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TERMS OF REFERENCE FOR UPCOMING TRADE SIAs ON EU-CAN AND EU-CA NEGOTIATIONS

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As it is expressly mentioned in the *Handbook for Trade Sustainability Impact Assessment*, “sustainable development is a key strategic objective set out in EU primary law (the Treaty) as well as in international decision-making processes such as the UN Millennium Development Goals”. This means that trade policies have to contribute to sustainable development and cannot constitute an obstacle to it. We believe that Trade SIAs are a very useful policy tool in this respect.

Building on previous experience, a group of Latin American and European civil society organisations and networks (11.11.11, ALOP, CIFCA, Friends of the Earth Europe, Grupo Sur) have jointly produced this document with the intention to contribute to the EU Trade SIA process and, particularly, to the forthcoming SIAs for EU negotiations with Central America and the Andean Community of Nations.

We believe that the Terms of Reference (ToR) of the new SIAs should pay special attention to the following issues:

- **TIMING** – The future SIAs should be elaborated in parallel to the negotiations and their findings should inform negotiators in a timely manner;
- **OBJECTIVES** – They should provide an un-biased assessment and propose measures that contribute to sustainable development;
- **PROCESS** – The approach adopted must be multi-disciplinary; it must go beyond macro-economic research and help identify who are the potential winners and losers of the various policy options at hand;
- **REGIONAL SPECIFICITIES & SECTORAL STUDIES** – The SIAs should look into regional issues such as regional integration processes and foresee comprehensive sectoral studies, reflecting the specificities of the regions;
- **STAKEHOLDER CONSULTATION** – The future SIAs should foresee the active participation of local stakeholders and civil society throughout the SIA process;
- **COMMUNICATION & INFORMATION** – Communication and information must be improved at various levels (organization of local meetings and workshops, web-site and diffusion of the final SIA report);
- **SELECTION CRITERIA** – The selection criteria should be redefined in view of the previous recommendations.

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1. TIMING

It has already been largely recognised that the major weakness of the SIAs is their timing¹. From our point of view, Trade SIAs should not only be carried out ‘*in parallel to*’ the negotiations; they should also *inform* the negotiators in a timely manner. This means that the process of elaboration of a Trade SIA for EU negotiations with Central America (EU-CA) and with CAN (EU-CAN) has to start before the negotiations are launched and that, in any case, the SIA findings must be available before the negotiations or a political agreement are concluded.

¹ European Commission, *Key outcomes and work programme for follow-up action of the Trade Sustainability Impact Assessment (Trade SIA) Stocktaking Conference*, 21-22 March 2006 ; *EU Trade Sustainability Impact Assessments: A Critical View*, Statement of European Civil Society Organisations, October 2006

The ToR will also provide for a review and monitoring mechanism in order to assess the political buy-in of the SIA's recommendations by the EU negotiators and adapt the assessment to the new reality of the agreement.

2. OBJECTIVES

The European Union “*is committed to pursuing a commercial policy which is successful not just in trade terms but which also brings about the biggest gains in welfare*”². The Trade SIAs have been designed to assess the potential consequences of a free trade agreement (FTA) – “they are a tool for evaluating whether the action should be taken” – which means that the purpose of the SIA is not to justify an FTA by any means, or to take trade liberalisation for granted, but rather to assess ex-ante the potential sustainability impacts of the proposed trade agreement in a comprehensive and honest manner.

Sustainable development is “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*”³. This means working towards a situation that implies that all people can fully enjoy all human rights, including civil, political, social and cultural rights, peoples' rights, the right to development, the rights of future generations and the right for a safe, healthy and preserved environment, with a particular care for natural resources.

Clearly, the EU Trade SIAs on EU-CA and EU-CAN negotiations will have to identify the winners and losers of the future Association Agreements (AA). They will also have to question the adequacy of trade liberalisation itself, suggest different trade policy options and compare their respective impact on sustainable development. They will have to provide recommendations on how the proposed agreements can be best in line with the precautionary principle, which is at the heart of sustainable development idea.

