



#### CIVIL SOCIETY DIALOGUE

## **UPDATE ON THE TRADE RELATIONS WITH ASEAN, WITH PARTICULAR FOCUS ON THE TRADE NEGOTIATIONS WITH INDONESIA**

### **FINAL REPORT**

**Date:** 14/02/2022

**Time:** 09:30-11:30

**Location:** WEBEX

#### **Lead speakers :**

Head of Unit South and South East Asia, Australia, New Zealand, DG Trade, European Commission

Chief Negotiator for the trade agreement with Indonesia, DG Trade, European Commission

#### **Moderator:**

Information, Communication and Civil Society Unit, DG Trade, European Commission

#### **Panel Presentation**

DG TRADE presented the state of play of the EU trade relationship with ASEAN and ASEAN Member States.

With a growth rate of 5 per cent on average, ASEAN is predicted to be one of the major economic entities in two or three decades. Around 5 per cent of EU external trade is with ASEAN and 10 per cent of ASEAN trade in goods is with the EU. ASEAN is also creating an ASEAN economic community but the association is still far from creating a single market. ASEAN was able to conclude a number of Free trade agreements (FTAs), mainly in Asia, focusing on its neighbours (Japan, South Korea, China and India) as well as Australia and New Zealand. ASEAN is now starting to also look at western partners, namely Canada. One landmark regional development is the entry into force on 1 January 2022 of the Regional Comprehensive Economic Partnership (RCEP) that basically combines 5 FTAs ASEAN has with its Asian partners (all above except India) into one mega FTA.

The EU realized the potential ASEAN presents back in 2006 when the Council gave the Commission a mandate to negotiate with ASEAN and its Member States a Free

Trade Agreement, in parallel to negotiating an FTA with India and South Korea. That mandate was then updated to include investment protection. Between 2007 and 2009, the EU negotiated with seven ASEAN Member States but in 2009 the EU and ASEAN realized the gap in ambition and switched to a bilateral track of negotiations with the six major economies in ASEAN. Since then, two negotiations were concluded (Singapore and Vietnam with the investment protection agreements undergoing the ratification process), one active (Indonesia) and three at present inactive negotiations (Malaysia, Philippines and Thailand).

Looking back at the regional dimension, in 2017, a Joint Working Group was set up by Commissioner Malmström and ASEAN Economic Ministers to « develop a framework setting out the parameters for the resumption of ASEAN-EU negotiations ». The Joint Working Group met last two years ago but the gap of ambitions had widened. ASEAN is not comfortable engaging with the EU as a group in areas where it does not have common positions and policies (eg government procurement, TSD, competition, GIs). In parallel, the EU is monitoring closely the next instalment of the creation of the ASEAN Economic Community (AEC). While this community is not a common market, there is some potential for trading goods. EU will continue to work with ASEAN: at the moment EU and ASEAN are developing the next trade and investment work program that focuses on bringing together EU and ASEAN on areas and levels of ambitions in areas such as trade and sustainable development. In terms of the latest developments, the Commission and HR/VP adopted on 16 September 2021 a Joint Communication on the Indo-Pacific strategy following the April Council Conclusions on the Indo-Pacific. As regards trade, the Communication reconfirms EU interest in engaging with ASEAN member states and ASEAN, including, once the conditions are ripe, to resume bi-regional negotiations. The Communication also stresses the opportunity to engage sectors like regulatory coordination, green and digital areas. The digital trade aspect was touched upon at the last FTA Trade Committee with Singapore in December. On 22 February, several Executive Vice Presidents and Commissioners will meet, with the Member States and countries from the Indo-Pacific region, at the Paris Forum on the Indo-Pacific strategy.

DG TRADE then presented the state of play of the negotiations with Indonesia.

Negotiations were launched in July 2016 on the basis of an ambitious scoping paper. Since then, eleven rounds have taken place, the last one was held on the week of 8 November in virtual format. The fundamental rationale behind the decision to start the negotiations two years ago is the same: to create an agreement with the largest economy of ASEAN. This comprehensive agreement, not only covering tariff reduction but also rules, is the best available means to open up a promising and growing market of about 270 million people. This agreement should also create certainties in Indonesia's complex domestic regulatory environment.

