



Report of the 8th round of negotiations for a Free Trade Agreement between the European Union and Indonesia

17 to 21 June 2019, Jakarta

Officials from the EU and Indonesia met in Jakarta from 17 to 21 June 2019 for the 8th round of negotiations for an EU-Indonesia Free Trade Agreement. The EU negotiating team was led by Ms Helena König, Deputy Director-General DG TRADE at the European Commission, while the Indonesian team was led by Pak Iman Pambagyo, Director General for International Trade Negotiations at the Indonesian Ministry of Trade.

The eighth round showed continued progress, with further text consolidation in most chapters under negotiation. Negotiators made notable progress on government procurement and also saw good engagement on the chapter on state owned enterprises. The section on anti-trust and mergers was concluded, while the chapter on sanitary and phyto-sanitary measures is now close to completion at technical level. On the other hand, discussions on trade and sustainable development continue to be very difficult as conceptual differences have not allowed to advance much in terms of text consolidation.

Some chapters that are close to conclusion such as customs and trade facilitation and trade remedies were discussed via video-conference, while discussions on economic cooperation and digital trade will be held in the coming weeks.

There were no exchanges of revised market access offers during this round but detailed discussions were held especially on the services and investment offer. In the margins of the round a special session was also held on palm oil, where both sides provided an update on recent developments.

Both sides agreed to hold the next round in early December in Brussels.

Details per negotiating area

Trade in Goods

Discussions managed to reduce the number of articles where difficulties for both sides had been identified. Two articles, on the scope of the chapter and on export licensing procedures, were agreed. EU proposals on export taxes, repaired and remanufactured goods, import and export restrictions and import licensing remain difficult, however.

Both sides also discussed conditions and modalities for updating the respective tariff offers in respect of the 5% of lines and trade value that may not be fully liberalised within 7 years after the entry into force of the Agreement. Work on this will continue in the coming months.

Regarding energy and raw materials, significant progress was made on non-goods related issues such as non-discriminatory access to the grid for energy companies. Indonesia also agreed to include such rules in a separate chapter for energy and raw materials provisions not relating to goods.

Rules of Origin

During the 8th round of negotiations the rules of origin discussions touched on General Provisions (Section A), origin procedures (Section B), the provisions on goods in transit and Andorra and San Marino (Section C). Indonesia shared its first reactions on the EU proposal for product specific rules. For the majority of the sectors, however, Indonesia is still carrying out internal consultations.

Customs and trade facilitation

Discussions, held via DVC, covered all remaining articles. Agreement was reached on the article on definitions and good progress was made regarding the article on fees and charges. Discussions on pre- and post-shipment inspections remained inconclusive though.

Indonesian counterproposals prepared ahead of the round also allowed for positive discussions on anti-fraud and the protocol for mutual administrative assistance (MAA). This should allow both sides to make good progress at the next round, especially on MAA.

Technical Barriers to Trade

Experts from both sides engaged for the first time in detailed discussions on the Motor Vehicle Annex. Both sides also had intensive discussions on the remaining articles of the TBT chapter, but were able to make only limited progress. Among the outstanding issues are allowing non-Indonesian persons to participate in public consultations, and making replies to TBT comments public. On conformity assessment the use of a subcontractor in another country, or the acceptance of Suppliers Declarations of Conformity (SDoC) remain difficult for Indonesia.

Sanitary and Phyto-Sanitary measures

Both sides made very good progress, with only four articles left, out of which 3 await the outcome on the horizontal approach discussed in other chapters. On the last and main outstanding issue, the import license, both sides reached common understanding but need to further fine-tune the precise drafting by the next round.

Trade in Services

The discussions on services focused on both the text and the respective market access offers. Both sides made some further progress on the texts for financial, mode 4, delivery and telecommunications services, which are close to be finalised, with only a few outstanding provisions not yet agreed.