Only by addressing these questions will the SIAs provide the necessary information for EU negotiators to make responsible political choices⁴.

² European Commission, External Trade, *Handbook for Trade Sustainability Impact Assessment*, March 2006

³ Brundtland Report, 1987, in European Commission, External Trade, *Handbook for Trade Sustainability Impact Assessment*, March 2006

⁴ See comments of Carol Chouchani Cherfane in her Contribution to the EC SIA Stocktaking Conference: *How to ensure a better participation of Partner Countries in Trade SIAs*, Brussels, 21-22 March 2006: The SIAs are “*meant to ensure that trade liberalization is a means to support advancement towards sustainable development and so that more open trade is not an end in and of itself*”

3. PROCESS

As suggested by the European Commission, the aim of Trade SIAs is to integrate the three dimensions – economic, environmental and social – of sustainable development⁵. The Commission has also recognised that this can be achieved best through a multi-disciplinary approach to impact assessment⁶.

We agree with this aim if multi-disciplinarity means adopting a variety of analytical perspectives by involving not only economists but a pool of different social scientists. Indicators reflecting this holistic approach should be adopted accordingly. These include, for instance, variables such as average real income, employment, decent work criteria, net fixed capital formation, market concentration, equity and poverty, distribution, health and education, social cohesion, gender inequality, environmental quality of air, water and land, biological diversity, climate change, natural resource stocks and environmental space⁷.

The same measures can affect in different ways the various regions, sectors or economic/social groups at stake. Macro data should therefore be complemented with:

- disaggregate figures (regarding, for instance, the impacts on the different regions, sectors, companies or economic/social groups)⁸, and
- more focussed analysis in specific economic sectors where the impacts of trade liberalisation (and other policy options) should be considered for the whole supply chain. This would help provide a better insight to the ‘reality of the market’ and identify the actual ‘winners and losers’ of the adopted policy options.

Since the future EU agreements with CAN and CA will be Association Agreements, the SIAs will have to check all dimensions of the negotiations against the others. In other words, how the trade provisions of the agreement will affect the enforcement (or the lack of enforcement) of its non-trade clauses will have to be assessed, in particular as regards the effective implementation of the 27 treaties and socio-labour instruments contained in

⁵ European Commission, External Trade, *Handbook for Trade Sustainability Impact Assessment*, March 2006

⁶ Peter Mandelson in its introduction to the *Handbook for Trade Sustainability Impact Assessment* (March 2006): “*trade policy makers also have to look at broader concepts of social transformation, environmental science and development economics*”

⁷ The concept of ‘environmental space’ goes beyond the one of ‘ecological footprint’. It describes the total amount of energy, non-renewable resources, agricultural land, forests etc. that everyone can use without causing irreversible damage to natural systems. This concept combines two fundamental principles: the *environmental principle* and the *equity principle*. The *environmental principle* says that the planet can only cope with a limited amount of environmental pressures before the global ecological systems collapse (this means that if we want to give the same development opportunities that we have enjoyed to coming generations, we must dramatically reduce our resource consumption). The *equity principle* says that every human being has the same right to use the natural resources of the Earth. If one links these two principles, one can estimate the amount of resources available for every human being on Earth, i.e. its ‘environmental space’. See http://www.foeeurope.org/publications/2006/SERI_FoEE_EN.pdf

⁸ Commission Handbook: “*provide an in-depth assessment of likely changes caused by the trade agreement on economies, social development and the environment in any potentially affected geographical area*”

the GSP+ mechanism, the ILO Convention no 169 and the Millennium Development Goals. Likewise, how political, cooperation, democratic, environmental and social provisions of the AA will affect trade relations between the parties will also have to be assessed.

4. REGIONAL SPECIFICITIES & SECTORAL STUDIES

a) Asymmetries

The future SIAs on EU-CA and EU-CAN should acknowledge the asymmetrical context of the proposed agreement, not only from an economic point of view, or with respect to economic and political integration, but also in terms of human, social and technological development. This is true for the bi-regional relations between the EU and the CA and CAN regions, but it is also a characteristic of the regions themselves⁹.

b) Trade liberalisation & regional integration

Regional integration is the stated objective of the EU when it comes to start negotiations on Association Agreements with the Andean Community and Central America. Besides focussing on political dialogue and cooperation, the AA will also have a strong trade component, with the overall objective to create a free trade area between both Latin American regions and the EU (by liberalising substantially all trade between the parties).