Both the EU and Indonesia trade and export structures are complementary and not in direct competition so much. EU wants to use these free trade negotiations (called CEPA - Comprehensive Economic Partnership Agreement) as a driver for more domestic reforms in Indonesia (e.g. simplify red tape), helping to attract foreign investment while making Indonesia's economy more green and resilient.

The negotiations as such have been making decent progress, although not at a particularly fast pace (one round every half year). Things were not moving fast earlier on because the Indonesian chief negotiator pointed out the difficulties for the Indonesians to adapt to EU requests. The Covid-19 pandemic had quite a bit of an impact on the dynamic of the negotiations also. The last physical round was held in December 2019 in Brussels. Since then, in 2020, there was hardly any engagement because the Indonesian side was uncomfortable with the virtual

format. Last year, there were two more comprehensive rounds. The one in November delivered on the objective of rebuilding some momentum and obtaining some progress on technical issues. An important deliverable of that round was that the Commission was able to conclude the SPS food safety chapter. The round also enabled the EU to present a new text proposal for new sustainable food systems, as a result of the 'Farm to fork' strategy. The round was also used to convey some reassurances and dispel some misconceptions that exist in Indonesia on the EU shifting the goalpost with new requirements based on EU-green deal-related initiatives. Within the negotiation team, many Indonesian leads expressed their interest to continue the discussion beyond the round as such. It needs to be seen if that sense of engagement will be also translated in terms of Indonesia moving forward on some key outstanding issues requiring political clearance (public procurement, market access, disciplines on State-Owned Enterprises, disciplines on subsidies and rules on export duties). Those items need to be addressed in detail now. The report of Round 11 has been published on the EU Trade webpage.

DG TRADE noted that virtual rounds with Indonesia are difficult and highlighted the need for a physical round to be able to explore compromises and make significant progress on difficult issues. After 6 years of negotiations, a number of chapters have new leads, who never met in person. Apart from logistics, the substantive bottlenecks (government procurement, SOEs) are difficult issues to negotiate for Indonesia since they do not have a negotiation history for those. A renewed political push from the Indonesian cabinet would be helpful.

The Commission also noticed some new worrying protectionist reflexes coming up in Indonesia. Making the case for a liberalizing nde agenda has become somewhat more difficult. Import substitution policies have lately gained the upper hand. The Commission noticed that President Jokowi and Minister Lutfi have stated publicly that they are keen to conclude the trade negotiations quickly. However, for the moment, that political signal of accelerating has not yet translated into a new mandate at the negotiation table. The Commission hopes Indonesia will be able to move on some difficult issues by the next round, which is likely to be held in May, after Ramadan.

### **Discussion Highlights / Questions and Replies**

Questions from civil society followed. **Confederation of Christian Trade Unions (ACV- CDC)** asked the Commission on its stance on the Indonesian Omnibus law that does not, in their view, respect basic human and workers rights. ACV-CDC highlighted the recent Constitutional Court ruling stating that the Omnibus law is partly unconstitutional and needs to be adapted within two years. ACV CDC requested that the EU draws attention to this ruling and puts pressure on the Indonesian government to open up a participatory process with trade unions and civil society organizations.

**UNIFE (European Rail Supply Industry)** noted that public procurement is one of the main priorities when it comes to trade. UNIFE asked which ASEAN countries are reluctant to negotiate on public procurement aspects and what are the advancements on public procurements within the trade and investment working groups, notably with Indonesia.

