

## Scene Setter

Indonesia is increasingly recognized as a key global player, both politically and economically<sup>1</sup>. It is the largest economy in ASEAN (40% of total ASEAN GDP) and has grown over 5% per year in the last decade. However, with a widening trade deficit, signs of a weakening economy and the proximity of 2014 elections (Parliamentary and Presidential elections in April and July 2014, respectively), Indonesia is increasingly leaning towards import substitution trade policy and protectionist measures which inevitably affect business environment and trade. These policies have also affected the preparatory talks (scoping exercise) to the launch of an FTA (the Indonesians prefer to call it CEPA), that, after a promising start in 2012, have stalled because of Indonesia's low level of ambition and lack of determination to address trade liberalization.

You last met Minister Gita<sup>2</sup> in Bali at the 9<sup>th</sup> WTO Ministerial conference in December 2013. While you did not have then an in-depth discussion on bilateral trade issues, this meeting should be the occasion to **convey our growing concerns as to Indonesia's protectionist policy trend, as well as inject some realism on the timeframe for starting CEPA negotiations**. Realistically, negotiations for a CEPA are unlikely to start in 2014, partly due to the upcoming Indonesian elections and post-election adjustments, but mainly because of the big gap in ambition and the work required to close it: the worrying **plethora of restrictive measures Indonesia is adopting does not help**.

On **bilateral issues**, as resulting from Indonesia's restrictive policies, we are suggesting that:

- you raise the **export restrictions on raw materials**, which, like other similar measures, is of concern to the EU, as expressed in your January 2014 letter to the Minister (attached);
- you raise concerns regarding the **recently adopted Industry Law (very protectionist at a first preliminary analysis)**;
- you enquire about when the revision of the **Investment "negative list"** will be announced.
- you raise the **"entry port restrictions"**: art 4(1)(a)

<sup>1</sup> Part of ASEAN, APEC, G20; hosted the WTO MC9.

<sup>2</sup> Gita is a prominent political figure; one of 11 nominees for the Presidential candidate runner up of the Democratic Party.

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**We have included 3 defensives on issues that that the Indonesians tend to raise at Ministerial level.**

On **WTO issues**, Minister Gita very able chairmanship was instrumental to the Bali deal. You could stress the need to prioritise the implementation of the trade facilitation agreement in the coming months.

### Line to take

## I. Bilateral issues

### Line to take on EU/Indonesia relations

- While the EU/Indonesia trade and investment relations are good, there is **considerable scope for improvement**. The EU stands firm in its commitment **to launch negotiations for a comprehensive CEPA** as soon as we are able to agree on the scope and level of ambition of such negotiations.
- Regrettably, however, there is **still an important gap in ambitions** between our two sides in the scoping exercise: we need to see greater ambition from Indonesia on services, investments and procurement, to ensure that the future CEPA brings new market access opportunities and a more predictable investment and business climate.
- Furthermore, I cannot hide my concern about Indonesia's increasingly protectionist measures which negatively affect our trade and investment relations: **how does Indonesia intend to address them in view of a future CEPA with the EU?** We need to seriously address a coherence issue here.
- With Indonesia's **elections around the corner** and the upcoming change of leaders in the EU next year, it looks very difficult to reach a point still during this year where both sides are ready to launch negotiations.
- But we should work in parallel to clarify the current policy situation, close the current gap in ambition and **engage in a constructive dialogue to address the increasing number of trade issues and try to solve some of them**.

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- Let me take **examples, which we need to seriously address:**

### **Export ban on raw materials**

- In January 2014 I have addressed you a letter conveying our **growing concern Indonesia's export restrictions of raw materials.**
- These export restrictions and localisation requirements are likely to be in breach of WTO law; are inconsistent with the G20 anti-protectionist pledges; and contribute to unfair and non-sustainable trade given the major differences in resource endowments across the globe and interdependence between countries.
- I would strongly urge you to consider alternative, non-restrictive measures to achieve Indonesia's policy objectives, without negatively affecting WTO members. Indonesia's measures can only create incentive for users to find other sources or alternative materials and this may not necessarily benefit Indonesia.

