

TERMS OF REFERENCE

Related to a contract to provide a Sustainability Impact Assessment (SIA) in support of an investment protection agreement between the European Union and the Republic of the Union of Myanmar

Multiple Framework Contract TRADE2014/01/01; request for services TRADE2015/B2/B03

1. BACKGROUND INFORMATION

This request for services is sent to you in the context of the Multiple Framework Contract TRADE2014/01/01 related to a Multiple Framework Contract with re-opening of competition for the provision of evaluation services to the European Commission in the field of Trade. For further details about DG Trade and its activities please refer to number 1 of the Terms of Reference for the mentioned procedure.

2. THE PROJECT FOCUS OR CONTEXT OF THE PROJECT

After decades of self-imposed isolation and restrictive measures imposed by several countries, Myanmar/Burma underwent a process of political and economic reform since the swearing-in of Myanmar/Burma's elected president U Thein Sein in 2011. One of the aims of these reforms was to rebuild the country's trade and investment links in the region and to reintegrate into both the regional and global economy. In the past years, the Government of Myanmar/Burma has adopted new investment laws with a view to attracting investment to contribute to the development of the country.

In recognition of these efforts, the international community, including the EU, progressively lifted some of the restrictions imposed on Myanmar/Burma. On 22 April 2013, the Council lifted all restrictive measures imposed on Myanmar/Burma, with the exception of the arms embargo, and reiterated its commitment to collaborate with Myanmar/Burma in assisting the reform process and contributing to economic, political and social development. It further encouraged responsible trade and investment.

In addition, since 1997, the EU had temporarily withdrawn from Myanmar/Burma its trade preferences under the Generalized Scheme of Preferences (GSP) due to routine and widespread use of forced labour, as confirmed by the International Labour Organisation (ILO). On 13 June 2012, the ILO Conference suspended some of its restrictions on Myanmar/Burma. Following substantial progress in meeting ILO recommendations since 2011 and based on the positive decision of the ILO Conference in June 2012, followed by a complete lifting by the ILO Conference of all remaining ILO restrictions on Myanmar/Burma in June 2013, the EU reinstated Myanmar/Burma's access to the trade preferences under the Generalised Scheme of Preferences (GSP) in July 2013. Being a Least-Developed Country (LDC), Myanmar/Burma automatically enjoys quota-free – duty free access for its exports to the EU markets, except for arms and ammunitions (under the Everything but Arms initiative or EBA).

On the occasion of the visit of the president of Myanmar/Burma U Thein Sein in Brussels on 5 March 2013, the EU and Myanmar/Burma agreed to "*explore the feasibility of an investment agreement*". Given that Myanmar/Burma already benefitted from preferential access to the EU market through EBA, there was no prospect of negotiating a Free Trade Agreement in the short to medium term.

Regarding the scope of the envisaged investment agreement, Myanmar/Burma reiterated on several occasions that it was not ready to negotiate market access provisions with any foreign partners. The EU emphasised on several occasions that while it respected Myanmar/Burma's decision only to negotiate an investment protection agreement, it did not want its investors to be discriminated vis-à-vis third countries investors as regards the conditions for entry and establishment.

Following a public consultation conducted between April and July 2013, the European Commission completed in November 2013¹ an Impact Assessment on the possible effects of an investment protection agreement. Civil society, EU Member States and the European Parliament were consulted. In February 2014, the European Commission sought the authorisation to open negotiation on an investment protection agreement with Myanmar/Burma, which the Council granted on 18 March 2014.

On 20 March 2014 the negotiations for the EU-Myanmar/Burma Investment Protection Agreement ("IPA" or "agreement") were officially launched. The first round of negotiations took place on 9-12 February 2015 in Yangon, and the second round on 25-29 May also in Yangon.

The aim is to conclude a standalone investment protection agreement which would improve the legal certainty regarding treatment of EU investors in Myanmar/Burma and of Myanmar/Burma investors in the EU; ensure that these investors are not discriminated against; allow the enforcement of the protection provisions through access to investor-to-State dispute settlement; support sustainable development by encouraging responsible investment while promoting transparency, environmental protection, core labour standard; and ultimately increase bilateral investment flows.

The agreement should include the fundamental provisions to protect investors of both Parties against discrimination, expropriation without compensation, unfair and inequitable treatment and guarantee the possibility to transfer returns related to an investment. The agreement would also contain a mechanism to resolve disputes between Parties to the agreement, as well as an effective, transparent and state-of-the-art investor-to State dispute settlement mechanism. The agreement should also include provisions relating to transparency, as well as sustainable development and the promotion of Corporate Social Responsibility (CSR).

In the investment protection agreement it is not foreseen to include specific liberalisation or market access commitments such as those usually found in a Free Trade Agreement or an investment agreement covering both the pre-establishment and the post-establishment phases. However, the agreement would aim to ensure a level-playing field between all foreign investors in the host country at the establishment phase by providing that investors of one party shall not be treated in the other party less favourably than investors from third countries.

¹ Report: http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2014/swd_2014_0041_en.pdf.

EU investment relationship with Myanmar/Burma

The EU investment relationship with Myanmar/Burma has been impacted by the imposition of economic sanctions as of the mid-1990s. These sanctions resulted in multinational corporations (MNCs) pulling out investments from Myanmar/Burma. For example, mainly as a result of sanctions and public pressure, Carlsberg completely withdrew from the market while Heineken and Adidas shut down their production plants, and stopped sourcing intermediaries and materials from Myanmar/Burma. After 1997, Myanmar/Burma experienced an almost continuous decline in foreign direct investment (FDI) inflows until 2006. In the late 2000s, Thai and Chinese enterprises became a major FDI source in Myanmar/Burma, filling the void created after the withdrawal of EU, US and Canadian companies.

