
Asosiasi Pengusaha Indonesia
(APINDO)
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FOREWORD

Indonesia faces two global challenges that will orient its position in international economic policy: a relatively weak global demand, causing the sluggishness of global market for trade and decline the commodity price; and the end of "easy money" era that will deteriorate Indonesia’s FDI performance. Such conditions push Indonesia to be more competitive at the global level, which urge policy makers need to consider a rather pro-active trade policy, such as free trade agreement (FTA) or comprehensive economic partnership agreement (CEPA) as it offers tariff elimination and non-tariff barriers relaxation.

As an official partner of Government of Indonesia, APINDO holds a credential position representing the private sectors to actively assist the government in forming effective economic policies. This policy recommendation sets down a grand mechanism on how to optimize the benefit and minimize the potential adjustment cost coming from proposed Indonesia-EU CEPA on the perspective of business communities. This paper looks into several relevant aspects, such as tariff, non-tariff measures, services, investment, trade defense, agriculture subsidy, public procurement, IPR, and competition law. It provides suggestion not only on how liberal the Indonesia should be opened up to EU, bit also in what aspects Indonesia might push the EU’s trade policy to be more accommodative and less-restrictive in the pursuit of mutually beneficial Indonesia-EU CEPA.

Overall, we convey our appreciation to APINDO’s staff and team who has successfully delivered this position paper and we would like to thank all of associations and companies, which have been contributed in FGD series. We hope our position paper will contribute a significant input in moving forward the Indonesia-EU CEPA negotiations.

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Key Messages

- Given global economic challenges, financial uncertainty and lower domestic economic growth and overall performance, Indonesia is currently at the right moment to improve trade and investment performance.
- APINDO supports the conclusion of CEPA with the EU, since it will explore new market opportunities for business, attract more FDI to Indonesia, and help Indonesia to move up its competitive edge in the region.
- APINDO calls for import duties elimination in the EU, especially on Indonesia’s key and potential exports, and on other commodities that still have tariff peaks and tariff escalation problem, such as cigarettes, cocoa products, fisheries products, TPT, palm oil products, and other agriculture-processed products.
- APINDO emphasizes the need to tackle non-tariff barriers in the EU, through: (i) regulatory convergence, (ii) intensive and effective capacity building, (iii) improvement of Indonesia’s EQI, (iv) policy transparency, and (v) socialization program.
- Negotiation on services sectors must be put under the context of: (i) expansion opportunity to the EU, (ii) attracting the presence of high quality services providers to support industrial growth, and (iii) facilitating movement of skilled labor.
- APINDO stresses the need to create a fair and competitive Indonesia-EU CEPA, through strengthening of trade defense system, proper enforcement of intellectual property and competition law, as well as commitment on a non-distortive agriculture policy.
- APINDO suggests the creation of high-impact cooperation and capacity building programs that are architected under the ambition to support business sector in facing tougher competition, as well as to promote the capacity of policy makers in performing necessary regulatory reform and in enforcing elements critical for a fair and competitive CEPA.
A. The Contexts

Indonesia is currently grappling with two major global challenges that will alter the way Indonesia pursues international economic policy. Firstly, the relatively weak global demand due to economic growth slowdown in major emerging countries, e.g. China and India, as well as stalling recovery in advanced economies, i.e. European and The United States (US). It has contributed to the sluggishness of global market for trade and crucially has triggered major international commodity price to decline significantly. As other countries try to become more creative and work even harder to maintain their share in a shrinking global trade market, conventional and less-active trade policy will then no longer be reliable in boosting country’s trade performance.

Secondly, the end of “easy money” era as The Fed has begun to normalize the monetary policy in US (quantitative easing tapering). The Fed’s plan to phase out quantitative easing policy has caused enormous uncertainty in the global financial market and created significant pressure for developing countries, especially the fragile one like Indonesia. Since the announcement of the Fed tapering, significant amount of money has flown out from emerging market, towards other countries with safer financial instrument, i.e. advanced economies. As a result, especially in fragile-small-open economies including Indonesia, currency becomes significantly depreciated, current account deficit widens, and consequently the economic growth becomes slower. Moreover, the end of quantitative easing policy is expected to bring increased interest rate in US and other developed countries, meaning that investing in developing and/or riskier countries is now becoming less interesting than before. As investors worldwide have become more cautious in investing their money, the FDI performance in many developing countries including Indonesia is likely to be affected also, especially with regards to foreign investment which comes from advanced economies. Therefore, concrete policy measures are very critical to keep boosting country’s FDI performance, especially the measures which focus to regain investor confidence, such as investment protection, liberalization, and incentives.

