

## QUESTIONNAIRE ON A 'FREE TRADE AGREEMENT' WITH INDONESIA

On 18 July 2016, the European Commission received the endorsement from the Council of the European Union to open negotiations for a Free Trade Agreement (FTA) with Indonesia.

This questionnaire has been prepared in order to provide the Commission with information that should help establishing priorities and taking decisions throughout the FTA negotiations. Your reply to this questionnaire is important in this process and we thank you in advance for your contribution.

### ***Background***

Indonesia is one of the 10 members of the Association of Southeast Asian Nations (ASEAN) and is the largest (36 % of ASEAN GDP) and most populated (more than 250 million people) economy of the region. The Indonesian economy has more than doubled its size in the last decade and is one of the fastest growing economies in Southeast Asia (average GDP growth of 5.6% during the period from 2005 until 2015; 4.7% GDP growth in 2015).

Indonesia continues to work with the rest of the ASEAN Member States in deepening economic integration in the region under the ASEAN Economic Community (AEC), which was formally established on 31 December 2015. As part of ASEAN, Indonesia has concluded regional FTAs with China, India, South Korea, Japan, and Australia and New Zealand and is engaged in the negotiation of the Regional Comprehensive Economic Partnership (RCEP) that aims to consolidate these FTAs under a broader regional chapeau. Indonesia has also concluded a separate bilateral FTA with Japan and a preferential agreement with Pakistan. Negotiations for an FTA with Australia are being resumed. Indonesia recently also expressed interest in joining TPP.

Since October 2014, with the arrival of President Widodo, Indonesia has started a series of reforms to shift the direction of Indonesia's trade policy. Nevertheless, a very significant number of trade barriers persist. The aim of the FTA which the EU has started to negotiate with Indonesia is to facilitate and increase bilateral trade flows between the EU and Indonesia as well as to expand foreign direct investment. In this way, the agreement will develop a key aspect of the overall relationship based on the Partnership and Cooperation Agreement (PCA) that entered into force in 2014.

The EU is Indonesia's 4th largest trading partner. Indonesia ranks 30th in the EU's trade ranking and is the EU's fifth largest trading partner in Southeast Asia.

Bilateral trade in goods amounted to over €25 billion in 2015, with over €5 billion trade surplus for Indonesia. Indonesia's key exports include agricultural products, amounting to €4.3 billion. Indonesia also exports machinery and appliances, textiles and footwear, plastic and rubber products. EU exports to Indonesia are dominated by industrial products, including machinery and appliances, transport equipment and chemical products.

Bilateral trade in services amounted to €6 billion in 2014, with a surplus of €2.2 billion for the EU. The EU has a foreign direct investment stock in the country of nearly €26 billion, second only to Singapore.

The FTA negotiation with Indonesia is the sixth FTA the EU has launched with a member of the Association of Southeast Asian Nations (ASEAN) – following the launch of negotiations with Singapore (2010, concluded in 2014), Malaysia (2010), Vietnam (2012, concluded in 2015), Thailand (2013) and the Philippines (2015).

### *Information on the questionnaire*

The questionnaire is divided into the following sections:

- I. Trade in Goods
- II. Trade in Services and Investment
- III. Regulatory Issues (Transparency, Intellectual Property Rights, Competition, Government Procurement)
- IV. Other issues

Please describe any additional point you wish to bring to the attention of the Commission under chapter "IV. Other issues".

In addition, where possible, we would appreciate receiving as specific information as possible (substantiated where possible by economic indicators and/or data) of respondents' interests, prioritization within sectors, and any proposals for solutions, where problems have been identified.

The Commission, subject to the application of the EU's rules on access to documents (Regulation (EC) No 1049/2001), will treat the information that you provide as confidential. EU rules on access to documents allow the Commission to withhold access to a document where disclosure would undermine the commercial interests of a natural or legal person or harm the EU's relations with third countries, unless there is an overriding public interest in disclosure.

Please send your replies by 1 December 2016 to the following e-mail address: [trade-industry@ec.europa.eu](mailto:trade-industry@ec.europa.eu)

## ABOUT YOU

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\* Are you a small a medium-size company (SME) (remark: SMEs have less than 250 employees)?

YES  /NO

### I. TRADE IN GOODS

The Trade in Goods section of this questionnaire is divided into the following sub-sections:

- A. General goods-related questions
- B. Questions related to rules of origin
- C. Questions related to import restrictions and prohibitions
- D. Questions related to access to raw materials and export restrictions and prohibitions
- E. Questions related to import and export procedures (included under a general heading "customs procedures")
- F. Questions related to discrimination and transparency in domestic regulation and taxation
- G. Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)
- H. Questions related to Technical Barriers to Trade (TBT) (industrial goods)
- I. Questions related to Sanitary and Phytosanitary Measures (SPS) (agricultural goods, fish and fishery products)

#### **A. General goods related questions**

1. In what sector(s) are you active, and how much do you export to, or import from, Indonesia (directly or indirectly)?
2. What is your assessment of the potential for growth in your sector(s)?
3. Could you specify your overall "offensive" and "defensive" interests?

*(Note: "Offensive interest" is understood to mean the interest you may have in gaining additional or better access to the Indonesian market. "Defensive interest" is understood to refer to competition from Indonesia firms in your domestic market.)*

4. In your sector, do you see:

a) an interest in exporting and supplying goods to Indonesia?

Yes

b) an interest in importing from Indonesia?

Yes

c) an interest setting up production facilities and investing in Indonesia?

Yes

d) an interest in using Indonesia as a basis for trading / business within ASEAN or beyond?

Yes

How strongly would you rate the level of these interests?

high

5. Do you have an interest in exporting or importing "green goods" (i.e. goods considered to be environmentally and climate change friendly)?
6. Is there any element in an existing FTA between Indonesia (or ASEAN) and a third (i.e. non EU) country that harms your competitive position and that you would like to see addressed?

#### Transport, logistic and courier

No, Indonesia's commitments, however, should be no less ambitious than in its other agreements (incl. ASEAN agreements with China, New Zealand and Australia, etc.) in order to reach a level playing field with market competitors.

The current regulation on FTA (PMK 205/2015) allows for goods in transit provided there is non-manipulation however most of the time the Customs only allow FTA facility to be provided to goods with direct flight arrangements. This limits the ability of the company who trade with Indonesia using FTA scheme. At the moment, the FTA regulation is being revised and it would be good to see this part revised to allow for non-direct flight shipments to enjoy FTA scheme.

#### IT and Telecommunications Equipment

Basic localisation policy was introduced by regulation 69 of the Minister of Industry. It lists a lot of equipment that would be subject of minimal local Value Added including IP switches, routers etc. but until today no one applied it in process of obtaining type approval before minister of telecommunication release another regulation as the guidance regarding amount of local VA to be applied in specific equipment.

With the Ministry of Communications and Information (KOMINFO) regulation (MCIT 27/2015) signed in July 2015, Indonesia introduced new local content requirement for LTE (4G) telecom equipment, requiring 30% local content for base stations and 20% for subscriber stations, which will be increased to 40% for base stations and 30% for subscriber stations within two years.

After several iterations, in June 2016 the Ministry of Trade (MOT) signed the third amendment to MOT Regulation 82/2012, regarding local content provisions for LTE devices. MOT 41/2016 went into effect on July 1, 2016. The final regulation is largely the same as the previous draft we have seen, except for the removal of some labelling requirements.