Most of the CA and CAN countries have already concluded FTAs with third countries, notably the United States of America (US). And we know from our partners in the region that the experience of these FTAs with the US has not brought significant benefits to economic, political and social integration between the Latin American countries themselves. To some extent, FTAs in the region seem to have rather undermined regional integration and dislocated these economies than made them stronger and more integrated. For example Colombia's imminent FTA with the US is likely to threaten Bolivia's soy exports for whom Colombia represent 40% of their market as Bolivia can not hope to compete with US subsidised soy.

Because of this experience, the SIA should assess the potential – positive and negative – impact of trade liberalisation between the EU and CA/CAN regions on regional integration, and should explore alternative commercial roads to simple across-the-board liberalisation between these regions and the EU. Proposals of establishing an agreement based on economic cooperation, partnership and complementarity should therefore be taken into account. Besides, the SIA should assess the sustainability impacts of the

⁹ ALOP, APRODEV, CIFCA, GRUPO SUR, *Un acuerdo de asociación Unión Europea – América Central orientado hacia el desarrollo humano es posible*, 10 October 2006

various proposals which suggest that CA and CAN countries should keep the right to granting better trading conditions to their neighbours.

c) Sectoral studies

As outlined above, the future SIAs on EU-CA and EU-CAN will have to look at some specific economic sectors in the two regions. The choice of these sectors will be based on the expected degree of sustainability impacts of trade liberalisation measures adopted as a consequence of the agreement.

The following issues should be taken into account and explicitly addressed by the respective Trade SIAs:

- The environmental vulnerability of the region;
- The particular vulnerability of indigenous people and afro-descendants;
- The impact of existing trade and investment agreements on sustainable development, in order to be able to propose alternative solutions;
- The ways of guaranteeing the policy space for Central American and Andean Community states to take sovereign decisions on strategic issues to defend public interests on, among others, food security, health care policies, protection of the environment, natural resources, energy policies;
- The impact of different policy options on economic, social and cultural rights in the case of investments in public services (ex. cases of the Union Fenosa and others) such as health, education, electricity, water, energy, postal, telecommunications and banking;
- The impacts of these different options on food security, the respect of the right to food and the preservation of traditional knowledge;
- The possible consequences for states of disputes with European investors;
- Impact of different options for investment and trade policies on social and environmental issues and on an increasingly informal labour market;
- Possibilities of regulating capital flows to prevent speculation and its negative consequences for national welfare.

More specifically, the impact of trade agreements with the EU should be assessed on the following sectors (these proposals apply for both regions):

i. Agriculture

As it is the case for most developing countries the agriculture sector is of critical importance for rural livelihoods, providing jobs and income for the rural poor. For small farmers and local businesses it is also an area of diversification and adding value.

The SIAs must look at the likely impact of the Association Agreements on smallholder agriculture and food processing, the impact over employment and livelihoods, the impact on land rights, water supply, food sovereignty, social cohesion and climate change.

Specific sub-sectors to take into account in this assessment are the cut-flowers industry and products such as bananas, dairy products and cattle and chicken farming.

ii. Energy

In the case of the Andean region, the energy sector is the main source of exports and government revenues for Ecuador and Colombia (in the case of oil). For Bolivia natural gas is the main source of government revenue. Peru is less dependent but with future natural gas developments its economy will also become dependent to hydrocarbon revenues. This sector is also the second major export of CAN countries to the EU and very important in CAN trade relations with other Latin-American and global partners.

Electricity is also one of the most traded commodities within the Andean and Central American regions.

The energy sector, more precisely exploration and extraction activities, pose many challenges to the Andean region: property and sovereignty over natural resources, ecological and cultural conservation, land rights (indigenous communities), participation in the economic rent. This sector is also of crucial importance for the regional integration process in the Andean Community.

