

**To:** PETRICCIONE Mauro Raffaele (TRADE); art 4(1)(b)

**Cc:** KONIG Helena (TRADE); art 4(1)(b)

**Subject:** Report of the meeting between Commissioner Malmström and Minister of Foreign Affairs of Indonesia, R. Marsudi, 29 November 2016

FYI

*At the meeting of 29 November between Commissioner Malmström and Minister of Foreign Affairs of Indonesia, Retno Marsudi, discussions focused on the FTA negotiations, the general perception on the new US administration and on Indonesia's policy to discontinue expiring BITs. Discussions were open and friendly.*

*Main issues focused on :*

- *Indonesia's reluctance to stop discontinuing bilateral investment treaties on the grounds that this would equal to a discriminatory policy and a demand to receive clear and detailed documentation on the ICS as well as to hold a workshop to clarify the system. Minister Marsudi stressed that as long as Indonesia does not have an alternative to ISDS, "negotiations will be very tough".*
- *the Minister's suggestion to build an acceptable certification (similar to FLEGT and based on Indonesia's ISPO) for palm oil.*

### **Detail**

*Commissioner Malmström conveyed that the EU is very much committed to FTA negotiations with Indonesia. In referring to President Widodo's wish to conclude negotiations within two years, she conveyed that both sides need to have the necessary commitment and resources for this to be possible, but reminded that the substance obviously need to be there, and stressed that this is a priority for the EU.*

*Minister Marsudi referred to her discussions with HRVP Mogherini and referred to FTA negotiations as well as to the mutual perception of possibilities and policies under the new US administration. She referred to the uncertainty surrounding the US intention to withdraw from the TPP and under these circumstances to Indonesia's need to find as many certainties as possible , e.g. the EU. On these grounds, Indonesia's President wants to expedite negotiations. She also referred to the recent visit by NL Prime Minister Rutte.*

*Minister Marsudi also referred to her conversation with art 4(1)(b)*  
*She alluded to the belief that despite BREXIT and discussions on CETA a very high spirit persists and made reference to the upcoming FTA round in January. In this regard and referring to Commissioner's Malmström letter of 23 November on BITs, the Minister inquired about the ICS and its functioning and suggested to hold a workshop back-to-back with the round in January, preferably in*

*Jakarta. She stressed that only something that can be presented as a win-win system (which was not the case for ISDS) could gain approval in Indonesia.*

*Commissioner Malmström asked Minister Marsudi about the state of play of discussions in Indonesia on the current Indonesian system and raised concern about Indonesia's policy of the BITs termination and urged the Minister to freeze it.*

*Minister Marsudi pointed out that Indonesia's current policy concerns discontinuation of expiring bilateral investment treaties, not termination. She informed that some EU MS approached Indonesia with a view to consider not to discontinue BITs. However, she stressed that Indonesia does not intend to apply discriminatory treatment (N.B. 7 BITs have already been discontinued) and clearly stated that despite Indonesia's policy, the sunset clause, triggered until 2037, continues to provide investment protection. She stated clearly that Indonesia was not ready to stop the policy of discontinuation across the board.*

*Finally Minister Marsudi welcomed the new developments on the FLEGT licensing for timber and referred to the possibility to apply it to other commodities. In particular, she referred to the negative campaign against palm oil and asked whether Indonesia and the EU can work together on a certification for palm oil based on Indonesia's ISPO certification.*

*The Commissioner offered to look at the issue and recalled that RSPO ,the private international certification scheme, already exists and there is need to look at existing certification systems.*

Regards, art 4(1)(b)



**European Commission**

DG TRADE

Unit C2 "South and South East Asia, Australia, New Zealand"

art 4(1)(b)