Over the past years, and in particular since 2010-2011, foreign investment has grown significantly. According to data from Myanmar/Burma's Directorate for Investment and Company Administration (DICA²) (as of end 28 February 2015), the approved amount of foreign investment increased by 10% per year on average in the past 5 years (from USD 36.1 billion in 2010-2011 to USD 54.1 billion in 2014-2015). Also according to the same source, foreign investment of existing enterprises has increased by some 25% in the past year (from USD 34.2 billion at the end of 2013 to USD 42.8 billion at the end of 2014). According to data from UNCTAD³, the FDI stock in Myanmar/Burma increased from USD 4.7 in 2005 and USD 8.8 billion in 2010 to USD 14.1 billion in 2013. In the same period, the yearly FDI flow into Myanmar/Burma increased from USD 0.2 billion in 2005, and USD 1.3 billion in 2010 to USD 2.6 billion in 2013.

Over the last 20 years, the largest investor, based on cumulative amounts of investment, has been China. As of 31 March 2015, FDI of existing enterprises from China accounted for 33.23% (USD 14.7 billion). The second largest originator of FDI in Myanmar/Burma was Singapore (19.21% or USD 8.5 billion) and the third largest was Hong Kong (15.93% or USD 7 billion).

Investment from the EU remains modest with EU countries accounting for 9.89% (USD 4.4 billion) of existing enterprises as of 31 March 2015. The United Kingdom ranks fourth with 7.81% (USD 3.4 billion) of existing enterprises, which includes enterprises incorporated in British Overseas Territories, France accounts for 1.22% (USD 0.5 billion) and the Netherlands for 0.72% (USD 0.3 billion).

The accumulated FDI in Myanmar/Burma is currently strongly concentrated in the oil and gas (38.16% of existing enterprises as of 31 March 2015 according to DICA) and in power (30.10%), followed by manufacturing (9.71%), transport and communication (6.81%), mining (5.31%) and hotel and tourism (4.30%). Figures for the amount of permitted enterprises are only slightly different: power (35.63%), oil and gas (32.44%), manufacturing (10.12%), transport and communication (5.87%), mining (5.29%) and real estate (4.20%).

The amount of Myanmar/Burma FDI in the EU is marginal and is likely to remain low in the short to medium term. In this context, the focus of the SIA is likely to be on the assessment of the impacts of the EU investment in Myanmar/Burma.

² The figures on FDI in Myanmar/Burma are based on DICA figures available at <http://dica.gov.mm.x-aas.net/>.

³ The figures are available at <http://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx>.

While EU Member States account for almost half of the bilateral investment treaties (BITs) concluded worldwide, there is no BIT between Myanmar/Burma and any of the 28 Member States. With the foreseen agreement, investors from all Member States would benefit from the same guarantees for their investment in Myanmar/Burma.

By contrast, several countries have concluded BITs with Myanmar/Burma. These countries include those with the highest level of investment in Myanmar/Burma (e.g. China, Thailand, Korea, Japan, India). Moreover, Myanmar/Burma is party to the ASEAN Comprehensive Agreement on Investment and has concluded Free Trade Agreements with Asian and Pacific partners (e.g. ASEAN-Australia-New Zealand FTA) which contain investment protection provisions and an ISDS mechanism.

EU-Myanmar/Burma trade flows

The combined effect of the lifting of EU sanctions (which included an import ban on timber, precious stones and metals), and the reinstatement of GSP/EBA preferences in July 2013 have led to an increase in bilateral trade flows.

In 2014, EU-Myanmar bilateral trade in goods reached EUR 886 million, a 56% growth from 2013 (EUR 567 million) and a 120% increase from 2012 (EUR 404 million). In 2014, Myanmar/Burma exports to the EU reached EUR 392 million, a 76% increase compared to 2013. While previously concentrated on garments, Myanmar/Burma export base has started to increase and in 2014, major exports from Myanmar/Burma to the EU were garments (60% of total exports), rice (12%), jewellery (9%), fisheries (7%) and wood products (4%). EU trade preferences are complemented by a EUR 10 million trade-related assistance package (2015-2020). The EU also funds a EUR 2 million project to support the sustainable production of garments "made in Myanmar" (including CSR).

With the reform process, the increased confidence and the country's needs for input, EU exports to Myanmar/Burma increased by 43% between 2014 and 2013, reaching EUR 494 million.

EU-Myanmar/Burma dialogues

In parallel, the EU and Myanmar/Burma have also held or set up several dialogue and cooperation mechanisms, such as the first EU-Myanmar/Burma Forum in June 2013 (political dialogue similar to a Joint Committee with a sub-group on trade and investment as well as a sub-group on development cooperation), the EU-Myanmar/Burma Task Force in November 2013, and the EU-Myanmar/Burma Human Rights Dialogue, preceded by a Civil Society Forum (the first Dialogue took place in May 2014 and a second one is foreseen in the week of 18 June 2015). The EU Delegation in Yangon also holds regular dialogues with the civil society. The EU also participates in the initiative to promote fundamental labour rights and practices in Myanmar/Burma together with the Governments of Myanmar/Burma, the United States of America, Japan, Denmark and the International Labour Organisation. This initiative focuses on labour law reforms, institutional capacity building as well as empowerment of local stakeholders, including business, employers' and workers' organisations.

EU development cooperation with Myanmar/Burma

The EU is one of the largest providers of development cooperation assistance to Myanmar/Burma.

Under the Multi-Annual Indicative Programme for the period 2014-2020 the EU will be providing development cooperation assistance in the following focal areas: (i) rural development, agriculture, food and nutrition security; (ii) education; (iii) governance, rule of law, State capacity building; and (iv) peace-building support. Overall EU development assistance for Myanmar/Burma is estimated to amount to EUR 90 million per year.