The commitments offered by each side were also discussed in detail, with respect to all services sectors. The EU requested Indonesia to eliminate discriminatory measures against EU investors and, in particular, the foreign equity caps. On temporary movement, Indonesia insisted to receive ambitious commitments based on the list of occupations submitted earlier, which includes certain professional categories that the EU has never committed before. The EU showed readiness to consider offering reciprocal commitments in various services sectors under the contractual service suppliers, independent professionals and ICTs categories, subject to making good progress on the overall market access negotiations.

Investment

Constructive discussions took place with regard to the investment-related provisions. Some progress was made in further consolidating the text of the definitions as well as on the article on expropriation. On investment liberalization, the discussion focused on the remaining open issues related to national treatment and prohibition of performance requirements. Both sides exchanged useful explanations and clarifications in order to facilitate future compromises on the remaining provisions.

Investment Dispute Settlement

Although Indonesia has still not made a policy decision on the Investment Court System (ICS), internal consultations are currently being conducted with different stakeholders on the ICS. During the round constructive discussions on several key policy issues took place.

Government Procurement

During this round, it was agreed to use as a basis for discussion Indonesia's proposals sent ahead of the round. Both sides managed to reach an agreement on a number of articles as well as significant progress on the majority of the remaining articles. Divergences of view remain, however, on key provisions such as the non-discrimination principle and the procedure for domestic review. Regarding market access the EU reiterated openness to discuss transitional periods as part of market access commitments, while Indonesia flagged its concerns on entering the EU government procurement market.

Competition, Subsidies and SOEs

Both sides were able to find compromise on the outstanding language on competition. The section on anti-trust and mergers was thus concluded.

On subsidies both sides parties were able to narrow down the bracketed texts in several articles. Alternative wording was discussed on the principles, definition and scope of subsidies, and transparency. The concept of subsidies for services remains difficult.

Building upon a prior video-conference both sides continued with a positive discussion on state-owned enterprises (SOEs) and had good engagement in the presence of all relevant Ministries. Relevant data will be exchanged ahead of the next round. The entire text was discussed in detail which allowed to identify the areas requiring further work. Exchanges also touched upon the link with the chapter on public procurement.

Intellectual Property Rights

Both sides discussed all open issues in the IPR Chapter, article by article. Progress was recorded on the general provisions, designs, patents, trade secrets (undisclosed information) and civil enforcement. Both sides maintained their positions on the extension of the term of protection for performers, phonogram producers, broadcasting organisations as well as for designs, the exceptions to the rights conferred by a trademark and revocation of trademarks, unregistered designs, regulatory data protection and on the supplementary protection certificates for medicines and plant protection products, and plant varieties protection. On geographical indications, both Parties agreed ad referendum on the only remaining open issue on co-existence between good faith prior trademarks and subsequent GIs. On IPR border measures both sides could not yet make progress.

Trade and Sustainable Development

Intensive discussions took place over five days but resulted in only limited progress in terms of text consolidation. Conceptual differences remain on scope and the article on sustainability in a trade context. In depth discussions were held also on the articles on labour, the right to regulate, upholding levels of protection, sustainability schemes, sustainable fisheries management and trade and climate action – the latter being the most advanced in terms of text consolidation. Due to still on-going internal consultations Indonesia was not yet in a position to discuss the provisions related to trade in timber and sustainable forest management.

Small and Medium Enterprises

Limited progress was achieved in the SME chapter. The whole text was discussed and clarifications were provided on all articles. The Indonesian side also provided a detailed presentation of the Indonesia National Single Window portal. Text negotiations will continue in the next round after further internal consultations.

Dispute settlement

Productive discussions led to some further progress in terms of text consolidation. Main substantial issues in relation to the chapter and the annex on rules of procedure remain whether Panel hearings should be open or closed and, in particular, the general acceptance of the panel roster concept.

Institutional and final provisions

On Final & Institutional a few specific articles were extensively discussed such as the Domestic Advisory Group, Provisional Application and No Direct Effect. There was good progress on the chapter on exceptions but lengthy exchanges on the approach to follow for the taxation article.

Transparency and Good Regulatory Practices

Continued fruitful discussions on the chapter on Good Regulatory Practice led to agreement on several provisions, with only a few elements outstanding.