

Framework Contract FPI/PSF/2015 – LOT4

CRIS NUMBER 2016/377522

Specific Terms of Reference

IMPLEMENTATION OF THE EU-ECUADOR MPTA

MAPPING / IDENTIFYING ACTIONS / MEASURES THAT ECUADOR MUST TAKE IN ORDER TO IMPLEMENT / COMPLY WITH PROVISIONS AGREED UNDER THE EU-ECUADOR MPTA

1. BACKGROUND/ CONTEXT

1.1. Country Background

Between 2006 and 2014, Ecuador's GDP grew in average by 4.3 percent, thanks to high oil prices and important external financing flows. This allowed for increased social spending, particularly in large social projects and infrastructure, which helped to reduce the country's poverty rate to 35.8%, affecting positively 1.6 million Ecuadorians. This process also contributed to the growth of Ecuador's middle class, raising the national consumption levels.

Since late 2014 the fall in oil prices and strengthening of the U.S. dollar (Ecuador's national currency) have been putting its Balance of Payments and the national budget under pressure, leaving the national incomes reduced. Furthermore, the lack of diversification of Ecuador's economy and its focus on natural resources proved to be an important source of vulnerability. Furthermore, the dollarization introduced in 2000 in reaction to a strong depreciation of Sucre (national currency) and subsequent high inflation, has exposed Ecuador to major macroeconomic risks in the past two years.

Following the April 16th earthquake, the Government estimated the reconstruction costs at US\$ 3.3bn, and adjusted its growth expectations downwards to - 0.3% of the GDP, after 0.3% growth in 2015. The World Bank revised its economic outlook for Ecuador downwards, to - 4%.

In the first four months of 2016 the trade balance registered a surplus of US\$ 48.5 million, which should help the country strengthen its external position, accumulate currency reserves, and phase out its balance of payment safeguards. The entry-into-force of the Trade Agreement with the EU should further improve exports, help Ecuador diversify its economy, and promote its integration into a rules-based trading arrangement which would, if fully implemented, improve legal certainty and attract more foreign investment.

[Article 4(1)(a) 3rd indent]

[Article 4(1)(b)]

Ecuador, Key Indicators (2015)	
Population	15,9 million (estimate 2014)
Land area	283,560 km ²
GDP	US \$100.9 billion
<i>Manufacturing (as % of GDP)</i>	39.1%
<i>Services (as % of GDP)</i>	51.8%
<i>Agriculture (as % of GDP)</i>	9.1%
GDP per capita	US \$6,286
Overall GDP growth	0.3 % (BCE)
Unemployment rate	5,65 %
Trade	
Imports	US\$ 18.36 billion
Export	- US\$ 2.5 billion
Total	US\$ 20.93 billion
World Bank Ease of Doing Business (Rank, 2015)	117th
WEF Global Competitiveness Report (Rank, 2014/2015)	76th

International trade

In 2012, the EU became Ecuador's second most important trade partner with 11.6% participation in its total trade exchange, the first trade partner being the US, and China the third. Ecuadorian exports are directed mostly to the USA (33%), followed by the EU (18%), while its imports are coming mainly from the US (28 %), China (11,2 %), Andean Community countries (CAN, 14%) and the EU (11%).

In 2016, exports have dropped 24%, recording a loss of US\$-1.5bn, dragged by the 45% fall in oil exports and, to a lesser degree, the slow-down of non-oil exports (-11%). In March 2015 Ecuador started implementing balance-of-payment safeguards which affected imports from the US, China and the CAN and helped reduce Ecuador's trade deficit. Regarding Ecuador-EU28 trade flows, Ecuador's exports decreased by 6% in the first four months of 2016 compared to the same period in 2015, while the EU's exports to Ecuador fell by 31% (US\$-537m) in the same period, mainly as a result of reduced domestic demand.

Besides the Andean Community of Nations (CAN), Ecuador has not been involved in any comprehensive FTA yet. The MPTA (Multiparty Trade Agreement) with the EU, an ambitious agreement expected to enter into force in 2017, will be the first full-fledged FTA. Therefore, it is of major importance and may create a positive precedent for Ecuador's further integration in world trade. It has also served as a basis for discussions about similar agreements with South Korea, EFTA countries and Turkey.