**Digital Europe** noted that Indonesia, despite its commitment under the Information Technology Agreement (ITA), continues to impose duties on products covered by the ITA. When the EU companies face these tariffs when importing equipment into Indonesia, the competitors can import these goods duty-free thanks to regional FTAs, leaving EU companies at disadvantage. Political interventions are therefore necessary to bring solutions in line with WTO commitments. Secondly, while European digital companies are working with

Indonesian partners to connect Indonesians with ICTs technologies, Digital Europe pointed out that new local content requirements for 5G base stations are under preparation. Additional regulatory requirements regarding local content will impact EU companies to support the digital transformation of Indonesia's economy. Digital Europe requested the EU to urgently demand Indonesia to abandon its local requirement policy such as for 5G base stations.

**DG TRADE** noted that Malaysia struggles with the opening of government public procurement because of its internal Bumiputra policy. As a result, Malaysia cannot take commitments internationally on government procurements. On the trade and investment trade program with ASEAN, the program runs for a couple of years with Arise+ and E-READI activities. Under this program, experts from the EU and ASEAN have mentioned public procurement yet it remains a mid to long-term exercise to lift up ambitions, in terms of both scope and quality.

**DG TRADE** replied that the Omnibus law reform process was done following consultations with experts from the World Bank, stressing the need for Indonesia to make it easier to attract foreign investors, to ease red tape and create jobs. Considering its scale, the Omnibus law was put through the parliament faster than expected. Arguably, there are elements of due process that may not have been followed. The EU had submitted comments earlier on but the law seemed to have been adopted without providing further feedback. The Commission acknowledged anxiety from Indonesian labour unions at initial drafts but understood that the final version of the Omnibus law preserved basic labour rights. While there has been some relaxation the labour protection remains higher than its ASEAN neighbours. The law has also provided more compensation guarantees to contract-based workers and more protection in the case of bankruptcy. The Commission reading of the law would thus be more balanced, especially after checking with experts from the ILO. Admittedly, there are shortcomings in the text, but nothing that would constitute a violation or a breach of labour standards. On public procurement, the Commission made very clear to Indonesia that it is a must for the EU to have market access in its three components, whether it is tariffs, services and investment or public procurement. The EU wants to see parallelism in the level of advancement between tariffs and procurement negotiations. Levelling of tariff treatment with competitors is clearly part of the FTA objective. The Commission underlined it is aware of the new local content requirement on 5G base stations and indicated that Indonesia is resorting since the Covid-19 pandemic to its historic tendency to favour import substitution. The Commission has been underlining to Indonesia the importance of having several players competing in such an important market rather than having a single supplier coming from Asia.

**Institut der deutschen Wirtschaft (IW)** noted that the usual approach of the EU to have a very comprehensive agreement might tend to draw the negotiations over time. IW asked if it would be a possible solution to turn down some ambitions in order to show the EU is really engaging in the region and preserving its strategic autonomy.

**Amfori** observed that violations in the Philippines are still continuing. Amfori asked about the progress of the EU discussions with the Philippines government and if there is any threat of a GSP investigation.

**Both ENDS** requested clarifications on IPR concerns related to health in Indonesia, as well as further information on palm oil and the WTO case. Both ENDS requested that the comments the EU provided to the Omnibus law drafts could be made public in the spirit of transparency.

**DG TRADE** replied that the question "how far do we need to lower our ambitions to get a deal" is often asked, now also in the context of the Indo-Pacific strategy, the geopolitics, the geoeconomics, the position of China in the region, the

developments of intra-regional trade and supply chains issues. On one hand, the EU has a mandate to negotiate comprehensive agreements; on the other hand, the WTO GATT and GATS commitments impose minimum requirements. The EU has a good story to tell in terms of engagement since it has already four FTAs in place in the region and has decided to reopen negotiations with India last year.

On Philippines monitoring, DG TRADE recalled that the Philippines enjoys GSP+ and has committed to ratify and implement 27 conventions including on human rights. The Philippines is quite constructively engaging with the EU, but concerns remain on extrajudicial killings as part of the war on drugs, the curbing of media freedom and the reintroduction of the death penalty. Similar concerns were raised by the European Parliament. The Commission indicated that a monitoring mission is being prepared and should go ahead soon. The elections occurring at the end of the year need to be monitored as well.