More and more producers in the Andean and Central American regions are switching to bio-fuels production (especially palm oil and other vegetable oils) and are hoping to increase their exports to the EU. Experience shows that this cash crop – often produced in a monoculture fashion – can have detrimental impacts on forests and biodiversity (especially when primary forests are converted to plantations), rural livelihoods and further erosion of food security, with serious impacts on water, soil, and regional climate patterns. The impact on local communities and indigenous people is equally great.

The SIAs should assess the likely sustainability impacts of increasing energy trade between both CAN and Central American regions and the EU.

iii. Mining

All countries of the Andean and Central American regions have a lot of natural resources, raw materials, minerals and metals. But in many of these countries, there are growing concerns about the negative environmental and social impacts of the mining industry. There is evidence that mining waste (often toxic heavy metals including mercury) are dumped by the mining industry into the rivers and oceans, obliterating aquatic life, affecting food supplies and livelihoods, contaminating drinking water, contributing to

flooding and causing a series of health problems. Some mining projects have been found to contradict community rights.

The SIAs should analyse this issue, the responsibility of European economic actors, and ways on how the Association Agreements with the EU could set a framework for resolving these problems.

iv. Forestry

Illegal logging is a major problem in both the CAN and Central American regions. In the Andean region, figures point out to an extremely worrisome situation: from all logged timber, the majority is illegal: 80% in Bolivia, 80% in Peru, 70% in Ecuador and 42% in Colombia¹⁰.

The SIA should assess the likely effects of the Association Agreements on the possible increase of trade in forestry resources, and the related impact on forest conservation, biodiversity, illegal logging, sustainable forest management regimes, etc. The impact of the elimination of 'non-tariff barriers' should be specifically assessed, as well as possibilities to strengthen and better enforce the EU's FLEGT Action Plan and fully embed it in the Association Agreements.

v. Investment

This is an area which has traditionally not been studied in SIAs even though the EU is pushing rules-based deals that would limit the policy options for developing countries, carrying huge implications for development. A key issue to investigate is the trade-offs which developing countries will have to make between signing up to liberal investment provisions and their ability to enact national policies to manage investment in order to maximise benefits and minimise costs. The EU should also analyse the co-existence of EU level investment agreements with the Bilateral Investment Treaties signed between EU Member States and CAN and Central American countries.

The SIAs should, therefore, look closely at investment provisions and assess their impact on the following:

- Costs and benefits to the local private sector, especially SMEs and including new market entrants;
- Jobs;
- Government revenue;
- The environment and the ability to review environmental protection legislation.

¹⁰ Figures from the FAO (2005), the European Forest Institute (2005) and the World Bank (2006)

The sectoral studies on investment should also investigate the sectors where investment could most usefully be attracted to CAN and Central American countries to diversify economic activity and assist the long term development of these regions, in order to help CAN and Central American countries prepare their positions for the negotiations.

vi. Services

This sector is particularly important from an economic development perspective since services are a very dynamic and fast growing sector in all Latin American countries, involving huge numbers of small and medium sized businesses, most of them being local (e.g.: telecommunications). This sector is also important from a human development point of view as services sustain livelihoods and help fulfil basic human needs (water, education, health).

The SIAs must therefore look at important services sectors, for example, the construction sector, the distribution sector and the tourism sector. In these sectors liberalisation could potentially have large negative impacts on the domestic private sector (including small retailers and small farmers) and could negatively affect the long term growth potential of local businesses.

The analysis should also look at possible impacts of trade liberalisation on access to essential public services such as water, education and health.

vii. Government Procurement

Public procurement is a very important policy instrument in many countries to encourage and support the domestic private sector. In its trade negotiations the EU is seeking progressive liberalisation and market access to government procurement at all levels of public entities.

The SIA should assess the impacts of the liberalisation of the government procurement market on the domestic private sector. The analysis should also look at how best to increase the competitiveness of the domestic private sector, and whether limits should be recommended on liberalisation to achieve this.

viii. Intellectual Property

Given the recent signing of CAFTA by Central American states and the FTA between the US and Colombia and Peru, there has been a recent revision of intellectual property legislation in these countries.