Sustainability Impact Assessment

Sustainability Impact Assessments (SIAs) are a trade-specific tool developed for supporting trade and investment negotiations. They are essential for the conduct of sound, evidence-based and transparent trade negotiations. SIAs were first developed by the European Commission's Directorate General for Trade ('DG Trade') in 1999 for the WTO Doha Development Agenda ('DDA') negotiations. At the close of 2014, 22 SIAs had been conducted in support of all major bilateral and multilateral EU trade negotiations and 4 are currently on-going.

SIAs are performed concurrently with trade negotiations. They feed into and steer the negotiations, assessing changes that are likely to be caused by the trade agreement, helping to identify possible trade-offs, and ensuring that the related policy choices are optimised.

SIAs consist of two equally important and complementary components:

- (i) A robust analysis of the potential economic, social, human rights, and environmental impacts that a trade agreement could have, in the EU, in the partner country(ies) and in other relevant countries; and
- (ii) A continuous and wide-ranging consultation process which ensures a high degree of transparency and the engagement of all relevant stakeholders in the conduct of the SIA inside and outside the EU.

SIAs are:

- Integrated. SIAs are based on a comprehensive approach which looks at both benefits and costs; and covers economic, social, human rights, and environmental considerations all in a single document.
- Independent. SIAs are carried out by external contractors in a neutral and unbiased manner, in observance of strict rules on the absence of conflicts of interest.
- Evidence-based. SIAs should be based on the best available research, information and data presented in a transparent manner.
- Transparent. SIA consultations contribute to the transparency of the analysis and the on-going trade negotiations. Stakeholder consultations are a key element of SIAs and all

stakeholders are given equal opportunity to take part in the process through various channels.

- Proportionate. The scope and the depth of each SIA should be calibrated to the importance and the type of trade and investment measures being negotiated, as well as to the magnitude of the expected impacts.

General information and reports on the SIAs either completed or in progress is available on DG Trade's website:

<http://ec.europa.eu/trade/analysis/sustainability-impact-assessments/assessments/>

The European Commission is updating its 2006 Handbook on Sustainability Impact Assessment. A draft revised edition is currently under public consultation and can already be referred to:

http://trade.ec.europa.eu/consultations/index.cfm?consul_id=186

3. OBJECTIVES OF THE PROJECT

The SIA in support of negotiations on an investment protection agreement between the European Union and Myanmar/Burma should be carried out during the negotiations. It should be completed before or in any case not later than the end of the negotiations so that its results can inform the negotiations and decision-making process. In this light, this SIA should be completed within six months from signature of the specific contract.

The SIA should assess how the investment provisions under negotiation could affect economic, social, human rights and environmental issues in the EU and in Myanmar/Burma. Furthermore, it should make recommendations to maximise the benefits of the agreement and prevent or minimise potential negative impacts.

This assessment is necessary to enable the EU to pursue an approach which brings the greatest overall welfare gains, thereby helping the EU to meet its objective of creating economic growth, enhancing social inclusion and promoting sustainable development throughout the world. Assessing the economic, social, human rights and environmental impacts of the proposed investment protection agreement is necessary in order to set up the right accompanying policies.

4. WORK TO BE CARRIED OUT / SERVICES TO BE RENDERED

4.1 Overall analysis of the sustainability impacts arising from the negotiations of an investment protection agreement between the European Union and Myanmar/Burma

The purpose of the SIA is to provide for an assessment of economic (including the impact on competitiveness, SMEs and consumers), social (including the impact on employment), environmental and human rights effects of the envisaged investment protection agreement. This

analysis shall cover impacts in the EU, Myanmar/Burma and third countries where relevant, in particular in other Least Developed Countries and neighbouring poor and vulnerable countries. The focus of the analysis shall be on the possible effects of EU investment in Myanmar/Burma and Myanmar/Burma investment in the EU rather than on investment originating from other countries.

Given that the level of FDI from Myanmar/Burma into the EU is marginal and is likely to remain low in the short to medium term, the analysis will concentrate on the impact of EU FDI in Myanmar/Burma.

The Contractor will ensure that the main findings of the SIA are based on the most relevant and reliable information and on an analysis of its economic social, environmental and human rights impacts. Where appropriate and possible, the quantitative and qualitative impact analysis shall be supported with statistical data, and corresponding data sources shall be quoted. Additional methodologies can be proposed by the Contractor and discussed with the Commission. The approach shall be justified and the Contractor can include a summary of pros and cons of alternative approaches. Also, ways to assess the robustness of results shall be envisaged.

The SIA will include a baseline scenario outlining what are the likely economic, social, environmental and human rights effects in the absence of the agreement. This is meant to evaluate the main elements of the "status quo" situation, against which the potential outcomes of the investment protection agreement shall be assessed.

Such a baseline will take into account existing commitments by the EU and Myanmar/Burma, (including the extent to which these commitments have been implemented) as well as the agreements recently concluded by the EU with Canada and with Singapore. The Contractor shall include an assessment of the potential impact of the agreement on the right of both parties to pursue legitimate public policy objectives.

(1) Economic analysis

The Contractor shall carry out a detailed analysis of different types of potential economic impacts of the future agreement using also the analysis conducted in the Impact Assessment. Starting from the current economic situations of the countries affected, the review shall cover both qualitative and quantitative aspects of the economic impact of investment agreements. In the absence of reliable data, the Contractor shall include a good qualitative assessment based on contacts and interviews with economic operators and other stakeholders. In its effort, the Contractor shall also look into existing analysis already available, in particular the relevant results in studies already conducted by international organisations such as the WTO⁴, the World Bank⁵ and the OECD⁶, to arrive at an assessment of the potential economic effects of this agreement. Where applicable, the Contractor shall include a review of possible differences to results in comparable studies.