In 2016, the Ministry of Trade has also issued a new import regulation (Minister of Trade Reg No 41/2016 – MOT 41) for 4G devices that require importers to have a manufacturing import license, instead the general import license, to import 4G devices. Manufacturing import license is granted only for companies who have established manufacturing facilities in Indonesia, where the import license itself is designated to import raw and supporting material for the manufacturing facilities. Therefore, this is forcing companies to have manufacturing facilities in order to conduct business in Indonesia.

After that, the Ministry of Industry (MOI) released the final version of Regulation 65/2016 with the methodology for calculating local content. There is an inherent contradiction for the Government to want to improve the country's ICT connectivity, while preventing operators from importing the 4G technology that they need to build rapidly the necessary infrastructure.

The local content requirements imply that very few companies are able to comply with these requirements as their supply chains include importation of components not available in Indonesia. At this stage, EU companies are at an impasse as the options they tried to meet the requirements didn't succeed, they cannot import any item with 4G into Indonesia. There is a new option discussed about having software counted as local content, but the regulation hasn't been released yet. We hope that the CEPA negotiations will allow an improvement of this situation.

7. How would you assess for your sector the relative importance of Indonesia (in terms of production capacity, comparative advantage, potential, etc.) among the countries of the Southeast Asian region?

**B. Questions related to rules of origin**

8. What preferential rules of origin and in particular product specific rules should apply in the sector(s) of your interest in the agreement with Indonesia (Please indicate whether you are exporting or importing):

a) The rules based on the reform of the GSP rules of origin applicable to Indonesia since 2010?

- Yes  
 No

b) The product specific rules negotiated in the EU-Vietnam FTA (when different from the GSP rules)?

- Yes  
 No

c) The product specific rules proposed by the EU within TTIP which result from the latest comprehensive consultation of the EU industry?

- Yes  
 No

d) Other?

If relevant, please indicate the level of non-originating materials that you would wish to apply to your products.

9. Would your industry need specific flexibility to source abroad, including from other ASEAN Member States? If yes, from which ASEAN Member State? Could your industry indicate sensitivities as regards possible cumulation by Indonesia of materials or products from other ASEAN Member States or from other EU FTA partners?

**C. Questions related to duties, import restrictions and prohibitions**

10. What depth of tariff cuts and on which goods would be necessary for these to make a meaningful impact for your sector?
11. Does your sector face import restrictions or prohibitions in Indonesia? If so, please specify the type of import restrictions (import duty, combined with additional or specific duties, tariff rate quota, import licensing, import prohibition, etc.)? Are these measures related to import restrictions or prohibitions publicly available? Please also specify the likely effect of their elimination.
12. If your product is subject to import licensing requirements, are such licenses granted automatically to all applicants?
13. What other measures are you faced with when importing into Indonesia?

The enactment of Indonesia National Standard (SNI) has widely affected Indonesia's distribution sector especially for imported products. This is much due to the fact that Indonesian standards are seldom fully aligned with international standards. Businesses in the distribution sector have been prioritizing to comply with Indonesian standards, however they report challenges in implementing procedures to comply with the SNI and the time they require to get import clearance. The longer the clearance takes place, the bigger the inventory cost is. Clearance which requires inspection per shipment becomes a highly significant factor to inventory cost and hence to the competitiveness of distribution sector. So far, the cost has to be directly translated to the price received by consumers. In addition, the lack of alignment with international standards both impact Indonesia's viability as a regional manufacturing hub and the competitiveness of Indonesia's exports.

**D. Questions related to access to raw materials and export restrictions and prohibitions**

14. Do you have an interest in purchasing raw materials from Indonesia? If so, please specify what raw material and describe its economic relevance. Are there any measures that could be included in an agreement to facilitate trade or reduce costs for trade in raw materials?
15. Do you face export restrictions or investment restrictions? If so, please specify the type of export restrictions (export duty, tariff rate quota, VAT rebate schemes, licensing, discriminatory promotion schemes, etc.). Please specify the likely effect of their elimination.
16. Are you aware of dual pricing of raw materials (i.e. where raw materials are priced at a lower level on the domestic market compared to international market prices to the benefit of local production)?
17. On top of legally binding provisions in an eventual EU-Indonesia agreement, does your sector favour closer cooperation in the field of raw materials with Indonesia? If so, in which form (e.g. regular dialogue)? What could be the topics discussed in the framework

of such a cooperation (e.g. rules, points of concern, alliance building with raw material producers and potential users)?

18. Do you have an interest in investing in the raw materials sector in Indonesia? Are there specific issues which should be tackled to facilitate this? If so, please explain.

**E. Customs Procedures (import, export and transit procedures)**

19. Do you face problems regarding one or several of the following issues? Please respond with yes/no and where possible provide a more detailed description of the problems faced.

a) Overall problems with customs procedures and requirements for imports, exports and/or transit in Indonesia?

Overall, procedures are lengthy and burdensome. The establishment of a coherent, simplified and more transparent procedure should be addressed in the negotiations.

More specifically, as of today, Indonesian regulations do not allow for some of these international best practices which are commonplace around the world, including in Indonesia's neighbouring countries. Key factors causing the clearance delays are a shortage of customs manpower, long delay of physical inspection (red lane) in combination with high rates of physical inspections and the burdensome and duplicative hardcopy paperwork submission requirements for clearance and customs control purposes. With regard to Customs automation system which is known as Customs and Excise Information System and Automation (CEISA) which is hosted at the Ministry of Finance has experience frequent down time since May 2015. This creates unnecessary delay to the clearance of shipments. The cause of the down time was due to network error, application as well as electricity supply.

b) Do you encounter specific problems related to:

- inspections and controls during clearance

YES  /NO

A way of improving clearance times is to reduce physical inspections - in certain Asian countries physical inspections are done on 40-60 per cent of imported goods. Customs should instead rely on risk management techniques and implement **pre-arrival clearance and post audits**.

Customs should also apply enforcement systems that use risk analysis and risk management to identify goods for inspection, based upon submission of data in advance of physical arrival of goods at the border.

- pre-shipment inspections

YES  /NO

Customs clearance and release can be further expedited through early lodgement of data. In cases where goods are selected for physical inspection, the importer can also be advised in advance so that the presentation of the goods to be handed over to Customs for inspection can be arranged without delay. The adoption of pre-arrival clearance would help reduce delays at the entry points and expedite clearance and release time. This is also in line with international customs conventions like the WCO's Immediate Release Guidelines.

- release times YES  /NO
- fees and charges YES  /NO
- confidentiality of data YES  /NO
- data requirements YES  /NO
- documentation requirements YES  /NO
- compulsory use of customs brokers YES  /NO
- other customs procedures YES  /NO
- transparency / publication of and access to trade regulations YES  /NO

Despite some improvements under the current government, Indonesia's regulatory framework remains murky. Draft regulations continue to be issued with little or no public consultation. Some ministries make existing regulations available online (sometimes late announcement) but this is not consistently adopted across government.

- discriminatory treatment YES  /NO
- lack of uniformity in application of procedures YES  /NO
- complexity in application of procedures YES  /NO
- customs valuation YES  /NO
- tariff classification YES  /NO
- relations with/access to the customs authorities YES  /NO

The accessibility of customs to carry out clearance outside of office hours at all the major airports and bonded zones would greatly reduce transaction time and costs, and reduce delays resulting from potential bottlenecks as a result of lack of customs availability outside office hours.