The EU SIAs should therefore assess whether there is space for the EU to truly assist CAN and Central American countries in applying intellectual property regimes which:

- maximise benefits for public health;
- develop local capacities;
- ensure the transfer of technology and encourage innovation;
- protect consumer welfare.

The SIAs should also investigate the implications of the EU's offensive agenda, regarding:

- intellectual property enforcement (how much will enforcement mechanisms cost and what will be the impact on farmers, local businesses and consumers);
- geographical indications (impact on local businesses);
- data exclusivity (impact on local businesses, public health and consumers).

ix. Medicines

Medicines, excluding analgesics, are an important trading commodity between Latin American countries and also a major import from the EU. The SIAs should assess the impact of the Association Agreements on this sub-sector, and take into account the issue of IPRs and availability of generic medicines according to public health objectives in CAN and Central American countries.

5. STAKEHOLDER CONSULTATION¹¹

Regretfully, third countries have not shown particular enthusiasm in EU Trade SIAs so far, let alone appropriate the idea for themselves¹².

We believe that involving local stakeholders would be a good way for the EU to increase the credibility of its SIAs towards third countries. This can also help improve the quality and legitimacy of the assessments. Therefore, consultation with local stakeholders must be made compulsory for the consultants.

The viewpoints, arguments and proposals of the different stakeholders should not only be referred to by the researchers: they should be fairly presented and analysed, on the project-dedicated website and in the papers submitted to the European Commission. This would allow having a more diversified and politically nuanced assessment.

¹¹ 'Stakeholders' must be understood as including those that are potentially affected, directly or indirectly, by the establishment of a FTA, local NGOs and other civil society associations including labour, consumer, indigenous, women, health, cultural and health groups, grassroots organisations, environmental NGOs, peasant and small producers' organisations, cooperatives, academics, local governments and parliaments, and regional mechanisms and organisations.

¹² European Commission, External Trade, *Handbook for Trade Sustainability Impact Assessment*, March 2006

Civil society organisations should be supported in carrying out field research, in collecting local data and testimonies, in defining recommendations and policy measures and in participating in consultation sessions on the findings of the studies.

As suggested by the European Commission¹³, local consultations or workshops should be organised in partner countries, with at least one event in each country concerned by the proposed trade agreements.

The necessary emphasis on stakeholder consultation should be reflected in the contract between the Commission and the researchers, which will provide for a significant part of the project's to be dedicated to this objective.

Finally, an ex-post monitoring system or review mechanism of the SIA should be foreseen with the active participation of civil society.

6. COMMUNICATION & INFORMATION

a) Project-dedicated website

The contractor must create and maintain a website dedicated to the SIA project with a link to the DG Trade web-site but as well to the websites of NGOs working in the sectors studied. The contributions and communications received from the civil society must appear on the website.

The information put on the website must be available in English and in Spanish and the main documents must appear in these two languages. Translation must be an inherent part of the budget.

An e-mail list must be created to inform the stakeholders about the SIA developments, upcoming meetings, etc. The information must be sent in English and in Spanish.

Finally, the contractor must create an email address to receive questions and suggestions and to be able to answer them.

b) Final SIA report

The final report of the SIA should be made public¹⁴ and not exceed 100 pages, in order to maximize the chances for civil society feedback. Sectoral analyses should be provided in an annex.

¹³ European Commission, *Key outcomes and work programme for follow-up action of the Trade Sustainability Impact Assessment Stocktaking Conference*, 21-22 March 2006

7. SELECTION CRITERIA

- The contracted consultants should comply with the multi-disciplinary requirements outlined above;
- They should be capable of working in English and Spanish and should have a specific knowledge of trade, economic, environmental and social issues of Central America and the Andean region;
- They should have proven experience in working with European, Central American and Andean civil society;
- They should either be based in the partner region or be organised in a consortium which includes institution(s) from the region.

¹⁴ European Commission, External Trade, *Handbook for Trade Sustainability Impact Assessment*, March 2006

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