⁴ WTO 2014 Trade Policy Review: Myanmar available at https://www.wto.org/english/tratop_e/tp_r_e/tp393_e.htm

⁵ World Bank's Myanmar Investment Climate Assessment (31 March 2015) available at <http://documents.worldbank.org/curated/en/2015/01/24222884/myanmar-investment-climate-assessment-sustaining-reforms-time-transition>

⁶ OECD 2014 "Myanmar - OECD Investment Policy Review" available at <http://www.oecd.org/countries/myanmar/investment-policy-reform-in-myanmar.htm>.

The Contractor shall also include a general review of the impact of investment agreements on foreign direct investment by making use of available studies, starting with the 2014 review by UNCTAD⁷ and other documents from other international organisations.⁸ The Contractor can also make use of other studies and analysis from the literature that however will need to be discussed with the European Commission first.

In case data on investment is available, the Contractor shall include an analysis of trends and developments.

In assessing the potential economic impact, in so far as the agreement contains investment liberalisation commitments, the contractor shall also take into account any existing unilateral investment commitments that the EU may grant, as well as the specific analysis of issues where we expect commitments to be negotiated.

The Contractor shall also include an assessment of the expected impact of the agreement on trade.

(2) Social analysis

The Contractor shall carry out a detailed analysis of different types of potential social impacts of the future agreement using also the analysis conducted in the Impact Assessment. As part of the overall assessment of social impacts, in addition to areas of social policies such as education and public health, the Contractor shall specifically analyse the impact on employment as well as the interaction between the potential future investment protection agreement and the effective implementation of international Core Labour Standards (CLS) and international fundamental labour Conventions of the International Labour Organisation (ILO), as well as the other strategic objectives of the ILO Decent Work Agenda (job creation, rights at work, social protection and social dialogue) in the investment partners under consideration.

The Contractor shall analyse what the social impacts, including on employment and decent work, of investment protection and hence potentially increased investment by EU investors might be, and how these impacts might be measured or quantified (including reference to decent work indicators, ILO sources and information on labour standards).

Furthermore, the analysis shall assess the potential positive and negative impact on employment in the specific sectors mentioned in section 4.2.2 below, including through potentially necessary restructuring in certain sectors.

The analysis shall also rely on thorough stakeholder consultations, including consultations of employers' and workers' organisations (social partners).

The findings in respect of social policy, labour standards and decent work shall be summarised separately in a specific chapter in the report, and in the executive summary.

⁷ UNCTAD 2015 "The Impact of International Investment Agreements on Foreign Direct Investment: An Overview of Empirical Studies 1998–2014" available at <http://investmentpolicyhub.unctad.org/Upload/Documents/unctad-web-diae-pcb-2014-Sep%2010%20PM.pdf>

⁸ Such as "World Investment and Political Risk 2012". Washington, DC: MIGA, World Bank Group, available at <http://www.miga.org/documents/WIPR12.pdf>

(3) Environmental analysis

The Contractor shall carry out a detailed analysis of different types of potential environmental impacts of the future agreement using also the analysis conducted in the Impact Assessment. In so far as the agreement contains liberalisation commitments, the Contractor shall pay particular attention to those issues when assessing the possible direct and indirect environmental impact of the agreement. This shall include the impacts of those measures on the environmental areas identified below (as well as issues pertaining to health, consumer protection, food safety etc.) as well as on the ability of both Parties to maintain and amend regulatory provisions relating to the protection of the environment.

This will include impacts on climate change of the potential agreement. For this purpose, the Contractor shall examine recent developments in climate and energy policies both in Myanmar/Burma and the EU and complement these, if possible, with a decomposition of them into scale, structural, technology and product effects.

Scale effects refer to environmental impacts by investment-induced economic growth (e.g. increased resources for environmental protection, impacts on biodiversity); structural effects refer to changes in production or consumption patterns at the microeconomic level (e.g. changes in cost of raw materials or cost of labour); technology effects are those impacting the processes or production methods used in product supply (e.g. potential for facilitated access to environmental technologies); product effects refer to the changes in the use of specific goods and services following liberalisation. The analysis shall cover at least the emissions of the most energy-intensive sectors and of primary energy producing sectors. The resulting potential domestic environmental impacts and global climate change impacts shall be expressed in units of welfare (if feasible) as well as in million tonnes of GHG emissions (CO₂ equivalent).

The analysis will also include, to the extent feasible, impacts of the future agreement on air quality, use of energy, water quality and resources, land use, soil quality, waste and waste management, biodiversity (diversity within species, between species and of ecosystems), ecosystems services and protected areas. The report shall also identify how the agreement could contribute to greening economy and resource efficiency objectives, notably through the promotion of sustainable production and consumption.

Concrete indicators for assessing these impacts shall be suggested and explained in their value for the overall environmental analysis.

The Contractor shall take into account the interaction between the potential investment protection agreement and relevant multilateral environmental agreements (MEAs), as well as assess its impact on the environmental areas covered by the core MEAs and on trade in legally obtained natural resources such as timber, wildlife and fisheries and their sustainable management. The final approach to be followed is to be defined by the Contractor in cooperation with the European Commission.

(4) Human rights

The contractor shall analyse the potential impacts of the proposed agreement on human rights, as set out in the *Charter of Fundamental Rights of the European Union* and in the UN Conventions⁹, in accordance with the Commission guidance on the analysis of human rights in

⁹ Viz: *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD); *International Covenant on Economic, Social, and Cultural Rights* (ICESCR); *International Covenant on Civil and Political Rights* (ICCPR); *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); *Convention*

the toolbox of the Better Regulation Package and the Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives.¹⁰ The contractor shall in particular: identify the specific human rights potentially affected by measures included in the proposed agreement; analyse the extent to which the particular measures may enhance or impair the enjoyment of the relevant rights, and/or may strengthen or weaken the ability of the Parties to fulfil or progressively realise their human rights obligations¹¹ in accordance with international fundamental human rights Conventions. The analysis shall take due account of rights recognised in European and international human rights instruments, such as the right to property and the right to an effective remedy and to a fair trial. The analysis of potential impacts on fundamental and human rights might overlap with the analysis of impacts on certain labour rights (as the fundamental labour rights are considered fundamental human rights). However, findings related to fundamental labour rights shall be kept in the chapter on social impacts and the impact on other human rights shall be covered separately in a specific chapter in the report, and in the executive summary. The analysis shall rely heavily on stakeholder consultation, especially on Myanmar/Burma stakeholders.