- co-ordination between different border agencies YES  /NO
- use or non-use of information technology YES  /NO

The introduction of EDI clearance at Customs is well received and further contributes to enhancing the efficiency of trade. Whilst these have been introduced for different categories of clearance progressively at different points of entry, there are still burdensome and duplicating hardcopy paperwork submission requirements for clearance and customs control purposes. This introduces a parallel manual processing of paperwork. Any requirement to print hardcopy paperwork and the parallel hardcopy clearance requirements should be completely removed, in favour of automated customs clearance.

- application or non-application of relevant international standards YES  /NO
- procedures for legal recourse/appeal YES  /NO
- transshipment YES  /NO
- reference pricing YES  /NO
- logistics/congestion YES  /NO

Domestic logistic services are challenged by limits in the availability of reliable transportation and information systems, and by the underdevelopment of supporting services. Meanwhile, the outer regions of the country suffer from high logistical cost, caused not only by trade imbalances stemming from the concentration of economic



activity in Java, but by the high market concentration of a few domestic shipping lines, creating near-monopolistic character of the market.

- other (please specify)

c) In light of your sourcing / delivery patterns, do you have any other comments to make?

A de minimis value exempts low-value imports from revenue collection. The implementation of a de minimis threshold can initially be seen as a saving to government, where the cost of collecting Customs duty and other taxes on each low value consignment exceeds the amount of revenue collected. While a de minimis threshold may reduce government revenue, it simultaneously reduces government regulatory compliance costs and benefiting business, in particular SMEs, and consumers by reducing import costs and delivery times. Indonesia currently has a de minimis value of USD 50, which was introduced in 1996. We positively note that this threshold shall be increased to USD 100 according to a new courier draft law. We highly support this important move as it will help facilitation for SME and MSMEs as well as the growth of eCommerce triggered shipment volumes. However, the new draft express regulation will have big implication to the express industry due to the following points:

1. Weight threshold is going to be replaced with value threshold with new grouping of consigned goods that could create confusion for Customs themselves and courier and postal companies.
2. Flat tariff of 7.5% for shipment within the range of >USD 100 – USD 1,500 will be applied – this could trigger a lot of enquiry from customers
3. Business entity with shipment >USD 100 will use formal entry – majority of express customers are business entities and with the formal entry the clearance will take 3-5 days which is not an ideal situation for the express industry whose main business is express clearance.

20. Do you face any problems with the way in which customs procedures are implemented by the Indonesian customs authorities?

- The implementation of regulation may be interpreted differently by Customs officers in the field, an example would be as shown in point A.6 related to FTA. In relation to this, some Customs officer could take the non-direct flight shipment while some others may not be.
- The requirement to submit power of attorney creates additional burden for the express industry as obtaining them may take some time from customers

**F. Questions related to discrimination and transparency in domestic regulation and taxation**

21. Is your sector faced with discriminatory measures and practices between domestically produced goods and imported goods into Indonesia? If so, describe the nature of this discrimination (e.g. is it based on legislation or on de facto discrimination; does it concern a regular domestic regulation and/or taxation regime?). Can you provide written substantiation of discrimination (including reference to legislation)?

22. Do you encounter problems due to lack of transparency of Indonesian regulation, e.g. in the form of lack of publication of legislation or other documents? (Please also refer to the detailed questions under section III.A below regarding transparency).

**There is a clear lack of transparency and timely and good communication (also not always in English) resulting in issues regarding new or changed regulation, which makes it hard for companies to follow and implement changing requirements and practices.**

Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)

23. Have you had experience related to the use of trade defence instruments in Indonesia (anti-dumping, anti-subsidy or safeguards)?
24. Were there particular difficulties in communicating with and/or receiving information from Indonesian authorities dealing with trade defence instruments?
25. Have you encountered market distortions (subsidies, pricing policies) in Indonesia which should be addressed by e.g. trade defence measures or other types of measures or which create structural trade difficulties?

**G. Technical Barriers to Trade**

*In the context of this questionnaire, the term "Technical Barriers to Trade (TBT)" is intended to mean requirements applicable to products (e.g. technical regulations) and the conformity assessment procedures intended to verify compliance with these requirements (e.g. testing, inspection and certification, product registration, etc.).*

*Please provide comments on the following issues. Comments are particularly welcome if you consider that some of the below areas should take priority in the TBT discussions.*

26. Have you found Indonesian product requirements to be a problem in exporting your products to Indonesia?
27. Often, trade barriers arise not necessarily from the product requirements as such, but from the procedures used to verify compliance with these requirements (conformity assessment procedures). What are the procedures used by Indonesia to verify compliance of products in your sector? Do Indonesian authorities accept, if applicable in your sector, self-declaration of conformity? Are procedures more burdensome than those applied in the EU<sup>1</sup>, or in other ASEAN countries? Do Indonesian authorities accept product specific test results from accredited EU conformity assessment bodies? Do they accept EU certificates or internationally recognised certificates? Are there any specific requirements in terms of accreditation? Are time-periods set for certification? Do you encounter difficulties (e.g. increased costs and marketing delays) due to these conformity assessment procedures?
28. What is your assessment of Indonesia's transparency and good regulatory practice in the development, adoption and enforcement of technical regulations? Please focus in particular on the questions below, and provide as detailed answers as possible.

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<sup>1</sup> For instance, EU legislation may allow for a manufacturer's declaration of conformity without the mandatory intervention of a third party certification body, whereas Indonesian legislation may require that the product be certified by a public authority or a certification body approved by this authority.

- a) How do Indonesian authorities consult industry on proposed technical regulations or conformity assessment procedures? In your view, does Indonesia systematically conduct public consultations on proposed TBT measures? How is transparency and participation of stakeholders ensured with respect to standards used in support of technical regulations or conformity assessment procedures?
  - b) If not, do importers (or domestic industry in Indonesia) have other opportunities to submit comments during the drafting of new technical regulations or conformity assessment procedures, before the proposal is adopted?
  - c) Are similar consultation opportunities being provided to domestic and foreign industry alike?
  - d) In your experience, have comments made by stakeholders been taken into account?
  - e) Is industry involved in standardization work in Indonesia? In particular, are foreign and/or foreign-invested companies allowed to participate in standard-setting activities in your sector (e.g. membership in technical committees developing new Indonesian standards)? If yes, what is your experience with regard to this area?
  - f) Have you ever tried to obtain information about proposed or adopted technical regulations, conformity assessment procedures or standards from the Indonesia TBT Notification and Enquiry Point (<http://tbt.bsn.go.id>)? Have you encountered specific difficulties?
29. To what extent have you encountered difficulties due to short implementation periods for new measures?
30. Have you experienced problems or difficulties arising from the division of responsibility for TBT-related measures between Indonesian authorities, or from regulatory differences between different regions of Indonesia?
31. Does Indonesia use relevant international standards as a basis for its technical regulations, conformity assessment procedures and national standards in your sector? If so, are there any unnecessary deviations from, or additions to those international standards, that could create barriers to trade?
32. Do you encounter any barriers to trade arising from burdensome or discriminatory labelling or marking requirements? If so, please describe them in as much detail as possible.
33. With your knowledge of the technical regulations, standards and conformity assessment systems both in the EU and Indonesia, do you have any recommendations for solutions which would facilitate trade?
34. Would your proposed solutions be achievable within the provisions of regulatory systems currently applied in the EU and Indonesia, or would changes to those systems or legislative framework be necessary?
35. Do you see the recognition of EU standards as an important element of the FTA? What is the importance of standards to your sector? What standards are you using?

