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Participation of Civil Society in EU Trade Policy Making: How Inclusive is Inclusion?

Lotte Drieghe [a], Jan Orbie [a], Diana Potjomkina [a,b,c] and Jamal Shahin [b,c,d]

[a]Department of Political Science, Ghent University, Ghent, Belgium; [b]Institute for European Studies, Vrije Universiteit Brussel, Brussels, Belgium; [c]United Nations University – CRIS, Brugge, Belgium; [d]Department of Modern European History, University of Amsterdam, Amsterdam, Netherlands

ABSTRACT

In response to growing contestation and politicisation of trade policy, policy makers have aimed to enhance the 'inclusiveness' of trade policy through the institutionalisation of deliberative forums in which civil society organisations participate. However, it is not clear whether these processes actually enhance inclusiveness. This article adds to our understanding of this question by, first, developing an analytical framework (the 'inclusiveness ladder') and, second, applying it to the civil society mechanisms (CSMs) of European Union (EU) free trade agreements. The unique feature of CSMs is their focus on ensuring that the actual implementation of trade agreement does not run counter to sustainable development principles. Specifically, our empirical research involves a mixed methods analysis of primary and secondary sources and a survey of civil society participants. We find that CS is largely included at the level of logistics and partly at the level of information sharing, whereas monitoring capacities remain limited and impact on policy-making is quasi-absent. Moreover, results suggest differences between business participants, who seem largely satisfied with the lower steps on the 'ladder', and non-governmental actors who insist on policy impact. Finally, we outline avenues for further research and reflect on policy implications.

KEYWORDS

Trade; sustainable development; civil society; inclusiveness; European Union

Introduction

Trade policy has become more and more contested over the past decades. Parliamentarians and other politicians, trade unionists, civil society groups, journalists, academics and the public at large have increasingly voiced their concerns with the international trading system. While in the 1990s, criticism was mainly directed at the newly created WTO, since the 2000s it has shifted to bilateral free trade agreements. In response, policy makers have aimed to enhance the 'inclusiveness' of trade policy through the institutionalisation of forums in which civil society (CS) organisations participate. However, it is not clear whether these processes actually enhance inclusiveness. They have been problematised by several researchers who find that more in-depth empirical studies are needed for a more definitive assessment (Dür and De Bièvre 2007, Steffek and Ehling 2008).

A number of studies suggest that the *inclusion* of civil society (CS) actors in trade policy making does not effectively enhance *inclusiveness* because of three reasons. First, dialogue mechanisms do not always allow civil society actors to directly participate in actual decision-making (Scholte *et al*.

CONTACT Jan Orbie jan.orbie@ugent.be@janorbie

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1998, Steffek and Ehling 2008, Harrison *et al*. 2019). Second, the positions of policy makers and CS are often misaligned. The latter prefer to discuss technical issues (Hocking 2005, Steffek and Ferretti 2009). Influenced by the dominant neoliberal paradigm, trade policy-makers are unwilling to take on board CS suggestions if these criticise the foundations of neoliberalism, such as demands for partner countries to liberalise their markets (Hannah 2016, Ford 2018, Lawrence 2018, Holden 2019). Scholte *et al*. (1998, pp. 19, 22) talk about a 'dialogue of the deaf' whereby participants are not 'fully ready to listen to, learn from, and be changed by each other'. Third, when civil society actors overcome initial obstacles, they may be inclined to align their position with policy makers and become less critical (Ford 2018); Steffek and Ferretti (2009, pp. 54–5) refer to it as the 'participation trap'. These three impeding factors are exacerbated by the fact that these participatory processes often lack a clear purpose (Hocking 2005, Gheyle and De Ville 2017). As a result, impact is frequently lacking (Ebert 2016, Marx *et al*. 2016, Orbie *et al*. 2016a, Tran *et al*. 2017; however see Postnikov and Bastiaens 2014 for a more optimistic take).

While these studies provide valuable insights, they are mostly limited to specific cases and to labour-related issues (Van den Putte 2015, Marx *et al*. 2016, Raess *et al*. 2018, Smith *et al*. 2018) or revolve around whether they should or should not trigger sanctions (Postnikov and Bastiaens 2014, Garcia and Masselot 2015, Xu 2017, Postnikov 2019). Some studies provide mostly descriptive and normative insights (Orbie *et al.* 2016a, Harrison *et al.* 2019). Dür and De Bièvre (2007), Velut (2016) and Kube (2019) offer a more analytical approach to various dimensions of inclusiveness. However, they do not clearly differentiate among different purposes of consultative bodies or focus mainly on the basic distinction between formal and substantive engagement. What we see as presently lacking is a more systematic study, empirically spanning multiple countries and policy issues and theoretically accounting for different degrees of inclusion in trade policy.

Against this backdrop, we aim to provide a theoretically informed and empirically grounded analysis of civil society participation in European Union (EU) trade policy. We conduct a comprehensive examination of a key forum for civil society inclusion in the implementation stages of EU free trade agreements (FTAs) – the civil society mechanisms (CSMs). This empirical focus is particularly relevant because, first, politicisation of trade policy has been particularly high in the EU; second, the EU has been one of the most vocal proponents of including civil society; third, the CSMs that we study have already existed for several years; and fourth, they are established at the post-ratification stages.