### **Adoption of new Industry Law**

- We have strong concerns regarding the recently adopted Industry Law.
- The Law leaves a lot of discretion in terms of imposing local content requirements, protecting national strategic industries (without specifying them) and initiating safeguard measures to protect domestic industry, empowering the Industry Ministry to propose such measures (tariffs and quotas).
- The Law appears to be very trade restrictive and discourage companies to operate in Indonesia: how do you intend to reconcile it with a project for an Indonesia /EU FTA?

### **Investment list**

- Finally, let me also enquire about the revision of the **"Investment negative list"** which has been under discussions in the Government for some time. We are obviously hoping to see further liberalisation in some

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sectors of key interest for EU industry (pharma, telecoms, tourism).  
**Would you be able to update me on this?**

## **EU Horticulture and Indonesia entry port restrictions**

- In December 2013 the head of the EU delegation in Jakarta and the Minister of Agriculture, Dr Suswono met and agreed to meet up early in the 2014 in order to resolve the current ban on EU horticultural imports through Tanjung Priok (Jakarta) port.
- Can you confirm when will the issue be solved and the EU will be granted a CRA and therefore use of the port?
- **The forthcoming Indonesia/EU Working group on Trade and Investment which should take place in February will be a good opportunity to hold a constructive discussion on these issues.**

## **II. Multilateral issues**

- We collectively reached a landmark deal in Bali. Let me again thank you for your very able chairmanship.
- The coming months will be crucial for the WTO. We now need to ensure a timely and meaningful implementation of the trade facilitation agreement to demonstrate *in practice* that the Bali outcome is solid and credible.

### **Defensives (bilateral issues)**

- **Should the Minister accuse the EU of lack of ambition with regard to the launch of the scoping exercise and the CEPA negotiations with Indonesia:**

We have already mentioned this briefly in Bali. We remain committed... but we need to get the substance right. The “scoping” exercise in 2012 unveiled an important lack of ambition from Indonesia’s side in the procurement, services and investment sectors as well as the extent of liberalization. This was the reason which did not allow progressing in a

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meaningful manner. We must see this gap reduced for constructive, realistic talks to start. We therefore look forward to receiving positive signals in this regard from Indonesia and are willing to engage. The forthcoming EU/Indonesia Working group on trade and investment to be held in February 2014 (date to be confirmed) can be an opportunity to hold a first exchange of views.

### **If asked about AD measures on biofuel**

Let me assure you that the current anti-dumping and anti-subsidy biodiesel investigations are highly technical proceedings based on strict legal WTO requirements. **The Council adopted on 19 November 2013 a regulation imposing definitive anti-dumping measures on biodiesel from Indonesia (and Argentina) which entered into effect on 27 November 2013.** The rights of defence of the Indonesian producers, guaranteed under WTO rules, are fully respected.

- **If asked about Indonesian palm oil exports and future possible restrictions on the EU market:**

In the EU, there are currently no restrictions on imports of Palm Oil as such. Most palm oil imports from Indonesia enter at 0% duty rate.

Indonesia maintains the lion's share of EU total imports of palm oil with 48%.

Amendment of the EU sustainability criteria for biofuel currently under decision making process or future EU food labelling rules equally apply to all products irrespective of their origin and are non-discriminatory.

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## Background

### Launch of talks on a scoping exercise for an EU-Indonesia CEPA

The shared interests and commitment to closer collaboration between EU and Indonesia outlined in the EU-Indonesia PCA (signed in November 2009) opened the door to closer cooperation in a wide range of fields, including trade. When Presidents Yudhoyono and Barroso met in December 2009 they tasked a joint Vision Group to examine how to increase trade and investment between both partners. The Vision Group's Report, made public in 2011, recommended the negotiation of a CEPA.

After the promising launch of a scoping exercise in 2012, the process has stalled because of Indonesia's low level of ambition and lack of determination to address trade liberalization (in their latest scoping counter-proposal full negotiation chapters, such as competition, had been completely eliminated and the level of ambition both as regards coverage of good trade, level of ambition on services and investments and procurement).