**DG TRADE** responded that IPR, in particular patent requirements of medicines and supplementary patent protection, were not discussed at the last round. Indonesia and the EU agreed to first see how the debate on the TRIPS waiver unfolds at the international level before returning to those discussions in the bilateral talks. The Commission also indicated that palm oil has not come up in the negotiations. While the Commission expects a WTO panel report this year on the palm oil dispute, the EU and Indonesia have been able to make progress on the non-palm oil-related issues. The Commission also clarified that comments to the omnibus law drafts were made by the EU industries on the ground (Eurocham). There had not been a specific contribution by the Commission other than in general talks with Indonesian interlocutors. The message passed by the Commission was that the EU hoped the Omnibus law would open up Indonesia's market to foreign competition.

**FERN** wanted to know whether the new EU deforestation regulation is having an impact on the negotiations with Indonesia and to what extent. FERN also asked if the Commission is exploring how the TSD chapter can be used to strengthen the enforcement of the regulation, and asked to what extent the EFTA-Indonesia agreement on palm oil can inspire also the EU-Indonesia FTA.

**European Services Forum (ESF)** asked about the timeline of the Thailand negotiations. On Indonesia and services, ESF stressed that mobility of people is one of the main difficulties faced in the country and highlighted the importance of the digital trade chapter. ESF asked for some clarifications on the Commission approach to negotiations (e.g. negative list or positive list approach) and in terms of offers.

**Federatie Nederlandse Vakbeweging (FNV)** requested that the EU provide more reliable and comprehensive information on the consequences of negotiations. For example, the Commission's statement on omnibus law proved to be a new insight for FNV. FNV expressed concern that CEPA, through Investor-State Dispute Settlement (ISDS), would undermine the government role in determining Indonesia's domestic labour policy. For example, Indonesia's own wage determination mechanism is at risk if this ISDS is applied by the EU. Threats also come from the imposed intellectual rights, applied against workers and supported wages. FNV requested the EU to commit to supporting Indonesia in upholding decent work standards in line with ILO conventions. The EU should send a clear message to the Indonesian government to fulfil its obligations of ensuring public participation from the civil society and worker's rights. FNV also asked if the EU shared their concern that the freedom of expression is under threat and if so, how the EU is encouraging Indonesia to respect labour rights and freedom of speech and demonstration.

**DG TRADE** indicated that Indonesia has been making the point that the EU is shifting the goalpost and making new demands. Indonesia looks at some of these regulatory proposals (i.e. Deforestation initiative) with some scepticism. The

Deforestation initiative focuses on six products, four of which are important export products for Indonesia (palm oil, wood, coffee and cocoa).

On the question of whether the EU will use CEPA TSD chapter to enforce a benchmarking system, the Commission replied that it is too early to say for two reasons. First, the Deforestation proposal needs to go through the co-legislative authorities. Second, the initiative is an autonomous instrument that will apply to all products placed on the EU market, whether imported or not, and imported under any scheme. On the EFTA treatment of palm oil, the Commission indicated that Switzerland is importing a very limited quantity of palm oil from Indonesia, whereas the EU imports four million tons each year. Switzerland has restrictive conditions that would be impossible to implement at the scale of the trade between the EU and Indonesia.

On the question on services, the Commission took note of the objectives of ESF. The approach taken is that of a positive list similar to what the EU has done with Vietnam and Singapore. Services texts are well advanced for most of the regulatory rules but they would need to be read in conjunction with the services and investment, as well as market access offers. So far, the EU and Indonesia have exchanged one offer in 2018. Since then, the EU has been waiting for the result of the autonomous liberalization that Indonesia has undergone through the Omnibus law. The EU now expects Indonesia to build a second offer upon that, but also needs to see what will happen now with the pending court case.

On labour protection, the EU is asking in line also with the previous TSD review (15 action plan) for ratification and effective implementation of additional ILO conventions on occupational health and safety, as well as on labour inspections. The EU also encourages the Indonesian government to organise similar CSD format meetings. As regards investment protection, the EU has revised its approach and stepped away from the ISDS system. In terms of dispute settlement resolution mechanisms, the EU has come up with a new proposal of an investment court system. This new system, which exists in the agreements with Singapore and Vietnam, is being discussed with the Indonesian counterpart.