Theoretically, we construct an analytical framework (the 'inclusiveness ladder') that engages with existing literature on inclusion of civil society in trade policy while allowing for a more refined approach that links inclusiveness to different purposes of participation. This is partly inspired by Arnstein (1969), who developed a citizen participation ladder to show the different levels of citizen 'power' and participation in social programmes in the United States, but we focus specifically on civil society mechanisms. Subsequently, the empirical research follows a two-pronged approach: first, we make a qualitative and comprehensive analysis of civil society organisations' assessments of the CSMs; second, we complement this with a more focused and quantitative study of EU participants' evaluation of these mechanisms. The application of our analytical framework to both empirical sections allows us to generate relevant conclusions on the inclusiveness of the CSMs.

Methodologically, this two-step approach involves mixed methods. First, the qualitative section mostly builds on desk research of a broad set of primary and secondary sources. For this purpose we constructed a dataset of all relevant official documents from the European Commission, European Parliament and European Economic and Social Committee (EESC), 15 civil society organisations' responses to a European Commission's non-paper in 2017–18, existing academic publications, our notes from participatory observation in a number of CSMs and related events in Brussels, as well as interviews and informal discussions with participants since 2014. Second, the quantitative part is based on a survey of EU DAG members, thereby providing more systematicity in the analysis of inclusiveness. Surveys were carried out with all members of the existing DAGs in the summer of 2016 ($N = 85$; 31 responses) and in the spring of 2018 ($N = 82$; 41 responses).[1] The surveys were

identical in form and content, except that the second survey involved three additional questions (see appendix). 74 per cent of the respondents from 2016 also took part in the 2018 survey. When not indicated otherwise, 2018 data are quoted. This study only concerns the EU DAGs and to a limited extent the joint civil society forums, mainly because of practical considerations in terms of access, language and sometimes also political sensitivities that render it difficult to conduct in-depth interviews and surveys with (critical) participants in third countries.

The next section provides some background on the CSMs. Subsequently, the analytical framework is elaborated. Parts four and five deal with, respectively, qualitative review and quantitative survey analysis. In the conclusion we bring the findings together and formulate some general insights.

Civil Society Mechanisms

The CSMs are part of the EU's broader response to contestation against its trade policy. The European Commission set up several initiatives to involve civil society at various policy-making stages, ranging from the all-encompassing Civil Society Dialogue to more restricted mechanisms such as, most recently, a Group of Experts on EU Trade Agreements. Dialogue with stakeholders carried out by other EU institutions is more limited (Potjomkina 2018). The unique feature of CSMs is their specific focus on ensuring that the implementation of trade agreement does not run counter to sustainable development principles.

The mechanisms operate under the Trade and Sustainable Development (TSD) Chapters included in the so-called 'new generation' agreements negotiated by the EU since 2010. Currently, CSMs are established under nine EU FTAs: with Canada, CARIFORUM, Central America, Georgia, Japan, Moldova, Peru-Colombia–Ecuador, South Korea and Ukraine.[2] All these agreements share a generic blueprint with three main features: a Domestic Advisory Group (DAG) within both the partner country and the EU, each time consisting of civil society representatives, and a Joint Civil Society Forum including participants from both DAGs but also other CS groups. SD chapters provide for a separate dispute settlement procedure which can entail the creation of a Panel of Experts. Agreements vary in the extent to which DAGs can provide input during disputes and monitor the implementation of panel reports; however, they can never formally trigger the dispute mechanisms (Martens *et al*. 2018, Kube 2019). DAGs' main tasks, as defined in the FTAs, are 'advising' and 'submitting views or recommendations'. However, there has been confusion on the exact purpose(s) of the DAGs (Orbie *et al*. 2016b, Harrison *et al*. 2019), an observation that complicates assessments of inclusiveness and will be central to our analytical framework (see below).

Before elaborating on this, some notes on the notion 'civil society'. The Commission claims that it aims for a 'balanced' inclusion of CS groups. It tends to use a broad definition which includes business associations in addition to labour, environmental and other organised groups such as consumer organisations and indigenous communities (Commission of the European Communities 2002, Velut 2016). The EU's general conception of civil society as an area of diverse groups that coalesce into democratic governance (Saurugger 2010) goes against more critical notions of civil society as a playground of hegemonical political ambitions (Talani 2016) or as a potential battleground where antagonistic interests challenge hegemonic forces (Cox 1999). In this paper we follow the Commission's broad definition, because we aim to study the inclusion of all participants to the DAGs as they are set-up and conceived by the Commission. However, we are aware of the above-mentioned critiques. We also explicitly acknowledge that there may be irreconcilable differences between (and within) business versus non-business groups and will account for this distinction in the various stages of the research.

Furthermore, the Commission states that 'The institutional structure of the EU TSD chapter is designed to be inclusive' (Commission Services 2017). In order to examine how inclusive these CSMs really are, the next sections develop an analytical framework and apply it to qualitative and

quantitative data. As we focus on the EU civil society, our findings concern the EU DAGs and (to a lesser extent) the Joint Civil Society Forums.

Analytical Framework

As stated in the introduction, we envisage a more refined conceptualisation and a more systematic research of inclusiveness compared to the (limited) number of studies on civil society inclusion in EU trade policy. Engaging with existing literature, this section therefore constructs an analytical framework that (1) provides a more fine-grained framework in four degrees and (2) links this explicitly to the purposes of participation.

