt, ‘Trade and Investment Arrangements and Labor Rights’, in L. Blecher et al. (eds.), *Corporate Responsibility for Human Rights Impacts: New Expectations and Paradigms* (Chicago: ABA Book Publishing 2014), 121-176.

<sup>11</sup> See M. Oehri, E. Postnikov and I. Bastiaens, *supra* note 5.

<sup>12</sup> The states that are part of Central America are Panama, Guatemala, Costa Rica, El Salvador, Honduras and Nicaragua.

<sup>13</sup> O. De Schutter, *Trade in the service of sustainable development: linking trade to labour* (Oxford: Hart Publishing 2015).

<sup>14</sup> Van den Putte et al., ‘What social face of the new EU trade agreements? Beyond the “soft” approach’, European Trade Union Institute (ETUI) Policy Brief N° 13/2015, available at <<https://>

Moreover, the European Commission has indicated that the set-up and functioning of the CSMs could be further improved.<sup>15</sup> In general, outcomes of this research can contribute to the academic and policy debate on the EU as a 'normative power'<sup>16</sup> and/or 'market power'.<sup>17</sup>

The structure of the paper is in line with the three research questions. It also follows an increasing level of abstraction: we first need to know how the meetings function (features), and what they are intended to do (purposes), in order to eventually assess them (evaluation). Section I lists the distinctive features of the CSMs, referring to both *de jure* and *de facto* characteristics. This part consecutively elaborates on the institutional set-up, composition, organisation, and outcome of the CSMs. It provides the building blocks for a comparative analysis. Section II dissects the different purposes that can be (and have been) ascribed to the CSMs. We will show that these meetings can serve four analytically distinct purposes: instrumental (gathering support for FTA), functional (monitoring and information gathering on the implementation), deliberative (promoting democratic governance) and policy purposes (advising the governments). Section III builds on the previous parts by outlining an evaluative framework for assessing the success of the meetings. The objective of this framework is not to provide a definite evaluation of the current functioning of the CSMs, but rather to situate different assessments within wider debates in order to transcend unqualified judgements. The conclusion summarises the main findings and expresses some critical concerns on the (so far) limited role of the CSMs, even if it would be too early to dismiss their potential future relevance.

## I FEATURES: WHAT DO THEY LOOK LIKE?

The institutional setting and specific features of the CSMs vary across the existing agreements. In this section, we will dissect and describe four *de jure* and *de facto* features (see Figure 1). These have been established 'abductively',<sup>18</sup> meaning that they stem from the interaction between theoretical insights (secondary literature on trade policy, interest representation, civil society participation, and meeting management) and empirical data (interviews and field research on the EU-Korea, EU-Central America, and EU-Peru-Colombia agreements). It is important to systematically elaborate these features for two reasons. First, this establishes a framework for more systematic comparative analysis of existing agreements in future research. Second, any evaluation of the success (or failure) of the CSMs needs to take into account the specificities of the existing arrangements. In what follows, we will set out the specific features identified. While the normative evaluation of these features is part of the evaluative framework pro-

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<sup>15</sup> Author's interview with EU official, Brussels, 6 May 2015.

<sup>16</sup> I. Manners, 'The normative ethics of the European Union', 84 *International Affairs* 2008, 45-60.

<sup>17</sup> C. Damro, 'Market power Europe', 19 *Journal of European Public Policy* 2012, 682-699.

<sup>18</sup> J. Friedrichs and F. Kratochwil, 'On Acting and Knowing: How Pragmatism Can Advance International Relations Research and Methodology', 63 *International Organization* 2009, 703-731.

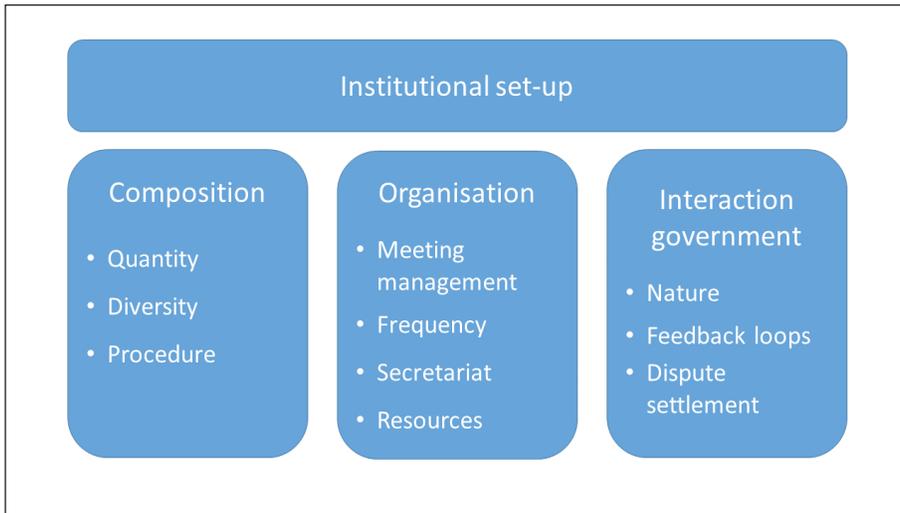


Figure 1. Comparative framework (features)

vided for in section III, we already provide some specific insights into how these can be assessed.

### Institutional set-up

The first feature is the most overarching one, as it concerns the institutional framework within which the CSMs take place. The three features set out hereafter (composition, organisation, interaction government) should be regarded in light of this overarching institutional set-up. The institutional set-up consists of different bodies that are created in the framework of the agreement. In addition to the *de jure* formations, it is possible that other bodies are *de facto* involved. Important to notice is that, alongside these non-governmental bodies at the domestic and the transnational level, every agreement also sets up an intergovernmental body<sup>19</sup> that meets annually in order to monitor the implementation of trade-related aspects of sustainable development. This body comprises of high-level senior officials of each Party.

As illustrated in Figure 2, at least five different constellations for CSMs currently exist:

1. A Domestic Advisory Group (DAG) in which civil society organisations of one Party meet.
2. A joint meeting of the domestic advisory groups (DAG-to-DAG meeting) of the Parties.

<sup>19</sup> In the EU-Korea FTA this body is named 'Committee on Trade and Sustainable Development' and in the Peru-Colombia agreement 'Sub-committee on Trade and Sustainable Development' and finally in the Central American 'Board on Trade and Sustainable Development'.

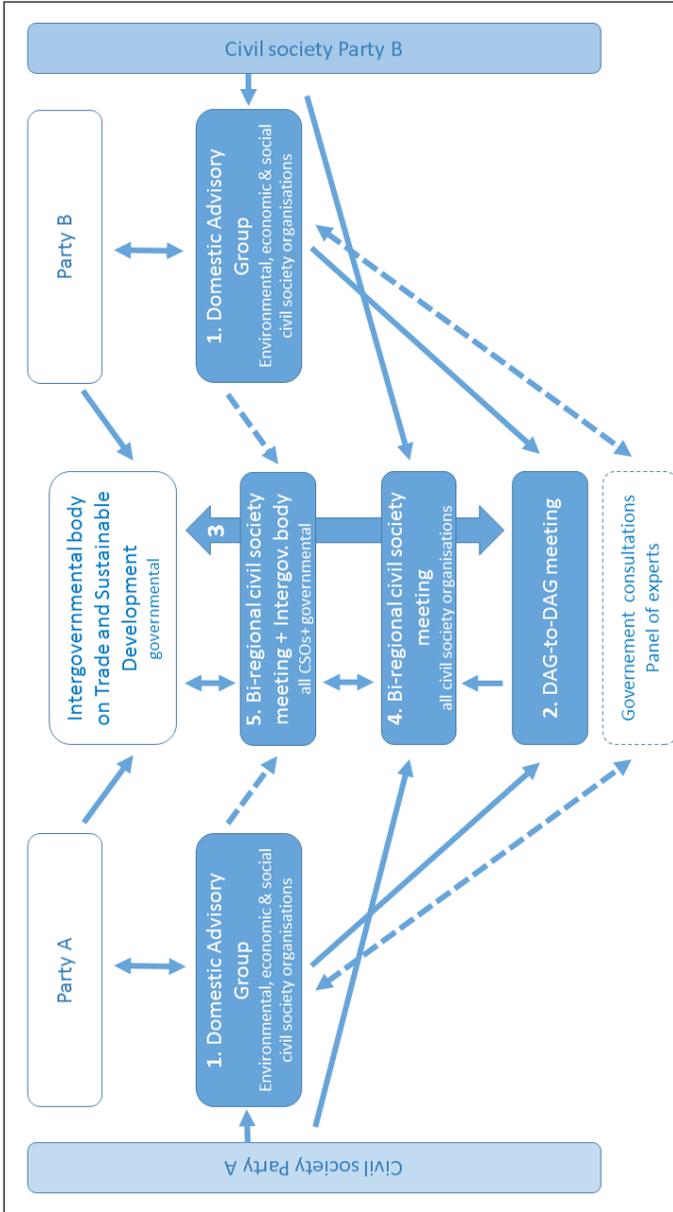


Figure 2 Institutional set-up: five constellations

3. In this constellation, the DAG-to-DAG meeting comes together with the inter-governmental body.
4. An open civil society meeting<sup>20</sup> where civil society organisations of the Parties meet without the presence of the intergovernmental body.
5. Civil society from different countries meets with the intergovernmental body.

Thus, the institutional framework can differ from agreement to agreement. First, differences exist between the *de jure* and *de facto* set-up of the mechanisms. For instance:

- The EU-Korea FTA formally creates 2 DAGs (1)<sup>21</sup> and a DAG-to-DAG meeting, which is called the 'Civil Society Forum' (2), while *de facto* an open bi-regional civil society meeting (4) is organised in addition to the Civil Society Forum. Although only a limited number of interests should be consulted according to the agreement, in practice a wider range of interests can participate in a designated meeting.
- In contrast, the EU-Central America and the EU-Peru-Colombia agreements do not require the creation of new DAGs: Parties can also rely on existing groups or committees (1). These agreements also establish a bi-regional CSM (4). Moreover, in practice the EU-Central America agreement also creates a DAG-to-DAG meeting (2) as well as an open bi-regional civil society meeting with the intergovernmental body (5).
- The CARIFORUM agreement, as well as the Economic Partnership Agreements (EPAs) with West Africa and East Africa (which have not yet entered into force), only foresee a Consultative Committee, which is a closed meeting of CSOs of all the Parties where the intergovernmental body is also present (comparable to a DAG-to-DAG meeting with the intergovernmental body (3)).

Second, there is variation in the agreements on whether a new DAG (1) should be established or an existing group can be consulted:

- The EU-Korea FTA requires the establishment of a new DAG. All FTAs concluded thereafter explicitly mention the possibility to either convene a new DAG or consult existing groups. The formulation varies: the Peru-Colombia agreement stipulates that 'Each Party shall consult domestic labour and environment or sustainable development committees or groups, or create such committees or groups when they do not exist' (Article 281), whereas the Central American agreement spell out that 'Each Party shall convene new or consult existing Advisory Groups on trade and sustainable development' (Article 294.4). Interestingly, the latter goes a bit further by stipulating (in a footnote) that, if existing groups are used, these should be offered 'the opportunity to reinforce and develop their activities with the new perspectives and areas of work' provided in the SD chapter.

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<sup>20</sup> Here too the names of this constellation vary between the FTAs: the Peru-Colombia open CSM is called 'Dialogue with Civil Society', in the case of Central America it is called 'Civil Society Dialogue Forum' while in the case of Vietnam the agreement mentions a 'Joint Forum'.

<sup>21</sup> The numbers between brackets refer to the constellation of the CSMs described above.

- In practice, new DAGs have been created (or are in the process of being created) under the Central American agreement, specifically within each of the Central American countries. In contrast, the Peruvian and Colombian government have designated already existing mechanisms. In the case of Peru, the government opted to use four already existing bodies to monitor labour provisions,<sup>22</sup> and to use existing national technical working groups or commissions for environmental provisions. In the case of Colombia, the government decided to use the (malfunctioning) Permanent Commission on Salaries and Labour to deal with labour issues, and to use the National Council in Environment to deal with environmental issues. It is not always clear for participants in these already existing national mechanisms that in this context they are also tasked with discussing the sustainable development aspects of the EU trade agreement.<sup>23</sup>
- The EU establishes a new, EU-wide DAG for every agreement.

