



ASEAN-AUSTRALIA DEVELOPMENT COOPERATION PROGRAM (AADCP) PHASE II

TERMS OF REFERENCE FOR

ASSESSMENT OF NEW AND EMERGING ISSUES IN ASEAN PLUS ONE FTAS

The ASEAN Secretariat and the Australian Government, through AADCP II, invite applications from consultants for the above-referenced project.

I. Background

The rapid development in the regional and global economic outlook in recent decades requires policymakers and businesses to adapt to the current challenges. International trade and investment today are now not as simple as liberalizing trade and investment to obtain access to foreign markets or attract foreign direct investments.

Many economies are beginning to utilize issues that are traditionally outside the conventional realm of international trade and investment as instruments to influence their economic policy. These issues include those related to environment, labour, micro, small, and medium enterprises (MSMEs), gender, digital technologies, competition, state-owned enterprises, and government procurement, among others. Key ASEAN partners, notably the EU, US and Canada have reflected in their recent free trade agreements (FTAs) some obligations that are based on existing international agreements such as the International Labour Organisation (ILO) Conventions and Paris Agreement. Similarly, the Sustainable Development Goals and World Trade Organisation's (WTO) Joint Declaration on Trade and Women's Economic Empowerment recognizes the need for full and effective participation of women for furthering economic growth and sustainable development.

The entry into force of the ASEAN-led Regional Comprehensive Economic Partnership (RCEP) Agreement, which represents a new generation of FTAs that are comprehensive, advanced, and more responsive to new business developments, has also raised the levels of expectation not only in the upgrade of existing ASEAN Plus One FTAs but also for ASEAN's potential FTA. Some of these "new and emerging issues" are included in the RCEP Agreement, although the scope has been limited to transparency and economic cooperation.¹ However, incorporation of these new and emerging issues in the negotiations for upgrading ASEAN's FTAs or potential FTAs remains to be a key challenge for ASEAN especially in defining the scope and coverage of the negotiations for either upgrading existing Plus One FTA or new FTAs. Usually ASEAN Member States (AMS) continue to maintain its long-standing position not to include these issues in the discussion for reasons that include: (i) the elements are neither in the ASEAN Economic Community (AEC) nor are they in any of the ASEAN FTAs; (ii) AMS have no mandate to negotiate those issues; and/or (iii) AMS do not have the capacity to engage.

During the 28th ASEAN Economic Ministers' (AEM) Retreat, the Ministers agreed on the importance of keeping ASEAN FTAs relevant, modern, forward-looking, and responsive to regional/global challenges. Thus, ASEAN and the individual AMS must be prepared to

¹ For example, RCEP has provisions affirming the rights and responsibilities of each Party under the Convention on Biological Diversity as well as those that relate to the protection of genetic resources, traditional knowledge and folklore.

embrace emerging issues and challenges. Sustainable impact assessments done on bilateral FTAs between EU-Indonesia, EU-Malaysia and EU-Philippines noted that aside from the expected traditional benefits, there are potential gains in incorporating social and environmental concerns in trade agreements. However, there would also be possible barriers erected. These, as well as examples and practices in other jurisdictions, may provide direction on what ASEAN's next steps could be.

The project will support an assessment of new and emerging issues in FTAs noting the conditions in the region, which will in turn assist ASEAN trade negotiators in formulating strategies and policy options for future engagements.

II. Needs and Objectives

The project will conduct a strategic assessment of new and emerging issues in FTAs that can be used as reference in defining ASEAN's "offensive and defensive" interests in FTAs, while taking into account the development gaps and different levels of readiness amongst the AMS. Guided by the strategic assessment, ASEAN is expected to formulate strategies and policy options that can serve as reference for ASEAN trade negotiators in engaging ASEAN's existing and potential FTA partners on these new issues.

This will further consolidate an ASEAN strategy and create a fresh momentum to strengthen ASEAN's engagements with stakeholders, including the ASEAN dialogue partners, in the new and emerging areas. It will also serve to inform AEC in the development of the post-2025 vision in promoting a proactive global ASEAN.

Through the project, it is envisaged that ASEAN and the individual AMS would have a better understanding of implications of the emerging FTA issues that will assist in making informed, evidence-based strategies /general approaches to these new and emerging issues towards modern, relevant FTAs. In the long run, it is expected to promote relevant, forward looking FTAs in order to maximise the real benefit for the AEC.

Together with AADCP II, the ASEAN Secretariat's Analysis and Monitoring on Trade and Emerging Issues Division (AMTEID), ASEAN Integration Monitoring Directorate (AIMD) seek to engage the services of an entity or firm to support the preparation of the project key output, namely a Study on New and Emerging FTA Issues.