## **H. Sanitary and Phytosanitary Measures (Agricultural products, fish and fishery products)**

*Sanitary and Phytosanitary (SPS) Measures apply in order to protect human, animal, and plant health.*

36. Please list the agricultural products (these include animals and animal products, plants and plant products, processed agricultural products) and fishery products you are currently exporting to or importing from Indonesia.
37. Please list the agricultural and fishery products that you may be potentially interested to export to or import from Indonesia in future (regardless of whether trade is currently taking place or has taken place in the past).
38. Please specify the major Sanitary and Phytosanitary (SPS) barriers you have encountered in the past (or may potentially encounter) when trying to export agricultural and fishery products to Indonesia.
39. Are you aware of any Indonesian law or policy which could have an impact on SPS and create a trade barrier? If you have examples, please express your views on how to address this.
40. With your knowledge of the technical regulations, standards and conformity assessment systems both in the EU and Indonesia do you have any recommendations for solutions which would facilitate trade?
41. Would your proposed solutions be achievable within the provisions of regulatory systems currently applied in the EU and Indonesia, or would changes to the systems or legislative framework be necessary?
42. Which basic elements/provisions should an SPS chapter in the FTA with Indonesia contain in order to potentially fulfil your priorities (please tick the box)?
  - i. Import conditions (transparent and clear SPS import rules based on international standards) and their applicability in a non-discriminatory manner to the entire territory of the exporting Parties
  - ii. Adaptation to regional conditions (regionalisation policy for animal and plant diseases)
  - iii. SPS related approval procedures for agricultural products which are transparent, undertaken and completed without undue delay, predictable, with information requirements limited to what is necessary and thus being in line with international obligations. Indonesian approval procedures should also recognise the EU's harmonised SPS framework.
  - iv. Equivalence (system of possible recognition)
  - v. Pre-listing of exporting establishments
  - vi. Verification procedures (audit, pre-clearance)
  - vii. Transparency and information exchange

- viii. Notification and consultation
- ix. Emergency measures
- x. Collaboration
- xi. Other

## II. TRADE IN SERVICES AND INVESTMENT

43. What are the main barriers that your sector encounters in cross-border services trade with Indonesia (e.g. obligation to have a local commercial presence such as an office, branch or subsidiary in order to conduct business, etc.)?

### Transport, logistic and delivery services

One of the main barriers European companies face for cross-border services trade is Indonesia's cargo security system. All cargo, regardless of risk and shipper status, must now be x-rayed by designated Regulated Agents prior to export and the civil aviation authority has prescribed a very limited number of Regulated Agents through which all cargo has to be screened. Although the number of Regulated Agents which have been approved has now been expanded to reach around fifteen entities (from originally three), the number is still too low to handle all cargos. The implementation of the regulation with three regulated agents being appointed initially led to severe delays, congestion and protests at the airport.

In 2012, the Ombudsman of the Republic of Indonesia conducted an investigation on Transportation Ministerial Regulation No. 152 Year 2012 regarding air transportation-based security. Findings of the investigation include the regulation causing high national logistic cost, increase of flight safety risk from terrorist threats and dangerous smuggled goods, cargo screening outside of line 1 airport area which is not sterile for flight security, and unclear responsibilities between Regulated Agents and airlines regarding flight security.

The current RA regime increases logistics costs as screening fees increase ten-fold, and impacts import and export. The Regulated Agent is not responsible for the goods they screen, under the current Regulated Agent the air cargo safety must be borne by the airlines. Screening is performed without appropriate equipment and adequately trained staff to detect and handle high risk cargo. There is an issue about the standard of x-ray machines that are being used. Each Regulated Agent can have different machines with different standards.

We suggest the EU, in its negotiation process to use the opportunity to display EU standards by showcasing line 1 being used by foreign companies and allowing airport authorities to learn from line 1.

### Insurance and reinsurance:

1. **For cross-border provision (mode 1) of insurance, as a general rule, a local legal entity must be established or the insurer in question must buy shares of an established insurer.** However, cross-border provision of insurance by licensed foreign insurers is conditioned on domestic availability tests – although direct purchase of personal insurance from non-admitted insurers via the internet is currently tolerated by the OJK.

2. **Since January 2015, insurers operating in Indonesia must place 25-100% of their risk coverage with domestic reinsurers.**

### IT and Telecommunications:

#### • **Over-the-top (OTT) content**

KOMINFO released a draft regulation on the provision of internet-based applications and/or content (OTT) at the end of April, 2016 (see [https://www.kominfo.go.id/content/detail/7398/siaran-persnomor-35pihkominfo42016-tentang-uji-publik-rpm-penyediaan-layanan-aplikasi-danatau-kontenmelalui-internet/0/siaran\\_pers](https://www.kominfo.go.id/content/detail/7398/siaran-persnomor-35pihkominfo42016-tentang-uji-publik-rpm-penyediaan-layanan-aplikasi-danatau-kontenmelalui-internet/0/siaran_pers)). The draft regulation requires foreign over-the-top (OTT) mobile service providers to register as permanent Indonesian business units and also includes requirements for OTT providers to partner with telecommunications providers. Currently, OTT is defined with a wide scope covering every item running over the Internet, and imposes requirements for local presence, local payment gateway, local language, and local IP address.

In early July 2016, Minister Rudiantara told reporters from the Jakarta Post that Kominfo will be moving away from several provisions in the draft regulation. However we are still watching this closely. Kominfo has brought in MOF to the discussions around taxing OTT. We have not seen any movement on the draft.

#### • **e-Commerce**

MOT released a draft regulation on e-commerce in June 2016 (see <https://chambermaster.blob.core.windows.net/userfiles/UserFiles/chambers/9078/File/IC/T/2016/peraturan-pemerintah-tentang-transaksi-perdagangan-melalui-transaksi-elektronik-id-2016066.pdf>). While the draft is an improvement upon previous versions looking at regulating e-commerce, there are still concerns around minimum capitalization for foreign businesses, data on-shoring, the right to block content, and extensive data protection provisions. At the moment the draft is reviewed by the Ministry of Law and Human Rights for harmonization, who is expected to host inter-ministerial discussions on the draft. The target to finish harmonisation is September. Another concern for the EU Industry relates to the provisions on data privacy which should rightly be addressed in the data privacy regulations (see more in the data localisation paragraph below).

#### • **Data localisation**

Government Regulation No. 82 on the Operation of Electronic Systems and Electronic Transactions came into force on 15 October 2012, augmenting the previous Law No. 11 on Electronic Information and Transaction. It regulates: the operation of electronic system, electronic transaction, electronic signature, electronic certification, certification body and domain name. The regulation expanded the country's data protection regime by requiring "electronic systems operators for public service" to set up a data center and disaster recovery center in Indonesian territory for the purpose of law enforcement and data protection. The unclear scope of the regulation has been a source of concern since its inception, and in January 2014, KOMINFO increased concern by circulated a draft regulation with technical guidelines for data centers, which according to the Ministry's spokesperson "covers any institution that provides information technology-based services".

In August 2015, KOMINFO issued 3 draft ministerial regulations regarding protection of personal data in electronic systems, information security management systems, and electronic system software.

Global Industry submitted comments on the three drafts. Comments stressed changes to ensure the protection of the public's privacy in a manner that is efficient, flexible, and

practical, while facilitating innovation. Available at this link: [Comments on the regulation concerning the protection of personal data.](#)

Later, Minister Rudiantara stated that Indonesia will remove the requirements to locate data servers but these requirements are still included in the OTT and e-commerce draft regulations. Also worth noting that there is also a draft regulation on IT risk management that includes data localisation for banks. The electronic transactions law may be reviewed by the Parliament this year, in which case Kominfo is expected to review GR82 next year. Finally, the new draft bill for data privacy is expected to be adopted by the Parliament next year. In addition, KOMINFO said they are working on a draft ministerial regulation.

