

## **TERMS OF REFERENCE**

**Related to a contract to provide Sustainability Impact Assessments (SIAs) in support of free trade agreement (FTA) negotiations between the European Union and the Republic of the Philippines, between the European Union and the Republic of Indonesia, and between the European Union and Malaysia.**

**Multiple Framework Contract TRADE2014/01/01; request for services  
REVISED-TRADE2016/C2/C06**

### **1. BACKGROUND INFORMATION**

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

### **2. CONTEXT OF THE PROJECT**

The Philippines, Malaysia and Indonesia are all Member States of the Association of Southeast Asian Nations (ASEAN). As part of this regional group, the Philippines, Malaysia and Indonesia were Parties to the FTA negotiations between the EU and ASEAN that were launched in 2007 and paused in 2009 to give way to a bilateral format of negotiations. In accordance with the initial region-to-region approach to negotiations with ASEAN, a Trade Sustainability Impact Assessment (SIA) of the Free Trade Agreement under negotiation with ASEAN was conducted in 2008.<sup>2</sup>

This ASEAN SIA was conducted in 2008 in a very different economic context and from a clear regional angle. In addition, since the ASEAN SIA was conducted, the Commission's policy and practice on Impact Assessments and SIAs have considerably evolved, notably with the incorporation of the human rights dimension into the analysis.

It is for these reasons that, following the launch of bilateral FTA negotiations with the Philippines and with Indonesia respectively, and in view of the likely resumption of the bilateral FTA negotiations with Malaysia, the European Commission has decided to carry out dedicated Trade Sustainability Impact Assessments for the bilateral FTA negotiations with the Philippines, Malaysia, and with Indonesia.

When completed, bilateral FTAs between the EU and each ASEAN partner will develop the trade aspect of EU's overall relationship with the partner country, as set out in the respective

<sup>1</sup> Terms of Reference for TRADE2014/01/01: [http://trade.ec.europa.eu/doclib/docs/2014/november/tradoc\\_152920.pdf](http://trade.ec.europa.eu/doclib/docs/2014/november/tradoc_152920.pdf)

<sup>2</sup> All finalised reports can be found in: <http://ec.europa.eu/trade/policy/policy-making/analysis/sustainability-impact-assessments/assessments/>

Partnership and Cooperation Agreement (PCA). The PCA with Indonesia entered into force in May 2014, while the PCAs with the Philippines and with Malaysia are still in the process of ratification.

Taken as a whole, ASEAN ranks as the eighth economy in the world and the EU's third largest trading partner outside Europe, after the United States and China. Bilateral trade in goods and services between the EU and ASEAN reached €280 billion in 2015. Following the pause of region-to-region negotiations in 2009, bilateral negotiations were launched with Singapore (2010), Malaysia (2010), Vietnam (2012), Thailand (2013), the Philippines (2015) and Indonesia (2016). These bilateral FTAs were conceived as building blocks towards a future region-to-region agreement. So far, the EU has completed negotiations with Singapore (2014) and Vietnam (2015).

## **2.1. EU trade relationship with the Philippines**

The Philippines is one of the 10 Member States of ASEAN and, with a GDP of €304.7 billion in 2016, the fourth largest economy in the region. The Philippine economy has more than doubled its size in the last decade and consolidated itself as one of the fastest growing economies in Southeast Asia (6.8% GDP growth in 2016). With a population of 102 million it is also the second most populated country in ASEAN.

Bilateral FTA negotiations with the Philippines were the fifth to be launched with an ASEAN Member State. The Philippines is the EU's sixth largest trade partner in ASEAN and ranks 40<sup>th</sup> worldwide, while the EU is the Philippines fourth largest trading partner. In 2016, the EU exported to the Philippines goods worth €6.2 billion, while the EU imports from the Philippines amounted to €6.6 billion.

The EU exports to the Philippines are dominated by machinery (18.9%), transport equipment (16.8%), chemicals (14.1%), food products (13.8%), and electronic components (13.7%), while the Philippines' main exports to the EU are office and telecommunication equipment (45.8%), machinery (13.9%), food products (12.0%), and optical and photographic instruments (10.5%)<sup>3</sup>.

Trade in services between the EU and the Philippines was worth €4.2 billion in 2015, with a surplus for the Philippines of €0.2 billion. In addition, European businesses have invested heavily in the country during the last decade, building up an FDI stock in the Philippines of €6.1 billion (2015) that makes the EU the largest investor in the country, well ahead of the US and Japan.

The FTA with the Philippines will develop a key aspect of the EU overall relationship with the Philippines that is based on the Partnership and Cooperation Agreement signed in 2012 (but still under ratification). The aim is to conclude an agreement in order to eliminate or

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<sup>3</sup> More information on the overall EU-Philippines trade relationship is available on DG Trade's website: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/philippines/>

reduce tariff and non-tariff barriers to trade in agricultural products, manufactured goods and services and thereby facilitate trade flows, realize the untapped potential and expand FDI, level the playing field between private businesses and state owned enterprises, and contributing to sustainable development objectives.

## **2.2. EU trade relationship with Malaysia**

Following the pause of EU-ASEAN region-to-region negotiations in 2009, negotiations for a bilateral FTA between the EU and Malaysia were launched in 2010. FTA negotiations were put on hold in 2012 after seven rounds, most importantly due to diverging views on the level of ambition for the EU-Malaysia FTA. Malaysia sought to re-engage with the EU in early 2016 and both teams explored whether there was enough common ground to resume the negotiations. There is now more convergence on the level of ambition for the future FTA and a resumption of the talks is likely to be announced in due course.

In 2016, EU-Malaysia annual trade in goods amounted to €35.4 billion, with Malaysia remaining the EU's 22nd largest trading partner in goods and the third trading partner in the ASEAN region. Imports from Malaysia (€22.1 billion) into the EU exceed by €8.9 billion the EU exports (€13.2 billion) and continue growing. Bilateral trade is dominated by industrial products: machinery, appliances and electrical equipment (both ways industrial products account for more than 90% of trade). The EU also imports from Malaysia plastics and rubber products, as well as vegetable oils (in particular palm oil).

Although Malaysia has not been a major trading partner in services so far (bilateral trade in services amounts to €7.7 billion, with a €1.1 billion surplus for the EU), opportunities have already been increasing due to Malaysia's autonomous liberalisation policies and would even further advance with a Free Trade Agreement. In 2015, EU Foreign Direct Investment stock in Malaysia amounted to €19.0 billion.