So far, Ecuador has developed its trade relations bilaterally under complementary economic agreements and mixed commissions on cooperation which cover economic and trade issues such as bilateral technical committees for trade facilitation, investment and tourism.

Ecuador's economic agreements
The Andean Community of Nations - CAN (customs union)
The Latin American Integration Association (ALADI)
The MERCOSUR (Associate)
The Bolivarian Alternative (ALBA)

The Latin American and Caribbean Economic System (SELA).
 Extra-regional Agreements of the Andean Community: India, China, Russia.
 US-ATPDEA (Law of Andean Trade Promotion and Drug Eradication Act)
 The Economic Complementation Agreement - Guatemala; Chile.
 The Trade Agreement with Iran (05/2016)

1.1. Current situation: Andean Community and the EU-Ecuador MPTA

The EU is the second largest trading partner and the main investor in the Andean countries (Ecuador, Colombia, Peru, Bolivia). In 2014 the total trade of the EU with the Andean region reached 28.8 billion Euros. The Andean countries export to the EU predominantly agricultural products (40.5%), mineral fuels and mining products (52.3%). EU exports consist mostly of manufactured goods, notably machinery and transport equipment (48%), and chemical products (19.1%). In 2015 the EU exported goods in total value of 13bn Euro to the CAN against its imports of 15bn Euro.

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The Trade Agreement negotiations between the EU and the Andean Community (Bolivia, Colombia, Ecuador and Peru) were launched in June 2007. After a pause in 2008, the talks continued in 2009 when in July Ecuador dropped out of the negotiations; however contacts were maintained. In June 2012 the EU signed an ambitious and comprehensive Trade Agreement with Colombia and Peru. The agreement is applied with Peru since 1 March 2013 and with Colombia since 1 August 2013. Seeing the potential for improving EU-Ecuador trade, Ecuador returned to the negotiating table in January 2014 and reached agreement in July of that year.

The MPTA will allow Ecuador to benefit from improved access for its main exports to the EU – fisheries, bananas, cut flowers, coffee, cocoa, fruits and nuts. The terms of the new arrangement go beyond the unilateral EU GSP (Generalised Scheme of Preferences), for which Ecuador is no longer eligible. Besides, the MPTA will provide improved access to the Ecuadorian market for many key EU exports (automotive sector, alcoholic beverages etc.). The agreement aims to create a stable and predictable legal environment that will help boost and diversify trade and investment on both sides.

The complete text of the EU-Ecuador MPTA can be found here: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1261>

While the MPTA will largely reduce or eliminate tariffs, Ecuador maintains administrative and complicated customs procedures, on top of several concrete trade irritants.

In line with the objectives set by the negotiating directives, the agreement will secure, *inter alia*:

- Comprehensive liberalisation of the trade in goods, services and investment, including cross-cutting rules on licensing, the mutual recognition of diplomas and sector-specific rules designed to ensure a level playing field for EU businesses;

- New tendering opportunities for EU bidders at regional and local level;
- The removal of technical and regulatory trade barriers to trade in goods, in the sectors of motor vehicles, spare parts, electronics, pharmaceuticals, as well as green technologies;
- Protection of intellectual property rights to a higher-level, and better enforcement of this protection;
- Protection for GIs from the EU.
- A comprehensive chapter on trade and sustainable development including the civil society involvement in its implementation and monitoring;
- A swift dispute resolution mechanism through either panel arbitration or with the help of a mediator.

1.2. Implementation of the EU-Ecuador MPTA

Specific provisions agreed under the EU-Ecuador MPTA will require Ecuador to make changes to its domestic legislations, enact new laws, or modify certain existing administrative procedures to fully adhere to its commitments.

In view of this, as part of the preparations for the implementation of the EU-Ecuador MPTA, **an exhaustive legal analysis is needed to determine the changes that will have to be made by the Ecuadorian government, or implementing bodies as empowered by the government.** This exercise will facilitate the monitoring process and allow the EU to discuss with the authorities in Ecuador any issues that may arise. Securing the effective implementation of the Agreement is crucial for EU businesses to be able to reap the full benefits of the provisions that have been negotiated.