III. Outputs

The Study on New and Emerging FTA Issues will be delivered in stages (First, Second and Final drafts). The study must reflect, but not limited to, the following:

- Do an in-depth assessment of the evolving trends in multilateral/plurilateral/regional/bilateral free trade agreements where AMS are Parties to vis-à-vis ASEAN's existing Plus One FTAs;
- Take stock of international conventions relevant to some of the new issues, e.g., labour, environment, gender, government procurement in the WTO, particularly those where AMS are parties to;
- Analyse and assess the possible effects of the incorporation of rules and disciplines on these new and emerging issues on the implementation of the FTAs, particularly on the areas of trade in goods, services and investments;
- Review and assess the readiness of each AMS on the inclusion of new and emerging issues into ASEAN FTAs (e.g., procedures, institutions, capacities) including readiness to address implementation issues on FTAs relative to the said new and emerging issues.
- Define a policy framework on: i) areas where ASEAN is ready to engage the FTA partners; ii) areas where ASEAN should pursue more active cooperation or even deeper commitments/obligations; and iii) areas where ASEAN needs more technical assistance and capacity building; and
- Provide reference in strategies and policy options that would guide ASEAN in the course of negotiations with its existing and potential FTA partners.

It is important to note that the assessment should focus on the trade and economic aspects of these new and emerging issues, instead of their usual aspects in socio-cultural or non-economic realms. An example to consider would be the provisions under the European Green Deal, wherein adoption of the new stricter standards may become additional nontariff barriers for trading partners. The application of economic instruments such as tariffs, subsidies and taxes may be explored when appropriate. Thus, the assessment should be able to guide policymakers in crafting a regional trade policy agenda that would enable ASEAN's FTAs to contribute to ASEAN's growth and development post-COVID19. It is, therefore, suggested that the study come up with an honest, factual, and independent assessment and recommendations.

The proposed methodology would include:

- i. **Desk-based research**, to identify:
 - a. the treatment of new and emerging issues, including but not limited to labour and environment, trade and sustainable development, government procurement, state-owned enterprises in competition, and gender, in more modern FTAs;
 - b. the treatment of these new and emerging issues in ASEAN's internal economic integration agenda;
 - c. AMS' experience on these new and emerging issues in their bilateral and/or other multilateral/plurilateral FTAs they are parties to (e.g., tradeoffs and potential changes);
 - d. the readiness of AMS, individually and collectively, to engage in these new and emerging issues (i.e., inclusive of potential bottlenecks such as resource constraints and legal/institutional mandates that may be encountered as well existing commitments to international conventions); and
 - e. the potential costs and benefits of including/not including these new and emerging issues not only in further advancing ASEAN economic integration but also in integrating ASEAN into the global economy (may also consider the differential effect across AMS).

- ii. **Bilateral consultation/engagement**, in-depth consultation with individual AMS (SEOM and other relevant Ministries/Agencies) to present initial findings and further identify the challenges to engage in these new and emerging issues. AMS' views are to be captured in a Summary of Responses format.
- iii. **Regional Consultative Dialogue**, a venue for AMS and SEOM to discuss findings and recommendations. The discussion is to be delivered in physical format, subject to COVID-19 travel restriction.
- iv. **Final Report**, that sets out the assessment and findings from the desk-based research, bilateral consultation, and incorporating additional inputs, if any, from the Dialogue, as well as recommendations for ASEAN in formulating the strategy on these new and emerging issues. The conduct of proposed study aims only to further information on the inclusion of new elements in FTAs, and that the recommendation should still be subject to AMS's consideration.

IV. Tasks / Activities

Given the participatory and consultative nature of the project, multiple methods may be used to obtain the needed information from AMS (e.g., literature review, desktop research, and conduct of interviews whether virtual or face-to-face). It is envisioned that the consultative dialogue (either virtual or face-to-face) will be facilitated by the selected experts/bidders.

Bidders are expected to design their own work plans ensuring delivery of the desired outputs, taking into account the potential hindrances and delays posed by the COVID 19 pandemic. The bidder should provide details on its approach, specific activities, corresponding number of working days, expected completion dates and person(s) responsible in its bid and is free to recommend additional activities, if needed. A summary should be presented in the form of a tabulated work plan in their bid to indicate the following information:

- Deliverable output or report;
- Activities to be undertaken for each deliverable;
- Person working days;
- Timeline for completion/ target completion date; and,
- Person/s responsible in the team.

The eventual project implementation design will be determined in consultation between ASEC, AADCP II and the winning bidder during the inception stage.