With a population equal nearly half of that of France and GDP growth rates between 5% and 6%, Malaysia remains an interesting market forecasted to reach OECD high-income status in the years to come.

Like for the other ASEAN countries, the aim is to conclude an agreement in order to eliminate or reduce tariff and non-tariff barriers to trade in agricultural products, manufactured goods and services and thereby facilitate trade flows, realize the untapped potential and expand FDI, level the playing field between private businesses and state owned enterprises, and contributing to sustainable development goals. The EU-Malaysia initiative is one of the building blocks to achieve the ultimate goal to put in place an EU-ASEAN region-to-region agreement.

## **2.3. EU trade relationship with Indonesia**

With a population of more than 255 million Indonesia is the most populated and largest economy in ASEAN, constituting 36% of the region's GDP. The Indonesian economy has more than tripled its size in the last decade and is one of the fastest growing economies in Southeast Asia (average GDP growth of 5.6%).

Bilateral FTA negotiations with Indonesia are the sixth to be launched with an ASEAN member. Bilateral trade in goods between the EU and Indonesia reached €25.1 billion in 2016 (EU exports €10.5 billion and EU imports €14.6 billion). The EU trade deficit of €4.1 billion is largely explained by the significant imbalance in agricultural products. The EU is the third largest exporter to Indonesia with a 9.5% share of Indonesia's total imports. There is a lot of untapped potential as, despite its size and potential, trade with Indonesia only represents 13% of EU's overall trade with ASEAN (€207.9 billion in 2016) and Indonesia is the fifth EU partner in ASEAN, after Singapore, Vietnam, Malaysia and Thailand. In the same year, Indonesia ranked 29<sup>th</sup> in the overall EU trade worldwide (from the 30<sup>th</sup> place in 2015).

In 2016, the EU exports basket to Indonesia was composed of 92.6% industrial products and 7.4% agricultural and fishery products. Industrial products exports were dominated by machinery and appliances (33.6%); transport equipment (21.6%) –with aircrafts recording an exponential 300% growth in the past 5 years chemical products and mainly pharmaceuticals and plastics (12.6%). Indonesia's main exports include agricultural products which amounted to €4.3 billion in 2015 and represented about 4.7% of ASEAN's exports of agricultural products. Palm and palm kernel oils remained Indonesia's most competitive agricultural products with an export value of €2.5 billion in 2015, accounting for more than 50% of the EU imports of palm oil. Other main exports to the EU include machinery and appliances (12.6%), textile and textile articles (11.2%), footwear, hats and other headgear (10.7%), plastic, rubber and articles thereof (7.2%).

Total bilateral trade in services between the EU and Indonesia reached €6.1 billion in 2015, with a surplus of €1.9 billion for the EU. During the period from 2009 to 2014 trade in services recorded a 62.1% growth.

In the period between 1990 and 2014 the total EU FDI flows in Indonesia reached \$28.2 billion<sup>4</sup> with most of them directed to the chemical and pharmaceutical industry, transport, storage and communication, food industry, mining, food crops and plantation hotels and restaurants. Since much of FDI is re-routed through other regional hubs such as Singapore, actual EU investments are estimated to be higher than official estimates.

European companies have been scaling up their investments in Indonesia. At the same time, there are challenging barriers to trade and investments. The ongoing review of Indonesia's policy regulating investments is expected to open up certain sectors and accelerate key infrastructural projects across the country, opening up major opportunities to EU operators, provided that the investment climate is conducive to foreign businesses. An FTA with Indonesia can give impetus for further economic reforms and for addressing existing barriers to trade and investment.

Like for the other ASEAN partner countries, the aim is to conclude an agreement in order to eliminate or reduce tariff and non-tariff barriers to trade in agricultural products, manufactured goods and services and thereby facilitate trade flows, realize the untapped

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<sup>4</sup> Indonesian Investment Agency (BKPM)

potential and expand FDI, level the playing field between private businesses and state owned enterprises, contributing to sustainable development objectives.

## **2.4. Sustainability Impact Assessment**

A Sustainability Impact Assessment (SIA) is a trade-specific tool developed for supporting major trade negotiations conducted under the aegis of the EU Commissioner for Trade. SIAs are a key tool for the conduct of sound, evidence-based and transparent trade negotiations. They were first developed by the European Commission's Directorate-General for Trade (DG Trade) in 1999 for the World Trade Organization Doha Development Agenda (DDA) negotiations.

SIAs are independent *ex ante* assessments carried out by external consultants during major trade negotiations. They feed into and steer the negotiations, assessing the 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 the trade agreement under negotiation could have, in the EU, in the partner country(ies) and in other relevant countries;
- (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 consultants in a neutral and unbiased manner, under 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. SIAs contribute to the transparency of the analysis and of the ongoing trade negotiations by providing stakeholders with comprehensive information on the possible impacts of the agreement.
- Participatory. SIAs work as a platform for systematic dialogue between stakeholders and trade negotiators, through in-depth consultation in which all stakeholders are given an opportunity to participate.

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

Once the SIA is finished, the Commission services set out their views on the consultants' findings and recommendations by means of a position paper. The position paper explains how the SIA has and will contribute to the negotiations; it highlights the Commission services' views on the impacts identified in the SIA and on the measures proposed by the consultants and explains how the SIA findings have or will be used.

Please refer to the DG Trade section on the Europa website for more information on conducted and ongoing SIAs:

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

Relevant guidance for carrying out this SIA includes:

- The Handbook on SIA, 2<sup>nd</sup> edition<sup>5</sup>;
- The Better Regulation Package, notably the guidelines<sup>6</sup> and the accompanying "toolbox"<sup>7</sup>;
- The Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives<sup>8</sup>.

### 3. OBJECTIVES OF THE PROJECT

The project foresees the carrying out of three separate and stand-alone SIAs in support of negotiations on FTAs between the European Union and the Philippines, Malaysia, and Indonesia, respectively. The SIAs shall be carried out during the negotiations and 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, the SIAs shall be completed within one year from signature of the specific contract.

Each SIA shall assess how the trade and trade-related provisions under negotiation could affect economic, social, human rights and environmental issues in the EU and in the partner country (by also taking into account the regional integration process in the ASEAN and its potential impact), as well as in other relevant countries notably developing and least developed countries (LDCs). Furthermore, it shall make recommendations to maximise the expected benefits of the agreement and prevent or minimise potential negative impacts.