EU and Indonesia forthcoming elections (N.B. **in 2014 Indonesia's presidential election takes place in July, after the Parliamentary elections in April**) as well as a need to fill in the wide gap between EU and Indonesia in the current scoping exercise makes it unlikely that FTA negotiations can be launched in 2014. Most likely the discussions will pick up speed again only after the new President and Cabinet are in place sometime in autumn 2014.

### EU market access concerns

There are various trade issues, many of which linked to the trade policy of Indonesia. This is rather protectionist and oriented towards self-sufficiency, import substitution. To mention some of the numerous restrictive practices and measures:

- Export restrictions: Legislation de facto banning the export of metal and mineral raw materials which must be processed within the country has been applied since 2012. The straightforward export ban has entered into force on 12 January 2014, but, pending a legal analysis of the newly adopted measures, it appears that a recent decree continues to temporarily suspend it, subject to mining companies demonstrating their plans to domestically process minerals and to build smelters over a stipulated time period of three years, until 2017. Indonesia also applies a 20% export tax on 65 mining commodities. There is no information about any exporting companies being

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banned outright; apparently the Government has allowed a list of 66 companies to continue to ship unprocessed ore after the January 12 deadline.

The measures enshrined in Indonesia' mining laws constitute export restrictions and localisation requirements are likely to be in breach of Indonesia's WTO commitments. They also go against the anti-protectionist pledges made by Indonesia's leaders in the G20.

- The newly adopted ( December, 19) Industry law, which is still in the process of being assessed, but which already appears to be protectionist, by imposing, inter alia, local requirements. This Law is yet seen as another victory for Indonesian hard-line policy makers, notably in the Ministry of Industry, requiring more restrictive and protectionist industrial policies, spilling over into the trade policy areas. It is a wide ranging Law, which touches upon many aspects affecting trade and investment, and will provide greater protection and benefits to domestic industries. The Government will have to issue all implementing rules and write up the National Industrial Development Blueprint, a 20-year work program, to correspond with the new law.

Preliminary identification of key areas of concern, inter alia: the imposition of compulsory national standards; compulsory rules on procurement of local products (mechanism for sanctions if not complied with): the law obliges public procurement to utilise domestic product; State control of key industries: Safeguard measures to protect domestic industry: the law mandates the government to ensure "domestic industrial security"; prohibition to use foreign workers: In order to secure selected national strategic industry, Minister of Industry can prohibit the use of foreign workers

- Trade restrictive import practices, where licensing is a major instrument used. Exporters to Indonesia must comply with numerous and overlapping import licensing requirements that create confusion. They do this on a broad range of products, including electronics, household appliances, textiles, toys, food and beverages. **Certain sectors are also hit by restrictions to enter major ports (horticulture).**
- Entry port restrictions: the main entry port of Tanjung Priok in Jakarta is closed to imports of EU horticultural products. Exception was granted to countries that have a 'Country Recognition Agreement' (CRE) (US, Australia, New Zealand and Canada). art 4(1)(a)

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. So far however there are no concrete results on an EU wide CRA. The US and NZ requested the establishment of a WTO panel in March 2013 challenging the Indonesian non-automatic import licensing procedures for horticultural, and animal and animal based products, and their inconsistency with obligations under the WTO. **The EU has third party status.**

- Investment restrictions: a 'negative list' restricts foreign ownership in numerous sectors. A revision of this list has been on the cards for some time, with expected announcements of liberalisation in some key sectors of great interest to EU companies (such as pharma, telecom, and tourism). However, it does not seem to materialise, as decision-makers are waiting for an opportune moment to make such an announcement.

### Background

#### Defensive issues

##### **Anti-dumping Biodiesel case**

Following complaints lodged by the European Biodiesel Board ("EBB"), the Commission initiated anti-dumping and anti-subsidy investigations in August and November 2012 respectively on imports of biodiesel from Indonesia and Argentina. Provisional **anti-dumping** duties were imposed on 28 May 2013. No provisional **anti-subsidy** measures were imposed: the investigation continued, but the industry withdrew the complaint lodged in the anti-subsidy proceeding.