At the domestic level, as Indonesia aims to move up the ladder to become high-income country, there is an increasing need to shift Indonesia’s development strategy from consumption and domestic market orientation towards a policy strategy that focus more on productivity, innovation, and have greater orientation to compete in the global market. To be more competitive at the global level, policy makers need to consider a rather pro-active trade policy, such as free trade agreement (FTA) or comprehensive economic partnership agreement (CEPA) as it offers tariff elimination and non-tariff barriers relaxation which translates to: (i) cheaper input, i.e. raw material and capital goods, for domestic industry, as well as (ii) better market access for Indonesia’s export. This will eventually boost industrial development and export competitiveness in Indonesia.

Situated at these contexts, APINDO and Indonesia’s private sector in general view that there’s no reason to be hesitant and even resistant to any FTA/CEPA negotiation, as it constitutes a significant part for Indonesia’s attempt towards high-income country, and more importantly will help Indonesia to sail through the rough times like nowadays. The issues then should be on how to make the best deal out of
FTA/CEPA negotiation, which in one hand can significantly improve investment opportunities and market access for Indonesia’s key and potential exports, while on the other hand ensure a level playing field for domestic industries in order to be able to compete in a tougher business environment.

B. Why Indonesia Should Expedite the EU CEPA Negotiation? Business Perspectives

Given global economic challenges, financial uncertainty and lower domestic economic growth and overall performance, Indonesia is currently at the right moment to improve trade and investment performance. EU is a key strategic trade and investment partner for Indonesia. It represents one of the largest export destinations for Indonesian goods and is the second largest source of Foreign Direct Investment after Singapore for Indonesia over the period of January – September 2014. Therefore, strengthening Indonesia-EU economic and business relations through an Indonesia-EU CEPA is an essential policy step to be seriously taken into consideration.

In term of business perspective, Indonesia-EU CEPA is essential for many reasons. Firstly, considering the fact that global demand is still relatively weak, Indonesia-EU CEPA is therefore an effective mechanism to explore and create new market opportunities for business. Moreover, because the EU’s consumer are relatively more sophisticated and demanding than that of other countries and EU’s investment are mostly located in value-added and industrial sectors, thus the EU CEPA can be potentially used to move Indonesia’s business towards higher value-added production and services.

Secondly, since getting fresh liquidity/capital has now been harder following the monetary tightening in US, certain policy measures are needed to better attract foreign investment, especially which comes from advanced economies. In this context, Indonesia-EU CEPA is essential to improve EU’s FDI in Indonesia. Furthermore, as Indonesia has announced its plan to terminate all of its Bilateral Investment Treaties (BITs), including with the EU’s partners, the Indonesia-EU CEPA, especially through the “investment chapter”, is therefore the only way for Indonesia to better protect EU’s investment and provide EU’s investors with certain arbitration mechanism.

Thirdly, Indonesia-EU CEPA offers significant tariff reduction which is critical to boost competitiveness of Indonesia’s products and further anticipate the loss of competitiveness associated with the graduation of Indonesia’s key exports within the GSP scheme. Based on the newly-reformed GSP scheme, since 1 January 2014, as much as 85 Indonesia’s products listed under the HS code, including live animal and animal product (excluding fisheries), animal or vegetable oils-fats-and wax (including palm oil), as well as chemicals other than organic and inorganic chemicals will no longer be benefitting from GSP tariff reduction/elimination. As Indonesia continues to emerge as a fast-growing developing economies and aspires to become one of high-income countries in 2030, Indonesia then will gradually be excluded from EU’s GSP scheme. Situated in this context, negotiating CEPA with the EU is a very urgent policy task to do, otherwise Indonesia will lose significant market share in EU for its key commodities. Furthermore,
without any preferential concession with the EU, it will be harder for Indonesia to compete with much cheaper products originating from major competitor countries which still enjoy full benefit of EU's GSP scheme, such as Pakistan, Bangladesh, and African, Caribbean, and Pacific (ACP) countries.

Fourthly, as the ASEAN Economic Community 2015 which characterized by minimal barriers on economic activity in the region are being fully implemented, Indonesia is naturally forced to compete with its ASEAN neighbors to be the most competitive production base amongst all. If Indonesia succeeds in comprehensively liberalizing its market and giving best incentives for EU companies, Indonesia will then be able to move up its competitive edge over the ASEAN neighbors, thus will be able to enhance trade and investment performance. On the contrary, if Indonesia fails to conclude CEPA with the EU, then Indonesia will lose trade and investment enhancement momentum because EU will prefer to invest to other ASEAN countries (especially which already have CEPA with the EU) and Indonesia will have to import from other ASEAN countries when there's a demand for the EU products. In this case, the investment performance will not be improving, and trade deficit will likely to widen.