<sup>5</sup> SIA Handbook 2<sup>nd</sup> edition: [http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc\\_154464.PDF](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154464.PDF)

<sup>6</sup> Better Regulation Guidelines: [http://ec.europa.eu/smart-regulation/guidelines/toc\\_guide\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm)

<sup>7</sup> Better Regulation "Toolbox": [http://ec.europa.eu/smart-regulation/guidelines/toc\\_tool\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm)

<sup>8</sup> Human rights guidelines for trade: [http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc\\_153591.pdf](http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf)

This assessment is necessary to enable the EU to pursue an approach which brings the greatest overall welfare gains, thereby helping the EU meet its objectives of creating economic growth, enhancing social inclusion and promoting sustainable development throughout the world. Assessing the possible economic, social, human rights and environmental impacts of the proposed free trade agreements also contributes to the design of the right accompanying policies.

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

Each SIA for the FTA between the EU and one of the three partner countries shall be carried out in accordance with the following indications.

##### **4.1. Overall analysis of the sustainability impacts arising from the negotiations of a FTA between the European Union and the partner country**

The purpose of each SIA is to provide for a deep assessment of the potential economic, social, human rights and environmental effects of the anticipated trade agreement between the EU and the relevant partner country. The analysis in each SIA shall cover impacts in the EU (including the EU's outermost regions when relevant) and the respective partner country and third countries where relevant, particularly developing and least developed countries (LDCs), as well as Turkey which is linked to the EU by a customs union agreement.

A number of key sustainability issues to be analysed in the SIAs are cross-cutting and should therefore be mainstreamed in the analysis. Nevertheless, the analysis of the identified impacts for these key issues should be summarised in a specific subsection of the report. Those issues are:

##### *Least developed countries (LDCs)*

In line with the EU's *Trade for all* communication, each SIA shall analyse in-depth the impact which the underlying proposed agreement may have on LDCs, and shall propose flanking measures if necessary to ensure the agreements contribute to sustainable growth and job creation and minimise any negative impact on LDCs. The analysis of impacts on LDCs shall be streamlined both in the overall analysis as well as in the sectoral analysis.

##### *Small and Medium Enterprises (SMEs)*

Due to their size and limited resources, SMEs are arguably more affected by regulatory costs than their larger competitors. Each SIA shall assess the impact of the underlying proposed agreement on SMEs (the 'SME test'), reflecting the 'think small first' principle in each analytical step to the extent data allows.

##### *Consumer impacts*

The Contractor shall assess the likely effect of the agreement on consumers, on their rights and protection: including the likely impacts on consumer prices, quality, availability, choice and safety of goods and services, consumer information, knowledge and trust. In doing so, the Contractor shall make use of the relevant Commission guidance<sup>9</sup>. The analysis shall be conducted by providing, where relevant, a breakdown by broad product/service categories, also with the aim of estimating the overall impact of the agreement on different consumers' profiles. Indicators and other tools for measuring and/or quantifying consumer impacts shall be suggested, where possible, and explained.

### *(1) Economic analysis*

#### *(1.1) Modelling*

The Commission will perform the Computable General Equilibrium (CGE) modelling for trade in goods and services, including tariff and non-tariff barriers for the different scenarios, the results of which will be provided to the Contractor. The Contractor shall not re-perform this modelling. The modelling results will be published by the Commission as part of DG Trade's Chief Economist working paper series, thus ensuring that they are publicly available to interested parties.

The standard modelling results will be provided to the Contractor at the latest at the time of the inter-service steering group meeting that will discuss the draft inception report. The results shall then feed into the analysis to be carried out by the Contractor.

#### *(1.2) Analysis*

The Contractor shall review existing *ex-ante* studies on EU trade relations with the partner country, or comparable bilateral relations (taking into account studies focusing on specific sectors and partial analyses), summarise their results, provide information on methods and data used and compare their outcome.

Based on existing sources, the Contractor shall identify, describe and analyse the tariff and non-tariff obstacles affecting trade relations between the EU and the partner country, trade in goods and market access, national treatment and regulatory limitations for services and investment/establishment.

This shall cover in particular:

(a) horizontal cross-sector measures, including behind-the-border issues stemming from technical regulations, sanitary and phytosanitary measures,

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<sup>9</sup> 'Better regulation' tool #28: impacts on consumers ([http://ec.europa.eu/smart-regulation/guidelines/tool\\_28\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/tool_28_en.htm))

government procurement, intellectual property rights, including protection of geographical indications, investment barriers, competition policy, special conditions or privileges given to or by state-owned enterprises, local content requirements, customs and internal regulations concerning registration and import licensing, export restrictions, services related to labour mobility and mutual recognition of qualifications and electronic commerce; and

(b) any additional sector-specific non-tariff barriers for all relevant sectors.

This shall cover barriers established by legislation proper and deriving from its practical implementation or non-implementation, including halal-related legislation. It shall also identify the main practices that affect competition in the EU and the partner country's markets. Non-tariff barriers identification shall be undertaken in close consultation with the relevant Commission services.

With regard to investment/establishment, it shall be assessed to what extent the investment conditions applicable to EU investors in the partner country match those applicable to partner country investors in the territory of the EU.

The quantification of the impact of removing tariff and non-tariff barriers to trade in goods and services between the EU and the partner country as provided by the CGE analysis, shall be completed and complemented by an in-depth qualitative analysis of the costs and benefits of removing barriers, based on input from sectoral experts on the ground, reviewing existing studies, and business surveys on doing business between the EU and the partner country.

Qualitative analysis will be particularly important whenever the modelling is constrained by data limitations. It should be rigorous, thorough and rely on available evidence and on illustrative examples such as case studies. In its offer, the Contractor should make proposals for case studies to be included in each SIA.

Since the economic modelling will not include a quantification of non-tariff barriers for agricultural goods in particular, the Contractor will be expected to undertake a qualitative assessment of the said barriers. The selection of agricultural sectors will be discussed and agreed with the Commission. Based on the results of the CGE modelling, each SIA shall assess the wider economic impact with quantification of possible effects of the FTA on output, trade flows, prices, fiscal revenues (including revenues foregone), income and welfare. The expected impact of each proposed FTA shall be presented as changes compared to the baseline. Attention shall be paid to expected impacts on competitiveness of the EU economy and EU SMEs.

The Contractor shall quantitatively evaluate, to the extent possible and using the most appropriate methodology, the potential for increased investment and international procurement between the EU and the partner country.<sup>10</sup>

The Contractor shall further evaluate the capacity of the customs authorities of the relevant partner country to properly apply, implement and administer the preferential rules of origin applied in trade in goods with the EU. Such assessment may be based on the existing experience of the partner country in applying the EU's GSP rules of origin including the system of establishing the proofs of origin, subsequent verification of origin and administrative cooperation with the EU Member States' customs authorities, in consultation with the relevant Commission services.

