



Report of the 9th round of negotiations for a Free Trade Agreement between the European Union and Indonesia

2 to 6 December 2019, Brussels

Officials from the EU and Indonesia met in Brussels from 2 to 6 December 2019 for the 9th 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 opening session was attended by Indonesia's Vice Minister for Trade H.E. Jerry Sambuaga, underlining Indonesia's commitment to the negotiations.

Nearly all working groups met (except TBT and Energy and Raw Materials) and further progress was recorded in almost all chapters. On the rules side negotiators managed to agree on further text consolidation on IPR, rules of origin, good regulatory practice, government procurement, dispute settlement, trade and sustainable development, investment dispute resolution, and several services texts.

Important deliverables of this round were the exchange of the second offer for tariff liberalisation, the publication for opposition of the respective list of geographical indications (GI), and the start of detailed discussions on Product Specific Rules.

Both sides agreed on a list of follow-up items in advance of the next round which is planned for March 2020 in Indonesia.

Details per negotiating area

Trade in Goods

During the round, both sides exchanged a second offer for tariff liberalisation, building upon the initial offer that was exchanged at the fifth round. The second offer, while being an intermediate one, brings the proposed liberalisation to an already high percentage both in terms of number of tariff lines and trade volume, and paves the way towards an ambitious and comprehensive agreement.

On the text, negotiators also explored possible solutions in a number of outstanding articles, such as export taxes, repaired goods, and remanufactured goods. Both sides explored whether limiting the scope or product coverage of the respective articles may provide mutually acceptable results.

Rules of Origin

Discussions on rules of origin touched on General Provisions (Section A), Origin Procedures (Section B), and on the Product Specific Rules. Indonesia shared a counterproposal on Product Specific Rules before the round, allowing to enter into substantial discussions, in particular on the chapters covering agricultural products, processed agricultural products, textiles, clothing and footwear.

Customs and trade facilitation

The 9th round enabled the parties to further clarify their positions and interests. One further article was agreed leaving only 3 articles outstanding: fees and charges, customs cooperation and mutual administrative assistance, and the article on the proposed customs committee.

Productive discussions were also held on mutual administrative assistance and the anti-fraud clause, with good progress reached on both texts.

Sanitary and Phyto-Sanitary measures

Discussions on SPS matters were held via video-conference. Agreement was reached on the wording of the outstanding issue related to the import license. Agreement on the 3 other remaining articles will depend on the final outcome on the institutional provisions and the chapter on economic cooperation and capacity building.

Trade in Services

Both sides discussed the EU proposed text on Financial Services, Mode 4, Telecommunications, International Maritime Transport, Mutual Recognition Agreements, Digital Trade, as well as the Performance Requirements provisions applying on services. Several outstanding articles were agreed.

With respect to market access, the EU reiterated its request to Indonesia to modify its existing Investment Law and eliminate joint venture requirements and foreign equity caps – which currently apply to all services sectors except for hotels. The EU also asked to expand the sectoral coverage of Indonesia's offer in certain services sectors and to abolish the limitations to the performance requirements commitments on services. Both sides also discussed in detail the Indonesian Ministerial regulations on the use of national maritime transport and insurance for exports and imports of certain commodities which appear to be inconsistent with Indonesia's GATS commitments. The EU reiterated its request to repeal these regulations.

Investment

Useful exchanges took place with regard to the investment liberalization provisions and the corresponding schedules of commitments. Some progress was made in further consolidating the text of the scope and definitions as well as in building possible compromises in relation to the remaining provisions on investment protection.

Investment Dispute Settlement

Discussions on investment dispute settlement were constructive, with in-depth discussions on several key policy issues. Indonesia is engaged in internal consultations on the Investment Court System (ICS) but the policy decision to accept the ICS approach still needs to be made. Good progress was made on the Annex on mediation, the Code of Conduct, and the issue of cost allocation ('loser pays principle').

Government Procurement

Both sides continued to work on the text of the chapter and managed to reach an agreement on some additional provisions. Although the majority of the text has been agreed by now there are, however, important issues that still remain to be further discussed, such as the non-discrimination and transparency principles and the domestic review procedure.

