


- **Subject: Bilateral EU/Indonesia trade relations**  Ref. Ares(2018)5979569 - 22/11/2018
- **Bilateral Meeting between Commissioner De Gucht and Minister Gita Irawan Wirjawan**
- **Bali, Indonesia**
- **Date:**

### Scene Setter

You last met Minister Gita in Brussels in May 2012. While not yet an official candidate for the Presidency or Vice Presidency (he is standing to be leader of the Democratic party), Minister Gita clearly does have high political ambitions.. Parliamentary elections in Indonesia are expected in April 2014 and the Presidential elections in July 2014.

Indonesia is increasingly recognized as **a key global player**, both politically and economically (part of ASEAN, APEC, G20; now hosting the WTO MC9; biggest ASEAN economy with a GDP growth rate over 5% for the last decade and heading to become a \$1 trillion economy by 2014).

These facts and Indonesia's growing self-confidence contrast with Indonesia's **reported feeling of being neglected by the EU in trade and economic terms**. The promising launch of a scoping exercise in 2012 (which precedes the launch of FTA negotiations) has stalled because of Indonesia's low level of ambition and lack of determination to address trade liberalization.

Also, with a widening trade deficit, signs of a weakening economy and the proximity of 2014 elections, Indonesia is increasingly leaning towards **import substitution trade policy and protectionist measures** (third in the EU's protectionism reports, after Argentina and Russia, in number of measures in place since 2008). While EU business continues to do well in the Indonesian market, the business environment remains highly unpredictable.

The EU trade and investment relation with Indonesia has considerable scope for improvement when compared to other countries in the region: your meeting with Minister Gita should reconfirm our **positive and constructive attitude towards Indonesia while stressing our growing concerns as to a protectionist policy trend, as well as injecting some realism on the timeframe for starting CEPA negotiations**. Realistically, negotiations are unlikely to start in 2014, mainly because of the big gap in ambition between the EU and Indonesia, as demonstrated in the scoping exercise, but also due to the upcoming Indonesian elections (and post-elections adjustments) and the end of term of the Commission. Minister Gita has been a vocal supporter of EU-Indonesia CEPA negotiations in your meetings with him, art. 4.1.(a)

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On bilateral issues, we are suggesting that you raise the **"port entry restrictions"**; [Art. 4.1(a)]

. We also suggest you raise the broader issue of export restrictions on raw materials and enquire about when the revision of the **Investment "negative list"** could be announced.

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

### Line to take

#### Line to take on EU/Indonesia relations

- Turning to our bilateral relations, and while the EU/Indonesia trade and investment relations are good, I think we both agree that there is **considerable scope for improvement.**
- The EU stands firm in its commitment **and willingness 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. The joint Vision Group report from 2011 sets out clearly the mutual benefits – in particular increased exports from Indonesia to EU of \$9.8 billion representing an increase of 1.3% to Indonesian GDP.
- Regrettably, there is **still an important gap in ambitions** between our two sides in the scoping exercise. In order to move forward we need to see greater ambition from Indonesia on issues such as: services, investments and procurement, to ensure that the future CEPA brings new market access opportunities for economic operators and a more predictable investment and business climate.
- In addition, with Indonesia's **elections around the corner** and the upcoming change of leaders in the European Union next year, it looks very difficult to reach a point where both sides are ready to launch negotiations.
- In my view, I think we should work in parallel to close the current gap in ambition between the EU and Indonesia on the CEPA and **engage in a constructive dialogue to address the increasing number of trade issues** which hinder the growth of our trade and investment flows (for instant complex non automatic import licensing and export restrictions) and **try to solve some of them.**