The Contractor shall also assess to what extent each underlying proposed FTA could have an impact on the informal economy in the relevant partner country. Although data on the informal economy may not be sufficiently reliable to be used in a quantitative analysis, a best attempt should be made at estimating the effect that the trade agreement may have on it in both the EU and in the partner country. Efforts should also be made to determine the impact that each trade agreement under negotiation may have in the relevant partner country on the fight against corruption and promotion of good governance, particularly in sensitive areas (e.g. public procurement). Consideration could also be given to assessing the potential impact of the trade agreement under negotiation on possible tax avoidance strategies.

Though the economic modelling will be done by DG Trade, it is important that the team proposed by the Contractor for the assignment possesses the technical capability to understand and interpret the results of CGE modelling in the trade area and has experience of such modelling exercises. The Contractor shall also, subject to agreement with the Commission, use the results of the economic modelling in order to examine more in detail certain specific sub-sectors of particular relevance, where no sufficient disaggregation can be obtained in the CGE modelling.

## *(2) Social analysis*

The Contractor shall carry out a detailed analysis of different types of potential social impacts, both direct and indirect, of the proposed underlying FTA. In addition, as part of the overall assessment of social impacts, the Contractor shall review potential impacts in the area of social policies such as education and public health.

Specifically, the analysis shall assess the potential impacts of trade opening, and hence of the potentially increased trade flows between the EU and the relevant partner

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<sup>10</sup> The assumptions that for will be defined in agreement with the Commission at the kick-off meeting.

country on employment and decent work. The analysis shall also assess the potential impacts on employment (overall job creation or losses, job creation or losses for specific sectors, professions or skill levels), on working conditions (wage level, work standards, health and safety at work, social dialogue, including for migrant workers) as well as distributional impacts (poverty income inequalities, disposable income, vulnerable consumer groups), both overall and in the specific sectors mentioned in section 4.2.2. below, including through potentially induced restructuring of certain sectors.

Furthermore, the interaction between each envisaged FTA and the effective implementation in the relevant partner country of the international Core Labour Standards (CLS) and fundamental Conventions of the International Labour Organisation (ILO), as well as the realisation of the other strategic objectives of the ILO Decent Work Agenda (job creation, social protection and social dialogue) shall be investigated. Other conventions from the ILO and other UN bodies should also be taken into consideration, where relevant. The Contractor shall also assess how the potential trade agreement could contribute to the uptake in the relevant partner country of internationally agreed principles and guidelines on corporate social responsibility (CSR)/responsible business conduct (RBC), such as the Organisation for Economic Co-operation and Development (OECD) *Guidelines for Multinational Enterprises*<sup>11</sup>, the UN's *Global Compact*<sup>12</sup> and its *Guiding Principles on Business and Human Rights*<sup>13</sup>, as well as the ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*<sup>14</sup>.

Indicators and other tools for measuring and quantifying social development (including reference to decent work indicators, ILO sources and information on labour standards) shall be suggested, where possible, and explained. The quantitative analysis shall be complemented by case studies whenever relevant and by a detailed qualitative analysis, and shall include the impact on women and vulnerable groups (e.g. low income, children, people with disabilities, ethnic minorities, indigenous peoples, unskilled workers and older or less educated consumers).

The analysis shall also rely on thorough stakeholder consultations, including consultations of employers' and workers' organisations (social partners) – see 4.3. The results will be summarised in a specific section of the executive summary.

### *(3) Human rights*

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<sup>11</sup> The OECD guidelines for multinational enterprises: <http://www.oecd.org/corporate/mne>

<sup>12</sup> The United Nations global compact: [www.unglobalcompact.org](http://www.unglobalcompact.org)

<sup>13</sup> The United Nations guiding principles on business and human rights: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>14</sup> The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf)

The Contractor shall analyse the potential impacts of each proposed agreement on human rights, as set out in the *Charter of Fundamental Rights of the European Union* and in the core UN treaties and conventions<sup>15</sup>, and the European Convention on Human Rights and other regional human rights conventions as well as, where relevant, customary international law. To that end, the Contractor shall use the guidance on the analysis of human rights impacts in impact assessments as developed by Commission services, in particular the *Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives*<sup>16</sup> as well as other relevant Commission guidance.<sup>17</sup> The Contractor shall in particular:

- identify the specific human rights most likely to be affected by particular measures included in the agreement under negotiation;
- analyse the extent to which the particular measures foreseen in the agreement may enhance or impair the enjoyment of the relevant rights and/or may strengthen or weaken the ability of the EU and of the relevant partner country to fulfil or progressively realise their human rights obligations<sup>18</sup>;
- identify individuals or specific groups of people or those living in a particular territory that are likely to be specifically affected by those impacts.

In doing so, attention shall be given to the pre-existing legal situation in the EU and the relevant partner country (e.g. in terms of the human rights arising either from the human rights treaties by which the EU and the relevant partner country have consented to be bound – taking into account any reservations expressed – or from constitutional or other domestic law); pre-existing conditions of stress or vulnerability shall be highlighted, including in relation to particular vulnerable groups and those living in a particular territory.

Particular attention shall also be paid to women's rights and the effect that the agreement under negotiation could have on gender equality<sup>19</sup>.

Existing human rights dialogue mechanisms led by the EEAS (where human rights issues are discussed with the underlying partner country) and issues discussed in the context of the Partnership and Cooperation Agreement with the relevant trade partner shall also be taken into account, and the consultants shall consider how these mechanisms could be used to contribute to the analysis.

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<sup>15</sup> The list can be found in the SIA Handbook 2<sup>nd</sup> edition:

[http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc\\_154464.PDF](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154464.PDF)

<sup>16</sup> Human rights guidelines for trade: [http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc\\_153591.pdf](http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf)

<sup>17</sup> 'Better regulation' tool #24: fundamental rights & human rights ([http://ec.europa.eu/smart-regulation/guidelines/tool\\_24\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/tool_24_en.htm))

<sup>18</sup> The Contractor may refer in particular to *Human Rights Indicators: A Guide to Measurement and Implementation* (OCHCR, 2012)

<sup>19</sup> DG Employment, Social Affairs and Inclusion's manual for gender mainstreaming can provide guidance in this regard: <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=70&type=2&furtherPubs=yes>

The analysis shall combine both quantitative and qualitative approaches. Figures generated by the economic modelling shall be used, as well as qualitative analyses and, when relevant, case studies. To the extent possible, available quantitative information on affected individuals and/or groups of people or actors in relevant sectors shall be presented.