44. What are the main barriers that your sector encounters in establishing a commercial presence, including by acquisition, in the primary, secondary or tertiary sector in the Indonesia (e.g. capital ownership / equity cap, limitations to management control, difficulty in obtaining a licence or authorisation, treatment by state-owned enterprises, complex and lengthy procedure between federal and provincial level, etc.)? How do you assess the obligation to work in joint venture with Indonesian nationals, or the limitation on the ownership of land? Should this be a focus of our negotiations or are there ways for business to accommodate this and should negotiations give priority to other elements? Any details would be appreciated.

#### Distribution and courier sectors

There are a number of foreign ownership caps that affect the logistics, distribution and courier sectors in Indonesia, as follows:

- Per the 2016 Negative Investment List, warehousing is limited to 67% foreign ownership
- Per the 2016 Negative Investment List, distribution that is not affiliated with production is limited to 67% foreign ownership
- The Postal Law was passed in September 2009 with very limited transparency.
- The Law sets to privatise the Indonesian postal market within five years but contains a number of unclear and very restrictive provisions. In particular:
  - a. The wide scope of postal services goes beyond international best practices and what normally constitutes postal services. It includes among other things electronic transactions and logistics services, creating an overlap with freight forwarding services regulated by the Ministry of Transportation.
  - b. It restricts operation of foreign postal operators to international gateways in provincial capitals. Although a clarification letter issued in 2011 by the regulator the Ministry of Communications and IT (KOMINFO) expands the operational area somewhat, it does not cover the domestic leg of international shipments.

Indonesia should be urged to reinstate previous ownership thresholds of 95 per cent for all logistics services. In addition, additional restrictions on foreign logistics providers should not be imposed, since one of the Government's main priorities is to improve connectivity and lower the costs of doing business in the country.

#### Insurance and reinsurance

- **Only locally incorporated joint ventures may apply for an insurance operating licence.** To obtain an operating licence foreign insurers are also required to maintain paid-up capital reserves five times higher than domestic insurers by the Indonesian Financial Services Authority (OJK).

- As per the new Insurance Law introduced in September 2014, foreign equity caps stand at 80%. However, the Otoritas Jasa Keuangan (OJK) has approved 100% caps on a case-by-case basis.** Many joint venture insurance companies operating in Indonesia are currently fully controlled by foreign investors through utilising a dual-layer PMA structure to own shares in excess of the foreign direct investment limit of 80%. Foreign partners have been allowed within the current regulations to inject capital into a joint venture in excess of 80% so long as (i) the domestic partner does not reduce its capital; and (ii) the regulator approves the capital injection. Where approval has been given, this has often resulted from instances where Indonesian insurance companies have found themselves inadequately capitalised and the domestic partner has not been able to fund a recapitalisation. Having provided this approval in the first place, the statement by the OJK on 3 May 2016 was concerning, calling upon joint-venture insurers with foreign ownership above the current 80% cap to divest their shares via an initial public offering. OJK Commissioner for the Non-Banking Financial Industry Firdaus Djaelani suggested that alternatively, such foreign owned insurers could opt to divest from foreign owned shares above the current limit by seeking local strategic investors. The suggestion was dismissed at the time by the Ministry of Finance – responsible for setting equity caps - which stressed that the regulation setting out the foreign participation limit for insurance was still under development. However, the Ministry later confirmed that the new regulation would only be issued in 2017.
- The Indonesian authorities are reportedly considering reducing the foreign equity cap from 80 percent to 49 percent for life insurers.** In February, a speech from Otoritas Jasa Keuangan (OJK) Commissioner for the Non-Banking Financial Industry Firdaus Djaelani prompted rumours that a new lower foreign equity cap for the insurance sector would soon be announced. Djaelani said the OJK was preparing new regulation addressing foreign ownership limits, without disclosing the details of a new cap or when it would be issued. The speech prompted widespread speculation in the foreign specialist media that foreign ownership in the insurance sector could be lowered from the current 80% to 49% (or even 30%). Djaelani said that foreign investors holding stakes above the new cap would “probably” not be compelled to divest, but would not confirm this point. Any such move to force the divestiture of a previous approved equity increase would be concerning. It is also unclear on the OJK’s locus, given rules on equity caps is the prerogative of the Ministry of Finance.
- Lifting the obligation to work in joint venture with Indonesian nationals and the 80% cap on foreign ownership in the insurance sector should be a EU priority in the negotiations.** Although no details have yet been made public, the authorities maintain that these policy proposals are intended to level the competitive level playing field in ASEAN, arguing that Indonesian financial institutions are currently put at a competitive disadvantage in ASEAN by Indonesia’s more liberal market access regime. However, there is a strong counterargument given six out of ten ASEAN member states allow 100% foreign ownership of life insurance companies. Of the remainder, only Indonesia, Malaysia and Thailand maintain an equity cap (while Myanmar is considering the details of its regime). Further moves towards an inward-looking policy could result in the gradual deterioration of market access conditions in the near future.

45. What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in Indonesia (e.g. difficulty in obtaining work permits and visas due to lengthy



procedures, recognitions of your employees' qualifications, lack of transparency in regulations at various administrative levels, etc.)? Are there any occupations and professions in Indonesia that are not allowed to be exercised by foreigners, and that you would wish to see opened as a result of the FTA? What should be the professions to look at with priority? Are there any industry-specific legislation, regulations or administrative acts which contain criteria on the nationality of director, managing partner or manager?

- **Foreign companies face conditions on their ability to temporarily transfer staff in local business units from abroad.** Employment of foreigners is allowed only in positions Indonesians cannot fill and if regular and systematic training is provided, so that Indonesians can eventually replace expatriates. There are normally no difficulties obtaining permission to employ foreign managers/technicians if the government believes no Indonesians are available to fill roles, but firms must submit an annual report which states how many expatriates they employ and their plans for training Indonesian staff.
- **Indonesia also maintains legal nationality requirements on board directors and imposes residence restrictions on them.** The majority of the board of directors must be residents in the non-life sector, but not in life and reinsurance sectors. For all insurance's sub-sectors, at least one board director must be a national. Similarly, across the insurance sub-sectors a manager must be a national but does not have to be resident.
- The Indonesian Parliament occasionally passes rules which discriminate against foreign businesses, such as the recent bills on working visas and Bahasa language requirements for foreign workers. To date, the President has declined to pass these rules into law.

There are a number of other concrete hurdles regarding the temporary movement of natural persons, notably:

- There are no exemptions for a 1-3 week short job term job assignments, now it is same procedure as for a long term job permit which is a lengthy bureaucratic procedure.
- In the application for a residence and work permit every village that you intend to work in has to be listed. A permit should be valid for Indonesia as a whole to simplify the procedure and decrease the administrative burden.
- There are limitations on using foreign workers. These limitations however vary and there is a problem with transparency and clarity of rules.
- Regulations and actual practice do not align and also differ strongly from region to region within Indonesia, for instance regarding the formalities for work permits. This makes it very hard for companies to follow, given that changes are not communicated to stakeholders. Better implementation of regulations and laws as well as greater transparency and communication is absolutely key.

46. Do you observe any self-imposed constraints (i.e. voluntary codes of conduct that are agreed and followed by operators) relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which you would like to see generalised or codified in Indonesia? And if so, which?