2. DESCRIPTION OF THE ASSIGNMENT

The purpose of this contract is to support the implementation of the EU-Ecuador MPTA once it enters into force (2017). In identifying all the actions that Ecuador must take, the information provided by the contractor will enable the European Commission and the EU Delegations in Ecuador (and Colombia) to better track the implementation process and engage with the relevant stakeholders (Government or otherwise) ensuring that Ecuador takes all the necessary steps needed to abide by its obligations. This activity is focused on the EU's interests in the implementation of the Agreement and will mainly serve as technical support to the European Commission.

2.1. Overall objective / goal of the assignment

By increasing regulatory certainty, transparency and predictability with regard to Ecuador's obligations under the MPTA, this action will enable EU businesses to fully benefit from the Agreement. Furthermore, it will provide the EU with necessary knowledge on the implementation needs and challenges.

2.2. Specific objective / purpose of the assignment:

[Article 4(1)(a) third indent]

A high-quality study, reviewing the country's legislation and identifying challenges related to the adoption and implementation of new policies necessary to implement the agreement, will provide guidance to Ecuador's government. This action will thus help ensure that Ecuador adheres to the commitments it subscribed to in the MPTA, and enacts necessary

reforms in a number of sectors. The study will facilitate a better understanding to both the Ecuador's and the EU authorities on concrete steps to take in order to comply with and enable an efficient implementation of the MPTA. It will therefore improve the EU's market access after the entry-into-force of the agreement.

2.3. Expected results of the action:

The contractor is expected to provide the European Commission with a detailed road map and check-list, identifying all the actions (legislative, administrative, regulatory etc.) that Ecuador will have to undertake in order to comply with the provisions agreed to under the MPTA. It is expected that the contractor will identify concrete modifications/measures to be taken such as legislative reform, institutional restructuring, elimination of trade irritants via the modification of existing measures, etc.

The contractor will provide a high quality input to the European Commission on key implementation elements of the agreement.

2.4. Planned Activities that will achieve those results

The following activities are to be undertaken by the contractor:

1. Conduct a comprehensive legal review of the EU-Ecuador MPTA and Ecuador's domestic legislation/administrative regulations. Clearly identify and outline, chapter-by-chapter, changes that Ecuador will have to make to domestic legislation/administrative regulations, or otherwise, in order to comply with provisions agreed to under the MPTA. The contractor will provide an exhaustive list of all actions Ecuador must undertake to adapt its legal/administrative framework (including Acts, Enforcement Decrees, Regulations, Guidelines or otherwise) which the government, or relevant implementing bodies empowered by the government, must take in order to implement the commitments under the MPTA.
2. Where the domestic legislation/administrative regulations will have to be modified in order to comply with provisions under the MPTA, the contractor will outline **how** these changes will need to be introduced (e.g. via legislative amendment in parliament, executive decree, etc.) and identify the respective government agency/regulatory body that will be responsible for implementing these changes.
3. Identify instances where an unclear or ambiguous formulation of certain provisions in the MPTA may give rise to different interpretations on how commitments should be implemented and pose challenges to their effective implementation. With regard to these instances, the contractor will present a legal opinion on possible alternatives for an effective implementation of the provisions.

The assignment will include meetings with relevant stakeholders in Brussels and Ecuador that can be facilitated through video-conference. The communication with EU counterparts will be done via videoconference (VC). Shall the selected experts be based outside Ecuador, travel and accommodation costs of one trip to Ecuador will be covered from the project's budget.

. The assignment will start with a meeting with DG TRADE via VC and the EU Delegations in Ecuador/Colombia either via VC or in person, according to the circumstances. Documentation will be made available to the contractor either during the briefing or some

days before. This briefing will be followed by an in-depth analysis of the MPTA and Ecuador's domestic legislation/administrative regulations (including a field trip in Ecuador – in case the experts are based in Ecuador, the initial briefing will be made via VC); followed by drafting of the report, presentation of results to DG TRADE via a VC and the EU Delegation in Colombia/Ecuador). A joint VC of all the parties would be the desirable form of the final presentation of results and findings.