Third, when the agreement includes more than one EU trade partner (i.e., inter-regional agreements), there are differences in how the DAGs (1) within and among these countries are organised:

- Of all the Central American DAGs, Costa Rica is the only country that has divided its DAG into three separate meetings for the labour, environment and business groups, with apparently no interaction between them. Each of the sub-DAGs is then characterised by more similar interests.
- While the EU creates an EU-wide DAG for every agreement (see above), such regional configurations have not been established by its trading partners, and interactions between the DAGs of EU trading partners seem quasi-absent. For instance, no meetings have taken place between the Peruvian and Colombian DAG. Similarly, it appears that there have been no meetings among the Central American DAGs to prepare DAG-to-DAG meetings (4).

Fourth, there is variation in the *de jure* and *de facto* participation to the open bi-regional CSM (4) as CSOs participating in the DAGs (1) do not necessarily participate in these meetings:

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<sup>22</sup> The National Council on Work and Employment, the National Council on Health and Safety at Work and the National Commission on Forced Labour and National Committee on Child Labour.

<sup>23</sup> The fact that both governments use already existing mechanisms, is deplored by civil society in both countries. They prefer the establishment of an *ad hoc* mechanism to deal with these issues. Overall, the provisions for CSMs in the EU-Peru-Colombia agreement are more restrictive than in most other agreements. It seems that the Peruvian and Colombian government negotiated these provisions with an eye to their existing mechanisms. For example, as opposed to many other agreements, it is not stated that the members of these mechanisms should be 'independent'. This comes as no surprise, given that the main mechanism for social dialogue in Peru (the National Council on Work and Employment) is chaired by the Minister of Labour. Furthermore, it is explicitly mentioned that 'the procedures for the constitution and consultation of such committees or groups [...], shall be in accordance with domestic law' (Art. 281).

- Only the trade agreements with Ukraine, Georgia, Moldova, Canada and Vietnam explicitly mention that members of the different DAGs will participate in an open bi-regional civil society meeting.
- Neither the Central American, nor the Peru-Colombia agreement spells out this necessity. However, the Central American members will *de facto* attend these meetings, while the Peruvian and Colombian DAG members have not been able to do so (*inter alia* because the DAGs do not really exist in these countries and because of budgetary constraints, see below).

## Composition

The second feature concerns the composition of the CSMs, encompassing (i) the quantity of participants, (ii) the diversity amongst them, and the (iii) selection procedures for their participation.

The quantity (i) or the number of participants varies across the agreements. In some cases it is not specified, for example in the EU-Peru-Colombia FTA and in the EU-Central America agreement; in others, the maximum number of participants is determined in the rules of procedure, for instance the rules of procedure of Korea as well as the EU DAG for the Central American FTA specify that each DAG consists of a maximum of 12 persons. While the EU DAGs always have a circumscribed (and fixed) number of participants, the open CSMs organised for example in the framework of the EU-Central America agreement have a high number of participants. For now it is difficult to assess the number of participants in the CSMs in the partner countries, as lists of participation are not publicly available, and in some cases (e.g., Peru) doubts have even been raised about whether they effectively convene in order to fulfil their roles under the SD chapter.

Equally important is the diversity of the participants (ii). A distinction can be made between substantial diversity, geographical diversity, and diversity over time. First, as for substantial diversity, all the legal texts stipulate that CSMs encompass labour, business and environmental interests.<sup>24</sup> In practice, however, the groups participating in the CSMs can vary from being rather narrow to very broad. As mentioned earlier, the Costa Rican DAG is divided into three separate groups with similar interests, with virtually no interaction between the three DAGs and little knowledge of the members of the other groups. More diverse interests can be found for example in the European DAG for the EU-Peru-Colombia trade agreement, which includes groups like the European Telecommunications Network Operators' Association, the International Confederation of European Beet Growers, and the World Wide Fund for Nature. An even higher level of substantial diversity takes place when observers can be admitted to attend the meeting without actively contributing. This is the case in the Central American Civil Society Dialogue Forum (Fig. 2, no.4) and the EU-Korea DAG-to-DAG meeting (Fig. 2, no.2). We have no information about the

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<sup>24</sup> This is the case for all agreements since Korea, except for the EU-Ukraine agreement in which no explicit reference to environmental interests is made (Art. 299) and the Peru-Colombia agreement which does not refer explicitly to economic or business stakeholders (Art. 281).

extent to which observers are invited. It should also be noted that, even though environmental interests are *de jure* included in the CSMs, in practice these groups are rarely part of the DAGs. For instance, Colombian environmental groups do not seem to be strongly represented in the EU-Peru-Colombia CSMs, and the representation of environmental groups in the European DAGs is limited (Fig. 2, no.1). They are also not widely represented at the open civil society meetings (Fig. 2, no.4).

Second, in terms of geographical scope, the meetings are more or less diverse depending on the number of countries involved. While the CSMs for the Korea agreement only contain CSOs from the EU and Korea, the Central-American mechanisms consist of CSOs from the EU and six Central-American countries, resulting in seven separate DAGs. In the case of Peru-Colombia this results in three separate DAGs. Third, there is diversity over time. Participation of CSOs and their representatives can be fixed or variable. This determines whether the same people are present through the series of meetings. In the EU-Korea DAG case, the same people have been meeting every year since 2012 until the re-composition in December 2015. In the case of the EU-Peru-Colombia and EU-Central America meetings, participating organisations have been changing. The (draft) rules of procedure of the EU DAG for the Central American agreement spell out that '[t]he members of the EU AG shall be appointed for a two-and-a-half-year term (aligned with the EESC mandate) with the possibility of renewal for individual members.' In the EU DAG meeting for Peru-Colombia it seems that membership is quite flexible. In the last meeting (7 April 2016) the members present agreed that the International Confederation of European Beet Growers and the Eurogroup for Animals would no longer be member and that the European Fruit and Vegetables Trade Association would be added.

Also the selection procedure (iii) varies across the CSMs: there is no set procedure, neither for the domestic, nor for the transnational meetings. The main issue in this context is whether organisations are invited by their government to participate or whether they can take the initiative to participate themselves. There is also a concern that Government Organised Nongovernmental Organisations (GONGOs) would be appointed. The EU-Peru-Colombia agreement stipulates that 'The procedures for the constitution and consultation of such committees or groups (the CSMs, authors) [...] shall be in accordance with domestic law' (Article 281); the agreement with Vietnam spells out that each Party shall appoint the members of the DAG (Article 15.4); and the CARIFORUM EPA (Article 232), EAC (Article 108.2) and ECOWAS EPAs specify that 'participation shall be decided by the EPA Council [intergovernmental body]'. More broadly, this issue relates to questions concerning (in)dependence from the government and existing ties with government. Overall, the trade agreements are not very detailed on the selection procedure and the procedures for the selection of members do not seem transparent.

In the EU, it seems that for each agreement the European Commission is sending out a call for interest among the organisations taking part in the Civil Society Dialogue on trade policy. Thereafter, it is unclear how specific organisations are selected. In order to have relevant CSOs participating, it seems that some European organisations and the Commission itself would like to select

particular members more directly.<sup>25,26</sup> The rules of procedure of the EU DAG of the Central American agreement specify that '[i]f a seat occupied by a non-EESC member becomes vacant a new member shall be appointed by the EU DAG based on proposal made by the Chair, taking into account the need for balanced representation within the EU AG.'<sup>27</sup> Except for the requirement of 'balanced representation', it is unclear on what basis the Chair would propose a potential member.

In the EU's trade partner countries, the selection procedure seems even less transparent. In Korea, the government at first instance did not appoint the Korean Confederation of Trade Unions, one of the main labour federations in the country, and only did so after strong protest by the European Commission and the EU DAG. In Peru-Colombia the selection procedure is less relevant given that already existing mechanisms are used. This situation implies that CSOs that are not already part of these existing mechanisms, do not have the opportunity to discuss the sustainable development chapter within the domestic institutions. The only opportunity would be through the annual open bi-regional civil society meetings. In Costa Rica, the government composed the list of participants of the DAGs. Even though the participants are aware of their membership, many organisations are not actively involved and basically wait for instructions. Others are more proactive: two business Non-Governmental Organisations (NGOs) requested to be part of the labour group of the Costa Rican DAG and were also allowed to do so. In general little is known about the selection procedure in the Central American countries, except that for some of these governments, such as Honduras, it has been difficult to put forward independent CSOs to participate.<sup>28</sup> As for CARIFORUM, the selection of participants was the principal hurdle that caused a delay of six years in the formation its Joint Consultative Committee (Fig. 2, no. 3). The main reason was that all the Parties had to agree on the composition of this Committee.<sup>29</sup>

Interestingly, the European Commission's hands-off approach towards the composition of CSMs in third countries is at odds with the oft-heard criticism about the EU's exclusion of critical organisations (or, e.g., religious organisations) in its civil society consultations with third countries. Even though the Commission has expressed its concern regarding the composition of the DAGs of some trade partners, it exerts little or no pressure on the respective governments to address these issues. The Commission places most of the responsibility with the trade partner, emphasizing its sovereignty to establish its own domestic mechanisms, and saying that the quality of the CSMs 'is hostage of the third country.'<sup>30</sup>

<sup>25</sup> See author's interview, *supra* note 15.

<sup>26</sup> Author's interview with EU NGO, Brussels, 8 July 2015.

<sup>27</sup> EESC, 'Rules of procedure of the EU Advisory Group created pursuant to Title VIII (Article 294) of the EU-Central America Association Agreement' (Brussels 2015).

<sup>28</sup> See author's interview, *supra* note 15.

<sup>29</sup> Participant workshop, 'How to implement the monitoring of the EPAs?' hosted by MEP Joachim Schuster (Brussels 19 April 2016).

<sup>30</sup> Author's interview with EU official, Brussels, 15 April 2015.

## Organisation

The third feature is organisation, which covers (i) meeting management alongside questions concerning (ii) a secretariat, (iii) the frequency of meetings, and (iv) available resources.

The literature on meeting management (i) identifies several rules of thumbs addressing the conduct of the different phases of a meeting, namely its preparation, facilitation, and follow up.<sup>31</sup> These are transferable to the context of CSMs. First, preparations preceding the meetings include a timely decision of a time and place, a clear objective, a timely communicated and approved agenda, a review of the attendees and acknowledged rules of procedure. Honduras, hosting the CSMs of the Central American AA in 2016, waited until one month before the actual meetings to confirm the week (not yet the dates) in which the meetings would take place. This allowed little preparation time for the CSOs. Concerning the agenda, the rules of procedure of the EU DAG of the Central American AA spell out that it 'shall be sent out to the EU DAG members at least three weeks before the EU DAG meeting.'<sup>32</sup> Whereas the rules of procedure of the DAG-to-DAG meetings of the EU-Korea agreement stipulate that the agenda shall be sent to the members no later than three months prior to the meeting. Concerning the attendees of the Costa Rican DAG (May 2015), informal telephone calls were made from the EU delegation to members of the DAG the day prior to the meeting to inquire intended participation. This effort was however an *ad hoc* initiative and not part of a standardized approach. Preparations for the CSM of the Peru-Colombia agreement, especially for the first edition in February 2014 in Lima, were far from optimal. Some organisations reported that only very few people were invited and that those that were invited only heard about it a few days before which hindered effective preparation and participation.

Second, facilitation during the meeting is enhanced by a chair and by the decision-making procedures. An impartial chair has an important role as a facilitator to keep the meeting on track in line with the agenda items and the time and manage the contribution of the participants. The EU DAGs, and DAG-to-DAG meetings that take place in Brussels, are chaired by the EESC as well as a co-chair from the partner country. The advantage of having a meeting led by the EESC may be that that this institution has more experience with this format than for example their Central American counterpart.<sup>33</sup> The DAG-to-DAG meetings taking place in the context of the EU-Korea FTA have two co-chairs (each conducting parts of a meeting), with the hosting Party playing a leading role. The rules of procedure stipulate that the co-chairs shall be responsible for the preparation, coordination and organisation of the DAG-to-DAG meeting's work. The decision-making procedures also have an inevitable impact on the meetings' outcome and participants' engagement. Again, in the case of the Korea DAG-

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<sup>31</sup> P. Anderson (2013). 'How to run effective meetings', (6 June 2013), available at <<http://www.publicfinance.co.uk/2013/06/how-run-effective-meetings>>; M. Doyle and D. Strauss, *How to make meetings work* (Chicago: Playboy Press 1976); G. Parker & R. Hoffman, *Meeting Excellence* (San Francisco: Jossey-Bass 2006).