- **Not at present**

47. Do you encounter problems due to lack of transparency (e.g. lack of publication of legislation or other documents relevant for your trade behaviour)? Please also refer to the detailed questions under section III.A) below regarding transparency. Is there an interest in having a Mutual Recognition Agreement in your sector (to cover recognition of standards, licenses, qualifications or else)?

Regulations affecting the distribution sector are widely spread in different ministries regulations and local government regulations. These regulations may aim to regulate the

production part of the industry but end up regulating the distribution/supply chain process of the industry. One of the examples on such cases includes regulation on importing telecommunication devices. Another issue on regulation is that the implementation part of the regulation that becomes hindrance and a source of inefficiency in distribution sector. One of the examples of such cases is the obligation to have inspection per shipment as part of import clearance. Given that the regulatory authority (including licensing, supervision and reporting requirements) may lie across government institutions, direction, coordination and supervision from a high level institution is important in order to lower distribution costs and improve seamless connectivity.

As for the professional services sectors, the FTA should aim at establishing the same kind of framework allowing the sectors that would find a mutual interest to do so to work towards negotiating a MRA of qualifications and diplomas (for instance for architects, auditors or engineers).

48. Is market access allowed in your sector in Indonesia in a way that goes beyond the access obligations Indonesia committed to in the WTO and if yes, is it still interesting for your business to "lock-in" this market access by means of legally binding commitments at the level of the current situation - or would it be necessary to obtain even further formal market access commitments?

#### Insurance

**Yes. Indonesia's Mode 3 GATS schedule binds the government not to lower foreign ownership caps in the insurance sector below 49%, while under current legislation provides for 80% foreign ownership limit in locally incorporated joint-ventures.** Given the policy uncertainty resulting from a potential lowering of foreign ownership limits in life insurance to 49%, it is key that the EU seeks at the very least to bind the current 80% cap in its future FTA with Indonesia. However, the first priority should be to secure the elimination of joint-venture requirements and to raise foreign equity limits to 100%. In addition, there should be an undertaking that where a company has more than 80% shareholding with prior OJK permission, there will be no retrospective demand for the company to give up part of its shareholding. This undertaking could be achieved through a commitment to grandfathering of existing shareholding structures.

49. In your view, are European companies at a disadvantage vis-à-vis third countries' competitors, due to bilateral trade treaties or FTA agreements to which Indonesia is a Party and that are already in force or about to come into force (e.g. ASEAN-Japan, ASEAN-China, ASEAN-South Korea, ASEAN-Australia and New Zealand, or Indonesia's bilateral FTA with Japan)?

#### Insurance

- **ASEAN-Australia and New Zealand FTA: Indonesia's schedule of commitments in insurance binds foreign ownership limits at 80%.** This means that were Indonesia to lower its current unbound 80% MFN cap, Australian and New Zealand insurers would be able to maintain their ownership structure, putting them at a competitive advantage relative to European insurers.
- **There is a lack of laws guaranteeing national treatment by regulatory authorities with respect to foreign investors.** However, Australian firms receive national treatment under the terms of an ASEAN-Australia FTA.

• **Careful consideration will be required about a potential FTA's impact on existing Bilateral Investment Treaties** (for example, the UK-Indonesia BIT) and whether the FTA considers proposing the EU's Investment Court System (ICS) mechanism, or whether – like the EU-Vietnam FTA - it leaves existing BITs between Indonesia and member states untouched, to be replaced by the FTA's ICS only when existing BITs lapse. Following the termination by Indonesia of its BIT with the Netherlands in 2014, the current expectation is that it will seek to terminate other BITs in due course. The UK-Indonesia BIT has an automatic renewal process every five years (subject to a five-month notice period prior to its roll-over if either side wants to terminate the agreement). This notice period on the current roll-over is due in March 2017. While the existing BIT contains a twenty-year sunset clause for investments made when the BIT was in force, it will be important to ensure that the FTA provides suitable level of protection and enforcement if it replaces existing BITs, and that there are suitable transitional arrangements if BITs lapse and are replaced by an FTA-based ICS mechanism. At the moment, there are 15 EU member states have a BIT with Indonesia (Belgium, Croatia, Czech-Republic, Denmark, Finland, France, Germany, Hungary, Italy, Netherlands, Poland, Slovakia, Spain, Sweden and UK).

50. In the light of question 48, what negotiating objectives should the EU focus on, in the various sectors, so as to achieve at least a level playing field for its service providers and investors in Indonesia?

Insurance:

**Given the policy uncertainty resulting from a potential lowering of foreign ownership limits in life insurance to 49%, it is key that the EU seeks at the very least to bind the current 80% cap in its future FTA with Indonesia.** However, the priority should be to secure the elimination of joint-venture requirements and to raise foreign equity limits to 100%. Furthermore, as noted in response to Q48, if limits were lowered, there should be no retrospective demands for a company to give up a previously approved shareholding, and existing shareholding structures should be grandfathered.

51. Are foreign investments in Indonesia treated in a fair and equitable manner compared to domestic investments? Have there been any unreasonable, arbitrary or discriminatory measures against foreign investments?

Courier and express delivery

From 2009-2014, a raft of economic policies were adopted which were clearly aimed to protect domestic companies, and which created a great deal of ambiguity and uncertainty for foreign investors. The Joko Widodo administration has made some progress in shifting away from this trajectory, launching numerous economic policy packages to improve the investment climate. However, protectionist tendencies still remain, especially in sectors such as logistics where the domestic industry is very strong.

One example is Ministry of Transport Regulation 130/2016 which was just signed a few weeks ago. MOT Reg 130 revises the minimal capital requirements for foreign freight forwarding investors – the minimal capital requirement is now US\$4million, which is significantly high compared to other countries. Meanwhile the minimum capital requirement for domestic freight forwarding companies is approximately US\$150,000.

Insurance

- **There have been instances of unofficial pressures on foreign insurers from local regulatory authorities, often in form of ‘advice’ not to repatriate profits.** Failure to heed advice on advertising and marketing of bancassurance schemes has resulted in investigations and reform without notice or consultation.
- **Other informal barriers include discrimination or effective barring of foreign insurers from selling insurance to state entities, despite the absence of a formal provision limiting such activities.**
- **There is a lack of laws guaranteeing national treatment by regulatory authorities with respect to foreign investors.** It is important to note that Australian firms receive national treatment under the terms of an ASEAN-Australia FTA.

52. In the course of doing business in Indonesia, have you ever encountered any requirements or incentives to:

- export a given level or percentage of goods or services: yes  no  ; or
- achieve a given level or percentage of domestic content yes  no  ; or
- purchase, use or accord a preference to goods produced or services provided in Indonesia, or to purchase goods from Indonesian producers or services provided by Indonesian service suppliers yes  no  ; - in the case of re-insurance
- transfer a particular technology, a production process or other proprietary knowledge yes  no  ; or
- grant access to proprietary source code yes  no  ; or
- to locate the headquarters of that investor for a specific region or the world market in its territory yes  no  ; or
- to achieve a given level or value of research and development in its territory yes  no  ?

53. Have you been subject to any cases of direct or indirect expropriation? If so, have expropriated investments been compensated promptly, adequately and effectively? Was this done under the provisions of an existing Bilateral Investment Treaty between Indonesia and a Member State of the EU?

**There has been a local court case which proposed disproportionate action to seize all Indonesian assets of one European Insurance company.**

54. Are provisions on free transfer of funds of capital and payments related to an investment by investors fully respected?

**There have been instances of unofficial pressures on foreign insurers from local regulatory authorities, often in form of ‘advice’ not to repatriate profits.** This has in the past taken place under exceptional circumstances such as pressures on the balance of payments. Failure to heed advice on advertising and marketing of bancassurance schemes has resulted in investigations and reform without notice or consultation.