2.5. Deliverables of the assignment

The contractor will deliver a comprehensive legal analysis of the EU-Ecuador MPTA and corresponding Ecuador's domestic legislation / administrative regulations. The analysis will consist of identification of issues / areas where Ecuador must take corrective actions and a concrete proposal of these actions. The key part of the analysis will therefore be the overview of necessary modifications and suggestion of their implementation.

2.6. Key stakeholders

The main stakeholder of the project is the European Commission, notably the Trade Section of the EU Delegation in Colombia/Ecuador, and DG TRADE in Brussels.

2.7. Methodology

The contractor should provide a methodology of max 3 pages to outline the planned actions, retro-planning and expected results. A time framework of each phase of the legal analysis together with an indicative list of Ecuadorian institutions or experts to be consulted during the analysis should be provided.

3. EXPERTS PROFILE OR EXPERTISE

For the success of this assignment, the contractor must assemble a team with:

- Extensive legal expertise in international trade (WTO) law;
- Extensive knowledge of Free Trade Agreements, including the MPTA EU-Colombia and Peru;
- Extensive knowledge of Ecuador's legislative and regulatory environment as well as the *modus operandi* of relevant government institutions and regulatory bodies;
- Specific knowledge of Ecuador's domestic economy, including knowledge of market barriers faced by European economic operators in different sectors of the economy;
- Very good English skills
- Excellent Spanish drafting skills

In view of the above, a working team of 2 is recommended as follows:

- Expert I: Senior legal expert / Team leader, expert on Customs, Trade facilitation, and technical barriers to trade (TBT).;
- Expert II: Junior legal expert on Public Procurement, IP, Services and SPS.

Expert I: Team Leader, Expert on Customs, Trade Facilitation, and Technical Barriers to trade (TBT).

The Team Leader will have the overall responsibility for the coordination and management of the expert team carrying out the assignment as described in these terms of reference, ensuring: respect of deadlines; quality; consistency and high-standard of outcomes. S/he will be familiar with the EU's Free Trade Agreements and Ecuador's domestic legislation and will be specifically responsible for ensuring that the measures that Ecuador must take in order to implement provisions agreed under the EU-Ecuador MPTA are identified.

Qualification and skills:

- Education at the level of Masters' Degree in law, economics or business.

General professional experience:

- At least 10 years of post-graduate experience in the field of international trade law.

Specific professional experience:

- Proven experience in leading and coordinating international teams on at least 3 different assignments, each with a minimum continuous duration of 5 months.
- A minimum of 8 years of experience in working on Free Trade Agreements and / or market access issues affecting economic operators (Customs, Trade Facilitation, and Technical Barriers to trade), working experience in trade law in the countries of CAN would be of advantage.

Expert II: Junior Legal Expert on Public Procurement, Services, IP and SPS

In line with his/her expertise, the Junior Legal Expert will have the responsibility of identifying the relevant measures that Ecuador must adopt in order to comply with the provision in the EU-Ecuador MPTA in the field of Public Procurement, Intellectual Property, SPS and Services. S/he will have in-depth legal knowledge of Ecuador's legislation pertaining to Public Procurement, IP and SPS. S/he will also be familiar with Ecuador's institutional, legislative and regulatory environment, particularly in regards to the implementation of Free Trade Agreements.

Qualification and skills:

- Education at the level of Masters' Degree in law, economics or business.

General professional experience:

- At least 5 years of post-graduate experience helping international clients address market access issues.

Specific professional experience:

- A minimum of 3 years of experience working on specific market access issues such as Public Procurement, Intellectual Property (IP), Investment or SPS preferably related to FTAs. Experience in this field in the CAN region would be of advantage.

Note that civil servants and other staff of the public administration, of the partner country or of international/regional organisations based in the country, shall only be approved to work as experts if well justified. The justification should be submitted with the tender and shall

include information on the added value the expert will bring as well as proof that the expert is seconded or on personal leave. The EU DEL to Colombia must be consulted in the final selection of the two experts and has the right to refuse or approve the profiles suggested by the contractor.