<sup>32</sup> See EESC, *supra* note 27.

<sup>33</sup> See author's interview, *supra* note 26.

to-DAG meeting (Fig. 2, no. 2), the rules of procedure mention that its members 'shall make every effort to take decisions by consensus.'<sup>34</sup> In case of disagreement between the two DAGs, the conclusions and the minutes of the meeting should reflect that disagreement. Both the (draft) rules of procedure of the EU DAG for the Peru-Colombia agreement and the Central American AA mention that it shall strive to take decisions by consensus. In case a vote is called for, decisions will be taken by a simple majority. In the event of a tie, the Chair shall have a casting vote (Fig. 2, no. 1).

Third, following up on the meeting, minutes or meeting notes can be drafted, circulated, and approved. Also, external communication to policy-makers and the broader public can be taken care of. Publication of the meeting documents can make it easier for stakeholders to be informed about the proceedings. This also makes it easier to hold the Parties accountable for how they address the input received from the meetings. Both these tasks are mainly carried out by the EESC, which drafts and circulates the minutes (which appears to be a lengthy process) and has a dedicated public webpage<sup>35</sup> to report on these meetings. Unfortunately, the information available on this website is very limited. Finally, the implementation of decisions should be monitored and the participants should be able to evaluate the meeting in order to improve future meetings. In this regard, the EU DAG for Peru-Colombia took the initiative to identify priority themes for the DAG meetings so that the next meeting would be more focused (April 2016). The Commission suggested aligning these priorities with those of the intergovernmental body to improve the coherence between both groups. The group of various interests of the EU DAG for Central America wrote a letter to its president with suggestions on how to dynamise the group in order to lead to more concrete results.<sup>36</sup> They suggest making an annual programme with precise objectives, more communication with their Central American counterparts, permanent contact with European and Central American authorities and independent monitoring tools.

A secretariat (ii) or central contact point can play a crucial role in guaranteeing the three above-mentioned aspects of successful meeting management. In our case, the EESC is an important actor in this regard. The EESC Rapporteur on Sustainable Impact Assessments and EU Trade Policy E. Pichenot expressed the importance of the EESC because it

'provides a logistical support to the activities of the Domestic Advisory Group and the Civil Society Forum. The EESC also ensures the longevity of these mechanisms, since it is an EU institution well anchored in the Treaties and is therefore a very stable partner of the European Commission and the European Parliament.'<sup>37</sup>

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<sup>34</sup> Civil Society Forum under the EU-Korea FTA, 'Rules of procedure of the Civil Society Forum under the EU-Korea FTA' (Seoul 13 September 2013).

<sup>35</sup> <<http://www.eesc.europa.eu/?i=portal.en.external-relations-europe-international-trade-monitoring>>.

<sup>36</sup> Group III EU DAG of the EU-Central America Association Agreement, 'Letter to the president of the EU DAG of the EU-Central America Association Agreement' (Brussels 17 February 2016).

<sup>37</sup> EESC, 'Civil society in action – monitoring sustainable development and wider FTA implementation: lessons to be drawn from the EU experience' (Brussels 2013).

However, some have deplored that the EESC, the secretariat of all CSMs under EU FTAs, would be too bureaucratic and therefore lacks flexibility.<sup>38</sup>

There is no equivalent body at the side of the EU's trade partners. In the case of Central-America, the regional organisation 'Comité Consultivo del Sistema de la Integración Centroamericana' (CC-SICA) could take up this role, but it is unclear if it would have the mandate and the capacity.<sup>39</sup> In the case of Peru and Colombia, there seems to be no institutionalised coordination between civil societies of both countries. In the case of CARIFORUM, the secretariat of CARICOM (the Caribbean Community), which has a strong organisational capacity, could play this role.

Also the frequency (iii) of meetings varies considerably. Whereas the SD chapters of the discussed FTAs all contain the obligation to organise a yearly bi-regional CSM, there is no such prescription concerning the DAGs. The EU DAGs tend to meet more regularly: the EU DAG from the EU-Korea FTA has convened ten times since its first meeting in May 2012, the one from the Central American AA met six times since its establishment in October 2014, and the Peru-Colombia DAG has met three times since its first convocation in February 2015.

As for resources (iv), not all CSOs have the financial or personal capacities to travel in order to attend these meetings, let alone to be prepared adequately.<sup>40</sup> For the EU-Korea DAG-to-DAG meeting, which alternately takes place in Seoul and Brussel, funding can be provided for one side to travel to the partner country. Such funding is not provided for the meetings under the other agreements, even though it is being considered to use EU (development) budget for this.<sup>41</sup> As a result, Peruvian civil society organisations have not been able to attend the meetings in Colombia, and vice versa.<sup>42</sup> Alternatives are available, even though these are probably not optimal. For example, for the bi-regional CSM that took place in Colombia in June 2015, Peruvian CSOs sent issues to be addressed during the meeting of the Committee on Trade and Sustainable Development (i.e., the intergovernmental body) beforehand to the ambassador of the EU delegation to Peru as well as to the Peruvian Ministry of Foreign Trade.<sup>43</sup> However, there are no indications that the issues raised in this letter have been discussed in the intergovernmental meetings. In the case of the EU-Central American CSM in May 2015, the alternative of a videoconference was provided in all EU Delegations at the Central American side. This initiative only had limited success as only a few organisations made use of this possibility.

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<sup>38</sup> Author's interview with EU NGO, Brussels, 12 April 2016.

<sup>39</sup> Author's interview with EU official, San Jose, Costa Rica, 26 May 2015.

<sup>40</sup> A. Montoute, 'Civil society participation in EPA implementation: How to make the EPA Joint CARIFORUM – EC Consultative Committee Work Effectively?', European Centre for Development Policy Management (ECDPM) Discussion Paper 119 (2011), available at <<http://ecdpm.org/publications/civil-society-participation-epa-implementation-cariforum-ec/>>.

<sup>41</sup> See author's interview, *supra* note 15.

<sup>42</sup> In the case of Colombia, it was mentioned that environmental groups do not have the capacity to participate in the domestic discussions.

<sup>43</sup> Red Peruana por una Globalización con Equidad, 'Carta a la Señora Embajadora Irene Horejs de la Unión Europea en el Perú' (2015).

In sum, the organisation of CSMs has had a rough start. The first meetings under the Peru-Colombia and Central American agreements were evaluated as a failure (*ad hoc* and clumsy) by both civil society and EU officials.<sup>44</sup> At the same time, stakeholders mention that the organisation of these meetings is still in an early phase and that they are still looking for the best approach.<sup>45</sup> While some meetings have been dealing with procedural issues for a long time (e.g., the Central American EU DAG meetings, Fig. 2, no. 1), others (e.g., the Peru-Colombian EU DAG meetings) have started to discuss more substantial issues.

## Interaction with Governments

The fourth feature concerns the interaction between the CSMs and the Parties (or governments). We make a distinction between (i) the nature of the interaction, (ii) the governments' accountability to the outcomes of the meetings, and (iii) the involvement over CSOs in the dispute settlement mechanism.

As for the nature of the interaction (i), there are two possibilities. First, governmental actors may participate in the CSMs. Alternatively, civil society can meet both with and without government representatives. For instance, the EU DAG meeting of the Central American AA takes place with EU officials in the morning and without them in the afternoon. Accordingly, the bi-regional open CSM in June 2016 in Honduras include two session too: the first took place without governmental actors (Fig. 2, no. 4), whereas they were be present on the second day (Fig. 2, no. 5). Interestingly, the presence of officials is evaluated in differing ways. In the April 2016 EU DAG for the Peru-Colombia agreement, officials from the European Commission and the European External Action Service (EEAS) were present during the whole meeting. Their presence was seen as beneficial as it shows that CSOs and officials share similar concerns<sup>46</sup> and because it makes it possible for CSOs to talk to the officials that directly speak to their counterparts in the third countries.<sup>47</sup> In Peru and Colombia, however, CSOs lamented that they never have meetings without officials present. From our observation it seems that in the CARIFORUM Consultative Committee the presence of the representative of the CARICOM secretariat is not necessarily conducive for an open discussion. Thus, although involvement of government officials may be beneficial in terms of providing an opportunity for civil society to voice their concerns and enhance their leverage, it may also impede an adequate monitoring and an open deliberation (see section III). Second, the outcomes of the CSMs can be formally communicated to the governments. For example, the two co-chairs of the EU-South Korea Civil Society Forum present the opinions of the meeting to the intergovernmental body.<sup>48</sup>

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<sup>44</sup> See author's interview, *supra* note 39.

<sup>45</sup> See author's interview, *supra* note 15.

<sup>46</sup> Author's interview with European NGO, Skype, 25 March 2016.

<sup>47</sup> Author's interview with European labour representative, Brussels, 22 July 2014.

<sup>48</sup> Related to this point, the issue of fixed versus variable participation (see *supra*) is also relevant. Costa Rican civil society members explained their frustration about meeting different government representatives at different meetings that were not aware of the topics discussed

The governments' accountability (ii) concerning the outcome of the CSMs concerns the question if a feedback loop is created between the governmental and civil society actors. Accountability may be enhanced if there is a formal feedback mechanism by which the Parties remit information on how the outcomes of the mechanisms have been used (or not).<sup>49</sup> In order to influence the policy process, transparent and accountable structures to channel input and receive feedback have to be put in place.<sup>50</sup> If participants feel that their views are not taken into account by the respective governments, satisfaction might be low among participants, as is the case for some participants in the Civil Society Dialogue organised by DG Trade in the EU,<sup>51</sup> which might in turn lead to 'consultation fatigue'.<sup>52</sup> Different degrees of responsiveness are possible and can be put on a continuum: government officials can (i) make a statement without listening to the CSOs (one-way communication, no responsiveness), (ii) listen to civil society and vice versa (two-way communication, low responsiveness), (iii) take the input of civil society into account (high responsiveness), and (iv) implement the advice by the mechanism in concrete policy (full responsiveness).

For example, the rules of Procedure of the EU-South Korea Committee on Trade and Sustainable Development (i.e., the equivalent of the intergovernmental body) stipulate that the Committee will consider the communications it receives from the DAGs and the DAG-to-DAG meetings and that it will make the operating conclusions it may adopt in respect of such communications available to both DAGs. In the Central-America agreement, it is mentioned that 'each meeting of the Board will include a session in which its members shall report on the implementation of this Title to the Civil Society Dialogue Forum. In turn, the Civil Society Dialogue Forum may express its views and opinions in order to promote dialogue on how to better achieve the objectives of this Title.' (Article 295.2) The EU-Peru-Colombia agreement mentions that the Board shall annually convene an open session with civil society 'in order to carry out a dialogue on matters related to the implementation of this Title.' (Article 282.1)

Also concerning the involvement of the CSMs in the dispute settlement (iii) of the SD chapter (see Figure 2 and *infra*), a significant variation between the agreements can be noticed. The Korea agreement mentions that the panel of experts should seek information and advice from either Party, the DAG(s) or international organisations (Article 13.15.1). In addition, it mentions that the report of the panel of experts shall be made available to the DAG(s) (Article 13.15.2). Furthermore it is mentioned that, among others, on the basis of the communications of the DAG(s), government consultations can be requested (Article 13.14.1). In this way, the DAG(s) have a direct role in the instigation of disputes. Neither

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previously hereby impelling the discussions back to square one. Author's interview with Costa Rican NGO, San Jose, Costa Rica, 27 May 2015.

<sup>49</sup> M. I. Muguruza, 'Civil Society and Trade Diplomacy in the "Global Age": The European Case: Trade Policy Dialogue between Civil Society and the European Commission' Document', Inter-American Development Bank, Document for the Fourth Meeting of the Trade and Integration Network, available at <<https://publications.iadb.org/handle/11319/5717?locale-attribute=en>>.