(5) Corporate Social Responsibility (CSR)

The contractor shall take into account the interaction between the potential investment protection agreement and internationally recognised guidelines and principles on CSR and responsible business conduct¹². The report shall identify how the agreement could contribute to the promotion of CSR and responsible business conduct.

4.2. Sectoral SIA for the investment protection agreement between the European Union and Myanmar/Burma: detailed analysis of specific sectors

Based on the overall assessment mentioned in section 4.1, the Contractor will carry out a detailed SIA analysis on a list of sectors to be defined in coordination with the Commission (as explained in more detail below) at the latest at the submission of the draft inception report.

(1) General Approach

The sectoral work will include qualitative assessments of the impacts of potential outcomes in the sectors concerned. Where data is available, the Contractor shall complement the analysis with an analysis of trends and developments.

The sectoral analysis will include an assessment of the economic, environmental, social and human rights impact of the possible results of negotiations as well as cross-sectoral effects. This analysis shall also identify specific sectors, products, vulnerable social groups and

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CAT); International Convention on the Rights of Persons with Disabilities (ICRPD); and International Convention for the Protection of All Persons from Enforced Disappearance (ICPED).

¹⁰ These Guidelines are in the process of adoption and will be made available in June 2015.

¹¹ The Contractor may refer in particular to *Human Rights Indicators: A Guide to Measurement and Implementation* (OCHCR, 2012).

¹² The internationally recognised guidelines and principles referred to include in particular the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy.

geographical areas that are most likely to be affected, either positively or negatively, by the outcome of the negotiations.

The Contractor shall identify in which sectors SMEs would gain competitive advantages or disadvantages as a result of the future agreement. The SME test as set out in Annex 8 of the European Commission Impact assessment Guidelines shall be used for the analysis.

2) Preliminary sector selection

Using, as a starting point, the existing analysis conducted in the Impact Assessment, the SIA shall provide a broad analysis of the possible economic, environmental, social and human rights impacts of the EU-Myanmar/Burma IPA on at least five to six sectors to be defined in coordination with the Commission. The selection of sectors will be based on criteria such as sectors which have attracted large amounts of EU investment in Myanmar/Burma to date, are likely to attract large amounts of EU investment in Myanmar/Burma in the short to medium term, have a high labour intensity and/or have been under particular scrutiny.

The analysis shall include the factors mentioned in section 4.2.1 above, with regard to the possible economic, environmental, social and human rights impacts of the EU-Myanmar/Burma IPA on each of the respective sectors.

The study shall examine the impact on sectoral competitiveness by reviewing available sectoral studies.

The analysis of the five to six sectors shall look at the current state of the sector, its challenges and identify the potential for future development and the likely impact of the agreement. The remaining sectors that have been identified in the Impact Assessment shall be equally discussed, but the focus shall lay on the above mentioned five to six sectors.

Rather than only looking at the sector itself, the Contractor shall also look at sectoral linkages between sectors that could be affected. Especially in the service sector, these linkages shall be taken into account.

4.3 Proposals for policy recommendations and accompanying measures

The Contractor shall present proposals for policy recommendations covering enhancement and prevention/mitigation measures (*i.e.*, measures needed to reinforce any significant positive sustainability impacts, and to prevent or at least mitigate any negative sustainability impacts).

Recommendations shall be presented both:

- in terms of the EU's negotiating positions (*i.e.*, directly related to provisions to be included in the agreement, *e.g.*, in relation to investment policy vis-à-vis economically, socially, environmentally sensitive sectors and relevant human rights issues, if applicable); and
- in terms of non-investment-related (accompanying) measures, including measures to be implemented through development cooperation between the EU and Myanmar.

They may suggest priorities to be given to any specific sectors and specific actions on horizontal and cross-cutting issues. The Contractor shall consult the Steering Committee on draft recommendations prior to their finalisation.

4.4 Consultation process

The Contractor is requested to complement his quantitative and qualitative analysis with representative inputs from stakeholders.

Consultations are key to ensuring the transparency, quality, credibility and legitimacy of SIAs by providing a dynamic and robust framework for interaction and dialogue with all relevant stakeholders.

By directly involving those affected or interested in the trade and investment measures under negotiation, the SIA consultation provides additional and constructive perspectives on the potential sustainability consequences of the envisaged agreement.

The main objectives of the consultation process are:

- to actively engage with all interested parties in order to reflect their experience, priorities and concerns;
- to contribute to the transparency of the SIA analysis;
- to help to identify priority areas and key issues relating to the possible economic, social, environmental and human rights impacts in the negotiations.

The Contractor is responsible for establishing a consultation plan which proposes the way the SIA consultation will be carried out. In particular, the consultation plan shall identify key stakeholders and affected people to be consulted in the EU and Myanmar/Burma, map the nature of civil society, identify any risks (e.g. non-attendance by major stakeholders, lack of representation, lack of balance between the interests represented or constraints on freedom of association) and how these risks will be addressed to ensure constructive dialogue and useful inputs from stakeholders. Consultation means and activities foreseen shall also be described in detail.