55. Have there been any restrictions on payments due to exceptional circumstances such as pressures on the balance of payments or exchange rate policy?

**See Question 54**

56. Are there any known cases where foreign investors have been subjected to physical coercion as a result of the application of Indonesia's criminal law to regular business activity?

57. Have there been any cases where foreign investors encountered difficulties in enforcing their rights established under domestic legislation or judgements issued in their favour by domestic courts?

**See also Reply to Question 53. Investment protection is likely to be an important factor in these negotiations, seen that Indonesia is terminating their existing BITs. This agreement is an opportunity for Indonesia as well as the EU to negotiate a modern investment protection chapter that can address concerns of both parties.**

58. Do you have experience with incentives schemes that were promised but did not materialise, notably in terms of tax-reductions, cuts and reimbursements?

### **III. REGULATORY ISSUES**

The section of this questionnaire on regulatory issues is divided into the following sub-sections:

- A. Transparency
- B. Intellectual Property Rights
- C. Competition, State Aid/Subsidies and State-Owned Enterprises
- D. Government Procurement
- E. SME issues

#### **A. Transparency**

*To the extent applicable, indicate what problems arise due to lack of transparency such as lack of publication of legislation or other relevant documents. In the questions below, administration/government should also be understood as local authorities, regulatory bodies, regulatory authorities, certification offices, or licencing authorities.*

59. Is information on trade-related regulations and their administration published and readily available, including on laws and regulations, procedures, penalties, appeal procedures, administrative guidelines and practice, decisions, and any international agreements with Indonesia?

60. Is information made available in a readily accessible way, including through websites?

61. Are there enquiry points available and accessible to interested parties (including through websites) which help making information on trade-related regulations and their administration available? Do you have other suggestions concerning the availability of information?

62. Are the intervals between publication of trade related rules and regulations and their entry into force sufficiently long to allow interested parties to become acquainted with and prepared for complying with them?
63. Are appropriate opportunities offered for prior consultation and commenting on new and amended rules (including sufficient minimum delays for comment)?
64. Are there any areas or sectors where consultation could be improved?
65. What is your assessment more generally of Indonesia's transparency and regulatory practices in the development and adoption of trade-related rules and regulations?

Transparent and consistent stakeholder communication is an issue in Indonesia and should be tackled in the negotiations. The goal should be a transparent communications platform with stakeholders that provides timely information and notifications about regulations and requirements as well as changes thereof.

66. Are advance rulings available from the administration (such as for trade in goods on customs classification and origin)?
67. Are there adequate possibilities for complaint and appeal procedures (in terms of non-discrimination, transparency, possibility for representation by independent legal counsel, cost and timelines set by different authorities, including Customs)?
68. Do you have any other comments on the administration of trade-related regulations, including on the use of discretion, system of penalties, coordination and control mechanisms? Please specify any shortcomings identified. Where available, identify best practices (such as existing information and transparency mechanisms in Indonesia) that could serve as a reference or starting point.

## **B. Intellectual Property Rights**

69. Are you satisfied with the current conditions of protection and enforcement of intellectual property rights (IPR) in Indonesia? If not, what are the main weaknesses / problems of the current system in place?
70. Is an adequate and effective protection and enforcement of IPR in Indonesia essential for the pursuit, or the setting up, of your trading activities there?
71. Please indicate whether you consider intellectual property rights issues as priorities and specify which IPRs are the top priorities for you (please tick the box) in Indonesia and why :
  - i. Copyright and related rights :
  - ii. Trademarks:
  - iii. Geographical Indications (GIs):
  - iv. Designs:
  - v. Patents :

vi. Data protection :

vii. Plant variety :

viii. Enforcement:

Why?

72. Have you encountered problems in protecting/enforcing your IPRs in Indonesia? If yes, how did the protection/enforcement mechanisms function in Indonesia? Do you feel you encounter particular difficulties in protecting/enforcing your rights as a foreigner in Indonesia?

73. Is there any type of enforcement measure missing in Indonesian legislation or practices that you consider necessary in order to address infringements of IP rights? Are penalties proportionate and do they provide sufficient deterrent against violations?

### **C. Competition, State Aid/Subsidies and State-Owned Enterprises**

74. Have you encountered any anti-competitive practices in Indonesia (cartels, abuse of dominant position, vertical or horizontal restrictions of competition, anti-competitive mergers & acquisitions) that are harming your business? If so, describe briefly the nature of the practices and the problems encountered.

The situation regarding SOEs is similar to the one in Vietnam but Indonesia has made some progress in tackling this issue. Nevertheless, further efforts are needed esp. regarding further privatization and increased transparency in order to create a level-playing field. This should also be addressed in the negotiations for this agreement.

75. Does Indonesian law provide for legal remedies concerning those anti-competitive behaviours? Have you brought these problems to the attention of the relevant competition authority? If so, what has been their response/follow-up and how have decisions been enforced?

76. Have you been subject to investigations for alleged competition infringements by Indonesian competition authorities? If yes, how was this experience?

77. Have you been party to any merger review filings in Indonesia? If yes, how was this experience?

78. Are you aware of instances where state aid/subsidy granted by Indonesian authorities has had adverse effects on you, or put you at a competitive disadvantage?

No:

Yes:  If so, please

a) Indicate whether the aid made it more difficult for you to compete in the Indonesian market, in the EU market and/or in export markets.

b) Describe to the extent possible the form of the state aids/subsidies involved (e.g. export rebates, tax/duty exemptions, below-market loans, state guarantees, grants), the objective (e.g. research and development aid, export aid, regional development

aid), the sectors concerned, the granting authority (e.g. federal or provincial government, specific agency) and give an estimate of their amount.

- c) Indicate if you have taken any steps to raise this matter, either in Indonesia or with the appropriate authorities in the EU? Have you had problems in getting information on the state aid/subsidy granted by the Indonesian authorities?

79. Have you invested in Indonesia? Has the availability of state aids/subsidies played a role in your decision? If yes, please describe the form, amounts and objectives of the aid in question and specify the granting authority. Have you experienced discrimination in the access to state aid/subsidies from Indonesian authorities (e.g. aid or higher amounts of aid reserved to local firms)?
80. Are you aware of the Indonesian government granting special or exclusive rights or privileges, advantages or immunities to domestic enterprises that have an adverse effect on your business (e.g. discriminatory treatment, state aid/subsidies, access to markets, access to public procurement, access to financing, etc.)? If so, describe briefly the nature of these practices and the problems encountered.
81. Are you aware of any exemptions from the national law granted to Indonesian state-owned enterprises or the existence of statutory laws or favourable regulatory or other measures applicable to state-owned enterprises? If yes, please provide a brief description.
82. Are you aware of any particular government measures that would induce or encourage Indonesian state-owned companies to engage in anti-competitive behaviour? Please describe such measures.
83. Are you aware of any national policy objectives that the Indonesian government is implementing through domestic state-owned enterprises and which have an adverse effect on your business? If yes, please describe briefly what such policy objectives are and how they affect your business.
84. How easy/difficult is it to get information about the activities of Indonesian state-owned companies (through annual reports, published accounts, etc.)? If there are problems, how would you suggest improving the situation?

#### **D. Government procurement**

*Please respond with yes/no and where possible provide comments to expand on the replies to the following issues.*

85. Are you satisfied with the current conditions of access to Indonesia's government procurement markets? If not, what are the main reasons you are not participating, or not participating more, in the public procurement market in Indonesia?