Extant academic literature demonstrates that there is a range of possible provisions on inclusion, which can give CS a clear influence on decision-making but can also engage stakeholders in a consultation process while coming short of advancing their rights (Kube 2019). Dür and De Bièvre (2007, p. 80) and Velut (2016, p. 6) distinguish between (formal) 'access' and 'policy influence' for civil society actors, while Halpin and Fraussen (2017, p. 724) separate 'involvement', which is society-driven and does not per se relate to dialogue with policy-makers; 'access' or presence of such dialogue; and 'prominence' or favourable recognition of a group by policy-makers (a near substitute for influence).

To this end, we make two conceptual advances. First, we conceive of inclusiveness as a matter of degree. Seeing inclusion in terms of gradation resonates with existing literature. For example, the Organization for Economic Cooperation and Development (OECD) looks at stakeholder engagement in policy-making as a continuum from least to most inclusive approaches (OECD 2016, see also CoE 2017 and Conference of INGOs of the CoE 2009). Stakeholders also commonly conceive inclusiveness not as a 'yes or no' issue but as something that encompasses different degrees (interviews, December 2018, January 2019). Second, we differentiate different kinds of inclusiveness (cf. Halpin and Fraussen 2017), characterising them by the purpose of civil society participation. It concerns the intended purpose by the contracting parties of the agreement and how this is perceived by the stakeholders involved. Building on literature and previous empirical research, diverging evaluations revolve around different understandings of what DAGs are created for (Orbie *et al*. 2016b, cf. Kube 2019). Four distinct purposes can be identified, including not only the 'information sharing', 'monitoring' and 'policy impact' notions that are often referred to in literature, but also the critical notion that inclusiveness can be aimed to legitimise free trade, something which existing research has demonstrated without always theorising it as a 'kind' of inclusiveness (Dryzek *et al*. 2002, Steffek and Ehling 2008).

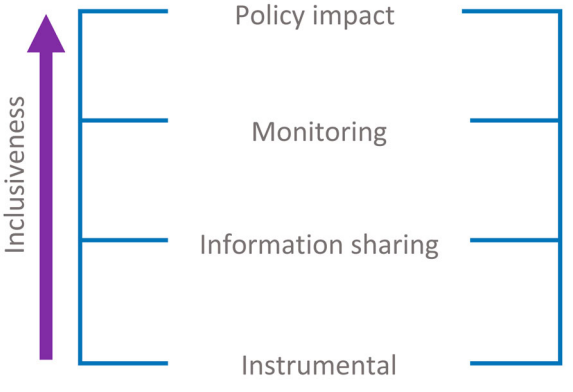


Figure 1. Inclusiveness ladder.

The resulting framework combines *degrees and types* of inclusiveness by arranging the four types of inclusiveness into consecutive and analytically distinct rungs of a ladder, based on the degree of inclusiveness to which they correspond (see Figure 1). Metaphorically, this is captured in the 'ladder', inspired by Arnstein's (2019 [1969]) 'ladder of citizen participation'. Interviewed stakeholders commonly perceive the four types of inclusion as involving different degrees of civil society power (interviews, December 2018). The idea that civil society inclusiveness is higher as it moves up from the instrumental, over information-sharing, to monitoring and ultimately policy-impact levels of inclusiveness, also corresponds to extant literature. For instance, the 'continuum approach' ranges from the lowest 'communication' to the highest 'co-decision and co-production' level (OECD 2016, p. 73), and the 'formal' versus 'substantive' participation is often conceived, at least implicitly, as low versus high inclusiveness (Dür and De Bièvre 2007, Velut 2016, Kube 2019). In his 'democracy cube', Fung (2006) also combines types and degrees of participation. The way in which we combine types and degrees resonates most closely with Arnstein (2019 [1969]) who differentiated eight rungs, ranging from 'manipulation' ('engineering support'), which corresponds to our 'instrumental' purpose, over several 'degrees of tokenism' (minimal 'informing' and 'consultation'), as with our 'information sharing' purpose, towards inclusiveness in terms of 'placation' which provides some advisory role and thereby resembles our 'monitoring' purpose, and 'partnership' and 'delegated power' which redistributes power and parallels 'policy impact' in our framework. Arnstein also puts 'citizen control' on top of the latter (Arnstein 2019 [1969], pp. 26–32), which we have not retained as it would be a merely theoretical notion that is not supported by some stakeholders.

First, the **instrumental** purpose implies nominal access when civil society is invited to *participate* in the implementation process, but this is done in a purely *formal* manner in order to legitimise the FTA (Dryzek *et al*. 2002, McLaughlin and Pickard 2005). Without substantive dialogue, such mechanisms do not enhance deliberative inclusiveness (Hall *et al*. 2014, Velut *et al*. 2020). To the extent that they contribute to legitimising the dominant free trade orientation of the agreement, CSMs may even constitute a deliberate attempt to prevent 'redistributive inclusion' (Velut *et al*. 2020). By accepting the invitation, CS members risk becoming co-opted and becoming less critical (Dryzek *et al*. 2002, see above on 'participation trap'). The main commitment of policy-makers is a logistical one, namely making sure that the meetings can be organised. However, convening the meetings might increase openness and facilitate access (Kohler-Koch 2013).

