



ASEAN-AUSTRALIA DEVELOPMENT COOPERATION PROGRAM (AADCP) PHASE II

TERMS OF REFERENCE FOR

Development of a Set of Methodologies in Conducting Ex-Ante Regulatory Review on the Draft Non-Tariff Measures Before They Are Imposed by ASEAN Member States

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

I. Background

With all tariff lines virtually eliminated, ASEAN has refocused its efforts on trade facilitation, including reducing trade transaction costs and addressing non-tariff measures (NTMs). ASEAN Member State (AMS) has differing national approaches for assessing the barrier effects of draft NTMs as there is no common regional methodology considered as best practice which AMS could refer to.

This project seeks to fill this gap by facilitating trade and efficiency for the movement of goods in ASEAN through developing pragmatic methodologies to conduct the quantitative analysis to identify the trade distortive barrier effects, then assess and quantify the impact of the draft NTMs of three specific product groups.

In accordance with the ASEAN Trade in Goods Agreement (ATIGA) and NTM Guidelines¹, AMS shall ensure the transparency of its NTMs, and that such measures are not more restrictive than necessary in fulfilling their legitimate public policy objectives and consider their proportionality in addressing public risks or market externalities. In ensuring that a draft NTM is necessary and proportional, the Member States preparing the NTMs shall endeavour to conduct an ex-ante regulatory review process to examine whether there are potential trade barrier effects of the proposed NTMs to the extent that it will reduce imports from other Member States or increase the costs of compliance by exporters of other Member States.

The methodologies would serve as a good practice for AMS to conduct ex-ante regulatory review process, supplementing AMS national efforts on regulatory impact assessment (RIA). In addition, the methodologies would support and enhance the

¹ The project aims to support AMS to implement Principle 1 (necessity and proportionality) of the ASEAN Commitments on NTM on Goods (NTM Guidelines). The project also addresses the:

- (i) Strategic Measure iii(g) to “minimise trade protection and compliance costs in dealing with NTMs” of A.10 (Trade in Goods) to achieve A Highly Integrated and Cohesive Economy under the ASEAN Economic Community (AEC) Blueprint 2025; and
- (ii) the initial work of Master Plan on ASEAN Connectivity (MPAC) 2025 Initiative 11 on “Increase Transparency and Strengthen Evaluation to Reduce Trade-Distorting Non-Tariff Measures”.

evaluation capacity of the ASEAN Trade Facilitation Joint Consultative Committee (ATF-JCC) in assessing and evaluating NTMs.

More importantly, this project aims to address challenges arising from the COVID-19 pandemic to ensure supply chain connectivity and smooth flow of essential goods and services, as well as to support the post-pandemic recovery. The methodologies would help assess if the relevant NTMs introduced are proportionate, reasonable, and justifiable, ensuring minimum disruptions to the region's post-COVID-19 pandemic economic recovery efforts².

To visualise and provide clear guidance for AMS, based on the methodologies introduced, the project will deliver detailed assessments on three specific product groups as follows:

- (i) electrical and electronic equipment (i.e. HS 85);
- (ii) agro-based products (i.e. HS 07, 08 and 09)³; and
- (iii) pharmaceutical / healthcare products (i.e. HS 30)⁴.

II. Needs and Objectives

The goal of this project is to facilitate trade and enhance efficiency for the movement of goods in ASEAN. The project will benefit a number of stakeholders, including policy-makers, technical experts, and the private sector. The key stakeholders relevant to the project may include the ATF-JCC, Coordinating Committee on the Implementation of the ATIGA (CCA), Senior Economic Officials' Meeting (SEOM), ASEAN Consultative Committee on Standards and Quality (ACCSQ), Senior Officials Meeting of the ASEAN Ministers on Agriculture and Forestry (SOM-AMAF), Senior Officials Meeting on Health Development (SOMHD), and ASEAN Connectivity Coordinating Committee (ACCC). They may be involved in the consultation process to provide relevant information, data, and views.

As a result of the project, it is expected that the stakeholders and beneficiaries will have (i) a better understanding of the impact of trade-distortive barrier effects on regional trade and find a way forward at a regional approach to reduce the compliance costs incurred to exporters, and (ii) an enhanced capacity to assess and quantify the impact of proposed NTMs.