Fifthly, stringent standard and technical barriers in EU have to date restrained the Indonesia’s export performance. By not moving forward with the EU CEPA, the impediment to trade will still remain, thereby trade volume will always be sub-optimal and no further economic enhancement could be created. Yet, under Indonesia-EU CEPA negotiation, there’s a greater opportunity for any EU's standards, technical regulation or non-tariff barriers in general to be further streamlined and especially harmonized with the suitable existing standards in Indonesia, thus reducing the compliance cost for private sector and improve market access. Therefore, it is best to have more optimistic view on any barriers and challenges embedded in Indonesia-EU trade relation in order to further transform it into negotiation stance.

The prolonged lack of a comprehensive EU-Indonesia trade and investment agreement is costing business from monetary, employment and growth perspectives. APINDO strongly believes that a policy and regulatory breakthrough should be made possible, so that Indonesia can benefit with a carefully thought overand selective liberalized trade and investment regime. Increased political commitments to immediately re-commence CEPA negotiations is what we crucially needed in order to expanding the Indonesia-EU trade and investment relationship.

C. APINDO Position on Indonesia-EU CEPA Negotiation

C.1. Position on Trade in Goods

**Tariff**

In term of trade in goods negotiation, especially with regard to tariff reduction modality, APINDO is fine with 7 years period of implementation (with flexibility up to 10 years for sensitive products) as proposed in the scoping paper. What matter the most is product coverage and the depth of tariff liberalization. In-depth sectoral/industrial studies and intensive consultation with business communities should be conducted.
in order to determine the inclusion, sensitive, and exclusion list. The basic principle is to have balanced framework between protecting national interest and boosting industrial and trade competitiveness.

As an attempt to improve Indonesia’s export competitiveness in EU market, APINDO calls for import duties (tariff) elimination in EU, especially on Indonesia’s key and potential exports, and on other commodities that still have tariff peaks and tariff escalation problems as well. This includes, but not limited to: tobacco, cocoa, fisheries products, TPT & footwear, palm oil and other agriculture products. APINDO argues that Indonesia-EU CEPA must be strategically used as a mean to: (i) boost export competitiveness of Indonesia’s main product; (ii) develop export capacity of Indonesia’s potential products; (iii) encourage higher value-added export; as well as (iv) attract more FDI from export-oriented companies.

Indonesia is forced to specialize in lower value-added export in agriculture, textile, garment, and footwear sectors, in part because of the EU imposing higher import duties on final products rather than on semi-and/or unfinished products. Around 63% of Indonesia’s tobacco export to the EU is unmanufactured one, as the EU applies higher rate for manufactured tobacco than the raw one. This is also true for footwear export whereby Indonesia’s exporters are incentivized to export the unfinished footwear rather than the final one. As the development of downstream/value-added industries is an essential component constituting Indonesia’s aspiration toward high-income countries, there needs to be a stronger commitment from the EU to support industrial-upgrading agenda in Indonesia particularly by resolving tariff escalation problem.

APINDO also stresses the importance to go beyond what we currently have now, and see through what we aspire to achieve in the future. In other words, we must think about our potential in future global trade, instead of judging on what we only have at the moment. For instance, export of fruit-based juice and chocolate bar to the EU is not yet competitive currently, because the EU’s import tariff rate for cocoa products as well as more-processed agriculture products is still relatively high1. However, if we set the right incentive, particularly by calling for import duties elimination in the EU for those kind of products, it will better attract the export-oriented and higher-value added companies as there’s now more feasible price structure to produce in and exporting to the EU from Indonesia. Therefore, APINDO believes that resolving tariff escalation as well as calling for import duties elimination for Indonesia’s potential export will upgrade export capacity of and bring more FDI to Indonesia.

In addition, as a mean to promote domestic industry’s competitiveness, APINDO encourages the Government of Indonesia (Gol) not to be hesitant in eliminating import duties (tariff) that are applicable for raw material and capital goods imported from the EU. This includes, but not limited to imported textile, garment, and footwear material as well as machineries. For Indonesia-EU CEPA to be wide-reaching, it needs to keep the Rules of Origin (RoO) as simple as possible. Further specific positions with regards to tariff reduction in Indonesia-EU CEPA negotiation, based on APINDO consultation with several private sectors and business communities, are summarized in Table 1.

1 The import tariff rate for fresh grape is only 11.5%, while it can reach up to 40% in the form of grape juice. It occurs also in the palm oil product, wherein the tariff for CPO is only 0 – 3.8%, while its downstream products is charged by tariff rate, ranging between 5.1 – 12.8%.
**TABLE 1** Sectoral Inputs and Positions towards Indonesia-EU CEPA