Second, the **information sharing** purpose can be seen as provision of more substantive access (cf. Halpin and Fraussen 2017), meaning that civil society is invited to *discuss* the implementation of the FTA and its impact on sustainable development (OECD 2016, CoE 2017). Information sharing can be vertical, involving policy makers, or horizontal, when only civil society organisations participate. Bringing civil society organisations together, allowing them to share expertise, discuss policies and broaden their networks, can contribute to a better understanding of the consequences of, and alternatives to, policy decisions, and eventually help in reaching consensus (Cammaerts 2011, Malcolm 2015). Information exchange can also entail 'attitudinal alignment' and, therefore, improved compliance with TSD commitments (Prévost and Alexovičová 2019). When the main purpose is information sharing, inclusiveness remains limited (Cammaerts 2011), although it could facilitate bundling of monitoring capacity.

Third, the **monitoring** purpose invites civil society to *oversee* the sustainability dimension of trade, providing detailed opinions and expertise to policy-makers. In EU discourse, this is highlighted as the CSMs' primary objective (Orbie *et al*. 2016b, Kube 2019). Knowledge and expertise are valuable resources for CS (Dür and De Bièvre 2007), allowing it to become a 'watchdog' that critically evaluates policy decisions (Scholte 2007, Kube 2019, Prévost and Alexovičová 2019). Contrary to the previous purpose, monitoring entails a concrete output, namely policy evaluation. Such assessments can be shared with policy makers (vertically) or disseminated (horizontally) through traditional or social media and member outreach. Although evaluations and recommendations are advisory and not enforceable (Gildemyn 2014), they may help to hold policy-makers accountable and potentially

induce policy changes (Fox 1997). Therefore, this purpose corresponds to a medium level of inclusiveness.

Fourth, the **policy impact** purpose entails that decision-makers actively *involve CS in decision-making* (OECD 2016, CoE 2017, Halpin and Fraussen 2017), implying that the latter has direct influence in decisions related to the implementation of the FTA. Kube (2019, p. 300) stresses that the purpose of participation should be not merely monitoring, but 'actual influence on the decision-making' in form of tangible results. Not surprisingly, this entails a high level of inclusiveness (Malcolm 2015).

As conveyed by the 'ladder' metaphor, in principle, lower steps need to be taken before higher rungs can be reached. For instance, information sharing is impossible without basic logistical requirements, and policy impact necessitates adequate monitoring capacities. Importantly, we designed this framework as a pragmatic tool for examination of inclusiveness and not as a normative evaluation of preferable steps. In particular, business and non-business actors may hold different preferences for certain types of inclusiveness. The former may prefer other, more straightforward consultation mechanisms as they have more access points to the EU (Dür and Mateo 2016) and are often influential (Wetzel 2011, Ford 2018). This, and possible differences in opinion on trade and sustainability, are the reasons why we will distinguish between both groups at certain stages of the analysis below.

Reviewing EU Civil Society Meetings

Following the establishment of this framework, this section offers a comprehensive qualitative analysis based on a systematic review of existing literature and primary sources. We discuss to what degree the CSMs currently fulfil each of the four purposes identified above. In doing so, we also point at some obstacles that have prevented DAGs from fulfilling each of the four purposes.

Instrumental

In the early years, many CSOs perceived that the CSMs did not even reach this level of inclusiveness. They highlighted how logistical problems, such as lack of resources, inadequate communication and bad infrastructure, hampered and even prevented the basic step – the organisation of the meetings. There was also confusion on the purpose and procedures and lack of a clear agenda (Altintzis 2013, Orbie *et al*. 2016a, Westlake 2017, Xu 2017). By the late 2010s most participants ceased to focus on these 'teething troubles', which have been largely addressed concerning the EU and transnational meetings. 'Rules of procedure' have been elaborated and the EESC has become more transparent. In their responses to the 2017 non-paper, EU civil society representatives did not prioritise logistical issues anymore (Feedback 2018). In 2018, the Commission launched a EUR 30,00,000 project, providing for exchanging best practices between CSMs in different countries and funding the participation of third country CS. This partially facilitates the work of the EU DAGs too.

Information Sharing

Inclusiveness at the level of information sharing seems largely (but not completely) achieved according to CS members. Most submissions to the Commission non-paper did not focus on this issue (only five out of 15 mentioned this, generally without putting emphasis, Feedback 2018). CSM participants agree that over the years, discussions have moved from purely procedural issues towards including more substantive debate on trade and sustainable development. Moreover, the Commission aims to draw up action plans on specific priorities for each country/region, which would facilitate more focused discussions and enhance relations between the DAGs and the intergovernmental TSD committees by allowing the participation of the DAG chairs in the committee meetings.

However, challenges remain. First, in EU DAGs, environmental groups are often underrepresented. Second, it continues to be difficult to have focused and coherent discussions on trade and development, and to the best of our knowledge only the CARIFORUM Consultative Committee has outlined a clear work plan (interviews, November – December 2018). Third, the meetings take place only once or twice per year, and the lists of attendees often vary from meeting to meeting. This hampers continuity and in-depth deliberations (Stoll *et al*. 2017). While EU trade agreements and concomitant CSMs are proliferating, institutionalised links among members of different DAGs are lacking (Commission Services 2018). Fourth, vertical information sharing with intergovernmental bodies has been limited, with little time and sometimes little interest on the officials' side (Orbie *et al*. 2017, participant observation, Brussels and online).