<sup>50</sup> See A. Montoute, *supra* note 40.

<sup>51</sup> Coffey, 'Evaluation of DG TRADE's Civil Society Dialogue in order to assess its effectiveness, efficiency and relevance' (Luxembourg: European Commission 2014).

<sup>52</sup> See M. I. Muguruza, *supra* note 49.

in the Peru-Colombia agreement nor in the Central America agreement anything is said on the involvement of the CSMs in the dispute settlement. By contrast, CETA contains much more explicit and ambitious provisions in this regard.

## Conclusion

Three general conclusions can be drawn from this overview of the features of the CSMs:

- There is a significant *de jure* and *de facto* diversity between the CSMs under the EU-Korea, EU-Central America and EU-Peru-Colombia agreements. The CSMs with Korea seem the most elaborate, as for example the establishment of new committees is required, and funding for travel is provided.
- These meetings are still in the early phase, whereby norms and practices on selection of participants, frequency of meetings, accountability mechanisms, etc., have clearly not yet been fully elaborated. While some features are permanent as they appear in the text of the agreement, many others are just 'snapshots' of a moving target.
- However, at this stage we can still not say much about whether the meetings should be assessed positively or negatively based on their institutional set-up, composition, organisation management, and even government interactions.

Indeed, while these observations provide some building blocks to evaluate the success (or failure) of the CSMs, we need to address as well more fundamental questions on the purposes of these meetings and on the role of civil society in trade, development and democracy. These will be addressed in respectively section II and section III.

## II PURPOSES: WHAT ARE THEY FOR?

Whereas there is a vague but common understanding that they should give a human face to free trade, correct the negative impact of liberalisation, contribute to sustainable development, and involve CSOs in decision-making on this topic, it remains ambiguous what exactly is (are) the purpose(s) of the meetings. Are they supposed to provide (binding?) recommendations for the governments? Or are the meetings intended to foster a dialogue between civil society members, some of whom may not have a voice within the domestic political landscape? Or should they focus primarily on the shortcomings in the Parties' compliance with the agreement? Finally, would we dare to say that the meetings essentially serve to buy off public support for the trade agreement?

In this section we will show that the CSMs can serve four analytically distinct purposes. Partly drawing on Friedrich<sup>53</sup> we make a distinction between instru-

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<sup>53</sup> D. Friedrich, 'Democratic Aspiration Meets Political Reality: Participation of Organized Civil Society in Selected European Policy Processes', in J. Steffek et al. (eds.), *Civil Society Participation in European and Global Governance: A Cure for the Democratic Deficit?* (Basingstoke: Palgrave Macmillan 2008).

mental, functional, deliberative and policy influence purposes. Hereafter we set out each purpose, illustrating it with quotes from the agreements and from a wide variety of actors involved in the meetings. Again, as in section I, we look at both the legal and practical components. It should be noticed from the beginning that the different purposes are not always mutually exclusive and that they can co-exist. However, it remains useful to make this analytical distinction, not the least because tensions may emerge between them. These also help to better understand diverging evaluations of the success of civil society meetings, as will be explained in section III.

### **Instrumental Purpose: Supporting the Free Trade Agreement**

First, the CSMs have arguably been established in order to guarantee political support for EU FTAs. Since the Global Europe trade communication in 2006 the EU has been negotiating FTAs at a tremendous pace. Indeed, the EU is a strong proponent of the view that trade liberalisation is necessary for economic growth (especially since the crisis).<sup>54</sup> This new generation of FTAs struggles with a tension between the creation of an economic project that focusses globally on expansion and competition and a political project that pays attention to concerns such as social justice and sustainability.<sup>55</sup> It is therefore not surprising that FTAs have become increasingly contested by CSOs. Overall there is a mistrust and opposition of labour, human rights and environmental groups against trade liberalisation.<sup>56</sup> The growing politicisation of trade agreements already became clear with the protests in Seattle (1999) against the launch of a new round of trade negotiations in the World Trade Organisation (WTO) as mentioned above and with the ‘Stop EPA Campaign’ (2006) against the EPAs between the EU and the countries from Africa, the Caribbean and the Pacific (ACP). Apart from civil society movements (both in the EU as well as in trade partner countries), members of the European Parliament (EP) have voiced critical concerns. The Lisbon treaty, which entered into force in late 2009, increased the competences of the EP. Due to its enhanced formal role, the EP should be regularly updated on where negotiations are going and is required to give its consent to any trade agreement. The rejection of the Anti-Counterfeiting Trade Agreement (ACTA) sent a clear message that the EP is able and willing to use its additional power.<sup>57</sup> In this capacity the EP has repeatedly emphasised her requirements concerning the

<sup>54</sup> European Commission, ‘Global Europe: Competing in the world’, COM(2006)567; European Commission, ‘Trade, Growth and World Affairs’, COM(2010)612; See European Commission, *supra* note 3; G. Siles-Brügge, ‘Resisting Protectionism after the Crisis: Strategic Economic Discourse and the EU–Korea Free Trade Agreement’, 16 *New Political Economy* 2011, 627-653.

<sup>55</sup> L. Ford, ‘EU Trade Governance and Policy: A critical perspective’, 9 *Journal of Contemporary European Research* 2013, 578-596; K. Ulmer, ‘Trade embedded development models’, 31 *The International Journal of Comparative Labour Law and Industrial Relations* 2015, 305-329.

<sup>56</sup> See EESC, *supra* note 35.

<sup>57</sup> L. Van den Putte et al., ‘The European Parliament’s New Role in Trade Policy: Turning power into impact’. Centre for European Policy Studies (CEPS) (2014) available at <<https://www.ceps.eu/publications/european-parliament%E2%80%99s-new-role-trade-policy-turning-power-impact>>.

inclusion of human and labour rights and civil society involvement in trade agreements through resolutions<sup>58</sup> as well as oral and written questions.

In the run up to the EU-Peru-Colombia FTA the EP, concerned about the human rights situation in those countries, explicitly advocated on several occasions a 'strengthening of the monitoring and dispute settlement mechanisms for breaches of human rights and sustainable development and the involvement of civil society in the implementation process.'<sup>59</sup> In response to this, EU officials and trade commissioners in speeches often stress the inclusion of such mechanisms. During the debate in the EP on the same agreement, the then trade commissioner K. De Gucht had to reply to requirements such as:

'Against this background, Parliament is, of course, investigating very carefully, [...] whether this trade agreement with Colombia and Peru meets these requirements [...]. The issues include the extent to which civil society is included in the process of implementing the trade agreement, the independence of its involvement and the options for instigating complaint procedures.'

And along the same line:

'We also want to see both in Peru and Colombia the establishment of permanent institutionalised mechanisms that guarantee the role of civil society.'<sup>60</sup>

Protests against EU trade policy have reached unprecedented highs with negotiations on a Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US. Since the start of the negotiations in 2013, public scrutiny of EU trade negotiations has only increased.<sup>61</sup> While some oppose 'neoliberal' free trade per se, others warn against the possible negative social impact of free trade if not well managed.

Creating CSMs in the context of the SD chapter indicates not only that the FTAs have a social and environmental face, but also that the parties intend to involve civil society actors in policy-making on these issues. It solidifies the belief that the EU and the third country government are not only interested in free trade, but also in a genuine partnership that promotes sustainable development. At least, it signals the Parties' intention to balance these market-enhancing provisions with more interventionist policies. Or to put it in De Gucht's words:

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<sup>58</sup> Such as European Parliament, 'Report on human rights and social and environmental standards in international trade agreements', 2009/2219(INI); European Parliament, 'Report on EU's trade relations with Latin-America', 2010/2026(INI).

<sup>59</sup> Council of the EU, 'Summary record of the meeting of the European Parliament's Committee on International Trade (INTA)' (Brussels 25-26 April 2012).

<sup>60</sup> European Parliament, 'Debate on EU trade agreement with Colombia and Peru', (Strasbourg 22 May 2012).

<sup>61</sup> F. De Ville and G. Siles-Brugge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership*, (Hoboken: Wiley 2015). See also De Ville, F, Orbie, J, Van den Putte, L (2016) 'TTIP and Labour Standards', European Parliament, Study for the EMPL Committee, 14 June. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578992/IPOL\\_STU\(2016\)578992\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578992/IPOL_STU(2016)578992_EN.pdf).

'With all of these safeguards, I hope you will agree that the agreement is strong enough to ensure that the parties' commitments on labour, human rights and the environment are consistently upheld.'<sup>62</sup>

At most, it suggests that trade and non-trade objectives are compatible and mutually reinforcing. In this view, trade liberalisation will be beneficial for sustainable development, and the CSMs play a role in this achievement. As is stated in the EU-Peru-Colombia trade agreement:

'The Parties recognise international trade, productive employment and decent work for all as key elements for managing the process of globalisation, and reaffirm their commitments to promote the development of international trade in a way that contributes to productive employment and decent work for all.' (Article 269.1)

The literature on global governance has long recognised that involving public participation in global governance arrangements (such as a trade agreement) helps to improve the democratic legitimacy of such arrangements.<sup>63</sup>

Not surprisingly, however, this purpose can also be interpreted in a less optimistic manner. Some observers have lamented the SD chapter and the CSMs as a 'fig leaf'. The criticism reads that these ostensibly progressive elements effectively hide the real objectives of the agreement, which are to create free trade in line with the economic priorities of the Parties – and particularly of the EU, which is usually the stronger partner. By forging a broader support for the approval of the agreement, including its liberalisation schedules and regulatory commitments, the SD chapter and its CSMs are helping the Parties to 'sell' the agreement to their constituencies and can thus be reduced to a public relations stunt to improve the reputation of the trading partners. It is a symbolic act to increase the support for FTAs without expectations that they would be effective, an afterthought lacking serious ambitions.<sup>64</sup> Questions can be raised about whether they will effectively be implemented once the ratification has been secured. In this regard one Peruvian NGO representative remarked that the EU CSMs are not designed for civil society to monitor the implementation of labour norms (see next purpose *infra*), but rather as a good news show for governments to show civil society which actions they have undertaken in the past months.<sup>65</sup>

Moreover, a perverse effect from the CSMs may be that critical civil society actors are being co-opted and their opposition is being neutralised.<sup>66</sup> By becoming a member of the institutions that serve to implement the agreement (e.g., monitoring labour rights and environmental principles), it becomes more difficult to oppose the fundamentals of the agreement (e.g., opposition against the prin-

<sup>62</sup> K. De Gucht, 'Public Hearing of the Committee on International Trade at the European Parliament: EU-Columbia and Peru Trade Agreement', SPEECH/12/142, (2012).

<sup>63</sup> S. Meunier, 'Trade Policy and Political Legitimacy in the European Union', 1 *Comparative European Politics* 2003, 67-90; J.A. Scholte, 'Civil Society and Democratically Accountable Global Governance', 39 *Government and Opposition* 2004, 211-233.

<sup>64</sup> G. van Roozendaal, 'Labour standards as an 'afterthought' in trade agreements: the South Korea case', Conference Paper EUIA V (Brussels 2016).

<sup>65</sup> Author's interview with Peruvian NGO, Lima, 9 December 2015.

<sup>66</sup> For a critical analysis of the 'rhetoric of participation' in development, see B. Cooke and U. Kothari, *Participation: the new tyranny?* (London: Zed books 2001).

ciple of free trade). Some CSOs would prefer not to have a trade agreement, but once it has been established, they consider making use of the opportunities provided by the agreement in order to maximise their impact on the implementation process. One opponent of the Central American AA decided, after opposing the agreement as a whole, to join the EU DAG because then at least they would still have a platform available to fight possible negative consequences of the agreement.<sup>67</sup> For the same reason, those CSOs that most strongly opposed the EPAs are most interested in being involved in the monitoring mechanisms, whereas the less critical organisations are often not interested.<sup>68</sup> There is a clear recognition that the CSMs present opportunities to undo the possible harms caused by the implementation of the trade agreements. However, there is a risk that through the process opposition is being silenced and/or civil society members become less critical and more 'constructive'.