Stakeholders to be consulted include non-governmental organisations, businesses, social partners, academia and national administrations. The Contractor shall seek to involve experts from the EU and partner countries as well as from appropriate international organizations such as the ILO.

The Contractor shall identify target groups that run the risk of being excluded. There might be differences between stakeholder groups regarding their access to consultations or in the availability of resources they can dedicate for participation in consultations; the Contractor shall make specific efforts to ensure that all relevant stakeholders are both aware of and able to contribute to the consultation.

The Contractor shall ensure a balanced coverage of all relevant interests among identified stakeholders and clearly explain how and why these stakeholders have been invited to participate in the process.

The Contractor shall also consult with the European Commission services and the European Economic and Social Committee to identify key stakeholders.

The consultation plan is presented to and discussed at the meetings of the Civil Society Dialogue¹³ as well as at the meetings with the SIA Steering Committee.

Consultation is not a one-off event but a dynamic, systematic process that includes a wide range of complementary activities. These include interviews, meetings and surveys of stakeholders, as well as dissemination of the findings at all the main stages of the analysis, publication of the draft reports for comments and their discussion in public meetings.

In particular, the activities required as part of the consultation process are described in more detail below.

4.4.1 Dedicated website and electronic communications

To ensure dynamic and continuous interactions with civil society and all other relevant stakeholders throughout the conduct of the SIA, a dedicated SIA website as well as other digital channels shall be set-up.

SIA dedicated website

The SIA dedicated website provides an essential channel for publicising the SIA, communicating information about it, and disseminating its results. The website shall be designed to facilitate regular interactions with stakeholders and serve as a discussion forum to further stimulate the involvement of stakeholders on the basis of SIA information made available online.

To this end, the SIA website includes a specific feedback mechanism, a home page with an easily accessible summary on the stage of the SIA process and all appropriate SIA-related information.

In particular, all reports – inception and final – in their draft version as well as in their final forms are made publicly available on the website. Other relevant outputs, including regular updates on the SIA's process and findings and documentation sources are also published on the SIA website.

All public meetings shall be appropriately advertised on the dedicated SIA website and through other channels such as SIA newsletters issued by the Contractor, Twitter accounts, EU trade newsletters¹⁴ (EUTN) etc. The dates, venue and other relevant information are clearly communicated well in advance of the events.

Finally, to ensure that the SIA consultation is open and transparent, the Contractor shall also publish all the inputs received from the stakeholders together with the names of their authors in

¹³ See Section 4.4.3.

¹⁴ For detail information on EUTN, please refer to the Trade on Europa website, <http://trade.ec.europa.eu/eutn/>

a section of the website specifically created to this end, unless respondents indicate that they do not wish their contributions to be made public.

The SIA dedicated website shall be created no later than the date of publication of the draft inception report, and shall remain active for at least two years after the date of approval of the final report.

Other electronic tools

Additionally, the Contractor is expected to contact relevant stakeholders by various means such as email, electronic newsletter, twitter, etc. to inform them regularly and pro-actively about the SIA process including consultation activities and the main findings. In particular, at the beginning of the SIA consultation process and at each of the main stages of the analysis, the Contractor shall contact identified stakeholders informing them about the SIA study and inviting them to provide contributions via dedicated channels.

Other complementary communication tools can be developed where relevant such as a dedicated email address for feedbacks, regular mails or social media coverage.

4.4.2 Interviews, meetings, and questionnaires

As part of the consultation process interviews, meetings, and questionnaires shall be conducted.

Interviews and meetings

The Contractor is encouraged to undertake interviews and one-to-one meetings. These interviews and meetings shall encourage detailed discussions on the ongoing negotiations and their potential sustainability impacts. The Contractor will be expected to conduct at least 20 interviews or meetings ensuring a balanced representation of stakeholder interests. The Contractor is invited to indicate whether, and how many, additional interviews and/or meetings it intends to conduct.

The Contractor shall also identify existing platforms for dialogue that they could use to enhance communication with stakeholders. In this respect, the Contractor shall consult with the SIA Steering Committee¹⁵, the European Economic and Social Committee and, via the Commission, the Social Dialogue Committees to determine whether existing conferences or meetings that they should attend are taking place.

Questionnaires

The Contractor shall also develop a questionnaire open to all stakeholders. The Contractor shall make sure that the questionnaire is appropriately disseminated and that all relevant stakeholders can reply to it.

¹⁵ All interested Commission services and the European External Action Service (EEAS) are invited to participate in the SIA Steering Committee.

4.4.3 Civil Society Dialogue meetings

The Contractor shall present on-going work to interested stakeholders, giving them the opportunity to provide direct inputs.

In particular, two meetings shall take place in Brussels with civil society in the framework of DG Trade's Civil Society Dialogue¹⁶. These are regular meetings between civil society and the Commission to discuss aspects of the EU's trade policy. The Contractor is expected to participate in the meetings specifically on SIAs, to present the SIA methodological approach and findings as well as to hold an open discussion with interested stakeholders. The first meeting shall be organised to discuss the draft inception report and the second meeting to discuss the draft final report.

The draft reports are made public within a reasonable time limit ahead of the public meetings and shall be finalised taking into account contributions provided during the Civil Society Dialogue as well as through other consultation channels.

4.4.4 Meetings with the European Commission

The Contractor will be required throughout the process to attend meetings with European Commission officials, including meetings with the SIA Steering Committee. These meetings will include: presentations and explanations by the Contractor of work completed up to the date of the meeting, including reports on progress and results of modelling; further information provided by the European Commission on (*inter alia*) negotiating developments; and discussions on future work and on the specific sectors to be assessed. The Contractor will be asked to draft detailed minutes of each of these meetings.

Three meetings shall be foreseen in the context of the SIA contract including a kick-off meeting to be organised between the SIA Steering Committee and the Contractor immediately after signing the contract. The Contractor will be required to attend additional meetings as the European Commission deems relevant and necessary.

