



## Report of the 3rd round of negotiations for a Free Trade Agreement between the European Union and Indonesia

11-15 September 2017, Brussels

Officials from the EU and Indonesia met in Brussels from 11 to 15 September 2017 for the 3rd round of negotiations for an EU-Indonesia Free Trade Agreement. The EU negotiating team was led by Ms Helena König, Director for Asia and Latin America, while the Indonesian team was led by Pak Iman Pambagyo, Director General for International Trade Negotiations at the Indonesian Ministry of Trade.

As in previous rounds, discussions were held in a good and cooperative atmosphere. They showed continued engagement to negotiate an ambitious agreement which led to progress in some chapters. The move to text-based negotiations in almost all chapters, across 18 active working groups, also allowed to identify several issues which will require further clarification and in-depth discussions, including divergent positions on e.g. export duties, energy and raw materials, state owned enterprises, provisions on the Investment Court System, market access for government procurement, sanitary and phyto-sanitary issues.

The two sides also had further exploratory discussions on the liberalisation of trade in goods and exchanged initial ideas on the way to achieve ambitious outcomes. They agreed to aim to work towards a first exchange of offers before the next round. The EU also emphasised the need to make progress towards an exchange of offers on services and investment as well as on public procurement.

A comprehensive list of follow-up items will be pursued through videoconferences or other means ahead of the next round which will be held in Indonesia at the beginning of next year.

### Details per negotiating area

**Trade in Goods:** The EU presented its text proposal for the Trade in Goods Chapter. Although no agreement was achieved on any of the articles of the text, the discussions revealed both points of convergence as well as divergent positions, in particular on export duties and the article on remanufactured goods. Both sides agreed to continue the exchange of information inter-sessionally in order to deepen their understanding of these issues before the next round. The discussions also included an initial exchange on possible parameters for tariff liberalisation and both sides agreed to aim to work towards a first exchange of offers by the next round.

**Rules of Origin:** Work continued on open issues in the EU negotiating text on Section A (General Provisions), including definitions, tolerances, accessories, spare parts and tools, neutral materials and elements, sets, accounting segregation and packaging materials and containers. The main structure of Section B (Origin Procedures) including proof, verification and denial was also discussed. Indonesia will further consult internally on the main ideas explained by the EU side. Further discussions will take place once the EU tables its textual proposal.

**Customs and trade facilitation:** Discussions took place on the basis of the EU text proposed in December 2016 and a separate Indonesian counterproposal tabled in May 2017. Both sides examined the two sets of proposals with a view to consolidating them into a single text. A total of 13 articles were covered and consolidated, two of which (Post-Clearance Audit and Customs Brokers) were agreed.

The EU side presented the anti-fraud clause and explained its way of functioning, stressing that it features the provisions already set out in the EU Generalized Scheme of Preferences (GSP), of which Indonesia is a beneficiary. The EU side also presented the provisions on mutual administrative assistance which are based on the model and practice of the World Customs Organisation.

**Technical Barriers to Trade:** The Indonesian side agreed on the scope of the chapter as set out in the EU proposal but submitted comments and/or alternative wording for several articles (objectives; relationship with the TBT agreement; standards). There was some progress as regards cooperation on standards development, the use of accreditation, and marking and labelling. However, discussions did not advance much in areas such as conformity assessment (acceptance of Supplier's Declaration of Conformity, SDoC), the listing of some of the international standards setting organisations, TBT-related transparency provisions or good regulatory practices in developing technical regulations.

The EU side briefly also explained the importance, for climate action and energy sustainability in general, of preventing and addressing technical barriers to trade in renewable energy and energy efficiency. The EU proposed that these goods should be included in the scope of the chapter. The EU side also stressed the need to include an Annex on Motor Vehicles in the agreement with provisions on regulatory convergence based on UNECE, market access, other non-tariff barriers, as well as regulatory cooperation.

**Sanitary and phytosanitary measures:** The two sides discussed the EU initial text proposal submitted to Indonesia one year ago. Two articles have been agreed (transparency and technical consultation) and progress was made on some other provisions related to: objectives, definition, import condition, audit, emergency measures, SPS sub-committee recorded progresses. However, important articles, such as regional conditions, pre-listing, equivalence, and some import provisions have not been discussed yet, pending further internal consultation.

**Government Procurement:** The two sides went through the entire text, based on the WTO Government Procurement Agreement with some additional articles related to the specific bilateral relation between the EU and Indonesia. The discussions suggest that there are no major divergences with regard to the rules part of the text. On the other hand, on market access, the Indonesian side signalled the need to obtain a more elaborated mandate. The Indonesian side also informed the EU side about some recent legislative initiatives. Both sides exchanged questions and answers on TED, the EU information system for publication of procurement information as well as on the Indonesian procurement rules for State Owned Companies.

**Intellectual Property Rights (incl. geographical indications):** The two sides engaged in a constructive discussion on the basis of the EU text proposal and the counter-proposal of Indonesia. The whole chapter was discussed article by article, including the general provisions, copyrights and related rights, trademarks, designs, patents, undisclosed information and trade secrets, plant varieties, geographical indications, enforcement, IPR border measures, technology transfer and cooperation and transparency.