In the literature, this has been called the insider versus outsider dilemma.<sup>69</sup> This dilemma has been clearly recognised by several civil society actors that we interviewed. Engaging in some self-reflection about his role in the EU DAG under the Peru-Colombia agreement, one member stated that 'before we were shouting against the agreement on the streets, today we are helping to implement it inside this building.'<sup>70</sup> Two years before, another participant of these CSMs had expressed it as follows:

'You see, this is a governmental process and then we're asked to come in already to basically defend these free trade agreements. Now many of us [...] have substantial conflicts and issues with the kind of free trade agreements and the economic agenda behind it. And for the Commission, for the government, this is a way to say we're smoothing with the edges and we get civil society in there and they can help us to address the worst issues. But the fundamental drivers and the way we design trade relations remain contentious. At least for us. [...] It's a way to invite the protest on the street into the agreement.'<sup>71</sup>

Also within the third countries, some CSOs are struggling with the insider-outsider dilemma. Others are reluctant to engage in the EU trade agreement as a whole for pragmatic reasons, since they assume that the EU trade agreements' mechanisms will be less effective than those under the US agreements<sup>72</sup>. Finally, some CSOs, including trade unionists, would like to be involved in the CSMs, but this does not happen because their government does not facilitate their participation and/or because of a lack of funding and capacities.

The purpose to guarantee support for trade agreements is mostly 'ex ante': it is most relevant during the negotiations and becomes less pertinent once the Parties have ratified the agreement. If the latter is the case, the purpose has mostly been achieved. Although it is also important for the Parties to ensure that

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<sup>67</sup> Author's interview with European NGO, Brussels, 1 March 2016..

<sup>68</sup> Author's interview with European NGO, Brussels, 8 June 2016.

<sup>69</sup> R. J. Spalding, 'Civil Society Engagement in Trade Negotiations: CAFTA Opposition Movements in El Salvador', 49 *Latin American Politics and Society* 2008, 85-114.

<sup>70</sup> Participant EU DAG of the EU Peru-Colombia agreement (Brussels 7 April 2016).

<sup>71</sup> Author's interview with European NGO, Brussels, 19 June 2014.

<sup>72</sup> Author's interview with Peruvian NGO, Lima, 2 March 2016.

agreements do not face too much opposition while they are in practice, this is less of an issue since it is more difficult to withdraw an existing agreement than to prevent the ratification of a new one. Nonetheless, it seems that once organisations take part in the CSMs, they try to play a constructive role and encourage each other not to remain stuck in protest against the FTA. In this regard Colombian CSOs, in a meeting with the EU delegation in Bogotá, urged a fellow Colombian anti-FTA organisation to play a more constructive role. In short, the message was that such meetings should not be used to discuss the benefits and disadvantage of free trade, but rather to make concrete recommendations. Thus, also after an agreement entered into force, the CSMs can serve the purpose of marginalising opposition to FTAs.

According to this purpose the outcome of the meetings is not that important: what counts is merely the fact that civil society is involved in the implementation. However, other purposes come to the fore once an agreement has been ratified, as will be explained below.

### Functional Purpose: Monitoring and Information

Second, the CSMs were established to monitor the implementation of the SD chapter, report on the advancements, and signal possible defaults. This monitoring and gathering of information is seen as a major purpose in the texts of the agreements and in EU discourse. For example, former Trade Commissioner K. De Gucht stated that the goal is to raise concerns:

‘As governments we will depend on their active support in bringing their concerns on labour or environmental matters to our attention.’<sup>73</sup>

The current Trade Commissioner, the Swede C. Malmström, puts it like this:

‘We also need to make sure that civil society and business organisations are properly consulted and integrated in our work so we have the right information.’<sup>74</sup>

Involved civil society actors also confirm this role as illustrated in the minutes of a EU-Central American CSM:

‘Those present reiterated their commitment to fulfilling the role laid down in the Trade and Sustainable Development Title of the Association Agreement, namely to monitor implementation of the Title and to provide advice to the Parties to the Agreement.’<sup>75</sup> (for the ‘advice’ purpose, see *infra*)

<sup>73</sup> See K. De Gucht, *supra* note 62.

<sup>74</sup> C. Malmström, ‘The way ahead for the EU-Cariforum Economic Partnership Agreement’ (Brussels, 16 July 2015).

<sup>75</sup> EESC, ‘Summary of the discussion held during the joint meeting of the European and Central American civil society advisory groups’ (Brussels, 28 May 2015).

One of the eight elements of the EU-Vietnam trade deal, according to the Trade-EU factsheet by the Commission, is '**civil society monitoring** of commitments on labour in line with ILO standards' [bold in original].

According to this logic, CSOs are regarded as experts on the ground that bring together information and can detect and then signal problems with implementation. Putting it more strongly, this can also be seen as the 'watchdog' role of the CSMs. Two issues are worth noticing with regard to this purpose. First, this implies that the EU and the partner country delegate the monitoring of the implementation of the sustainable development commitments (partly) to the civil society bodies. Theoretically, this can be captured in terms of the principal-agent framework. Although principal-agent theory has been used extensively to analyse EU trade policy negotiations,<sup>76</sup> the CSMs have not yet been examined in this framework. Specifically, a principal-agent theory would analyse how the Parties to the agreement (i.e., the principals) create an external body (i.e., the agent) in order to monitor the implementation of the agreement. This delegation takes place because of two reasons: to increase efficiency and to circumvent the collective action problem.<sup>77</sup>

Delegating this monitoring task to civil society might be more efficient given that these often have more expertise on the ground than the Parties do. For example, the European Commission and its DG Trade have been criticized for not having sufficient expertise in monitoring the sustainable development and human rights conventions of the Generalised System of Preferences (GSP) (plus) system, whilst relying mostly on a superficial assessment of the reports of international monitoring bodies (such as the International Labour Organisation (ILO)).<sup>78</sup> In addition, these institutions have been criticised for the late and/or limited Trade Sustainability Impact Assessments (T-SIA) relating to bilateral trade agreements that should be undertaken during trade negotiations to assess the impact on sustainable development.<sup>79</sup> Second, another advantage of creating an 'agent' in the form of CSMs is that a critical body is being created which can alert when deficiencies occur. This delegation constitutes a solution to the collective action problem whereby both Parties delegate the control over the implementation of an agreement to a third party. This may be particularly relevant when third party governments are not able or willing to provide the necessary information on the

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<sup>76</sup> C. Damro, 'EU Delegation and Agency in International Trade Negotiations: A Cautionary Comparison', 45 *Journal of Common Market Studies* 2007, 883-903; T. Delreux and B. Kerremans, 'How Agents Weaken their Principals' Incentives to Control: The Case of EU Negotiators and EU Member States in Multilateral Negotiations', 32 *Journal of European Integration* 2010, 357-374.

<sup>77</sup> M. Pollack, 'Delegation, agency and agenda-setting in the European Community', 51 *International Organization* 1997, 99-134.

<sup>78</sup> J. Orbie and L. Tortell, 'The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?', 15 *European Foreign Affairs Review* 2009, 663-681; S. Velluti, 'Human rights conditionality in the EU GSP scheme: a focus on those in need or a need to refocus?', in N. Ferreira and D. Kostakopoulou (eds.), *The human face of the European Union: is EU law and policy humane enough?* (Cambridge: Cambridge University Press 2016 (forthcoming)).

<sup>79</sup> S. Stephan, 'What does civil society expect from TSIA?' Macroeconomic Policy Institute (IMK) presented at trade conference 'EU Trade Policy at the Crossroads' (Vienna, 5 February 2016) available at <[http://www.oefse.at/fileadmin/content/Downloads/tradeconference/Stephan\\_Wien\\_5.2.2016\\_final.pdf](http://www.oefse.at/fileadmin/content/Downloads/tradeconference/Stephan_Wien_5.2.2016_final.pdf)>.

implementation of the commitments made in the SD chapter. For example, CSMs could reveal the information that one of the governments is lowering labour protection in order to attract investment. In brief, this system lessens the costs for the governments themselves to closely monitor the situation on the ground, and it enables them to control each other's implementation.<sup>80</sup>

This also implies that creating a monitoring agent may actually strengthen the power of the governments (principals). CSMs do not necessarily take power away from the governments. On the contrary, they serve to support the goals of the 'principals'. The latter remain the powerful actor in the principal-agent relationship. They determine the conditions under which the CSMs can work and what is done with the information provided. Although policy advice may be the ultimate goal (see *infra*), this purpose is analytically distinct. To some extent CSOs are the ears and eyes of the European Commission and its trading partner on the ground; and it is up to the Parties (the 'principals') to decide how the information will be followed up. That they should not be involved in policy-making, was made very explicit in the EU – Central American Association Agreement:

'For greater certainty, policy making and other such typical government functions shall not be delegated to the Civil Society Dialogue Forum.' (Article 295)

### Deliberative Purpose: Dialogue and Deliberation

Third, the civil society meetings aim to provide a forum for dialogue and deliberation, thereby contributing to the more general purpose of democratic governance. Instead of emphasising effective monitoring (outcome-oriented goal), this purpose emphasises more the intrinsic democratic and empowering potential of the discussions with(in) civil society (process-oriented purpose). In other words, organising a structured dialogue between members of civil society and with the governments is seen to contribute to the democratic quality of the agreement. This is not so much about the substance of the discussions (sustainable development in a trade context) but most of all about the (deliberative) process in which this is addressed. Dialogue can be a purpose in itself. Not only is it important to engage in a sectorial dialogue between the governmental parties to the agreement (e.g., on issues like customs, agriculture, investment, and indeed also labour and environment), but also members of civil society should be involved in open and transparent discussions on the trade agreement. The underlying assumption of such a 'governance' approach is that it makes the political decision-making system more democratic.<sup>81</sup>

Theoretically, this reasoning draws on the Habermasian ideal typical concept of 'public sphere'. Public sphere denotes a space where citizens can deliberate based on rational arguments. Deliberation essentially means that discussions are based not on power relations and self-interest, but on critical and rational

<sup>80</sup> See M. Pollack, *supra* note 77.

<sup>81</sup> J.A. Scholte, 'Civil Society and Democracy in Global Governance', Centre for the Study of Globalisation and Regionalisation (CSGR) Working Paper No. 65/01 (January 2001), available at <[http://wrap.warwick.ac.uk/2060/1/WRAP\\_Scholte\\_wp6501.pdf](http://wrap.warwick.ac.uk/2060/1/WRAP_Scholte_wp6501.pdf)>.

arguments on issues of common concern.<sup>82</sup> Even if the CSMs organised in the framework of EU trade agreements with third countries are far removed from the Habermasian ideal type of the French salons or the British coffee houses in the 18th century, an underlying purpose of deliberative dialogue can also be discerned. There are also clear links with the EU's approach to 'democratic governance'. 'Governance' has featured as an objective of the EU since the early 2000s.<sup>83</sup> Whereas in its external relations the EU originally promoted the effectiveness dimension of 'good governance', since the mid-2000s it started to emphasize 'democratic governance' more as a central objective. Against this background, the participation of civil society (or 'non-state actors') has become an increasingly important feature. Democratic governance also implies a stronger emphasis on transnational cooperation at the sectorial level.<sup>84</sup>

According to suggestions by some actors, the CSMs should open up space for an open and critical dialogue beyond the (governmental) Parties of the agreement. Their main added value, according to this perspective, lies not so much in the monitoring of compliance with labour standards (previous purpose), but more fundamentally in their potential to foster a better understanding of common concerns. For example, the document on the EU DAG for the Korea agreement states:

'In spite of the differences in terms of culture and approaches, both parties showed a strong willingness to have a dialogue and reach reciprocal understanding.'<sup>85</sup>

The rules of procedure of the EU-Korea Civil Society Forum (DAG-to-DAG meeting, Figure 1, no. 2) stipulate:

'The Civil Society Forum is a platform in which the organisations of civil society in Korea and in the European Union can exchange views and discuss matters related to the sustainable development aspects of the trade relations between the parties.'

Forging dialogue and common understanding is all the more important when it comes to sustainable development, given the sensitivity of the debate with some of the EU's trading partners. Especially regarding labour rights, there are still concerns about alleged EU (neo-colonial) interference in third countries' domestic sovereignty and about the EU's misuse of ethical concerns for protectionist interests. Whereas these fears may not be entirely justified (sovereignty is apparently less problematic in other chapters of the agreement where enforcement is much stronger, and the EU's soft approach barely allows for protectionist abuse), and may in fact be used as an excuse for lack of progress in compliance with labour rights commitments, it is of utmost importance to discuss different

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<sup>82</sup> J. Habermas, *The structural transformation of the public sphere: An inquiry into a category of bourgeois society*. (Cambridge: MIT Press 1991).

