



Report of the 12th round of negotiations for a Free Trade Agreement between the European Union and Indonesia

12 to 16 December 2022 (per video-conference)

The 12th round of negotiations on an EU-Indonesia Free Trade Agreement took place in virtual format in the week of 12 December 2022. Discussions covered a substantive range of areas under negotiation, with 15 working groups meeting during the week, and a few other groups holding discussions shortly thereafter due to scheduling constraints. The respective negotiating teams were led by Mr Filip Deraedt (Directorate General for Trade of the European Commission) and Pak Johni Martha (Indonesian Ministry of Trade).

The discussions aimed at taking stock of the state of play in each chapter, review the main pending issues and exchange views on how to address them. While the more transformative or novel areas (e.g. public procurement market access, disciplines on State-Owned Enterprises, Trade and Sustainable Development) will still require substantive discussions in order to identify possible ways forwards, the round allowed for progress on open issues of a more technical nature in several chapters, such as Trade in Goods, Rules of Origin, Customs and Trade Facilitation, Technical Barriers to Trade.

Agreement was reached on the Protocol on Mutual Administrative Assistance, which is now technically closed, and on the Financial Services text.

Both sides confirmed their commitment to intensify the negotiations, and will prepare for in-depth discussions at the next round, which is scheduled to take place in the week of 6 February 2023 in Indonesia.

Details per negotiating area

Trade in Goods

The working group reviewed all remaining open articles in the Trade in Goods text. Discussions allowed to clarify various open issues, preparing the ground for further progress in particular with regard to provisions on repaired and remanufactured goods, import and export monopolies, and import and export restrictions. The two sides also exchanged views on origin marking and on HS transposition, whereas export duties could not be discussed in this round. No discussions took place on tariff liberalisation.

Rules of origin

The working group held positive discussions, which allowed to further clean the text and pave the way for greater progress in the next round. As regards the chapter text, the two sides had a detailed discussion on the procedures related to the rules of origin, in particular on the ways to claim preferential tariff treatment, and the origin verification procedure. On product-specific rules, the two sides reached agreement for a number of tariff headings, in particular in the industrial sectors.

Trade remedies

Both sides continued discussing the remaining open issues. Provisions regarding expiry reviews in the anti-dumping/anti-subsidies section, or the duration of possible safeguard measures and the length of the transition period in the bilateral safeguards section need further discussion. The two sides also discussed provisions on channels for dialogue and cooperation.

Customs and Trade Facilitation

The discussions on the remaining open issues in the Customs and Trade Facilitation (CTF) chapter proceeded in a constructive manner, and the two sides are close to reaching agreement on the text. In particular, further progress was made in relation to the article on Customs Cooperation and Mutual Administrative Assistance. Concerning the article on institutional provisions both the EU and Indonesia clarified their positions.

Protocol on Mutual Administrative Assistance

Both sides reached agreement on the Protocol on Mutual Administrative Assistance, which is now technically closed – pending final fine-tuning of provisions linked to horizontal matters, such as on institutional aspects.

Technical Barriers to Trade

The working group held in-depth discussions with the objective of clarification of the outstanding issues in the chapter. The two sides made progress on several points, e.g. on public consultations for technical regulations, subcontracting in conformity assessment, marking and labelling. Further discussions will be necessary mainly on supplier's declaration of conformity and on the Annexes on conformity assessment and international organizations, as well as on the EU proposal for a dedicated annex on motor vehicles.

Services

Discussions included dedicated sessions on MRAs and professional services, General Provisions, Financial services, Delivery services, International maritime transport, Mode 4.

The Financial services section is now fully agreed while the two sides will need to further work to finalise their agreement on other regulatory sections such international maritime transport, MRAs, delivery services, Mode 4. The group did not engage in detail on matters of market access, for which further discussions will also be required.

Digital Trade

Discussions focused on scope and definitions for the chapter, but remained preliminary in nature. Follow-up exchanges will take place ahead of the next round in order to allow for additional clarifications. The two sides also exchanged views on privacy.

Investment

Both sides held constructive discussions, covering both investment liberalisation (notably, provisions on scope, national treatment and MFN treatment) and investment protection (focusing on provisions on regulatory measures, compensation for losses, expropriation, observance of written commitments, denial of benefits, termination, and relationship with other agreements).

Compromise was achieved on some footnotes, and some useful clarifications were made, but internal consultations are still needed to allow for further progress on the text. Both sides intend to discuss, at the next round, all remaining articles in the sections on investment liberalisation and protection.

Government Procurement

The two sides held discussions on the text of the government procurement chapter. As the majority of the text is already agreed only limited progress was possible, whereas the key

principle of non-discrimination remains open . Despite the EU's insistence, the working group was not mandated to engage into discussions on market access commitments.

State-owned enterprises

The two sides held a useful dialogue on the core elements of the proposed provisions on State-Owned Enterprises (SOEs), building upon previous discussions. The exchanges also highlighted similar provisions in the EU's and Indonesia's other bilateral trade agreements. Points of convergence as well as divergence were identified as for the scope and depth of common disciplines, thus facilitating further work prior to the next round of talks.

Trade and Sustainable Development

Both sides engaged in positive exchanges, taking stock article by article of the joint Trade and Sustainable Development (TSD) text consolidation and touching on all the outstanding issues, providing additional clarifications and paving the way for further convergence. The negotiators reflected on the recent trade and sustainability developments on each side. The EU informed of the outcome of its TSD review of June 2022 and that it has been reflecting the results in its ongoing negotiations.

Good Regulatory Practices

The working group had a discussion on the remaining open issues within the chapter, noting that on most points there does not appear to be substantive disagreement. However, some further reflection is needed on the scope of the chapter, notably concerning the regulatory acts to be covered therein.

Transparency

The two sides had an orientation discussion on the Transparency chapter, and confirmed broad convergence in principle on its key elements. Work on the text will start in the next round.

Dispute Settlement

Both sides continued their discussions on the state-to-state dispute settlement chapter, including its annexes on rules of procedure and for a code of conduct for panellists, allowing both sides to better understand their respective positions and priorities.

Investment Dispute Settlement

Both sides focused on identifying and reviewing the major outstanding policy issues, in particular: the Investment Court System, transparency, mediation and consent. The discussions aimed at preparing the work for the next rounds.

Final and Institutional Provisions

Both sides took stock of the open articles and identified the main outstanding issues, noting that agreement should be achievable swiftly on several of them. Discussions addressed in particular provisions related to the functions of the Joint Committee, Decisions and recommendations of the Trade Committee, Specialised Committees, Working Groups, Contact Points, Domestic Advisory Groups, Civil Society Forum, Territorial Application and No Direct Effect. The two sides also shared experiences on their respective practices for the involvement of stakeholders in trade agreements.

Economic Cooperation and Capacity Building

The two sides held constructive discussions, focussing on bringing forward a more streamlined approach to this chapter. Topics addressed in the discussions included areas and forms of cooperation, resources, and institutional matters, in respect to each of which both sides agreed in principle to keep the text concise.