It is envisaged that the relevant ASEAN sectoral bodies will use the methodologies to assess and quantify the potential trade barrier effects of proposed NTMs, which would facilitate policy-makers to determine how best to address or treat the measures, and to make well-informed decisions based on data-driven empirical evidence.

² This is in line with ASEAN commitments set out in the Ha Noi Plan of Action on Strengthening ASEAN Economic Cooperation and Supply Chain Connectivity in Response to the COVID-19 Pandemic (the "Ha Noi Plan of Action") adopted in June 2020 as well as the recent 52nd ASEAN Economic Ministers (AEM) Meeting in August 2020 where Ministers reiterated commitment to refraining from taking unnecessary measures that may affect the smooth flow of essential goods.

³ HS 07 (Edible vegetables and certain roots and tubers), HS 08 (Edible fruits and nuts; peel of citrus fruits or melons); and HS 09 (Coffee, tea, mate and spices).

⁴ HS 30 (Pharmaceutical products)

III. Outputs

This project would involve extensive desk research and stakeholder consultations, and is expected to carry out the following tasks:

1. Inception report including the overall approach, work plan, management plan and budget taking the COVID-19 situation into account. The inception report should also:
 - (i) present a preliminary literature review on ex-ante regulatory review;
 - (ii) stocktake and highlight the existing efforts of AMS and global best practices in ex-ante regulatory review (including case studies of AMS); and
 - (ii) present preliminary methodologies, based on best practices, for ex-ante regulatory review of the draft NTMs for the three product groups.
2. Interim report containing the following:
 - (i) analysis of literature review on ex-ante regulatory review;
 - (ii) analysis of global best practices in ex-ante regulatory review (including case studies of AMS);
 - (iii) comprehensive analysis of NTMs of the three specific product groups, including detailed scientific analyses in estimating the impact of NTMs on the three specific product groups and their supply-chains which comprise the main export goods of some AMS. The potential effects of NTMs on all sizes of business, particularly the MSMEs, would also be taken into account;
 - (iv) proposed specific methodologies for ex-ante regulatory review⁵, taking into account common methods/approaches to quantify the impact of NTMs.
 - (v) process of application of the methodologies on the draft NTMs of the three product groups; and
 - (vi) findings of the ex-ante regulatory review of the proposed NTMs for the three product groups, including recommended approach and proposed roadmap to address proposed NTMs.
3. Regional workshop⁶ to:
 - (i) present the Interim Report to get feedback;
 - (ii) socialise the proposed methodologies and the application outcomes of the proposed NTMs for the three specific product groups; and

⁵ Where applicable, the methodologies should include detailed information on the following:
(a) the recommended “best-fit” approaches or methods (i.e. price- or quantity-based);
(b) the data source used;
(c) econometric specifications (i.e. general equilibrium versus partial equilibrium); and
(d) the levels of country and sector disaggregation and coverage.

⁶ ATF-JCC, CCA, and relevant ministries/agencies in charge of the three specific product groups are targeted participants of the Regional Workshop.

- (iii) seek further comments on the assessed draft NTMs with minimal number of complaints and questions from stakeholders.
- 4. A comprehensive final report should build on the Interim Report, incorporating updates and revisions based on the feedback received and the outcomes of the Regional Workshop. The content should follow that of the Interim Report and should include:
 - (i) the recommended approaches;
 - (ii) a proposed roadmap to address proposed NTMs based on the results of the detailed assessments of the three specific product groups;
 - (iii) Assessment of the feedback on the assessed draft NTMs; and
 - (iv) A publication of a handbook outlining the information and guidance on using the developed methodologies in conducting ex-ante regulatory review on draft NTMs would also be developed.
- 5. Development of comprehensive capacity-building strategy and training programmes for policy-makers and technical experts in ex-ante regulatory review and methodologies.
- 6. Conduct workshop / training programme to socialise and utilise the methodologies (i.e. ex-ante regulatory review) for the policy-makers and technical experts in the relevant sectors.

IV. Tasks/Activities

The following activities will need to be undertaken to achieve the outputs presented above. The bidder should provide details on its approach to each activity in its bid and is free to recommend additional activities.