Indonesia is only an observer to the WTO GPA and is not negotiating accession to it. Given that there is a large untapped potential ambitious provisions regarding the access to the government procurement market would be an important success for the agreement. The EUVFTA could serve as an example. However, due to a lack of competition, efficiency and transparency in the Indonesian public procurement market major preparatory efforts regarding disciplines and preparatory requirements will have to be made.



86. Which key sectors, geographical regions, types of contract (public contracts, concessions, and other forms of Public Private Partnership) and procuring entities are priorities for EU suppliers?

EU services companies are interested in all kind of tenders that are of their specific interest. For important infrastructure works, concessions and PPP are more often used, for environmental services (water or waste management) also. For smaller projects, like catering services, cleaning services or security services, normal public contracts are used.

87. Are you aware of existing legislation on government procurement in Indonesia? What is your experience with its practical application?

In January 2016, the President of Indonesia has issued Presidential Regulation No. 3 of 2016 on Acceleration of the National Strategic Projects Implementation (“**Regulation**”), which serves to prioritize infrastructure projects that must be concluded immediately.

The Regulation stipulates provisions in regards to many issues, including licensing, non-licensing, land procurement, and domestic components. Specific to licensing and non-licensing, the One-Stop Integrated Service (*Pelayanan Terpadu Satu Pintu – PTSP*) must issue all licenses and non-licenses within five days after a complete application is received. In regards to domestic components, the Regulation is silent on the detailed figures and allocation of such components.

Furthermore, the Regulation also lists 225 infrastructure projects that are prioritized and must be finished as soon as possible.

88. Are there any areas in which you feel EU suppliers face restrictions or different treatment that does not apply to Indonesian suppliers? Please indicate the key regulatory and market access obstacles met by EU suppliers when tendering for public contracts. Please specify the extent to which these obstacles prevent EU suppliers from doing business in Indonesia.

- Usually in government procurements there are 35% local content requirements.
- The Indonesian government has recommended that local companies should use internal borrowing instead of for example ECA guaranteed loans. Companies and banks are confused whether the external borrowing is acceptable at all or whether Indonesian companies can apply for a special license for external borrowing (ECA-loans).
- There are also negative investment policies for selected industries, which lead to the situation that it is almost impossible for a foreign company to participate in certain major industries.

89. Please indicate whether you consider the following possible elements of a government procurement chapter as a priority concerning procedural rules and national treatment (please tick the box if yes) :

- Transparency in the tendering process :
- Easy access to the qualification system :
- Use of international rather than local technical standards :
- Effective review mechanisms including the possibility to obtain interim measures:

v. A single point of entry giving an overview of, and access to, all relevant procurement opportunities in a given jurisdiction :

vi. National and MFN treatment :

#### **E. SME issues**

90. Please indicate issues which are a priority for SMEs that small companies can fully benefit from a possible trade agreement with Indonesia. Do you think that SME provisions should be covered in some areas of the negotiation? If yes, what SME provisions do you propose for which point in the areas / chapters mentioned above in this questionnaire? In addition, have you encountered in Indonesia any specific barriers for small and medium size enterprises (SMEs) in your sector? If so, please describe briefly. In addition, have you encountered in Indonesia any specific barriers for small and medium size enterprises (SMEs) in your sector? If so, please describe briefly.

91. Are you aware of any user-friendly information on trade opportunities for SMEs provided by Indonesia?

#### **IV. OTHER ISSUES**

92. Are you aware of the ASEAN Economic Community (AEC) integration process? If yes, do you perceive progress in the AEC is easing doing business in your sector across the region? How do you see EU bilateral FTAs with ASEAN Member States in relation to the ongoing ASEAN economic integration process?

##### Insurance:

- **ASEAN commitments to liberalise market access in insurance – even though they are not binding and uneven across the region – have focussed the minds of policymakers on the prospect of greater regional competition.** Almost all ASEAN states reformed regulatory frameworks for insurance and imposed measures designed to encourage consolidation and competitiveness. In almost all cases, one of the most important spurs for this is the regional integration process.

- **The general commitment under the AEC to move more quickly on Mode 1 and the growing openness on Mode 3 have both had a positive effect on attitudes to regulation and supervision, and have driven up standards.** Supervisors across the region recognise that, as the ASEAN market is liberalised for cross-border trade in insurance, the jurisdictions with the most effective, transparent and accountable regulatory systems, will be inherently attractive as regional bases.

- **Aside from the range of market entry barriers and operational irritants that continue to exist across the ASEAN region (as they do in most jurisdictions globally), the key question for third country insurers based and operating in ASEAN is the extent to which they will be permitted to be integral to the integration of the ASEAN market for insurance over the years ahead.** At this stage it is unclear whether non-ASEAN insurers will reap the benefits of integration in the same way as their local counterparts. Much will depend on whether non-ASEAN foreign insurers are accorded ‘ASEAN Insurer’ status in an evolving regional single market, and on which of two rules ASEAN countries will chose to determine the eligibility of an insurance company to ‘ASEAN Insurer’ status.

- **According to the domicile rule – which is applied in the EU – ASEAN-domiciled subsidiaries would be regarded as domestic companies and would therefore be able to take full advantage of any new market access and national treatment provisions resulting from the AEC integration process.** In contrast, the ultimate-ownership rule would stipulate that a combined company after M&A would still be considered a foreign entity with foreign ownership status, and would therefore enjoy ‘less than equal’ market access rights compared to local insurers when trading within the ASEAN region.

- **Given the considerable contribution made by non-ASEAN firms across the market, it would make little sense for them to be denied domestic status.** Indeed, for the many ASEAN states where non-ASEAN firms are already a core part of their domestic market, it would be to grant a regional advantage to markets that had taken a more defensive approach to liberalisation. Those markets that aspire to be genuine regional hubs, such as Singapore and Malaysia, will also have an obvious incentive to ensure that ASEAN rules are as welcoming as possible.

93. Are there any other issues related to the topics covered by the above sections or to any other topics that are not mentioned in this questionnaire and that you would like to see addressed?

On 17 October 2014, the Indonesian Parliament issued Law No. 33 of 2014 on Halal Product Assurance ("Halal Law"). The objective was to provide protection and assurance of halal compliance for products consumed by Indonesian citizens, a majority of whom are Muslim. The law (attached) states that all products and services in Indonesia must obtain halal certification.

The definition of “products” and “services” in the law is unclear, and could be read to include all products consumed and all services offered in Indonesia. There is also no definition of "halal" in the law, but generally "halal" means permitted or lawful in Islam. Prior to the issuance of the Halal Law, halal registration was voluntarily and managed by the Islamic organization the Indonesian Ulema Council (Majelis Ulama Indonesia/MUI).

The Halal Law requires around 20 implementing regulations to be issued within two years of the 17 October 2014 issuance of the law. The law also states that the halal certification obligation will become mandatory five years after the issuance of the law. However, the law as it stands today remain unclear and could pose a trade barrier threat.

94. Are you aware that the EU provides EU exporters for free the online [Market Access Database](#) where you find product specific information for over 100 non-EU countries (tariffs, import formalities, statistics, etc.)? For EU importers, similar information is available in the so-called "[Export Helpdesk](#)".

-yes:

- No:

This current ESF consultation is not representing the exhaustive view of all ESF members, but rather a gathering of various members’ views. ESF will continue to work on this bilateral with its members and will come at a later stage with its own Position Paper. Many ESF members would have also replied directly to the Commission on this Consultation.