<sup>83</sup> European Commission, 'European Governance: a white paper', COM(2001)428.

<sup>84</sup> A. Wetzel, 'Governance Perspective: Democratic Governance promotion Through Functional Cooperation', in A. Wetzel and J. Orbie (eds.), *The substance of EU Democracy Promotion: Concepts and Cases*. (Basingstoke: Palgrave 2015).

<sup>85</sup> European Commission, 'Meeting with the EU Domestic Advisory Group (DAG) under the EU-Korea Free Trade Agreement' (Brussels, 2012).

views of how trade and labour rights are interlinked and how problems can be addressed efficiently and legitimately. Arguably, this would ideally happen in an even wider context that also involves other international actors such as the ILO, which has the international legitimacy on fundamental labour rights and expertise through its supervisory bodies. The trade-labour linkage remains an extremely complicated conundrum that begs for an open and rational dialogue between all partners involved, and, in theory, this is what the CSMs could provide for.

Perhaps even more importantly, these dialogues may empower certain civil society actors that are currently marginalised within the domestic context. While the process of empowerment is typically a process that should originate from the inside, actors like the EU can facilitate it by promoting social dialogue or establish venues for participation.<sup>86</sup> They could make it possible for marginalised actors to transcend the domestic political arena and have their voice heard within a wider, transnational setting. In political science terms, they create a new 'opportunity structure' for actors to raise their concerns and understand the power structures they are a part of.

The former Head of the Unit on the GSP and Sustainable Development puts it like this:

'But we do think that this is a very important element, and it is thanks to our FTA that we have given a voice to those trade unions in the trade context on labour rights.'<sup>87</sup>

Commissioner Malmström's spokesperson mentioned the same potential regarding the civil society involvement in an envisaged FTA with Malaysia:

'As in other FTAs, the Commission will pursue ambitious provisions aiming at fostering governments' accountability and civil society empowerment – and thereby strengthening a supportive environment for human rights. This is the case, for instance, for rules on transparency and on the direct involvement of civil society in the implementation of provisions on trade and sustainable development.'<sup>88</sup>

Empowerment can be strengthened through the forging of alliances with other domestic and international actors, which could be created through the CSMs. As such the CSMs could foster the creation of 'transnational advocacy groups' or facilitate the functioning of existing transnational networks.<sup>89</sup> In the past trade agreements have led to transnational collaboration between CSOs of for ex-

<sup>86</sup> Commission on Legal Empowerment of the Poor, 'Towards a Global Social Contract: Labour Rights for Legal Empowerment of The Poor', in Commission on Legal Empowerment of the Poor & UNDP (eds.), *Making the Law Work for Everyone: Working Group Reports (Vol. 2)*, (New York 2008); C. Ernst et al., 'Decent work and empowerment for pro-poor growth', Organisation for Economic Cooperation and Development (OECD) (2012), available at <<http://www.oecd.org/dac/povertyreduction/50157792.pdf>>.

<sup>87</sup> L. Van den Putte, 'What social face of the new European Union trade agreements?', transcripts event 23 June 2015, Brussels.

<sup>88</sup> M. Tempest, 'Rights abuses revealed in EU free-trade candidate Malaysia', *Euractiv*, 29 October 2015, available at <<http://www.euractiv.com/sections/global-europe/rights-abuses-revealed-eu-free-trade-candidate-malaysia-318965>>.

<sup>89</sup> M.E. Keck and K. Sikkink, 'Transnational advocacy networks in international and regional politics', 51 *International Social Science Journal* 2002, 89-101.

ample the US and Mexico.<sup>90</sup> For now the CSMs have not resulted in a significant increase of cooperation between CSOs from the EU and trade partner countries. However, it seems that the initiative for the letter sent by RedGe in 2015 originated from a European organisation taking part in the EU DAG for the Peru-Colombia agreement.<sup>91,92</sup> In addition, labour groups from the EU and Korea loosely coordinate before a CSM takes place.<sup>93</sup>

### **Policy Influence: Advising the Governments**

Fourth, by providing relevant information (purpose 2) and/or engaging in a deliberative debate (purpose 3), CSMs can also lead to tailor-made joint recommendations on how the EU and its trade partner should implement the trade agreement in a sustainable way. Whereas this purpose builds on the previous ones, it distinguishes itself by its explicit ambition to formulate policy advice.

According to this view the CSMs serve as advisory boards for the governments. They should come forward with concrete suggestions for the Parties as to how the implementation of labour and environmental provisions should be improved. The difference with the previous purpose of ‘monitoring’ lies in the positive role for civil society: the goal is not (only) to highlight shortcomings in the implementation of the agreement (purpose 2) and/or to engage in a deliberative dialogue on these issues (purpose 3) but also to come up with suggestions for improving this. The ultimate goal would be that such meetings provide the governments with a clear mandate to act with their support.

The EU-Central America AA for example sets out that:

‘These groups shall be tasked with expressing views and making recommendations on trade-related aspects of sustainable development and advising the Parties on how to better achieve the objectives of this Title.’ (Article 294.4)

The formulation varies among the agreements: while some, such as the Central American AA, spell out that the DAGs have a specific ‘task’ (EU-Central America, Korea, Ukraine, Georgia, Moldova and Vietnam), other agreements mention the groups ‘may submit views and recommendations’ (Peru-Colombia and CETA). Finally, some agreements include the formal possibility to submit these views and recommendations ‘on their own initiative’ (EU-Peru-Colombia, CETA, Moldova, Georgia, Singapore, Vietnam).

According to a union representative from the EU side coming forward with recommendations is the ultimate goal of such meetings:

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<sup>90</sup> L. Compa, ‘NAFTA’s Labour Side Agreement and International Labour Solidarity’, in P. Waterman and J. Wills (eds.), *Place, Space and the New Labour Internationalisms*. (Hoboken: Blackwell Publishers 2001).

<sup>91</sup> Author’s interview with Peruvian NGO, e-mail, 8 April 2016.

<sup>92</sup> See author’s interview, *supra* note 46.

<sup>93</sup> See author’s interview, *supra* note 47.

'Moreover, the monitoring mechanism's mandate provides for specific recommendations and making policy interventions on particular matters.'<sup>94</sup>

The Rules of Procedure of the EU-Korea Civil Society Forum (DAG-to-DAG meeting, Figure 1, no.2) set out:

'Within this area of competence, the Civil Society Forum may express its views in the form of opinions, reports or conclusions or through any other appropriate action.'

The EU-Korea Civil Society Forum already published concrete joint recommendations related to labour and environmental issues, for example the suggestion that Korean companies active in Bangladesh could join the Accord on Fire and Building Safety.<sup>95,96</sup> We are not aware of any other specific recommendations put forward by transnational CSMs, which is probably related to their more recent establishment.

In addition, as mentioned in section I, in some cases the agreements foresee that the CSMs can provide advice when a dispute arises between the parties on labour or environmental issues (EU-Korea, Moldova, Georgia and Canada). Here too, it remains to be seen whether and to what extent (a) the CSMs effectively manage to produce policy recommendations, (b) what their quality is in terms of setting out general policy orientations and making specific suggestions for improvement, (c) to what extent they are (and should be) picked up by the governments.

## Conclusion

This section has shown that at least four analytically distinct purposes can be identified from the agreements and the discourses of actors involved. These correspond to different roles that have been heard in the debate on the civil society meetings: whether they (should) constitute (respectively) a fig leaf, an alarm bell or watchdog, an empowerment device, or policy tool. In conclusion, three further observations should be mentioned.

First, these purposes are not mutually exclusive, and some actors expect the CSMs to fulfil several purposes. For example, EESC member E. Pichenot suggested during a workshop on civil society involvement in EU FTAs that

<sup>94</sup> Y. Altintzis, 'Civil Society Engagement and Linkages in EU Trade Policy', in T. Takács, A. Ott and A. Dimopoulos (eds.), *Linking trade and non-commercial interests: the EU as a global role model?* (Vol. 4), Centre for the Law of EU External Relations (CLEER) Working Paper 2013/4.

<sup>95</sup> While this can be regarded as a remarkable development, it should be noted that a European labour representative lamented that the original opinion of the EU DAG on labour issues in Korea was severely watered down by the Korean DAG members and many references to the ILO were taken out in the final conclusions.

Domestic Advisory Group under the EU-Korea FTA, 'Opinion on the fundamental rights at work in the Republic of Korea, identification of areas for action' (2013).

<sup>96</sup> EESC, 'Minutes of the meeting of the EU-Korea Civil Society Forum under the EU-Korea Free Trade Agreement', (Brussels, 2012); EESC, 'Civil Society Forum under the EU-Korea Free Trade Agreement: conclusions', (Brussels 2013); EESC, 'Conclusions of the Civil Society Forum under the EU-Korea Free Trade Agreement', (Brussels 2014); EESC, 'Conclusions of the Civil Society Forum under the EU-Korea Free Trade Agreement', (Brussels 2015).

'the key objective of these monitoring mechanisms, besides ensuring implementation, was to strengthen civil society in EU partner countries as well as to consolidate the support of public opinion of trade liberalization.'<sup>97</sup>

Second, however, different actors usually do emphasize different purposes. From our preliminary observations, it seems that EU trade officials seem to put more emphasis on the instrumental and functional purposes, members of civil society seem more keen on the normative and policy advising potential of the CSMs. The question who wants what and why needs to be researched more systematically.

Third, what makes it even more complicated is that intended purposes can have unintended consequences. Whereas the CSMs may be originally set-up for the purpose of legitimising the FTAs and silencing civil society opposition, and perhaps also to provide the necessary input to the governments in terms of monitoring Parties' compliance with the sustainable development commitments, over time the meetings might start fostering the empowerment of previously marginalised actors and making civil society actors indispensable members of decision-making with governments. Indeed, following historical-institutionalist reasoning the establishment of an 'agent' in the form of CSMs may set off a process of institutionalised cooperation whereby eventually the agent ends up performing different tasks than the creators originally envisaged.<sup>98</sup> Moreover, agents might successfully manage to cross the boundaries of their mandate and acquire more power than was originally foreseen (agent 'shirking' or 'slippage' in principal-agent terminology). Different factors – such as changing political preferences, unexpected circumstances, both nationally and internationally, as well as ambiguities on the original mandate, and of course the skilfulness of actors involved – may cause the CSMs to become more ambitious.

Despite these complexities, our analytical distinction between the different purposes does make it possible to get a better view of how the CSMs can be evaluated, as will be explained in the next section.

### III ASSESSMENT: HOW TO EVALUATE THEM?

So far we have refrained from evaluating certain purposes or features as 'superior' from a normative perspective. However, the question inevitably rises whether the CSMs have been successful. This section provides a framework for analysing the CSMs. Thus, we do not aim to make a definite assessment of the functioning of CSMs, let alone their tangible or intangible impact on sustainable development. One practical reason is that it would be too early for this. Another reason, however, is that we lack the evaluative tools for a thorough evaluation. Therefore, we mainly aim to provide an evaluative framework that goes beyond easy and unqualified judgments and that allows one to situate different assessments within wider debates. Throughout the elaboration of this framework, we

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<sup>97</sup> See EESC, *supra* note 35.

<sup>98</sup> P. Pierson, 'The Path to European Integration. A Historical Institutionalist Analysis', 29 *Comparative Political Studies* 1996, 123-163.

do provide a number of tentative empirical illustrations from our research on the EU-Korea, EU-Peru-Colombia and EU-Central America agreements.

This evaluative framework is summarised in Figure 3. It builds on the previous sections: in order to evaluate the success (or failure) of the meetings, it is important not only to consider their different features but also to engage in a deeper assessment of which underlying purposes are more or less relevant. Ultimately, this links the assessment to more fundamental differences in perspectives on the role of civil society in the context of trade, democracy and development.

The framework is structured around two basic questions. First, should civil society be involved? Second, if the answer is positive, for which purpose should this be? Evaluations of the CSMs basically resolve on actors' perspectives on both questions, as we will show below.