	Output	Activity	Person working weeks	Completion Date	Person(s) responsible
1	Inception Report	Develop the overall approach, work plan, management plan and budget.	4 person weeks	2 weeks after signing of a Special Services Agreement (SSA)	Consultants to draft the report, with inputs from ASEC and AADPC II
		The Report includes preliminary literature review on ex-ante regulatory review, stocktake and highlight the existing efforts of AMS and global best practices in ex-ante regulatory review (including case studies of AMS), and preliminary methodologies, based on best practices, for ex-ante regulatory review of the draft NTMs for the three product groups.			
		Presentation to ATF-JCC.			
		Circulate, revise, and finalise the Inception Report based on feedback.			
Approval of Output 1: Inception Report by ATF-JCC /ASEC (2 working weeks)					
2	Interim Report	<ul style="list-style-type: none">analysis of literature review on ex-ante regulatory reviewanalysis of global best practices in ex-ante regulatory review (including case studies of AMS)comprehensive analysis of NTMs of the three specific product groups, including detailed scientific analyses in estimating the impact of NTMs on the three specific product groups and their supply-chains which comprise the main export goods of some AMS. The potential effects of NTMs on all sizes of business, particularly the MSMEs	51 person weeks	Month 2	Consultants to lead and arrange for stock-takings, reviews, consultations, and further analysis, facilitated by ASEC

	Output	Activity	Person working weeks	Completion Date	Person(s) responsible	
2	Interim Report (Cont'd)	Consultation with AMS officials under ATF-JCC to solicit further information, data, and views on ex-ante regulatory review.		Month 3		
		<ul style="list-style-type: none">Proposed specific methodologies for ex-ante regulatory review, taking into account common methods/approaches to quantify the impact of NTMs;Process of application of the methodologies on the draft NTMs of the three product groups;Findings of the ex-ante regulatory review of the proposed NTMs for the three product groups, including recommended approach and proposed roadmap to address proposed NTMs		Month 4		
		Draft the interim report		Month 5		
		Circulate, revise, and finalise the Inception Report based on feedback.				
		Approval of Output 2 of Interim Report by ATF-JCC / ASEC (4 working weeks)				
3	Regional workshop	Organisation of the Regional Workshop to: <ul style="list-style-type: none">present the Interim Report to get feedback;socialise the proposed methodologies and the application outcomes of the proposed NTMs for the three specific product groupsseek further comments on the assessed draft NTMs with minimal number of complaints and questions from stakeholders	8 person weeks	Month 6	Consultants to develop all programmatic (content) and logistical arrangement, facilitated by ASEC	
		Draft and submit a Workshop Report containing the event's proceedings, notes, recommendations, and next steps.				
		Circulate, revise, and finalise the Workshop Report based on feedback.				
		Approval of Output 3: Workshop Report by ATF-JCC / ASEC (2 working weeks)				

	Output	Activity	Person working weeks	Completion Date	Person(s) responsible
4	Final Report and Handbook	Comprehensive final report builds from the interim report based on feedback received and the outcomes of the Regional Workshop. The final report should include (i) the recommended approaches; (ii) a proposed roadmap to address proposed NTMs based on the results of the detailed assessment of the three specific product groups; (iii) assessment of the feedback on the assessed draft NTMs; and (iv) a publication of a handbook outlining the information and guidance on using the developed methodologies in conducting ex-ante regulatory review on draft NTMs would also be developed.	27 person weeks	Month 7-8	Consultants
		Presentation to ATF-JCC and ACCC (if applicable).		Month 9	
		Circulate, revise, and finalise the Final Report based on feedback.			
	Approval of Output 4: Final Report and Handbook by ATF-JCC / ASEC (4 working weeks)				
5	Regional/in-country capacity building workshop(s)	Development of capacity building strategy and training programmes for policy-makers and technical experts.	10 person weeks	Month 9	Consultants
		Conduct the training programmes to socialise and utilise the methodologies (i.e. ex-ante regulatory review) for the policy-makers and technical experts in the relevant sectors.		Month 10	Consultants
	Approval of Output 5: Workshop(s) Report by ATF-JCC / ASEC (2 working weeks)				