Monitoring

Inclusiveness related to monitoring purposes has only partly been fulfilled, and only on the EU side. CS organisations are highly motivated in this regard. We coded 12 out of 15 civil society contributions, business and non-business alike, as favouring a strong monitoring role (Feedback 2018). However, this has only partly been achieved. CSM meetings have been criticised for being limited to information sharing, dialoguing and networking, or as often formulated more cynically, for 'meeting as a purpose in itself' (Harrison *et al*. 2019). According to one interviewee, some (albeit not all) business organisations deliberately attempt to keep the meetings limited to a 'talk show' (interview, December 2018, cf. Orbie *et al*. 2016a). There is little financial support to conduct in-depth and independent monitoring. Whereas larger EU organisations, such as the European Trade Union Confederation, may have necessary expertise, resources and networks for dedicated monitoring of specific topics, this is not applicable to all participants. Some CSM members rely on the Parties for information. The above-mentioned EUR 3000,000 project targets organisational and information sharing purposes and not structural funding for enhanced monitoring capacities. All this hinders the formulation of substantiated recommendations.

There are also no guidelines regarding how exactly CSMs should communicate advice, nor how governments should respond. In practice, civil society bodies have written letters to the EU Trade Commissioner, engaged in discussions with officials within the DAGs and CSFs, published reports on their concerns and reached out to parliamentarians. However, as former Trade Commissioner Malmström stated, 'all stakeholders have the possibility to submit views and to advise the parties' through the CSMs, but 'this process could be clearer' (European Parliament 2018).

Policy Impact

Non-business CSOs strongly criticise the perceived absence of policy impact. Nine out of 15 submissions to the Commission's non-paper, all coming from non-business players, advocate a stronger role for civil society in enforcing the TSD chapters. They emphasise three key obstacles in the existing system: (1) the impossibility to directly trigger the dispute settlement process when one of the parties violates the sustainable development principles (cf. Kube 2019), (2) the non-binding nature of this dispute settlement system, implying that even if it is triggered, this cannot result in sanctions, and (3) a general unwillingness of policy-makers to take on board civil society suggestions. Frustrations with the EU's 'soft' approach overshadow many stakeholders' evaluation of the whole system of civil society involvement (interviews, November 2018, January 2019). Because of this perceived powerlessness, some stakeholders inside and outside the EU decided not to prioritise the CSMs. In contrast, business organisations generally do not advocate for strengthening the CSMs in dispute settlement (Feedback 2018). Although the European Commission has pledged a more assertive enforcement of the sustainable development chapters (Commission Services 2018), civil society is unlikely to have significant policy impact unless trade agreements are revised (Table 1).

Table 1. The inclusiveness ladder applied to the EU CSMs.

	Purpose	Degree of attainment
Inclusiveness	*Impact*	• **The meetings lack impact** • Participants cannot trigger the dispute settlement mechanism; no sanctions • The Commission unwilling to act upon recommendations
	Monitoring	• **Limited capacity for monitoring** • Often lack of capacity for independent research • Unclear procedures for advising governments • Limited governments' accountability
	Information sharing	• **Information sharing mostly possible** • Participants can exchange information to some extent • However, lack of independence and limited representativeness of some members • Some discussions mostly procedural, sometimes lack focus, limited interaction with other bodies
	Instrumental	• **Logistical requirements are present** • Meetings can effectively take place • Original flaws largely addressed

In sum, the lowest steps of the ladder have been largely addressed. There is a consensus between business and non-business groups that the monitoring purpose should be improved and that civil society capacity in this regard is too limited. When it comes to policy impact, however, non-business organisations are much more critical than their counterparts from business associations. The next section will triangulate these findings by focusing more specifically and more systematically on the EU DAG members' perceptions through quantitative survey data.

European Survey Participants' Evaluation

This section complements the qualitative findings with survey results from EU DAG members. Relying on the analytical framework, we gauged the perceived inclusiveness by focusing on what, according to the participants, *is* the intended purpose of the mechanisms, what it *should* be, and what the mechanisms have actually *achieved*.

Intended Purpose: Low Inclusiveness

Despite the Commission's claims that the CSMs should monitor the sustainability of trade agreements, according to civil society participants, the intended purpose is less inclusive. 56 per cent (20 out of 36 who answered this question) believe the main intended purpose to be information sharing. No one ranked 'have policy impact' first, and only a quarter (9/36) respondents selected 'monitor the agreement' as the main purpose.

However, this general perception of low intended inclusiveness should also be nuanced. First, CSM members' interpretations of the mechanisms' purpose strongly diverge. Almost all purposes have been ranked as the most important by some and as the least important by others. This resonates with earlier findings that the purposes of the CSMs were unclear (Orbie *et al*. 2016b, Harrison *et al*. 2019). Moreover, there are relevant differences within civil society. Two thirds of business representatives (9/14) believe that the mechanisms are intended for information sharing and almost one third (4/14) – for monitoring. Instead, half of non-business respondents (11/22) rank information sharing and one quarter (5/22) – monitoring the agreement as the first purpose, but 27 per cent (6/22) mention instrumental purpose to be the priority for the Commission. Third, respondents' opinions changed over time. Comparing 2016 and 2018 responses, in 2018 European participants were less convinced that the CSMs were set up to merely legitimise EU FTAs. Moreover, while the

Table 2. Most important purpose.