Regarding market access, the EU reiterated its expectation for a comprehensive and meaningful market access coverage at all levels of government and also for State Owned Enterprises. The EU also confirmed its readiness to discuss transitional periods as part of market access

commitments. Indonesia confirmed that it is working on preparing its market access offer and also flagged its concerns on entering the EU government procurement market.

Subsidies and SOEs

Discussions on subsidies focused on the issue of Service Subsidies, including via a special session with the Chief Negotiators. Both sides reviewed the open issues identified during the 8th round, and the EU suggested modifications to its proposed text to accommodate the questions and concerns from Indonesia.

On SOEs both sides exchanged views and information on the elements in the Chapter reflecting each side's concerns. Both sides clarified their understandings of the issues and agreed on comprehensive follow-up work.

Intellectual Property Rights

All remaining open issues in the IPR Chapter were discussed in detail. Both sides made progress in the general provisions, copyright. Provisions on technology transfer and IPR border measures were agreed. Both sides maintained their positions on the duration of copyright protection, regulatory data protection and on the supplementary protection certificates for medicines and plant protection products, and plant varieties protection.

On geographical indications (GIs), agreement was reached on the remaining open issue so the entire text on GIs is now concluded. Prior to the round, Indonesia and the EU published for possible opposition the respective list of GIs proposed to be protected via the Agreement.

Trade and Sustainable Development

Discussions resulted in an overall positive outcome, with more constructive engagement on some long-standing differences in drafting and progress made in consolidating a number of articles such as: context and objectives, right to regulate, labour/social agreements, multilateral environmental agreements, and transparency. Nonetheless, important conceptual differences remain, such as Indonesia's request that the parties should compensate each other in case the expected economic benefits coming from sustainability efforts would not materialize. Indonesia informed it was planning to table additional proposals on vegetable oils but otherwise no substantive discussions were held on this subject.

Small and Medium Enterprises

Both sides discussed all open items, including the institutional set-up to be established in the SME chapter. The EU made a detailed presentation of the Trade Helpdesk website which was followed by a discussion on similarities or differences with Indonesia's National Single Window. Indonesia also tabled a proposal on cooperation under the SME chapter, which will need to be further discussed in conjunction with the chapter on economic cooperation and capacity building.

Dispute settlement

Productive discussions were held on the remaining open provisions. Indonesia signaled understanding of the advantages of a roster system, but reserves a final confirmation. On the issue of open/closed hearings, a possible compromise text was discussed. Both sides had a thorough exchange on the draft annex on Rules of Procedures and made significant progress on the text.

Institutional and final provisions

Both sides explored alternative language to accommodate for legal constraints on either side, such as related to the possibility to delegate certain powers to the Trade Committee, or to the

procedure to amend certain parts and annexes of the agreement or to adopt binding legal interpretations. Both sides also discussed the structure and number of possible committees. Other provisions discussed were the article on the fulfilment of obligations, and the paragraphs related to provisional application. The EU reiterated the importance of each side establishing a Domestic Advisory Group.

Trade Defence Instruments

Constructive discussions were held on the limited number of remaining open issues in the chapter. Discussions focused on the need to consider the interests of the other party before the imposition of anti-dumping and countervailing measures and the timeline for the initiation of expiry reviews. Concerning bilateral safeguard clause the length of the transition period and the duration of measures remain open, pending further progress on market access discussions.

Good Regulatory Practices and Transparency

Constructive talks were held on the chapter on Good Regulatory Practices with three further articles agreed.

Discussions also started this round on transparency. The EU made a general presentation of its proposal for this chapter and Indonesia gave its initial views on several aspects. Both sides discussed the link of the Transparency chapter with transparency provisions in other chapters. Text-based discussions on the concrete articles will start in the next round.

Economic Cooperation and Capacity Building

There was significant progress on the first articles of the text, resulting in possible compromise language for the wording to be inserted in the Preamble, and on the article on objective and scope and the one on principles. The discussion reconfirmed the cross-cutting nature of the chapter while noting that the specific committees would have the technical expertise to provide substantive guidance on cooperation activities. Indonesia reaffirmed the importance to have in the text references related to the resources for the implementation of the chapter.