### **Why not involving civil society?**

Not everyone would agree that CSOs should be involved in the implementation of trade agreements. Even within Europe there are different views on the extent to which this should be the case. Third party governments tend to be even more cautious about granting civil society a role in reaching the sustainable development objectives of the trade agreement. This hesitance does not necessarily mean that sustainable objectives are considered unimportant; it can also relate to different views of civil society and democracy in the context of trade agreements. Specifically the inclination not to give civil society a role in the monitoring of sustainable development can flow from authoritarianism, developmentalism, representative democracy, and neoliberalism.

First, authoritarian governments are obviously hesitant to grant civil society members a role in the follow-up of a trade agreement and its SD chapter. This relates to the possibility that civil society organisations would hollow out the government's power. Civil society has long been recognized as a major feature of an 'embedded' democracy, or vice versa as a potential threat for authoritarian governments.<sup>99</sup> Interference from foreign states and organisations into domestic politics, is even more sensitive from this perspective. Of course, there are differences in the extent to which governments are more or less authoritarian or democratic, which then also reflects on the extent to which civil society organisations are being involved. Authoritarian governments might also be more willing to accept civil society involvement, if they have an impact on which members participate in the meetings, and if the influence of these meetings remains limited.

This perspective in terms of more or less authoritarian, can explain why some third country governments have negotiated less far-reaching provisions on civil society involvement in the trade agreement with the EU. For example, in the agreements with Singapore and Vietnam, 'civil society' is not even explicitly mentioned. Another issue that might be explained from this perspective is the

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<sup>99</sup> W. Merkel, 'Embedded and defective democracies', 11 *Democratization* 2004, 33-58.



Devco has not been involved in the process, and coherence between EU development policy and the organisation of CSMs has often been lacking. Even though attempts are being made for DG Trade and DG Devco to speak the same language and to collaborate, so far both have been operating separately and barely coordinate their efforts.<sup>101</sup> As such, the promotion of civil society through trade agreements seems to fall in between the cracks of the EU's compartmentalised institutional structure. Also in third countries such as Peru, we noticed a developmentalist perspective with the government and some business associations as a reason for sidelining social dialogue.

Third, the perspective of representative democracy also supports the non-involvement of civil society. According to this view, the elected representatives and their governments are the main actors within any democratic system. As such, members of parliament and government officials are considered the most legitimate political actors. They should be primarily responsible for the monitoring, implementation and evaluation of the agreements concluded between the Parties (including the SD chapter). Although the importance of civil society for democratic systems has long been recognized within democracy studies (going back to A. de Tocqueville), the traditional view on democracy continues to grant a primordial role to representatives that are elected by the people. Contrary to views of deliberative or participatory democracy, they tend to question the legitimacy of civil society organisations whose representatives are not elected by the people and pursue their own particularistic interests.

This criticism is even stronger when we move from the domestic realm into the transnational civil society. It may be argued that in international politics, states still constitute the most legitimate international actors, perhaps in addition to intergovernmental regimes and organisations that have been established by the states. The legitimacy of transnational CSOs, in contrast, has been questioned. Transnational NGOs have been criticised for being not representative and reflecting global disparities of influence.<sup>102</sup> In addition it has been argued that they might overturn more legitimate political spaces.<sup>103</sup>

This perspective may also explain third country governments' hesitance to involve CSOs, as they would question their representativeness. For example, the legitimacy of the trade union movement has been criticised by the Peruvian government and business, as it is small in terms of numbers and allegedly anchored in violent historical conflicts. Moreover, the same actors have frequently argued that some CSOs do not represent Peruvian interests but rather interests of the foreign states and NGOs that are funding them. From the EU side, however, concerns of representative democracy seem to be less present. Even if the general impact of the CSMs is limited, especially in the short run, the European Commission and its members have generally favoured the CSMs. The EP has even been a strong proponent of the CSMs.

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<sup>101</sup> See author's interview, *supra* note 30; Author's interview with EU official, 24 May 2016.

<sup>102</sup> S. Khagram, et al., *Restructuring world politics: transnational social movements, networks, and norms*, (Minneapolis: University of Minnesota Press 2002).

<sup>103</sup> R. Price, 'Transnational civil society and advocacy in world politics', 55 *World Politics* 2003, 579-606.

Fourth, neoliberal economic thinkers may be even more explicitly opposed. This partly relates to the general view of a 'minimal state' in which the institution-alised power of lobby groups should be avoided. Trade unions, for example, typically tend to favour a more interventionist state. The neoliberal perspective emphasises the role of individuals instead of collective organisations. Specifically related to trade policy, the reluctance to involve civil society stems from the assumption that free trade should be minimally distorted by so-called 'non-trade' issues. This strand of thinking does not necessary dismiss the importance of sustainable development. However, it follows the 'trickle down' theory in that this objective can be better reached through free trade. When free trade in accordance with comparative advantages leads to economic growth, democratic and human rights standards will equally start to improve. Even if it might be interesting to strengthen civil society for the purpose of sustainable development, possibly through development cooperation, it would be dangerous to organise this within the context of a trade agreement. The underlying fear is that this would open the door for protectionist misuses or – to put it even stronger – that the moral face of fair trade or sustainable development would be used as a justification to restrict trade.<sup>104</sup>

Neoliberal orthodoxy may explain why some actors favour a 'soft' approach to the SD chapter (which provides no sanctions) without a strong role for civil society (which has no direct impact on trade flows). This may be the case for some third country governments, some business actors, and the European Commission. The idea that sustainable development provisions occupy an awkward position in EU trade agreements remains strong within the European Commission's DG Trade as well as in the trade sections of some EU Delegations. In this regard in the EU Delegation in Peru it was mentioned that the chapter on sustainable development is peculiar in light of the trade agreement as a whole as it is not really dealing with trade issues. While each chapter of a trade agreement has the general intention to expand trade and investment, this chapter has an inverted objective and goes the other way.<sup>105</sup> In a follow-up interview it was emphasised that 'it's a trade agreement.'<sup>106</sup>

In conclusion of this part, three final remarks should be made. First, overlaps between these perspectives are thinkable. For instance, authoritarianism and neoliberalism can go hand in hand. Also developmentalist thinking can be compatible to neoliberal development strategies and/or to favouring authoritarian policies. In turn, neoliberalism and representative democracy could have a narrow view on what constitutes 'democracy' in common. However, these are still analytically distinctive approaches to thinking about the role of civil society, democracy and development in the context of international trade.

Second, this is not an exhaustive overview. More perspectives could be considered, such as a perspective based on national sovereignty concerns and/or national policy space. Both perspective would be hesitant towards FTAs, but whether or not civil society involvement is favoured would depend on the ap-

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<sup>104</sup> J. Bhagwati, 'Trade Liberalisation and "Fair Trade" Demands: Addressing the Environmental and Labour Standards Issues', 18 *The World Economy* 1995, 745-759.

<sup>105</sup> Author's interview with EU delegation in Peru, Lima, 11 March 2015.

<sup>106</sup> Author's interview with EU delegation in Peru, Lima, 29 February 2016.

proach to the insider-outsider dilemma as explained in the previous section. CSMs can be seen as a way to legitimise the broader free trade principles that constrain national sovereignty and/or policy space, but they could also be seen as an opportunity to minimise negative effects and even act for improvement.

Third, these perspectives do not necessarily favour a complete rejection of CSMs. A limited involvement through soft mechanisms with much room of manoeuvre for the governments may still be accepted, as long as it is seen to guarantee the support for the overriding objective of having an FTA with the EU. This would be most clearly the case for the neoliberal, and to a lesser extent for the authoritarian perspective. From these perspectives, CSMs are evaluated positively on condition that (a) the FTA gets approved, (b) opposition to the agreement has effectively been dampened, and (c) civil society is being co-opted and silenced through this process. This makes it clear that the evaluation of the success of CSMs, is closely linked to the different purposes – in this case the instrumental purpose. This will be further elaborated below.

### **Why involving civil society – and for what?**

Those who do favour the CSMs as part of the trade agreements' SD chapters also do so for diverging reasons. Based on the analysis above, we can assume that perspectives favouring civil society involvement will hold a broader conception of democracy (e.g., embedded liberalism or participatory governance), in which democratic principles are not subordinated to economic or developmental concerns, and in which the neoliberal doctrine is not dominant. Still, when we zoom into the arguments in favour of CSMs, there is considerable diversity. We can discern three different perspectives that closely relate to the above-mentioned purposes, namely input, throughput and output democracy.

If the main purpose is to collect information and monitor the sustainable development commitments, the CSMs should first and foremost gather the necessary data on the implementation of the relevant conventions. In order to be able to do this, it is important that the meetings can draw on of the existing expertise in various sectors related to sustainable development. These could range from human and labour rights to environmental issues, consumer affairs, and animal welfare. The organisations involved should be representative for the various objectives that are pursued in the SD chapter. It is thus important that relevant organisations are not excluded (i.e., a broad substantial diversity, see *supra*).

This corresponds to what has been called 'input democracy', whereby democratic legitimacy hinges on the extent to which the actors have been involved in the decision-making process. Although the concept of input democracy originally applied to the political involvement of the public in the context of national democracies (through elections or referenda), it could also be used in this context of CSMs. Indeed, the successful follow-up of the SD chapter may depend on the amount of input that is given during and can be collected from the meetings. Without sufficient and reliable input from CSOs, the meetings cannot be successful. Specifically, CSMs would fail if only a limited number of participants are effectively involved. Limited involvement could be the result of a biased selection procedure (see *supra*) or simply because of a lack of information.

In this regard, the limited transparency of selection procedures for DAG members may be problematic. A prerequisite for input democracy is of course that CSOs are aware of the possibility to participate in these meetings. For example, a Honduran national trade unionist representative explained that she was not aware of the existence of these meetings. She stated that her organisation depends on the regional meetings of their umbrella association to be informed on such high-level activities.<sup>107</sup> In Peru and Colombia CSOs are largely unaware of the fact that already existing mechanisms have been selected by the governments to serve as the domestic monitoring mechanism for the EU SD chapter. Apart from that, interviewees in these countries often complained they were not timely informed about when the transnational CSM would take place.<sup>108</sup> In addition, the EU's ability and/or willingness to be involved in the composition of its trading partners' DAGs also seems limited (see section I). On the side of the EU DAG, the President of the EESC recently lamented that the groups that do participate in the CSMs are not necessarily representing European economic, social or employment interests and are rather purely sectoral, national or even international.<sup>109,110</sup>

However, this may collide with the purpose of democratic governance, which some consider more important than the collection of relevant data. According to this perspective, CSMs will be successful if they allow for a democratic dialogue between CSOs and for the empowerment of previously marginalised actors. This corresponds to what has been called 'throughput democracy', according to which institutions are legitimate if their decisions are well-informed and follow the logic of argument rather than bargaining.<sup>111</sup>

According to this perspective, the CSMs should make it possible for the participants to engage in an open debate that is based not on power dynamics but on critical and rational arguments. Although the Habermasian ideal type will never be reached, the meetings might create more favourable conditions for deliberation than the alternative (domestic or international) venues that are available. Thus, evaluations will depend on the extent to which such a culture of dialogue has indeed been created and eventually on the extent to which this facilitates the empowerment of marginalised actors. Although a relevant number of organisations should be involved (cf. input democracy), what is of utmost importance is that the conditions for deliberative dialogue are present. For example, members of the meetings should have the opportunity to become famil-

<sup>107</sup> Author's interview with Honduran labour representative, Brussels, 10 November 2015.

<sup>108</sup> Author's interview with Peruvian labour representative, Lima, 6 March 2015; author's interview with Peruvian farmers' organisation, Lima, 6 March 2015.

<sup>109</sup> President of the EESC, 'Assessment of and recommendations for the composition, remit and workings of European civil society DAGs under the free trade agreements concluded by the EU' (Brussels 2015).

<sup>110</sup> Some trade unions on both the EU and third country sides have complained that they are more representative than NGOs. See author's interview, *supra* note 108; See Author's interview, *supra* note 47.