4. ORGANISATION OF THE ASSIGNMENT

4.1. Main organiser / contact point for the contractor

The main contact point for the contractor is the EU Delegation in Colombia [Article 4(1)(b)] . For all contracting related issues it is FPI.4 in Brussels.

4.2. Timeframe of the assignment:

The intended start date is 15 September 2016 and the period of implementation of the contract will be 3.5 months.

The indicative planning provided below will be revised by the contractor at the beginning of the assignment together with the Contracting Authority.

Week 1	Initial briefing & kick-off meeting
Week 1 to 2	Submission of draft operational report
Week 2 to 7	Desk work / in-depth analysis of the MPTA and Ecuador's domestic legislation / administrative regulations
Week 7 to 9	Drafting of report
4 weeks before end of contract	Submission of draft report to DG Trade for Comments
Week 12	Submission of final report incorporating comments received and presentation of analysis to DG TRADE
Week 14	Presentation in Brussels and Ecuador

4.3. Location of the assignment

Homebase of the contractor and Ecuador.

4.4. Logistical support

The experts seconded under this contract should be equipped with laptop/notebook computer and/or have access to relevant communication and report writing facilities.

If the selected experts are based outside Ecuador, travel and accommodation costs of one 5-day study trip to Ecuador will be covered from the project's budget (an economy roundtrip from the place of residence indicated in the contract).

4.5. Communication activities

The contractor is expected to present the results to DG TRADE in Brussels (via VC) and the EU Delegations in Colombia and Ecuador – preferably via video conference.

5. ADMINISTRATIVE INFORMATION

5.1. Interviews

The contractor will identify suitable candidates for the position of the Team Leader and Junior Expert using his knowledge and experience.

The EUDEL to Ecuador/Colombia reserve the right to request an oral interview with the Team Leader and the Junior Expert proposed by the contractor before deciding on the signature of the contract. EUDEL Ecuador/Colombia reserves the right to reject the proposed profiles of experts.

5.2. Reporting requirements

The contractor will submit the following reports in Spanish, in one original and two copies:

1. A draft operational report to be submitted 2 weeks after the start of the assignment. The operational report should provide a description of the methodology to be followed, detailed work plan, indicative list of Ecuadorian interlocutors to be interviewed and expected results of the activity, in total of 10 to 15 pages. The contracting authority will revert with comments on the outline report within one week;
2. A draft report, an in-depth analysis of 50 to 70 pages with an executive summary of 3 to 5 pages (also in English) outlining, chapter by chapter as per the EU-Ecuador MPTA, all the actions Ecuador must undertake to fully implement the provisions of the Agreement. For each chapter of the Agreement, where applicable, the contractor will:
 - (i) propose appropriate legal language amending the relevant legislation/administrative regulation in force in view of amending it to reflect provisions of the MPTA;
 - (ii) identify the appropriate government/regulatory body responsible for implementing the necessary changes to the legislation/administrative regulation in question;
 - (iii) propose possible alternatives or interpretations where unclear or ambiguous formulation of provisions in the MPTA may hinder the effective implementation of the Agreement.
 - (iv) Propose and explain the concrete actions Ecuador should undertake in order to comply with the MPTA at both legal and practical level.

The draft report shall be accompanied by a tabular form containing all the amendments to, or the new enactments of the relevant Acts, Enforcement Decrees, Regulations, and Operational Guidelines, that have to be adopted for the implementation of the EU-Ecuador MPTA. The status of the required actions that will have to be taken by Ecuador's authorities (e.g. completed; in progress; delayed; unknown) will also be identified in the table.

The draft report shall be submitted no later than 15 December 2016.

The contracting authority will have **15 working days** to provide comments to the draft report.

3. A final report with the same specifications as the draft final report, incorporating any comments received from the contracting authority on the draft final report.

Three copies of the reports referred to above must be submitted to the Project Manager identified in the contract. The reports must be written in Spanish, with an executive summary in both Spanish and English. The Project Manager is responsible for the approval of the reports.

The expert will present the results of the study to Ecuador's government (Trade Ministry, Ministry of Industry and Productivity) in an informal meeting coordinated by the EUDEL Ecuador/Colombia.

[Article 4(1)(b)]