**DG TRADE** clarified that the Thai Ministry of Trade is engaging in an internal consultation process with the ministries and other stakeholders. Thailand and the EU need to see eye to eye when it comes to the level of ambition on substance. Thailand needs to give reassurances that they can share EU ambitions and be able to finish the negotiations once they are resumed.

**Danish Dairy Board** highlighted that Indonesia is a very interesting market for the dairy trade. Danish Dairy Board asked if the announcement of new halal legislation by Indonesia, including a WTO notification, are being discussed in connection with the FTA negotiation.

**CNV international** shared concern on freedoms of association and expression in Indonesia. CNV underlined that the Omnibus bill has impacted the palm oil and garment sector in Indonesia. CNV is working on an impact study and will share its findings. The bill has diminished the role of labour unions when it comes to wages, which proves to be in violation of the 131 ILO convention according to CNV. The law has allowed for excessive over-hours (namely 18 hours per week) and has eased firing procedures. CNV is concerned that CEPA will have an impact, it is important for workers and the population to also benefit from enhanced trade and investment flows. CNV requested the EU negotiators to guarantee that EU businesses in Indonesia will support living wages for the workers, particularly in the intensive labour sector such as garment and small enterprises.

**Spirits Europe** asked for the date of the next trade committee in Vietnam and stressed the importance of coordinating messages that are sent when the high-level

mission of DG AGRI goes ahead. Spirits Europe has not given up on the hope for the FTA negotiations to restart with Thailand and mentioned EU companies issues of regulatory cooperation. The US model was put forward, with requirements for testing and certificates of analysis.

**Lithuanian Investors Association** asked if the EU could join the RCEP which has been signed between Asian countries, New Zealand and Australia. It could help resolve supply chain issues.

**DG TRADE** replied that the EU, during negotiations on its trade and sustainable development chapter, asks its trading partners to commit and respect international obligations on core labour standards. He took note that an impact study is being conducted by CNV and would be interested to read it. The EU had hoped to include in the FTA language to specify that any halal measure would be voluntary and there would not be a labelling requirement to mandate products as being non-halal. In the meantime, however, Indonesia is moving ahead with implementing rules that make halal mandatory. The attention is now shifting towards ensuring that the certification bodies can do the halal certification in the least trade restrictive way.

**DG TRADE** indicated that the Trade Committee with Vietnam is not yet scheduled. There might be a physical meeting depending on the Covid situation and the possible travel arrangements. On Thailand, DG TRADE thanked Spirits Europe for pointing out the regulatory obstacles EU exports face compared to US exports. Thai authorities have used an APEC model that the EU does not have. Regulatory concerns and ideas suggested will be shared with EU regulatory experts to see how to move forward in the absence of an FTA. On the EU joining RCEP, the problem is the level of ambition, what the EU wants to see in the agreement and with whom the EU wants to engage (China is part of RCEP). Bilateral avenues can be used to ensure that EU interests are adequately reflected in the negotiated outcome.

**The Commission** committed to responding bilaterally to **CNV's** further questions on the situation in Indonesia, together with colleagues from DG EMPL.

**DG TRADE** concluded the meeting by stating that the session was very constructive and informative. There were three clusters of topics discussed : (1) one cluster on sectoral questions and concerns (procurement with ASEAN and Indonesia, ICT products, palm oil, deforestation, intellectual property rights, halal, spirits export and regulatory cooperation with Thailand) (2) a second cluster on the TSD side (sustainable development, labour rights, Indonesia Omnibus law and freedom of expression, GSP+ monitoring mission in the Philippines) (3) and a third cluster with strategic questions (how the EU position itself with its new Indo-Pacific strategy, Thailand FTA exploratory exercise, EU joining mega-trade agreements that exist already rather than entering bilateral negotiations).