In its work, the Contractor can use as sources the reports and recommendations of the European Union Agency for Fundamental Rights and of the Council of Europe; or refer to international work in this area, such as the output of UN human rights treaty bodies, the universal periodic review (UPR), or the work of the special rapporteurs on the various countries and/or themes.

Stakeholders' consultations are a particularly important source of information. They shall ensure inclusive participation with a view to contributing to the identification of potential impacts as well as of individuals or groups of people likely to be affected. Consultants are given a wide mandate to conduct consultations with all relevant stakeholders including women and vulnerable groups (e.g. low income, children, people with disabilities, ethnic minorities, indigenous peoples and unskilled workers) in the EU and in the relevant partner country.

#### *(4) Environmental analysis*

The Contractor shall carry out a detailed analysis of potential environmental impacts, both direct and indirect, of the future agreement.

The Contractor shall, in particular, take into account the potential interaction between each future FTA and relevant multilateral environmental agreements (MEAs), as well as assess the impacts on the environmental areas covered by the MEAs. The Contractor shall identify and analyse recent developments in environment, climate and energy policies in the relevant partner country and in the EU as part of the overall analysis.

The Contractor shall, where appropriate, break down the impact of the trade agreement so as to identify scale, structural, technology and product effects. Scale effects refer to environmental impacts resulting from trade-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 (CO<sub>2</sub> equivalent).

The analysis shall also include, to the extent feasible, possible impacts of the future agreement on air quality, greenhouse gas emissions, water quality and resources, land use, soil quality, waste and waste management, marine litter, biodiversity, ecosystems services and protected areas. The SIA shall also identify how the agreement under negotiation could contribute to greening the economy and to resource efficiency objectives, notably through the promotion of sustainable production and consumption.

With regard to Indonesia and Malaysia, specific attention shall be paid to the possible impacts of the trade agreement on the palm oil and timber sectors, notably with regard to sustainable production and taking into account the related issues of deforestation, illegal logging, land rights and policies or initiatives Indonesia and Malaysia are currently developing with regard to palm oil. In this respect, the Contractor should also look into possible interactions or linkages with the FLEGT Voluntary Partnership Agreement (VPA) between the EU and, respectively, Indonesia (concluded) and Malaysia (stalled).

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

The analysis shall also rely on thorough stakeholder consultations, including consultations of environmental interest groups (see 4.3). The results will be summarized in a specific section of the executive summary.

#### **4.2. Sectoral SIA for the free trade agreement between the European Union and the partner country: detailed analysis of specific sectors**

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

The analysis of the impact on the most significant sectors (approximately five to six sectors) shall include an overview of the current state of the industry, an identification of challenges and untapped future opportunities as well as an investigation of the likely impact of the agreement under negotiation.

##### *(1) General Approach*

The in-depth sectoral analyses shall identify and highlight specific subsectors, activities, products, vulnerable social groups and geographical areas that are most likely to be affected, either positively or negatively, by the outcome of the negotiations. Particular attention shall be given to a detailed analysis of the likely

impact on the functioning of the market, competitiveness, job creation or losses, gender equality, SMEs and consumers. Other potential economic, social, human rights and environmental impacts shall also be analysed in depth at sectoral level. Sectoral analyses may also contribute to analysing the impact that the trade agreement under negotiation could have on corruption.

Particular attention shall be given to non-tariff measures and behind the border measures affecting trade and investment, as well as the impact of a trade agreement on SMEs. Regarding the social effects, attention will be paid to employment, wage and decent work effects of trade liberalisation. The environmental impact of an increase of trade-related transportation services shall be examined. Potential impacts on third countries, in particular Least Developed Countries shall also be considered. This analysis shall also identify specific sectors, products, vulnerable social groups and geographical areas that are most likely to be affected, either positively or negatively, by the outcome of each negotiation, without prejudice to the five to six sectors which may be selected for detailed analysis.

The sectoral work will include a quantitative analysis as well as qualitative considerations on the potential effects of the relevant agreement in the sectors concerned in the EU and the partner country. The Contractor can, after agreement by the Commission, use additional quantitative tools to complement available results, but only if the existing results prove to be inadequate or insufficient to perform the deeper analysis that is foreseen in this section. In that case the use of micro data could be considered as well as the other available research. The study shall examine the impact on sectoral competitiveness by reviewing other available sectoral studies.

For all cross-cutting issues such as public procurement, establishment/investment, labour mobility, trade facilitation, etc., a detailed characterisation is required of the main sectors involved (main type of goods and services traded or affected in these transversal sectors).

## *(2) Impacts on SMEs*

The Contractor shall also identify the sectors where EU SMEs could be impacted (positively or negatively) by the FTA. This could cover inter-alia the potential benefits for EU SMEs in establishing operations in the relevant partner country, and an account of potential opportunities and threats for EU SMEs that are part of international supply chains. The "SME Test" of the European Commission Better Regulation "Toolbox" shall be referred to.<sup>20</sup>

SMEs are often disproportionately affected by non-trade barriers. It would be useful to assess if the liberalisation of trade is likely to be beneficial to SMEs, to large companies, or to both of these groups. In addition, it would be useful to identify in which sectors SMEs would gain competitive advantages thanks to the future free trade agreement. In this framework, it may also be relevant to examine the possible impact

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<sup>20</sup> Better Regulation Tool #19: The "SME Test" ([http://ec.europa.eu/smart-regulation/guidelines/tool\\_19\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/tool_19_en.htm))

of the enhancement of the competition policy framework in terms of competitiveness of SMEs and more generally in terms of economic and consumer benefits in a number of sectors.

### *(3) Preliminary sector selection*

The decision on the final selection of sectors shall be taken in agreement with the European Commission. Sectors that will be subject to further detailed analysis in each SIA shall be selected according to several criteria, such as their weight (e.g. GDP, share of employment, share of household consumption) in the EU, in the relevant partner country or in developing countries, in particular LDCs<sup>21</sup>; the particularly significant (positive or negative) expected economic, social, human rights or environmental impacts of the agreement in these sectors; their integration in global value chains; and concerns, opportunities and priorities raised by stakeholders.