V. Reporting

Apart from the outputs described in Section III, activity/progress reports would have to be produced including:

- Inception Report detailing the overall approach to the delivery of the expected outputs including detailed work and management plans;
- Project Completion Report summarising the project outputs, achievements/ shortfalls, learnings and recommendations;
- Consultation Reports/Summary of Responses; and
- Bi-monthly Progress Reports

All reports will be submitted based on AADCP II Guidelines for Contractors in draft format to the ASEAN Secretariat's AMTEID (with a copy to AADCP II) and, following HLTF-EI's approval, facilitated by ASEC, in final form. All outputs and reports must be suitable for publication, although the decision on publication lies with the ASEAN.

The contractor will also provide regular (fortnightly, or as agreed with ASEC) summation of activities undertaken and issues that have arisen. These will be submitted to AMTEID and AADCP II via email.

Financial reports will be submitted at invoicing in line with a payment schedule to be specified in the Special Services Agreement (SSA).

The consultant is expected to produce outputs in accordance with Section III and IV above. These are summarised below. The timing of delivery is indicative and can be adjusted when the consultant's work plan is developed, subject to mutual agreement.

| No. | Reports | Target Delivery/Completion Date |
|-----|---|---------------------------------|
| 1 | Inception Report <i>This would detail the consultant's approach to the project and provide a detailed work plan along with initial survey of literature</i> | 4 weeks after contract signing |
| 2 | First draft of the Study | Week 24 |
| 3 | Second (Revised) draft of the Study including Consultation Report | Week 33 |
| 3 | Final Study including Consultation Report | Week 42 |
| 4 | Project Completion Report <i>The Project Completion Report will establish a record of the project achievements against the project's original intended purpose and outputs. It is intended to assist in assessing impact, draw out conclusions and lessons learned that may be valuable in designing new related initiatives.</i> | Week 45 |

All reports will be submitted based on AADCP II Guidelines for Contractors in draft format to the ASEAN Secretariat's AMTEID (with a copy to AADCP II) and, following ASEC approval, in final form. All outputs and reports must be suitable for publication, although the decision on publication lies with the ASEAN.

The contractor will also provide regular (bi-monthly or as agreed with ASEC) summation of activities undertaken and issues that have arisen. These will be submitted to AMTEID and AADCP II via email.

VI. Project Management

The project will be funded by the AADCP II and managed by the AMTEID of the ASEAN Secretariat in consultation with the relevant divisions and AADCP II Program Planning and Monitoring Support Unit (PPMSU).

The AMTEID, with oversight support from AADCP II, will be responsible for the overall management of the project. It will work closely with AADCP II PPMSU in the selection of external consultant(s) for the project, in ensuring the timely delivery of planned activities and key deliverables of the project, and in ensuring efficient reporting and disbursement of funds. AADCP II will monitor progress from the perspective of the use of AADCP II resources and timely delivery of outputs that are fit for purpose, and will provide advice to the AMTEID accordingly.

AMTEID will act as the ASEC key focal point for the project. It will, in consultation with the relevant divisions in ASEC:

- manage project implementation, and together with AADCP II, monitor progress of the consultancy work;
- provide technical supervision to the project;
- assist/facilitate introductory consultation meetings with key Member States focal points and sectoral bodies; and
- provide over-all guidance on the presentations and meetings.

Project outputs will be consulted with key sectoral bodies and entities ad-referendum and through focus group discussions and consultations. The sectoral bodies to be consulted include the following: (1) Senior Economic Officials Meeting (SEOM); (2) Senior Officials Meeting on Energy (SOME); (3) ASEAN Senior Officials Meeting on Minerals (ASOMM); (4) ASEAN Digital Senior Officials' Meeting (ADGSOM); (5) ASEAN Coordinating Committee on Electronic Commerce (ACCEC); (6) ASEAN Experts Group on Competition (AEGC); (7) ASEAN Senior Officials Meeting on Environment (ASOEN); (8) ASEAN Senior Labour Officials Meeting (SLOM); and (9) the ASEAN Committee on Women (ACW).

The consultant should be responsible for organising and conducting the scheduled activities in collaboration with the leading ASEAN Member State and the ASEAN Secretariat. The designated project manager shall be the single point of contact between ASEC and the project team.

AADCP II will conclude at the end of 2022. Once it concludes, support for this project will be provided through its successor program, the Australia for ASEAN Futures (Economic and Connectivity), subject to the program's approval which is anticipated during the last quarter of 2022.

VII. Scope of Services

The consultancy will be undertaken over a **period of up to 330 person-days, spread out over approximately 12 calendar months** of professional services. Work will commence immediately after contract signing.