The two sides reached an agreement on the text of the section on geographical indications (GIs) and agreed to launch the publication of the GIs for opposition before the end of the year. They also made good progress across other sections of the negotiating text, with exception for the provisions related to patents and regulatory data protection.

**Small and Medium-sized Enterprises (SMEs):** Both sides had a comprehensive review of the questions tabled by the Indonesian side and provided clarifications on the EU text proposal. They envisaged starting the text-based negotiation of the SME chapter during the next round of negotiations.

**Trade in Services:** The negotiations on cross-border provisions and investment in services were very constructive throughout the round. Indonesia was represented by experts from several of its Ministries and the discussions on the EU text proposal allowed Indonesia to better understand the EU position on financial, delivery, telecommunications and maritime transport services, domestic regulation, mutual recognition agreements and digital trade (including computer services and electronic commerce). Significant information was also exchanged on each Party's regulatory framework in an effort to seek common ground between regulatory provisions proposed by the EU and Indonesia's domestic regulatory framework in each service's sector. The discussions on Mode 4 were based on the EU text. Further discussions will follow on Indonesia's proposed list of occupations that it wishes to see included in the Agreement. The architecture of the agreement was discussed; Indonesia will continue reflecting on EU's proposal but reiterated its preference to adopt a services only text.

**Investment:** Both sides had constructive discussions on all the key provisions related to investment liberalisation and investment protection, as well as on the investment-related definitions. Very good progress was made in relation to market access, establishment, right to regulate, expropriation and transfer of funds. While issues related to the scope and architecture of the text are still under consideration, more in-depth discussions are needed with regard to some definitions and exceptions, as well as with regard to substantive provisions such as performance requirements. The two sides agreed to have written exchanges in this respect.

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**ICS:** Constructive discussions on investment dispute settlement took place and a joint bracketed text based on the EU proposal was established. The main policy issues that require further discussion were identified. These include the Investment Court System on which Indonesia will continue its internal reflection.

**Competition:** The two sides worked on the basis of a joint bracketed text, which combined both sides' text proposals. They made very good progress and only a few outstanding issues remain, mainly in the area of bilateral cooperation. Both sides will consult internally ahead of the next negotiation round and endeavour to send proposals ahead of the next round, where possible. With regard to subsidies, although there were no text-based negotiations during this round, the Parties had very constructive discussions which allowed the EU to understand better the concerns from Indonesia's side. The EU will send a new text proposal addressing these concerns ahead of the next round of negotiations.

**Trade remedies:** Both sides continued their discussion based on a single text comprising of three sections, namely Anti-Dumping and countervailing measures, Global Safeguard, and Bilateral Safeguard. Overall, good progress was made. Both sides came to an agreement concerning a number of provisions. The exclusion of Trade Defence Instruments issues from preferential Rules of Origin and from a bilateral dispute settlement mechanism was discussed in detail, as well as the exclusion of "green box" agricultural subsidies from the scope of trade defence investigations. An agreement was reached concerning the "Consideration of Public Interests" in anti-dumping and countervailing investigations. Significant progress was achieved in the Bilateral Safeguard Section.

**Dispute settlement:** The EU side presented its proposals for the Rules of Procedure for panel proceedings and the Code of Conduct for panellists and mediator. Both sides held constructive discussions which will be continued after Indonesia's internal consultations on the proposals.

**Trade and sustainable development:** The EU and Indonesian sides engaged in intensive exchanges on the basis of their initial text proposals with the shared objective of achieving an ambitious and comprehensive chapter. The discussions primarily focused on the scope of the chapter, labour issues, multilateral environmental agreements, trade and climate change, and trade and conservation and sustainable management of biodiversity, forests and living marine resources. The two sides analysed in-depth their respective proposals in these areas, explaining their relevant policies, and identified specific info-exchange points to advance the text-based discussions. The Indonesian side gave a presentation on the on-going work to enhance the Indonesian Sustainable Palm Oil (ISPO) certification system. Discussions also stressed the importance of addressing Illegal, Unreported and Undeclared (IUU) fishing.

**Economic co-operation:** The two sides completed discussions based on the text provided by the Indonesian side. The EU side put forward its counterproposals and the Indonesian side conveyed comments and its position on each article. Both sides agreed to continuing work to consolidate the text by means of follow-up actions ahead of the next round. While constructive, discussions showed there are still several outstanding issues.

**Institutional and final provisions:** The EU side presented in detail the structure of the institutional and final provisions. The EU proposed to table a formal text proposal ahead of the next round of negotiations. Detailed discussions also took place on the Indonesian proposals for the preamble and initial provisions that had been tabled ahead of the round. The EU agreed to use these as a basis to develop a joint text.

**Transparency:** Discussions on transparency and good regulatory practice were held on the basis of the EU main ideas on regulatory coherence. A substantive discussion took place on the scope of these provisions and on the relationship between the horizontal provisions and the specific agreement chapters. Indonesia took note of the EU explanations. The EU intends to submit a formal text proposal by the next round.