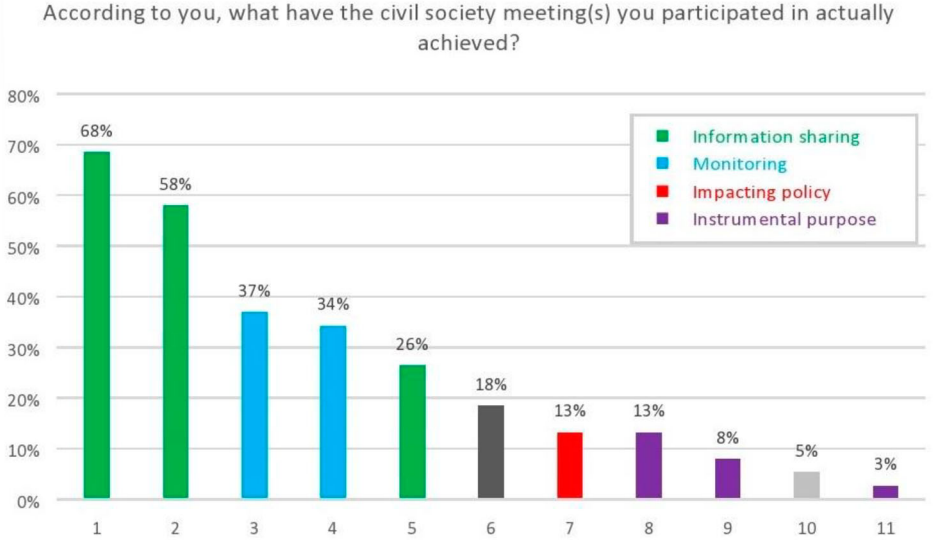
	Intended		Ideal	
	2016	2018	2016	2018
Instrumental	42%	19%	4%	8%
Information sharing	42%	56%	35%	24%
Monitoring	16%	25%	42%	41%
Policy impact	0%	0%	19%	27%

Source: Own data from surveys 2016 and 2018.

policy impact purpose was never selected as the main one, respondents did rank 'having policy impact' higher in 2018 than in 2016; in 2016 19 per cent ranked it second or third, 42 per cent did so in 2018. Table 2 clearly shows that the perception of the CSMs' intended purposes has shifted recognising them as more inclusive over time, but also highlights that there is much room for improvement.

Achieved Purposes: Middle of the Ladder

Civil society respondents' perceptions of the achieved purposes of CSMs are remarkably coherent. Both business and non-business actors underline the general picture that (1) information sharing has been mostly achieved, (2) monitoring has been partly achieved, and (3) impact has not been achieved. As a result, the CSMs are situated on the middle of the ladder of inclusiveness. As Chart 1 shows, achievements related to information sharing were acknowledged by the vast majority of the respondents. About one third of the respondents indicated that the CSMs were able to 'criticise the sustainable development dimension of the agreement' and to 'promote sustainable development', which are achievements related to the monitoring purpose. Only 13 per cent of our



Source: Own survey data 2018 (legend: 1: facilitated discussions with officials; 2: built alliances with other civil society organisations; 3: criticised the sustainable development dimension of the agreement; 4: promoted sustainable development; 5: facilitated the presentation of new ideas; 6: achieved nothing; 7: had an impact on decision-making; 8: legitimised the agreement with the larger public; 9: reduced opposition against the agreement; 10: other; 11: guaranteed ratification of the agreement)

Chart 1. Opinion on achievements of CSMs (2018).

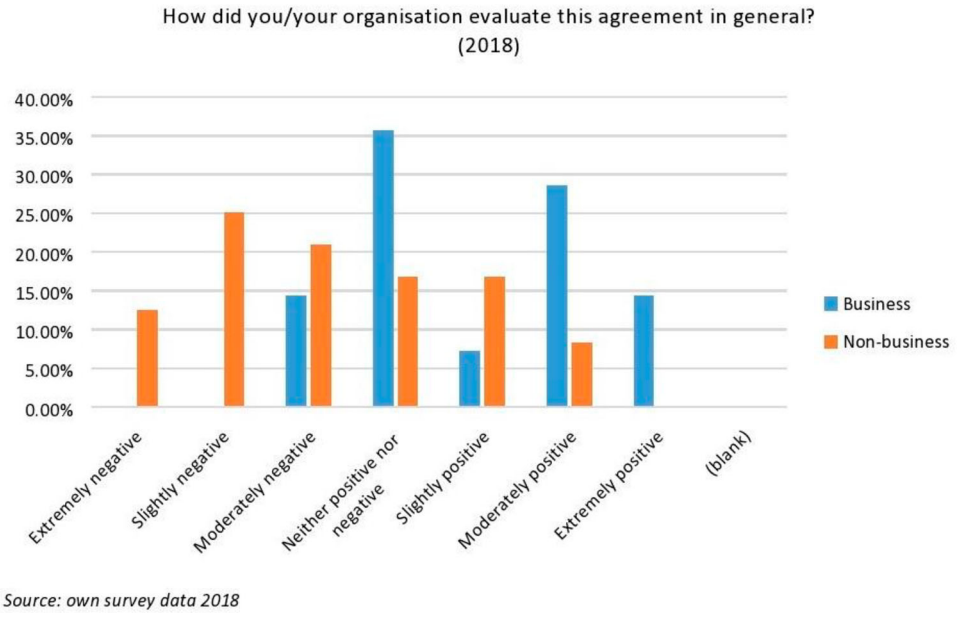


Chart 2. Evaluation of EU FTAs in which CSMs have been set up.

respondents indicated that the CSMs had 'an impact on decision-making' and less than one out of five respondents indicated that nothing has been achieved.