In line with the results of the SIA conducted in 2008 for the proposed EU-ASEAN agreement, sectors that may deserve specific attention due to a possible larger and/or particularly relevant economic, social, human rights or environmental impact of an agreement include:

- **Industrial products:** The analysis should depict the current situation and potential changes due to the free trade agreement of certain industrial sectors both in the EU and the relevant partner country, with an emphasis on their respective integration into and position in global value chains. Potential investment and potential development in the analysed sectors should be included in the analysis. The Contractor shall propose sectors in the course of the inception phase to be discussed with the Commission. Special attention may be paid to the automobiles sector, ICT products, machinery, clothing and footwear, the processed food sub-sectors and the extractive industry, including mining.
- **Fisheries:** the fisheries sector plays an important socio-economic role, both in value-added and employment terms, in the Philippines as well as in Indonesia. In these countries (and similarly in the EU), the sector is concentrated mostly in poor coastal and rural areas and can have large direct environmental effects depending on the production methods. The analysis should depict the current situation and potential changes due to the free trade agreement both in the EU and the relevant partner country. The analysis should pay special attention to the possible social and environmental impacts that may derive from variations in trade patterns between the EU and its partner country(ies).
- **Palm oil:** in relation to Indonesia and Malaysia, the respective SIA should depict the current situation and potential changes in the palm oil sector due to the proposed underlying FTA. Indonesia and Malaysia are the world's largest

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<sup>21</sup> The in-depth analysis of the selected sectors should then consider the impact in the LDCs concerned

producers of palm oil, accounting for around 85% of global production (53% and 32% respectively, Malaysia however being the largest exporter worldwide) and this is the most important commodity exported to the EU, which represents Indonesia's and Malaysia's second largest foreign market after India. On the demand side, India and Indonesia are the largest consumers of palm oil. The EU is today the third market (accounting for around 12% of global consumption) and the second largest world importer (India being the first, and China the third). Indonesia and Malaysia are the main exporters of palm oil to the EU. Potential investment and potential development in the analysed sector should be included in the analysis. Production of palm oil involves many facets and it is an area attracting strong interest by several actors both in the EU and in the relevant partner countries: the analysis should pay particular attention to the social and environmental impact that the proposed underlying agreement might have on the sector, including with regard to land rights and deforestation. Particular attention should be paid to the policies and initiatives Indonesia and Malaysia are currently developing with regard to palm oil (including development of certification schemes such as ISPO, MSPO, or of dedicated organisations such as the Council of Palm Oil Producing Countries - CPOPC).

- **Business services:** The analysis should depict the current situation and potential changes due to the relevant free trade agreement with respect to certain business services both in the EU and the relevant partner country with an emphasis on their respective integration into and position in global value chains. It should also identify potential investment and development in the analysed sectors. Particular attention should be paid to the SME sector. As business services comprises a number of sub-sectors, the Contractor may wish to propose to cover a limited subset of business sectors and if so, justify its choice for sub-sectoral coverage based upon relevance to each partner country in the context of the negotiated FTA.

### 4.3 Consultation process

The Contractor is requested to complement its quantitative and qualitative analysis with representative inputs from stakeholders. While areas requiring a thorough consultation of stakeholders have been highlighted above, this requirement applies to each entire SIA.

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, each SIA consultation provides additional and constructive perspectives on the potential sustainability consequences of the envisaged agreement.

Targeted consultation with sectoral stakeholders (through e.g. interviews) can provide a useful means to put the results of the economic modelling into perspective. The approach in this regard should be discussed and agreed with the Commission beforehand.

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 each 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 the relevant partner country, map the nature of civil society in that partner country, identify any risks (e.g. non-participation 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 so as 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 and academia. The Contractor shall seek to involve experts from the EU and the relevant partner country as well as from appropriate international organisations 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 Dialogue<sup>22</sup> as well as at the meetings with the SIA inter-service steering group (ISG).

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.

#### **4.3.1 Dedicated website and electronic communications**

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

##### *SIA dedicated website*

The dedicated website provides an essential channel for publicising the SIA, communicating with stakeholders and disseminating its findings. 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 shall include a specific feedback mechanism, a home page with an easily accessible summary on the stage of the SIA process, a search function and all appropriate SIA-related information. It shall also include an introductory paragraph in all official EU languages which explains the scope and goals of the SIA. To ensure its continued relevance, the SIA website shall be updated at least every two weeks since creation until completion of the SIA.

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

All meetings with civil society shall be appropriately advertised on the SIA website and through other channels such as SIA newsletters issued by the Contractor, Twitter

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<sup>22</sup> See Section 4.4.3.

accounts, EU trade newsletters<sup>23</sup> (EUTN) etc. The dates, venue and other relevant information shall be clearly communicated well in advance of the events.

Finally, to ensure that the SIA consultation is open and transparent, the Contractor shall publish all the inputs received from the stakeholders together with the names of their authors in 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 websites shall be created no later than the date of publication of the draft inception reports, and shall remain active for at least two years after the date of approval of the final report.

#### *Other electronic tools*

The Contractor is also expected to contact relevant stakeholders by various means such as email, electronic newsletter, Twitter, etc. to inform them regularly and proactively 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 feedback, regular mails or social media coverage.

### **4.3.2 Interviews, meetings, and questionnaires**

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

#### *Interviews and meetings*

The Contractor shall 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 a number of interviews or meetings both in the EU and in the relevant partner countries, ensuring a balanced representation of stakeholder interests. The Contractor is invited to indicate how many interviews and/or meetings it intends to conduct, particularly those targeting vulnerable stakeholder groups in the partner countries.

The Commission acknowledges that conducting interviews and meetings on the ground, particularly in the relevant partner countries, can constitute a costly

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<sup>23</sup> The Contractor will provide the content for the EUTN which is managed by the Commission. For further detail on the EUTN please refer to the Trade on Europa website: <http://trade.ec.europa.eu/eutn/>

component of the project. As such, the Contractor is requested to specify in its offer (see Annex 2 of these terms of reference) the estimated travel and subsistence expenses inherent in its stakeholder consultation plan. The Commission shall reimburse these expenses separately up to the limit indicated by the Contractor in its offer, it being clear that the total amount to be paid by the Commission shall not exceed the total budget foreseen for the contract (i.e. the amount indicated in no.7 of these terms of reference). The reimbursement will be subject to the conditions set out in the Framework Contract and to the flat-rate ceilings set out in Annex III of the Framework Contract.

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 inter-service steering group, 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*

For each of the three SIAs, the Contractor shall also develop at least one questionnaire open to all stakeholders, plus two specific ones (see below). The Contractor shall make sure that the questionnaires can be understood by the layman and are appropriately disseminated particularly amongst all relevant stakeholders. The questionnaires shall be made available in English, French, German and Filipino, Bahasa Malaysia, or Bahasa Indonesia, respectively. In addition to the questionnaire open to all stakeholders, questionnaires specifically directed to SMEs and to consumers shall also be developed.