On the other hand, with regard to the parallel anti-dumping investigation **the Council adopted on 19 November 2013 definitive anti-dumping measures on biodiesel from Indonesia (and Argentina). However, the measures entered into effect on 27 November 2013.** The rights of defence of the Indonesian producers, guaranteed under WTO rules, are fully respected (both Indonesia and Argentina are threatening to challenge the EU decision in the WTO on the grounds that it is not compatible with WTO rules).

##### **Biodiesel and the Renewable energy directive ("RED")**

Together with the AD case on biofuel, Indonesia is also raising concerns with regard to the EU proposed amendments to the **EU directive, on Renewable Energy Directive ("RED"), which sets sustainability criteria for biofuels and** requires EU member states to produce an agreed proportion of energy consumption from renewable sources such that the EU as a whole shall obtain at least 20% of total energy consumption from renewables by 2020. Two of the

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environmental criteria **are being revised and under decision making process.** Indonesian complaints they are discriminatory and trade restrictive. However, the RED which will be gradually implemented in the EU, **equally applies to all biofuels consumed in the EU, irrespective of whether the raw materials were cultivated inside or outside EU territory and** looks at the sustainability of fuel production overall. Furthermore, **as it is stated in the Commission's Renewable Energy Progress report<sup>3</sup> in 2010, 40% of EU consumed biodiesel feedstock in 2010 was produced outside the EU, and biodiesel imports were dominated by Indonesia (palm-oil) and Argentina (soy-bean) since 2010, the imports of palm-oil based biodiesel from Indonesia have considerably increased and its market share reached 9,7% in 2011) .**

### **Palm Oil Exports**

Indonesia has also lately raised growing concerns over **Palm Oil exports** to the EU, claiming that the market is becoming increasingly difficult to access for Indonesian producers as a result of NGO criticism on Palm Oil production and sustainability. Indonesia has tried for some time (without success) to have Palm Oil included as an **'environmental good'** in APEC in order to qualify for reduced tariffs. In the EU, there are currently no restrictions of the imports of Palm Oil as such, and the product enters in fact under 0% MFN tariff rate. Indonesia's exports of crude palm have been increasing significantly in the last five years. Indonesia is particularly concerned that anti-palm oil sentiments are increasing ahead of new EU labelling requirements (that will be introduced in 2017) requiring "Vegetable Oil" to be defined. However, even this legislation is not discriminatory, as it applies to all products irrespective of their origin.

### **Anti-dumping: Fatty Alcohol case**

In November 2011 EU imposed anti-dumping duties on fatty alcohols originating in Indonesia, India and Malaysia. Two Indonesian producers were originally affected, however following a review only one (was imposed moderate measures (45 Euro/tonne, ca 4% if expressed ad valorem).

Indonesia requested the establishment of a WTO Panel and demanded that the remaining company be removed from measures within the context of an on-going review of the measures. **The EU is currently discussing with the representatives of the company the possibility of accepting a price undertaking** and works with a view to avoiding the dispute in Geneva.

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<sup>3</sup> see 27 March 2013 (COM 2013) 175 final,

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### **Anti-dumping: Initiation of a new investigation on monosodium glutamate**

The European Commission has received a complaint by the Union industry regarding monosodium glutamate (MSG) originating in Indonesia pursuant to Article 5 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community. The Commission is obliged to act within 45 days (by 29 November), following the lodging of the complaint.

The Mission of Indonesia to the European Union was informed on 21 November 2013 that the Commission has a documented complaint (before that date the existence of the complaint was confidential).

The notice of initiation of the investigation was published in the *Official Journal of the European Union* on 29 November 2013. Upon initiation, the Mission of Indonesia to the European Union has received the notice of initiation and the complaint.

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#### **Contact person:**

art 4(1)(b)

**DG TRADE C2**

art 4(1)(b)

**17 January 2014**

**VISA:**