Remarkably, these findings are confirmed by both business and non-business representatives. Both groups primarily highlight the achievements related to information-sharing, and both are equally sceptical about policy impact. About half of the respondents from each group recognise achievements related to monitoring.

Ideal Purposes: Divergence on Impact

Both the purposes set by the Commission and actual achievements fall short of what is desired by the CSMs' EU members. Respondents demand a high level of inclusiveness: the majority (both in 2016 and in 2018) prioritised the purposes of 'monitoring the agreement' and 'policy impact' (see Table 2, above).

Interestingly, on this issue our data suggest a difference between business representatives and other participants. The former might prefer to engage on lower steps on the ladder of inclusiveness. For instance, business representatives seem slightly more in favour of using the CSMs to legitimise the FTA agreement: 21 per cent (3/14) put this first whereas none of the non-business participants believes that CSMs should be used to generate good will for the trade agreements. Also, businesses seem less concerned with having policy impact through the CSMs: only 14 per cent (2/14) ranked it as the first purpose, whereas 35 per cent (8/23) of non-business representatives aim for policy impact. This can be explained by the CS position towards the agreement itself. Business associations evaluate the EU FTAs more positively while non-business representatives have a more critical attitude (see Chart 2).

In sum, the survey shows that the CSMs are perceived as creating, and even intending to create, only low levels of stakeholder inclusiveness, whereas respondents, particularly non-business, desire higher levels. We did find, however, that over time EU DAG members started to evaluate the CSMs as being slightly more inclusive; while in 2016 almost 50 per cent of survey participants indicated that the instrumental purposes, or creating goodwill for the

agreement, were the most important for organisers of the meetings, only one out of five confirmed this in 2018 (Table 2).

Conclusions

Civil society mechanisms constitute a key tool for the EU to address the growing contestation of its trade policy. Using a pragmatic analytical framework – a 'ladder of inclusiveness' distinguishing four different purposes of civil society inclusion – we have reviewed a range of primary and secondary sources on the CSMs and analysed the results of a survey with European participants. The findings from our desk research resonate strongly with the results of the survey, showing that CS is largely included at the level of logistics and partly at the level of information sharing, whereas monitoring capacities remain limited and impact on policy-making is low or even non-existent.

While the surveyed business actors seem to be largely satisfied with the lower steps on the 'ladder', this does not reflect the ambitions of many non-governmental stakeholders. The former are mostly content with information sharing and monitoring, with some admitting that CSMs serve to legitimise the trade agreement, whereas the latter insist on stronger monitoring and pursue policy impact. This different perspective relates to different views on the EU FTA: business members have a more positive attitude towards EU FTAs, non-business representatives are less supportive of the agreements. Despite apparent divergences between both groups, there seems therefore a consensus on the need to strengthen monitoring capacities of the CSMs. This becomes clear from responses on the non-paper and also the survey reveals that the most popular purpose for business and non-business alike is monitoring (6/14 and 9/23, accordingly). Our survey results also suggest that overall stakeholders' evaluation of the CSMs has become more positive over time, in that they do no longer see it as mainly a legitimation of free trade.

Hence for non-business participants, who constitute the majority of members, CSMs have failed to include civil society in a significant way, namely participation that goes beyond information sharing. The EU has transferred responsibility to the CSMs for the monitoring of the sustainable development chapters of its trade agreements, without providing civil society actors with adequate resources or a prospect of effective policy impact. This resonates with existing studies on responses to the growing contestation of international trade policy, which find that, while small improvements have been made, civil society is not heard in the actual decision-making process (for instance Steffek and Ehling 2008, Gheyle and De Ville 2017). To complement the existing research, the 'ladder of inclusiveness' offers a more shaded tool for analysing different degrees of inclusiveness while also discerning different kinds of inclusiveness depending on the intended purposes. While our analytical framework is tailor-made for CSMs, it can be applied to other consultative mechanisms of the EU, for instance the Generalised System of Preferences (GSP)-plus conditionality on sustainable development and good governance and the Voluntary Partnership Agreements (VPAs) on forest governance, and by others such as the annual WTO Public Forum.

Ample scope for further research still remains. The analytical framework could be further extended by theorising the conditions under which CSMs step 'up' or 'down' the ladder. Recognising the limits of knowledge generated from surveys, further studies should elaborate our findings through systematic and in-depth interviews. Survey results from a relatively small population of participants should evidently be treated with caution. This is particularly true for our findings about business representatives, which constitute a minority in our sample. Deeper probing into CSM participants' opinions, through more elaborated surveys and in-depth interviews, would help to trace attitude changes over time and possible reasons driving them, as well as further avenues for reform. It would also be valuable to gain deeper insights into differences within civil society, going beyond the business versus non-business distinction. A comprehensive empirical study of non-European CSM participants is also in order and for this purpose, non-Eurocentric perspectives on inclusiveness may have to be considered. While we expect that our framework can be a starting

point for research in the EU's trading partners in the South and that inclusiveness in these countries will be (even) more limited than in the EU, we should be cautious about the applicability of our approach beyond the EU.