4.4.5 Workshop in Myanmar/Burma

A full one-day workshop shall be organised in Myanmar/Burma to allow a genuine and comprehensive consultation of local stakeholders. The EU Delegation to Myanmar will be involved as appropriate.

The workshop shall respect the following specifications:

- Venue: in 3-star (EU-equivalent) hotel/conference centre (the number of rooms will depend on the nature of the agenda and the possible organisation of thematic working groups)
- Estimated number of participants: 50
- Accommodation provided in 3-star (EU-equivalent) hotels/guest houses

¹⁶ For more information, please visit Trade on Europa at <http://trade.ec.europa.eu/civilsoc/index.cfm>

- Transport costs based on 1st class coach fares for distances less than 400 km, and on economy class for air travel for distances equal to or more than 400km
- Full board for participants coming from locations situated more than 60 km from the workshop.

The workshop will take place in the best suited location for ensuring a wide range of participation of the relevant stakeholders.

The contract shall cover the costs of the workshop organisation (logistics, communication, equipment – including interpreters and interpreting booths), and transport, accommodation, and catering costs for the participants. The expenses incurred for the workshop will be treated as reimbursable based on a per-head unit rate. The per-head unit rate will be used for the calculation of the eligible amount on the base of the actual number of participants for the workshop.

Tenderers are reminded that an adequate organisation of the local workshop implies timely preparation from an early stage of the contract – in particular, the elaboration of the draft programme, of the list of speakers and participants, and of the necessary logistical arrangements (e.g. invitations, venue). The date of the workshop, its venue, its programme, a balanced list of participants and speakers as well as the draft invitations shall be consulted and agreed upon in good time with the Steering Committee and the EU Delegation to Myanmar.

The Contractor will be responsible for preparing the documentation for the workshop, including an introductory documentation that outlines the inter-active nature of the workshop. The working languages of the workshop should be Myanmar and English. Documents relating to the workshop will also be provided in, respectively, these languages.

The Contractor must publicise the workshop among relevant stakeholders. Information relating to the workshop should be published on the Contractor's website.

Participants must be made aware that the Contractor is the organiser and that the EU is financing the local workshop. The EU logo must appear on all documents.

The Contractor will ensure a follow-up to the workshop by publishing on the dedicated website a report from the meeting, the list of participating organisations and the views expressed. Moreover, the Contractor shall make available information on how the stakeholders' views have been taken into consideration in the final SIA report.

5. REPORTING REQUIREMENTS

The Contractor must produce two self-standing reports as described below. Each must include all explanations, analytic concepts, assumptions, and contextual information necessary for a full understanding of the work performed, the evidence gathered, the judgements reached and the recommendations made.

Inception Report

The inception report shall describe how the work will be carried out by including at least the following:

- An overview of the Contractor's proposed approach to the study, including a presentation of the conceptual framework of the sustainability assessment analysis.
- A description of preliminary methodological developments.
- An account of initial contacts made with the Steering Committee, and of the directions and advice received, particularly in respect of consultation with stakeholders.
- A list of the relevant and representative stakeholders for this study.
- A consultation plan that meets the specification in section 4.4, including an explanation of how it will be implemented, and of how the active engagement of stakeholders will be ensured.
- A review of the literature, list of tools and references to be used.
- A preliminary screening exercise for the key sustainability issues (including human rights) associated with the trade agreement, based on quantitative and qualitative analysis.
- A preliminary overview of the overall and sectoral analysis, and identification and definition of indicators relevant for this report, justifying the choice and how the information is to be collected.
- Outline of the expected content for the final report.

The draft inception report must be presented to the Steering Committee and to civil society representatives in Brussels, and relevant comments shall be taken into account.

The final inception report shall not exceed 100 pages, including the executive summary.

Final Report

The final report must contain the following elements:

- Description of the methodology adopted for the SIA.
- The outcomes and results of the assessment.
- Proposals of flanking measures and policy recommendations.
- Details of communication activities including:
 - o Outline of contacts with stakeholders in the EU;

- Outline of contacts with stakeholders in Myanmar/Burma;
 - Minutes of the workshop in Myanmar/Burma;
 - Minutes of the Civil Society Dialogue meetings held in Brussels outlining key stakeholder positions and points of views, the programmes and list of participants;
 - Summary of comments and suggestions received (via e-mail, website comment function, ordinary mail, meetings etc.) and the uses made of these.
 - Overview of the use made of the website for the SIA.
- Conclusions, including recommendations and flanking measures.
 - References and key sources.

The final report shall contain an abstract of no more than 200 words and, as separate document, an executive summary of no more than 6 pages, in English, French and Myanmar.

It must include specific identifiers which shall be incorporated on the cover page provided by the European Commission.

It shall make use of the standard disclaimer and graphic requirements described in point 5.3.2 of the Terms of Reference for the Framework Contract.

The draft final report must be presented to the Steering Committee and to civil society representatives in Brussels no later than six months after signature of the contract. Relevant comments shall be taken into account while finalising the draft.

A separate briefing document of no more than two pages shall accompany the final report. This shall summarise, in very short and succinct form:

- the objectives, scope and purpose of the SIA;
- the main trade and investment measures identified for impact analysis;
- the liberalisation scenarios considered;
- other key assumptions and hypotheses;
- the most significant economic, social, environmental and human rights impacts identified;
- the most important complementary policy measures recommended in order to minimise negative impacts and maximise positive impacts of the trade and investment measures proposed;
- the sources of evidence, and the qualitative and quantitative evidence-gathering techniques used and reported;
- details of the representative consultation process undertaken for the SIA;
- limitations in the design or the execution of the SIA in meeting the project aims and objectives;

- suggestions (where relevant) of issues or aspects for further investigation, including *ex post* analysis of the impacts of any agreement reached at the conclusion of negotiations.