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- Let me take a **small example, where it should be possible for you to deliver a positive solution:**
- The **main entry port**, Tanjung Priok remains **closed to imports of fruits and vegetables from the EU**. Bringing perishable fruits and vegetables via other ports means longer travel time, increased costs and difficulties for the quality of these products.
- In the margin of the **ASEAN/EU business summit in Phnom Penh in March 2012** you expressed your willingness to **"cooperate to find a solution"** for the EU and you have also expressed support for an for EU-wide **"Country Recognition Agreement"**.
- **Unfortunately, the port is still closed to the EU and EU companies still suffer.** You will appreciate that **we are concerned about Indonesia's "de facto" discriminatory treatment** of the EU in comparison with some other major trading partners, such as the US, Australia, New Zealand and Canada, having Country Recognition Agreements (CRA), and who continue to enjoy unhindered access. We are even hearing that China will be granted access in the near future (not a country renowned for high SPS standards).
- **Are you able to confirm that the EU will be granted a CRA and therefore use of Tanjung Priok port** as has been previously promised? When will this be granted? Is there anything that we can do from the EU side to ensure that this decision is taken?
- This issue is one example of something that should be fairly easy to solve, However, I would also like to reiterate our **growing concern about broader systemic issues such as Indonesia's export restrictions** of raw materials - minerals and ores - as well as a 20%-export tax on a long list of mining commodities. I understand that the export ban has temporarily been suspended if mining companies can demonstrate their plans to build factories and process the minerals in Indonesia; but the threat of a ban remains and exports could be prevented from taking place as of January 2014.
- These export restrictions and localisation requirements are likely to be in breach in breach of WTO law. They are not consistent with Indonesia's anti-protectionist pledges in the G20 and contribute to unfair and non-

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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 that would still achieve Indonesia's policy objectives of developing its metal and mineral processing industry, without negatively affecting WTO members.**
- 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 sectors of key interest for EU industry (pharma, telecoms, tourism). **Would you be able to update me on this?**

### **Defensive Points**

- **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:**

Let's dispel any doubts or intentional misunderstandings: the launch of talks on a 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 meaningful manner. We must see this gap reduced for constructive, realistic talks to start. We look forward to receiving positive signals in this regard and willing to engage.

- **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, and the product enters in fact under 0% MFN tariff rate. In fact, the

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EU is the second largest export market for Indonesian Crude Palm Oil, accounting for more than 1 billion euros worth of exports. 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.

## **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 key issues: there are a number of Non-tariff barriers: 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. Investment restrictions: a 'negative list' restricts foreign ownership in numerous sectors. A

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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. Export restrictions: Legislation de facto banning the export of metal and mineral raw materials which must be processed within the country since 2012. The export ban is temporarily suspended until 12 January 2014, subject to mining companies demonstrating their plans to domestically process minerals and to build smelters. Indonesia also applies a 20% export tax on 65 mining commodities. There is no information about any exporting companies being banned outright; apparently the Government is close to finalising agreements with at least 12 companies that would allow them to continue shipping unprocessed ore after the January 12 deadline.

The measures enshrined in Indonesia's mining laws constitute export restrictions and localisation requirements that could 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 EU has engaged with Indonesia regarding these export restrictions through a dialogue at several occasions, at technical and political level, so far without satisfactory results.

**Port entry restrictions:** In June 2012, Indonesian Agriculture Ministry announced that it would close its main entry port of Tanjung Priok in Jakarta. Exception was granted to countries that have a 'Country Recognition Agreement' (CRE) (US, Australia, New Zealand and Canada) art. 4.1.(a)

the EU has so far not had any formal response from the ministry of agriculture on the request for 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 requested third party status.**

## **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

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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).

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### **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 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>1</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

<sup>1</sup> see 27 March 2013 (COM 2013) 175 final,

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(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. art. 4.1.(a)

### Anti-dumping Initiation of a new investigation

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 initiation of the investigation was due on 29 November 2013, and a notice of initiation was published in the *Official Journal of the European Union*. Upon initiation, the Mission of Indonesia to the European Union will receive the notice of initiation and the complaint.

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#### Contact person:

art. 4.1.(b)

**28 November 2013**



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