Based on insights from our study, three possible future scenarios are imaginable for the CSMs included in EU FTAs. First, civil society organisations may dampen their critiques and content themselves with the dialogue and network opportunities that the meetings provide, thereby offering ultimate proof of the instrumental purpose and the possible co-optation dynamics ('participation trap'). Inclusiveness would then remain extremely limited. Second, civil society may in the longer run manage to exploit the opportunities provided by the CSMs to 'go up', for instance by enhancing their knowledge and expertise in trade-related issues and by building transnational alliances on specific issues. However, a greater role for non-business actors would face obstacles on the side of the partner governments and, to a lesser extent, the European Commission, as the Parties try not to let non-business interests derail trade relations. Third, the organisations involved, and in particular non-business actors, may become increasingly frustrated by their limited inclusion ('consultation fatigue'), to the extent that they no longer commit to CSMs and even withdraw. In the latter case, civil society may switch to more active use of 'outside' lobbying tactics, leading to further delegitimization of the EU's trade policies.

Our research provides evidence of each of the three scenarios. Much may depend on the outcome of the ongoing dispute on workers' rights in Korea. Following repeated requests by the EU DAG, the EU ultimately asked for formal consultations in 2018 and, when these failed, proceeded to the last step of the dispute resolution procedure – creation of a Panel of Experts in July 2019. Some have lauded this as a success case of CSMs (Harrison *et al*. 2019). However, the trade unions on the EU side remain somewhat sceptical (ITUC 2020), and the EU still lacks mechanisms for enforcing the decisions of the Panel. Korea could therefore be a litmus test for the effective policy impact of civil society and the Commission's alleged 'new assertiveness' on trade and sustainable development. If the dispute fails to provoke meaningful improvements for labour rights in Korea, civil society may remain disillusioned about the whole process; however, the opposite results would inject a high dose of confidence and activity in CSMs under different trade agreements.

Notes

1. Some respondents participate in more than one DAG. The *N* of business and non-business representatives was respectively 14 and 27 in 2016, and 5 and 26 in 2018. While CSMs also do exist on the side of the partner countries, including their members in the survey was not feasible in the framework of this project because of uncertain status of many partner mechanisms and language barriers.
2. The CSM of the CARIFORUM agreement deviates from the general set up as there are no separate DAGs, only a single forum called Consultative Committee which monitors the entire agreement.

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Notes on Contributors

Lotte Drieghe is currently employed as a Project Officer at the World Trade Organization and was a post-doctoral researcher at the Department of Political Science at Ghent University.

Jan Orbie is Associate Professor in European Union External Relations at the Department of Political Science at Ghent University.

Diana Potjomkina is a PhD student working on multistakeholderism in international trade and affiliated with Vrije Universiteit Brussel, Ghent University and United Nations University Institute on Comparative Regional Integration Studies.

Jamal Shahin is part time Research Professor at the Institute for European Studies (Vrije Universiteit Brussel), part time Assistant Professor at the University of Amsterdam and Professorial Fellow at the United Nations University Institute on Comparative Regional Integration Studies.

ORCID

Lotte Drieghe http://orcid.org/0000-0001-9161-0856
Jan Orbie http://orcid.org/0000-0003-3080-3122
Diana Potjomkina http://orcid.org/0000-0002-9433-2828
Jamal Shahin http://orcid.org/0000-0002-6194-3956

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Appendix

Survey questions used in this article, 2016 and 2018
2016 survey taken as the base for this summary. Substantive differences between 2016 and 2018 survey questions are indicated separately.
Questions marked with asterisk (*) are mandatory.

Q3 * To which group do you/does your organisation belong in the civil society meetings?

- Business
- Labour
- Environmental
- Other

On the EU free trade agreements in which you were involved as a civil society representative:
Q9 * How did you/your organisation evaluate this agreement in general?

- Extremely positive
- Moderately positive
- Slightly positive
- Neither positive nor negative
- Slightly negative
- Moderately negative
- Extremely negative

Q11 If you have participated in civil society meetings of several agreements, please indicate how your choices on the 3 above questions are different for each of these agreements:

Q13 Do you have any comments? (e.g. different experiences in different meetings or relevant variation between domestic and international meetings)

Q14 What **IS**, according to your experience, the main purpose of the civil society meeting(s)? Please order according to importance (1: most important, 8: least important)

_____ Voice opinions
_____ Policy impact
_____ Create goodwill for the trade agreement

_____ Network with officials
_____ Network with civil society organisations
_____ Monitor the agreement
_____ Access to information
_____ Control critical voices

Q15 * What **SHOULD BE**, according to your experience, the main purpose of the civil society meeting(s)? Please order according to importance (1: most important, 8: least important)

_____ Voice opinions
_____ Policy impact
_____ Create goodwill for the trade agreement
_____ Network with officials
_____ Network with civil society organisations
_____ Monitor the agreement
_____ Access to information
_____ Control critical voices

Q16a * (only 2018) According to you, what have the civil society meeting(s) you participated in **actually achieved**? Multiple answers can be selected
The meeting(s) …

- … promoted sustainable development
- … guaranteed ratification of the agreement
- … built alliances with other civil society organisations
- … reduced opposition against the agreement
- … had an impact on decision-making
- … facilitated discussions with officials
- … criticised the sustainable development dimension of the agreement
- … legitimised the agreement with the larger public
- … facilitated the presentation of new ideas
- … other: _____
- … achieved nothing

Q16b (only 2018) Here you can clarify what the achievements have (or have not) been in your opinion:

Q16d (only 2018) Do you have any additional comments or remarks related to the civil society meetings that you would like to share?