### **4.3.3. Civil Society Dialogue meetings**

The Contractor shall present ongoing work to interested stakeholders, giving them the opportunity to provide direct input.

In particular, for each of the three SIAs, three public meetings shall take place in Brussels with civil society in the framework of DG Trade's Civil Society Dialogue (CSD)<sup>24</sup>. 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 meetings shall be organised to discuss the draft reports (inception, interim and final).

The draft reports shall be made public within a reasonable time frame ahead of the CSD meetings and shall be finalised taking into account contributions provided during the CSD meeting as well as through other consultation channels (such as the website).

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<sup>24</sup> For more information, please visit Trade on Europa at <http://trade.ec.europa.eu/civilsoc/index.cfm>

#### 4.3.4 Workshops in the partner country

A full one-day workshop shall be organised in each partner country to allow a genuine and comprehensive consultation of local stakeholders, in particular civil society, businesses, national and regional administrations, social partners including trade unions, and international organisations present on the ground.

The Contractor shall be in charge of planning and organising the workshops, including the timing and the venue of the workshops<sup>25</sup>, the participants and their detailed content. The EU Delegation to the partner country will be involved as appropriate and the Commission must approve the final programme and list of participants for the workshops. The Contractor shall bear all the costs of the workshops.

The workshops shall respect the following specifications:

- **Expected dates of the workshops:** the date of each workshop will be confirmed by the SIA ISG in consultation with the local EU Delegation
- **Documentation:** the Contractor will be responsible for preparing the documentation for the workshops. Documents should be made available to stakeholders participating in the workshop well in advance of the event, so as to enable an informed discussion to take place.
- **Content of the workshops:** the Contractor will make a proposal for the organisation and content of each workshop, including the respective programme and a list of participants and speakers which is representative of the different categories of stakeholders. The programme will be finalised in coordination with the SIA ISG and the local EU Delegation.
- **Venue:** the workshops will take place in each of the partner countries as specified above, in a location to be approved by the local EU Delegation. The Contractor will provide and pay for renting of the meeting rooms and for other logistical requirements such as catering (lunch, coffee, water), and equipment (IT tools and support, overhead projectors, printers, folders, etc.). The events should be organized in 3-star (EU equivalent) hotel/conference centres (the number of rooms will depend on the agenda, and the organisation – as necessary – of thematic working groups).
- **Participants:** the Contractor should propose a balanced list of participants covering the main categories of stakeholders, including: businesses, national and regional administrations, social partners including trade unions, and civil

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<sup>25</sup> Which should be agreed beforehand with the Commission.

society. The Commission will cover travel and accommodation costs (see below) for up to 50 participants per workshop; however that number may be exceeded, provided that additional participants are self-financing, and that the overall balance of the participation is maintained. The local EU Delegations may be consulted on the selection of participants. The draft list of participants (comprising both reimbursable and non-reimbursable participants) and the draft invitations will be discussed and approved by the SIA ISG. Once approved, invitations will be sent by the Contractor.

- **Working languages:** the working languages for the three workshops will be English, and Filipino, Bahasa Malaysia, or Bahasa Indonesia, respectively.
- **Travel and accommodation of participants:**

Travel must be organised for participants, as well as full board accommodation for participants travelling from locations more than 60kms from the workshop venue; these costs will also be covered by the Commission on a flat rate per effective participant. Accommodation should be provided in 3-star (EU equivalent) hotels/guest houses within walking distance of the workshop venue. Transport costs should be based on 1st class coach fares for distances less than 400kms; and on economy class air fares for distances of 400kms or more.

- **Travel and accommodation of organisers:** travel and subsistence that may be required by the Contractor to perform this consultation activity (the organisation of the workshops) will be reimbursed separately to the Contractor by the Commission.
- **Publication:** the Contractor must publicise the workshops among relevant stakeholders. Information relating to the workshops should be published on the Contractor's website. The Contractor should liaise with local media in order to ensure appropriately targeted coverage of the event. Press releases should be issued before and after the events. Participants should be aware that the Contractor is the organiser, and that the EU is financing the workshop. The EU logo must appear on all documents.
- **Follow-up:** the Contractor will ensure appropriate follow-up to each workshop by publishing on the specific, dedicated website a report on the proceedings, together with a list of participating organisations and individuals, and the views expressed. The Contractor should encourage further participation in the process by relevant stakeholders, in particular through the dedicated website; and should also provide information on how stakeholders' views have been taken into account in the final report.

#### **4.3.5 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 ISG<sup>26</sup>. 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.

At least four meetings shall be foreseen for each SIA including a kick-off meeting to be organised between the SIA ISG and the Contractor two weeks after signing the contract. The Contractor may be required to attend additional meetings or videoconferences as the European Commission deems relevant and necessary.

#### **4.4 Proposals for policy recommendations and accompanying measures**

For each SIA 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 significant 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 FTAs, *e.g.*, in relation to trade policy vis-à-vis economically, socially, environmentally sensitive sectors and relevant human rights issues, if applicable); and in terms of non-trade-related (accompanying) measures. They may suggest priorities to be given to any specific sectors and specific actions on horizontal issues. The Contractor shall analyse the feasibility of its recommendations and estimate their cost and possible impact.

### **5. REPORTING REQUIREMENTS**

The Contractor must produce, for each SIA (*i.e.* for each FTA), three 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 conclusions reached and the recommendations made.

Since the draft SIA reports will be made public for stakeholders' comments, it is essential that they are drafted in such a way to be accessible and meaningful to trade and non-trade specialists alike.

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<sup>26</sup> All interested Commission services and the European External Action Service (EEAS) are invited to participate in the SIA ISG.

Any reports submitted by the Contractor shall be accompanied by the original statistical databases, modelling files, and other data inputs that formed the basis for the analysis. Wherever appropriate, the quantitative and qualitative impact analysis shall be supported with statistical data, and corresponding data sources shall be quoted.

### **Inception Reports**

Each inception report shall describe how the Contractor proposes to achieve the project objectives. It shall include:

- An overview of the project's key features, a description of the project's objectives and of how the work will be structured into phases, and a clarification of the scope of work including a list of key issues for the negotiations to be discussed with the Commission.
- A detailed presentation of the proposed methodological approach and data sources.
- A draft literature review, list of tools and references to be used.
- A draft 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 all relevant stakeholders, and vulnerable groups in particular, will be ensured.
- A preliminary list of all the relevant and representative stakeholders (inside and outside the EU).
- A preliminary screening and scoping exercise for the key sustainability issues (economic, social, environmental, and human rights) associated with the trade agreement.
- 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.
- The selection of sectors for in-depth analysis.
- An executive summary and an outline of the expected content for both the interim and the final report.