	Output	Activity	Person working weeks	Completion Date	Person(s) responsible
6	Project Completion Report	Draft, submit, revise (if required), and finalise the project completion report which records the project achievements against the project's original intended purpose, work plan, outputs, and activities. It should assist in assessing impact, draw out conclusions, and lesson learned that may be valuable in designing new related initiatives/projects.	2 person weeks	Month 11	Consultants
<i>Approval of Output 6: Project Completion Report by ATF-JCC / ASEC (2 working weeks)</i>					
<i>** The number of person working weeks is intended to indicate the amount of relative effort required to deliver the corresponding outputs. The calculation is based on assumption of 5 person days per week. Actual time will be agreed in negotiation with the successful bidder.</i>					

V. Reporting

The consultant is expected to produce reports in accordance with Section III and IV above, including Inception Report, Interim Report, Workshop(s) Report(s), Final Report and Handbook, and Project Completion Report. The timing of delivery is indicative and can be adjusted when the consultant's work plan is developed, subject to mutual agreement.

All reports will be submitted based on AADCP II Guidelines for Contractors in draft format to the ASEAN Connectivity Division and Trade Facilitation Division of the ASEAN Secretariat (ASEC) (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 (weekly, bi-monthly or as agreed with ASEC) summation of activities undertaken and issues that have arisen. These will be submitted to the ASEAN Connectivity Division and Trade Facilitation Division 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).

VI. Project Management

The project will be funded by the AADCP II and managed by the ASEAN Connectivity Division and Trade Facilitation Division of ASEC. The consultant should be responsible for organising and conducting the scheduled activities in collaboration with the host countries and ASEC.

VII. Scope of Services

The consultancy will be undertaken over a continuous effective period of twelve (12) calendar months with approximately 102 person weeks of professional services. Work will commence immediately after contract signing.

VIII. Qualifications

This project is open only to consulting firms / entities with the appropriate qualifications, not individuals. In its proposal, the bidder should demonstrate:

- Thorough understanding and in-depth knowledge of ASEAN, ASEAN Economic Community, and ASEAN Connectivity;
- Thorough understanding, in-depth knowledge, and research experience on best practices on trade facilitation and non-tariff measures, regulatory impact assessment, and supply chains, including recent issues, trends, and developments in the ASEAN regional context;
- Proven national expertise in policy, technical, and practical issues related to trade facilitation and non-tariff measures, regulatory impact assessment, and supply chains;

- Proven track record in undertaking quantitative analytical work or evaluation research in complex, multi-sectoral, regional/global international development programmes;
- Strong capacity in data collection, management, and analysis, as well as report writing;
- Extensive experience working in a participatory manner with and having established networks amongst multi-stakeholders across ASEAN, including government officials, international organisations, multilateral development banks, research institutes, and business associations and councils;
- Experience in developing capacity building programme and conduct of capacity building workshops;
- Expertise in identifying opportunities for and evaluating progress in implementation of gender and social inclusion aspects of complex multi-sectoral projects or programmes;
- Thorough understanding of monitoring and evaluation of development projects, particularly in outcome setting and identification of performance indicators.
- Ability to manage multiple parallel activities and deliver results in a short timeframe would be desired;

Understanding of ASEAN, ASEC, and AADCP II procedures will be considered an added value.

IX. Bidding

Interested consulting firms are invited to submit a proposal in response to these Terms of Reference. This proposal should be in two parts: **Technical** and **Financial components**.

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 underlie 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.

The Financial component should specify:

- 1) Professional fees of expert(s);

- 2) 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;
- 3) Applicable taxes such as VAT, GST, PPN. See Section IX 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 “***Development of a Set of Methodologies in Conducting Ex-Ante Regulatory Review on the Draft Non-Tariff Measures Before They Are Imposed by ASEAN Member States***” as the subject via email to tender@aadcp2.org, no later than **Thursday, 12 November 2020 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 ‘Development of a Set of Methodologies in Conducting Ex-Ante Regulatory Review on the Draft Non-Tariff Measures Before They Are Imposed by ASEAN Member States’***.

IX. 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 ASEC.