6. TIMING

SIA findings must be available well in advance of the end of the underlying negotiation, and sufficiently early to be capable of informing decision-making relating the proposed agreement.

The tasks for this project shall be completed in 6 months. The period of execution of the tasks may be extended, but only with the written agreement of the parties concerned before such period elapses. The expected timeline is as follows:

Deliverables	Month
1 Draft Inception Report + presentation to civil society in Brussels	2
1 Draft Final Report + presentation to civil society in Brussels	5
1 Final Report	6

Tenderers must propose an indicative calendar for the work programme and reports included in the terms of reference. It is the Contractor's obligation to observe the implementation of the agreed timeframe, taking into account the time necessary for consultation with the Commission and with civil society.

The Steering Committee's meetings in presence of the Contractor are supposed to take place 2 weeks after the reception of the draft reports.

7. BUDGET

The budget of the contract, including all costs, shall not exceed EUR 200 000 for its total duration.

The tenderer should however be aware that the contract award criteria are based on the most economically advantageous tender.

The price offer of the tender must be complete. The price must include, *inter alia*, the honoraria and costs related to the workshop in Myanmar (general organisation, communication, transport, accommodation, and catering for the participants). The tenderer must not include in the price offer expenses for items that cannot be itemized and specified as requested (see Annex 2); otherwise, his tender will be rejected.

The Commission shall not separately reimburse travel or subsistence expenses incurred by the Contractor to attend the meetings in Brussels, nor any other costs such as translation costs, database management or administrative costs necessary to carry out the tasks of the contract (offices, secretarial assistance, communications, printing costs of documents, dispatch costs, etc.). Therefore, the tenderer is requested to take into account all these costs when preparing the offer.

Travel and subsistence expenses which may be required for the Contractor to perform the consultation activities foreseen in point 4.4.2 of these terms of reference shall be reimbursed separately, as foreseen in the Framework Contract and up to the flat-rate ceilings set out in Annex III of the Framework Contract.

8. PAYMENT

Payment shall be made in Euro (€).

Payment shall be made on services rendered (and time spent) based on the submission to, and acceptance by, the Commission of the reports and duly established invoices.

Interim payment:

As defined in article I.4.3 of the framework contract, at the request of the Contractor, an interim payment of 35% of the total value under point III.3.1 of the specific contract shall be made, after presentation and acceptance of the inception report and an invoice.

Payment of the balance:

The request for payment of the balance by the Contractor shall be made according to the provisions of article I.4.4 of the framework contract. The final report shall be accompanied by the evidence of attendance of the participants at the workshop.

9. CONTRACTUAL CONDITIONS

In drawing up his bid, the contractor should bear in mind the provisions of the standard specific contract attached to this invitation to tender (see Annex 1). This contract will be proposed to the successful contractor. By submitting an offer, the contractor accepts the conditions of this contract.

The contractor must not include in the offer conditions or clauses that are not specified in, or that modify, this Terms of Reference, on pain of his/her tender being rejected.

10. THE TENDER MUST INCLUDE:

- All the information and documents required by the authorising department for the appraisal of tenders on the basis of the award criteria set out at point 12 below;
- Description of the methodology and planning of the works, including the time limit for delivery of each report and document;
- A description of the team proposed for the assignment;

- A signed statement of exclusivity and availability for each expert;
- A fixed price: using the quotation form in Annex 2, the Contractor will specify the number of man-days allocated per category of staff as indicated in annex II of the Framework Contract and will provide a total cost for the workshop in Myanmar/Burma and the reimbursement of travels and accommodation (if necessary) of the local non-profit organisations' representatives invited to the workshop (maximum 50 participants per workshop) on the basis of a flat rate per participant.

11. QUOTATION OF PRICES

As regards honoraria, prices must be quoted in EUR (€) corresponding to the accepted unit prices as set out in annex II to the Framework Contract.

Prices must be fixed amounts that are non-revisable.

Prices shall be quoted free of all duties, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union annexed to the Treaty of the European Union and to the Treaty on the Functioning of the European Union. Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by immediate exemption. The successful contractor shall be given the necessary instructions by the Commission.

12. AWARD CRITERIA FOR THE CHOICE OF THE CONTRACTOR

The contract will be awarded to the "most economically advantageous tender".

Criteria to be applied are:

- price (price of the tender measured as a ratio compared to the lowest tender¹⁷), (30%) and
- quality in terms of technical quality of the offer (70%) assessed on the basis of the following sub-criteria

No	Qualitative award criteria	Weighting (maximum points)
1.	Technical quality, experience, variety and coherence of the proposed team for the assignment covered by the specific contract, including appropriateness of the local contacts proposed where relevant. Balance between the input of the senior and junior experts.	50

¹⁷ By using the formula: $\frac{\text{Price of the lowest tender} * \text{fixed percentage}}{\text{Price of the tender}} = \dots \% \text{ for the criterion 'price'}$

2.	Quality and appropriateness of the proposed methodology a) quality of the work plan, including subsequent steps, timetable and outputs so as to deliver in time credible, coherent and reliable deliverables b) methodology: quality of the quantitative and qualitative research methods proposed to perform the assignment	40
3.	Approach proposed for the management of the project and its quality control	10
<i>Total number of points</i>		100

The evaluation board will compare the offers based on this score, it being clear that the Commission cannot be required to accept an offer the quality of which does not reach the minimum standard of 65%.

A minimum threshold of 50% will also be applied per criterion, meaning that the Commission will only assess further offers that obtain 50 % or more on a single criterion.

The sum of the price and quality criteria will result in a numerical score (e.g. 75%).

Annex 1: Specific Contract

Annex 2: Quotation Form for Price