

*This **document** is the European Union's (EU) proposal for the Chapter on Exceptions for the EU-Indonesia FTA. The actual text in the final agreement will be a result of negotiations between the EU and Indonesia.*

DISCLAIMER: *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER X

EXCEPTIONS

ARTICLE X.1

General exceptions

1. For the purposes of Chapter X [Trade in Goods], Chapter X [Customs and Trade Facilitations], Chapter X [Energy and Raw Materials], Chapter X [State Owned Enterprises], Section Y of Chapter X [Investment Liberalisation], Article XX of the GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment liberalization or trade in services, nothing in Section Y of Chapter X [Investment Liberalisation], Chapter X [Cross-Border Supply of Services], Chapter X [Temporary Presence of Natural Persons for Business Purposes], Chapter X [Regulatory Framework], Chapter X [Digital Trade], Chapter X [Energy and Raw Materials] and Chapter X [State-Owned Enterprises] shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public security or public morals or to maintain public order¹;

¹ The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety.

3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with the provisions of the aforementioned Chapters/Sections:

- (a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of paragraph 2 of this Article include environmental measures, which are necessary to protect human, animal or plant life or health;
- (b) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources; and
- (c) measures taken to implement multilateral environmental agreements can fall under points (b) or (g) of Article XX of GATT 1994 or under point (b) of paragraph 2 of this Article.

4. Before a Party takes any measures provided for in points (i) and (j) of Article XX of GATT 1994, that Party shall provide the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. If no agreement is reached within 30 days of providing the information, the Party may apply the relevant measures. Where exceptional and critical circumstances require immediate action that makes prior information or examination impossible, the Party intending to take the measures may apply forthwith

precautionary measures necessary to deal with the situation. That Party shall inform the other Party immediately thereof.

ARTICLE X.2

Security exceptions

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Party from taking an action which it considers necessary for the protection of its essential security interests:
 - (i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Party from taking any action for the purpose of maintaining international peace and security.

ARTICLE X.3

Taxation

1. Nothing in this Agreement shall affect the rights and obligations of either Indonesia or the Union or its Member States, under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention shall prevail to the extent of the inconsistency.

2. [To the extent MFN articles are included in the respective Chapters:]

Articles [...] (Most-favoured nation treatment [Investment Chapter - Cross-Border Supply of Services Chapter - Trade in Goods Chapter]) shall not apply to an advantage accorded by a Party pursuant to a tax convention.

3. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure aimed at ensuring the equitable or effective imposition or collection of direct taxes that:

- (a) distinguishes between taxpayers, who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested; or
- (b) aims at preventing the avoidance or evasion of taxes pursuant to the provisions of any tax convention or domestic fiscal legislation.

4. For the purpose of this Article:

- (a) "residence" means residence for tax purposes;
- (b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that either the Union, any Member States of the Union, or Indonesia are party to.

ARTICLE X.4

Disclosure of information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private except where a panel requires such confidential information in dispute settlement proceedings under Chapter X [Dispute Settlement]. In such cases, the panel shall ensure that confidentiality is fully protected.

2. When a Party submits information to the Trade Committee or to specialised committees which is considered as confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

ARTICLE X.5

WTO Waivers

If an obligation in this Agreement is substantially equivalent to an obligation contained in the WTO Agreement, any measure taken in conformity with a waiver adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the substantively equivalent provision in this Agreement.

CHAPTER X

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE X.4

Multilateral environmental governance and agreements

[...]

4. The Parties reaffirm the right of each Party to adopt or maintain measures to further the objectives of MEAs to which it is a party. The Parties recall that measures adopted or enforced to implement such MEAs may be justified under Article [insert article number - General exceptions –Exceptions chapter].

CHAPTER X

GOVERNMENT PROCUREMENT

ARTICLE X.1

Security and general exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or from not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement:

- (a) of arms, ammunition or war material;
- (b) indispensable for national security; or
- (c) for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent a Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of persons with disabilities, of philanthropic institutions or of prison labour.