<sup>111</sup> T. Risse, 'Global Governance and Communicative Action', 39 *Government and Opposition* 2004, 288-313; V. Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"', 61 *Political Studies* 2013, 2-22; M. Zürn, 'Democratic governance beyond the nation-state. The EU and other international institutions', 6 *European Journal of International Relations* 2000, 183-221.

iar with each other's arguments. This relates to the question of fixed versus variable participation (see *supra*) and to the frequency of the meetings (see *supra*). CSM participants have explicitly stated that they should be able to be in contact more regularly, for instance by email or videoconference.<sup>112</sup> In most cases this has not been achieved (see *supra*). For now it seems that many of the current CSMs are a forum for the exchange of information rather than a venue for true deliberation on substantial issues. Apart from that, the most recent CSMs mostly deal with procedural issues and do not yet arrive at substantive discussions on labour and environmental issues in the EU and third countries.

However, much depends on the domestic context. In some instances, certain actors would be better excluded and/or involved in separate meetings. For example, Colombian civil society representatives mentioned that they would prefer meetings without presence of the authorities so that they can speak out freely.<sup>113</sup> In some cases it was mentioned that no real communication took place between civil society and the governmental actors. This was for example the case in the first EU-Central America civil society meeting in Nicaragua in 2014. The officials just read their statements and then left the room. When there is a domestic context of social dialogue between employers, trade unions, governments and other stakeholders, it would of course be preferable to organise joint meetings. However, this is very often not the case. Also, when labour and environmental groups with different backgrounds and interests are suddenly supposed to cooperate in the context of the SD chapter, it will be difficult to achieve a good context for deliberation. Participants need to get acquainted with each other so that a common purpose can be created. While socialisation may not be feasible and even not desirable, a common sense of the main objectives would be important.

Then again some may emphasise that the successfulness of the CSMs can only be measured in relation to what they effectively produce in terms of policy recommendations. This concerns both the quality of the policy recommendations that are advanced by the CSMs and the extent to which the Parties to the agreement take them into account. The former depends on the clarity of the recommendations, on how consistent they are in terms of argumentation, and on how detailed they are. The higher the substantial and geographical diversity (see features *supra*), the more difficult it will be to make recommendations.<sup>114</sup> Especially in the case of open meetings where many CSOs are present, it has been difficult to convey clear messages. The latter concerns issues of accountability, namely the responsiveness of the government(s) towards the outcomes of the

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<sup>112</sup> EESC, 'Draft Minutes of the second joint meeting of the representatives of the EU and Central American Advisory Groups under the Trade and Sustainable Development Title of the EU-Central America Association Agreement' (Brussels, 28 May 2015); See author's interview, *supra* note 15.

<sup>113</sup> N. Brandt et al., 'Assessing the impact of EU trade and development policies on human rights', Fostering Human Rights among European Policies (FRAME) Work Package No. 9 – Deliverable No. 2 (2015), at 149, available at <<http://www.fp7-frame.eu/wp-content/uploads/2015/08/FRAME-Deliverable-9.2-Submitted-30-June-2015.pdf>>.

<sup>114</sup> A. Dür and D. De Bièvre, 'Inclusion without Influence? NGOs in European Trade Policy', 27 *Journal of Public Policy* 2007, 79-101; S. Hix and B. Hoyland, *The political system of the European Union* (Basingstoke: Palgrave Macmillan 2011).

mechanism. Different degrees of responsiveness are possible and can be put on a continuum, as explained in section I.

This is perhaps the most commonly used (albeit often implicit) benchmark: what do the meetings actually achieve, and do the governments take them seriously? Theoretically, it refers to the concept of 'output democracy', according to which democratic legitimacy is determined not so much by the involvement of relevant actors (input) or by the democratic quality of the decision-making process (throughput), but primarily by what is achieved in terms of tangible outcomes. In other words, exploring the contribution of civil society organisations to effective (political) problem-solving.<sup>115</sup> This classification in input, output and throughput democracy also makes it clear that tensions between them may occur – something that will be elaborated in the next section.

## Conclusion

The question whether CSMs are successful is difficult to answer, not only because we do not have much empirical information on this new phenomenon, but most of all because it depends on which perspective one takes in the evaluative framework (Figure 3). On the one hand, limited CSMs can be considered a success from an authoritarian, developmentalist, representative democracy or neo-liberal perspective. On the other hand, perspectives that provide a role for civil society in fostering input, output or throughput democracy will favour more civil society involvement. However, the latter will not automatically evaluate each form of civil society involvement positively. Their evaluation will depend on the nature of involvement, namely whether it fits with the functional, deliberative, or policy tool purpose. Depending on the purpose one envisages, the evaluation of a certain CSM will be more or less positive or negative.

This distinction is important, because tensions between different purposes may occur – most clearly between input and output –, thereby determining evaluations of civil society involvement.<sup>116</sup> For example, while it may be necessary to involve various CSOs from an 'input' perspective, this makes it difficult to draw clear and consistent policy recommendations. The recent open meeting of EU and Central-American civil society in Brussels (May 2015), for example, had a wide range of participating organisations ranging from indigenous Central American organisations over a Turkish business association to Heineken. While most discussions were related to how such meetings should function, substantial issues were discussed to a limited extent only. One proposal was therefore to organise more thematic meetings to discuss some topics more profoundly. During the meeting with the governmental representatives the latter stressed they need more specific input to set up concrete projects. A member of the EU DAG confirmed he prefers to meet in a closed meeting with less participants because the discussions are better. Limiting the numbers of interests and participants would however affect the level of pursued input democracy.

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<sup>115</sup> B. Finke, 'Civil society participation in EU governance', 2 *Living Reviews in European Governance* 2007, available at <<http://www.livingreviews.org/lreg-2007-2>>.

<sup>116</sup> See B. Finke, *supra* note 115.

Also, tensions between throughput and output democracy can arise. On the one hand, bringing together civil society actors from various backgrounds (including business, in the EU's definition) might hinder the deliberative quality of discussions and the opportunities for empowerment. Separate meetings of labour representatives within and/or between the EU and third countries may be facilitating in this regard; however, the inclusion of environmental groups and business associations under the broad banner of 'sustainable development' could hinder deliberation and empowerment, especially if power asymmetries come to emerge. A member of the EU DAG of the Central American AA deplored that some actors are more vocal and imposing their will on the other DAG members when composing their joint recommendations, creating frustration in the group.<sup>117</sup> On the other hand, from a deliberative perspective it might be a good idea to get organisations that do not meet each other in other platforms to sit together at one table to discuss trade and sustainable development. Representatives can get to know each other and get to understand the position of the other actors. We do not have information on the actual moderation of the meetings, and whether open communication whereby each participant can express its opinion without monopolising the meeting or being attacked by others (in theoretical terms: whether the conditions for Habermasian deliberation are fulfilled). What seems clear, however, is that this has not been established in the first meetings of the CSMs and that it will take much longer to establish the necessary conditions for deliberation.

Conflicting views on throughput versus output democracy become clear in evaluations of the meetings of the EU DAG and the Korea DAG. In the view of the EU DAG, these led to a watering down of joint recommendations on labour issues in Korea. However, from a deliberative perspective, the fact that unions, businesses and environmental organisations discuss labour issues together, might be regarded as a success. Again, much depends on whether, in the coming years, the conditions for a deliberative dialogue can be established.

## CONCLUSIONS: WINDOW DRESSING OR WINDOW OF OPPORTUNITY?

We have addressed three basic questions: how are CSMs in the context of EU trade agreements organised (features), what are they for (purposes), and how can we evaluate them (assessment). In doing so, we have taken stock of current developments (empirical contribution) and proposed frameworks for further examination (analytical contribution, see Figures 1 and 3). While it is too early to make a systematic and comparative analysis of the CSMs, some of which have only convened a few times at the time of writing, we have made a first attempt to understand them.

It has indeed become clear that evaluating the success of CSMs is harder than might be thought at first sight. One might easily dismiss them as being irrelevant 'talking shops'. Or one could herald them as innovative mechanisms with the potential to further democratic governance and empowerment. One might also observe that the meetings have been useful 'fig leaves' because they

<sup>117</sup> See author's interview, *supra* note 26.

have secured the trade agreements. Alternatively, one may appreciate their relevance as a sort of 'study group', 'alarm bell' or 'watchdog', namely the extent to which shortcomings in compliance with sustainable development standards are brought to the attention.

When evaluating the meetings, it is important to consider organisational issues. As section I demonstrated, there are a number of shortcomings in the early stages of the organisation of the CSMs, and also the accountability mechanisms could be improved. In light of the increasing amount of EU trade agreements and the accompanying CSMs, one can also wonder whether the EU (and its CSOs) can keep up with the practice of establishing one specific DAG for each agreement. Especially for European labour representatives it seems that not enough resources are available to take up many more responsibilities in this regard. This problem seems less severe for other NGOs as there are many of them. One idea that could be explored is to bundle the EU DAGs in one or more mechanisms, for example depending on the geographical area. The US NAC (National Advisory Committee for Labour Provisions of US Free Trade Agreements) could provide some inspiration in this regard. While resources would be used in a more focused way, one can wonder whether labour and environmental problems in 'less problematic' countries would get sufficient attention.

However, we have also shown that evaluations of the meetings should go beyond practical issues. Fundamentally, much depends on one's view on democracy and civil society in the context of international trade. On the one hand, we identified different perspectives – authoritarianism, developmentalism, representative democracy, and neoliberalism – for which limited CSMs equals success. On the other hand, there are different perspectives that positively assess elaborate civil society involvement, although this depends on the nature of involvement. According to the view on 'output democracy' the tangible outcomes are more important than the involvement of relevant actors ('input democracy') or the democratic quality of the meetings ('throughput democracy'). There may also be inherent tensions between these different views, as we have illustrated.

Moreover, the domestic context in which these CSMs take place should be taken into account. First, the variation of features in the different agreements may be explained by different domestic factors within the third country. Second, evaluations should also take the domestic context into consideration. In some countries, where unions do not often sit together with government officials (as is the case in Korea), the mere fact that they provide a platform for interaction can be seen as positive. It also became clear that, depending on the domestic context, the presence of government officials in the meetings has been evaluated differently. Third, it would be important to know more about the background and preferences of the civil society organisations that are involved, about their expectations vis-à-vis the EU and their legitimacy in the domestic context.

Importantly, CSMs are not static events. Evolutions take place from agreement to agreement, as well as within the framework of one agreement. Also the European Commission argues that the meetings are still in an experimental phase and that their functioning could be modified and improved. The design and evolution of the CSMs does indeed resemble to what academics have called 'ex-

perimentalist governance' in EU external relations.<sup>118</sup> For example, the Korean DAG was not seen as representative of civil society. The European DAG and the Commission realised that an open meeting is also needed to make sure that relevant organisations can participate. Therefore the European Commission thereafter (in the negotiations with Central America and Peru-Colombia) proposed a more open meeting instead of fixed meetings between the different DAGs. The CSMs which take place in the context of the EU-Central America agreement also illustrate this experimental approach, for example through the gradual and challenging formation of the different DAGs and exploration of possibilities to increase the number of participants, such as the use of videoconference. Thus, these mechanisms need some time to develop.

Therefore, it would be extremely premature to argue that the civil society meetings in EU trade agreements are only relevant in terms of legitimising free trade. It seems tempting to conclude that the instrumental purpose has been dominant, given the limited visible output of the CSMs so far, the problems concerning budgetary and organisational support, the incomplete accountability mechanisms, the problems with the composition of the domestic groups in third countries, as well as the overriding economic objectives behind the EU's trade agenda. According to our evaluative framework, this would imply that neoliberal and perhaps authoritarian perspectives can claim success.

However, it may be too early to tell. In an experimentalist fashion, the CSMs seem to be gradually evolving towards more substantial discussions. Ambiguities on the purposes also provide opportunities for civil society actors to mould the meetings to their advantage. The European Commission does not strongly interfere in the composition of the meetings and there is scope for discussions on various concerns voiced by civil society organisations – even on issues that are only indirectly related to trade. Whether the meetings will eventually go beyond the instrumental purpose as it was perhaps originally designed by the Parties depends on how the EU, its trading partners, the CSOs involved and the wider public make use of the new mechanisms in the coming years.

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<sup>118</sup> J. Zeitlin (ed.), *Extending Experimentalist Governance?: The European Union and Transnational Regulation* (Oxford: Oxford University Press 2015).