The draft inception reports must be presented to the SIA ISG and to civil society representatives in Brussels, and relevant comments shall be taken into account while finalising the drafts.

Each revised inception report shall not exceed 100 pages (including the executive summary).

## **Interim Reports**

Each interim report shall contain the bulk of the analytical work. In particular, it shall include:

- A set of tables under electronic format with the numerical results of the quantitative analysis foreseen under point 4.1 (4).
- Preliminary findings of the economic, social human rights and environmental analyses.
- Preliminary findings of the in-depth analysis of the sectors selected for in-depth analysis.
- Progress briefing on the implementation of the stakeholder consultation plan, including:
  - o An account of the consultation activities that have taken place to date, a summary of the feedback gathered so far and an explanation of the use made of this feedback in the SIA;
  - o Overview of the use made of the SIA website and social media (including website and social media statistics).

Stakeholder consultation should be well advanced and already feed into the analysis at this stage.

- An executive summary and a roadmap for the work necessary to complete the final report and a proposed structure for the final report.

The Contractor is encouraged to seek early feedback from the SIA ISG on draft chapters of the interim report in order to identify upstream potential problems, such as flaws in the assumptions underlying the analysis.

The draft interim reports must be presented to the SIA ISG and to civil society representatives in Brussels and relevant comments shall be taken into account while finalising the draft.

Each revised interim report shall have no more than 200 pages (including the executive summary) plus annexes.

## **Final Reports**

The final reports shall refine the analysis, recapitulate the outcomes and findings of the assessment and make recommendations and proposals for flanking measures, summarising and exploiting stakeholders' comments in a transparent manner.

Each final report shall contain the following elements:

- Description of the methodological approach adopted for the SIA.
- The outcomes and results of the assessment.
- Details of communication activities including:
  - o Outline of contacts with stakeholders in the EU;
  - o Outline of contacts with stakeholders in the partner country;
  - o Outline of contacts with stakeholders in relevant third countries;
  - o Minutes of the workshop in the partner country;
  - o Evidence of attendance of the participants at the workshop in the partner country;
  - o Minutes of the Civil Society Dialogue meetings held in Brussels outlining key stakeholder positions and points of views, the programmes and list of participants;
  - o An account of the consultation activities that have taken place, a summary of the feedback gathered and an explanation of the use made of this feedback in the SIA.
  - o Overview of the use made of the SIA website and social media (including website and social media statistics).
- Conclusions, including recommendations and proposed flanking measures.
- References and key sources.

Each 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, German, and Filipino, Bahasa Malaysia or Bahasa Indonesia, respectively.

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

The reports 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 reports must be presented to the SIA ISG and to civil society representatives in Brussels no later than 10 months after the kick-off meeting. Relevant comments shall be taken into account while finalising the drafts.

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

- the objectives, scope and purpose of the SIA;
- the main trade measures identified for impact analysis;
- the liberalisation scenario 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 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; and
- 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 duration of the tasks for this project shall not exceed 14 months. The period of execution of the tasks may be extended, but only with prior written agreement of the European Commission. The expected timeline is as follows:

Deliverables	Month <sup>27</sup>
3 Draft Inception Reports	2
3 Draft Interim Reports	5
3 Workshops (one held in the Philippines, one in	7

<sup>27</sup> Counting from the date of the kick-off meeting.

Malaysia and the other in Indonesia) + the reports	
3 Draft Final Reports	10

Tenderers must propose an indicative calendar for the work programme and reports included in the terms of reference. The calendar should be realistic and conducive to the delivery of high quality draft reports. 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 SIA ISG meetings in presence of the Contractor are supposed to take place 3 weeks after the reception of the draft reports and will take place on the same day as meetings with civil society in Brussels.

## **7. BUDGET**

The budget of the contract, including all costs, shall not exceed EUR 600 000 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 workshops in the Philippines, Malaysia and Indonesia (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, its 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 points 4.3.2 and 4.3.4 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, up to a maximum of EUR 60 000.

## **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 payments:

In line with article I.4.3 of the framework contract, at the request of the Contractor:

- a first interim payment of 10% of the total value under point III.3.1 of the specific contract shall be made, after presentation and acceptance of the first of the three inception reports and an invoice.
- a second interim payment of 10% of the total value under point III.3.1 of the specific contract shall be made, after presentation and acceptance of the second of the three inception reports and an invoice.
- a third interim payment of 10% of the total value under point III.3.1 of the specific contract shall be made, after presentation and acceptance of the third of the three inception reports and an invoice.
- a fourth interim payment of 15% of the total value under point III.3.1 of the specific contract shall be made, after presentation and acceptance of the first of the three interim reports and an invoice.
- a fifth interim payment of 15% of the total value under point III.3.1 of the specific contract shall be made, after presentation and acceptance of the second of the three interim reports and an invoice.
- A sixth interim payment of 15% of the total value under point III.3.1 of the specific contract shall be made, after presentation and acceptance of the third of the three interim reports 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 reports shall be accompanied by the evidence of attendance of the participants at all three workshops. In line with article I.4.3 of the framework contract, at the request of the Contractor reimbursement of travel and subsistence expenses will be made together with the balance on production of the original supporting documents and an invoice.

## **9. CONTRACTUAL CONDITIONS**

In drawing up its 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 its 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 work, including the time limit for delivery of each report and document and quality control systems to ensure English drafting is of a very high standard;
- 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 workshops in the Philippines, Malaysia and Indonesia and the reimbursement of travels and accommodation (if necessary) of the stakeholders invited to the workshop (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 tender<sup>28</sup>), (30%), identified as the sum of the total maximum cost of tasks (honoraria) with the total

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<sup>28</sup> By using the formula:  $\frac{\text{Price of the lowest tender}}{\text{Price of the tender}} * \text{fixed percentage} = \dots \% \text{ for the criterion 'price'}$

maximum cost of workshop (assuming 50 participants), i.e. value arrived at in row (I+II) of "Annex 2 Quotation Form for Price"

and

- quality in terms of technical quality of the offer (70%) assessed on the basis of the following sub-criteria

<b>No</b>	<b>Qualitative award criteria</b>	<b>Weighting (maximum points)</b>
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
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
<b><i>Total number of points</i></b>		<b>100</b>

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