The number of people working weeks is intended to indicate the amount of relative effort required to deliver the corresponding outputs. The calculation is based on assumption of five person-days per week. Actual time will be agreed in negotiation with the successful bidder.

VIII. Qualifications

In its proposal the bidder (preferably an entity) should demonstrate experience and availability of the following skills and competencies, both management and technical:

- A multidisciplinary team composed of team members who possess expertise in the areas of international trade, economics, investment, public policy, labour and industrial relations, human rights, gender, environment and natural resources management, business management, government procurement, intellectual property protection, competition policy, digital technology or related fields;
- The team is expected to be led by a team leader with at least ten (10) years of demonstrated expert knowledge and practical experience in the areas of regional market integration and free trade agreements, particularly in ASEAN;
- Thorough understanding of policies and issues surrounding FTA negotiation processes in the context of ASEAN;
- Demonstrated knowledge of trade regimes and preferably have overseen/participated in negotiation of international trade agreements (i.e., bilateral, plurilateral, regional, multilateral);
- Knowledge of the rules of the World Trade Organisation and other international agreements;
- Experience in trade diplomacy and advocacy as well as the art of managing political pressure and stakeholders; agenda;
- Proven track record in policy formulation, research, activity design, survey and data analysis as well as delivering technical assistance, particularly those related to FTAs;
- Excellent writing and communication skills for building rapport, facilitating participation and effective presentation of result especially during the stakeholder's consultation workshop; and,
- Familiarity with ASEAN, ASEAN Economic Community, ASEAN Structure and implementation arrangements for the various ASEAN FTAs, is an advantage.

A thorough understanding of ASEAN, ASEC and AADCPH procedures will be considered added value.

IX. Bidding

Interested entities are invited to submit a proposal in response to this TOR. This proposal should be in two parts: Technical and Financial components, to be submitted as two separate documents.

The Technical component should present the following information:

- A brief discussion indicating the bidder's understanding of the needs of the project;
- A brief analysis of key issues;
- A methodological discussion of how the bidder proposes to address those needs including assessment of key issues, analytical strategies that will underline the project, specific techniques to be utilised, and practical discussion of possible limitations in carrying out the project;
- A detailed work plan that specifies activities to be undertaken, expected outputs and deliverables, resources to be utilised and timing;
- Staffing and management plan;
- A discussion on how measures to ensure the future sustainability of the outcomes of the project will be addressed;
- CVs of all proposed experts;
- Brief discussion of firm's past experience in undertaking similar work and brief summaries of all projects undertaken; and,
- Samples in soft copy attached to the application (or website link to samples) of

relevant past work/ reports.

The Financial component should specify:

- Professional fees of expert(s);
- Management and/or operational fees (if any), which include all costs incurred by the person/entity/company for internal coordination, communication, travels and any other associated project management cost; and,
- Applicable taxes such as VAT, GST, PPN. See Section XI point 3 for an additional note on tax liability.

Activity costs for experts and participants such as reimbursable expenses for airfare, other travel costs and daily subsistence allowance for workshops, meetings, and all other agreed activities do not need to be included in the Financial Component. These items will be discussed with the preferred contractor during the finalisation of the scope of services. Costs will be based on prevailing ASEC rates.

X. Submission of Application

Applicants should send their application with a cover letter, materials specified in Section IX above and other supporting documents with “**Assessment of New and Emerging Issues for ASEAN Plus One FTAs**” as the subject via email to tender@aadcp2.org , no later than **9 December 2022** at 05:00pm Jakarta time.

For Frequently Asked Questions (FAQ), please visit <http://aadcp2.org/aadcp-ii-tender-frequently-asked-questions/>

Any queries on the TOR should be sent to contact@aadcp2.org with the subject line: “**Query: Assessment of New and Emerging Issues for ASEAN Plus One FTAs.**”

XI. Additional Notes on Terms and Conditions of the Project

1. Any future studies/reports/analysis in any form of intellectual property rights (including but not limited to patents, copyright and any related rights) submitted by the Contractor to ASEAN arising out of or in connection to the services performed by the Consultant to ASEAN shall belong to ASEC under the name of **ASEAN** only.
2. Successful bidder shall agree to be bound and sign the Special Services Agreement (SSA) with all requirements under the terms and conditions provided therein, including but not limited to the AADCP II Guidelines for the Contractors attached to the SSA.
3. As an intergovernmental organisation, ASEAN shall not be responsible for any tax(es), levy, tax claim or any tax liability which may be imposed by any law in relation to any amount payable by the ASEAN Secretariat.