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<thead>
<tr>
<th>No</th>
<th>Inputs and Positions of Private Sectors Communities towards Indonesia-EU CEPA</th>
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<tbody>
<tr>
<td>1</td>
<td><strong>Tobacco Industry</strong></td>
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<td></td>
<td>• The CEPA should include a full reciprocal elimination of duties for HS Chapter 24 and a Rule of Origin (RoO) based on Change of Tariff Heading and a 10% minimum local content requirement.</td>
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<td>• The CEPA should also address the issue of Tariff Peak and Tariff Escalation in the tobacco sector (e.g. 40.3% tariff imposed on HS 2402.20). The issue will discourage the development of value-added tobacco industry in Indonesia. In addition, it will not facilitate a fair competition of Indonesia’s manufactured tobacco in the EU.</td>
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<td>2</td>
<td><strong>Cocoa</strong></td>
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<td></td>
<td>• Import duty for cocoa beans in EU is already 0%, but it remains significantly high for the processed-cocoa products, e.g. cocoa butter (MFN rate: 7-9%, GSP rate: 4-5%).</td>
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<td>• The export of Indonesia's processed-cocoa products to the EU (especially cocoa butter) has gradually lost its competitiveness and is being taken over by export from African countries which enjoy duties free from the EU.</td>
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<td></td>
<td>• As Indonesia’s cocoa butter export is very much dependent to the EU market, the elimination of import duties for processed-cocoa products in EU is therefore critical to restore and improve Indonesia’s competitiveness in EU market.</td>
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<td>3</td>
<td><strong>Fisheries Product</strong></td>
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<td>• The import duties rate for Indonesia’s processed-fisheries products in EU is still around 13-24%. With this high rate, the fisheries-processing industries in Indonesia cannot compete with relatively cheap products from other developing countries, e.g. ACP countries (African-Caribbean-Pacific), Bangladesh, Pakistan, Papua New Guinea, etc., because they have preferential arrangement with the EU (through GSP and FTA scheme).</td>
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<tr>
<td></td>
<td>• To improve Indonesia’s competitiveness in EU market, business communities in Indonesia call for import duty elimination in the EU, especially for downstream fisheries products, e.g. canned tuna, chilled or frozen sardines, etc.</td>
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<td>4</td>
<td><strong>Textile-Product of Textile (TPT), and Footwear</strong></td>
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<td></td>
<td>• Competition in the EU market for Indonesia’s TPT and footwear manufacturers will be tougher and more intense, because other producer and competitor countries have already conducted FTA negotiation with the EU.</td>
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<td></td>
<td>• Indonesia’s export of TPT products is less-competitive than that of other competitor (developing) countries, such as India, Bangladesh, Vietnam, and African countries, because import duties in the EU for Indonesia’s TPT products are still relatively high as compared to other competitor countries.</td>
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<td></td>
<td>• The structure of import duties and sales tax in the EU discourages Indonesia’s export on higher value-added footwear products.</td>
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<td>• Because of buyer requirement and the absence of high-quality raw material in the domestic level, many of Indonesia’s TPT and footwear manufacturers import its raw material from the EU.</td>
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<td></td>
<td>• To improve Indonesia’s competitiveness on TPT and footwear exports, APINDO calls for:</td>
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<td>• Elimination of import duties (tariff) as well as significant reduction of sales tax in EU market for Indonesia’s TPT and footwear products.</td>
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<td></td>
<td>• Significant tariff reduction (if not elimination) in Indonesia that are applicable for raw material and capital goods imported from the EU.</td>
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<td>• To optimize the use of Indonesia-EU CEPA and avoid illegal trading/transshipment, business communities also recommend that RoO for TPT products should be based on 2-step process/fabric forward.</td>
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</table>
5 **Palm Oil**

- The EU has imposed anti-dumping duty (additional import tariff rate) for Indonesia’s palm oil-based biodiesel product out of a very fragile foundation.
- **APINDO calls on the Government of Indonesia (GoI) to use Indonesia-EU CEPA negotiation as an avenue to seek for resolution** regarding anti-dumping duty imposed on Indonesia’s biodiesel product.
- If the EU seems rather reluctant about it, APINDO urges the GoI to further utilize it as a **bargaining chip** in the Indonesia-EU CEPA negotiation process, meaning that the more the EU is willing to repeal its anti-dumping duty on Indonesia’s biodiesel product, the more it is for Indonesia-EU CEPA to proceed into final stage of negotiation.

**Source:** API&GPEI Position Papers (2014), and APINDO FGD Summary of Meeting (2014)

### Non-Tariff Barriers (NTBs)

In most cases, the non-tariff barriers in EU are perceived to be more concerning, by business community in Indonesia, rather than its tariff barrier. While the applied tariff rate in EU for Indonesia’s products is already as low as 2.23%, Indonesia’s businesses still have enormous difficulties in exporting to EU, particularly because there are extensive and stringent non-tariff barriers applied in the EU market, both for agriculture\(^3\) as well as manufacturing products. Based on European Committee for Standardization (CEN), there’s only 30% of European Standards (EN) which are identical to the ISO standards.\(^4\) The data suggests that majority of EU’s standards are more restrictive and more complex than that of international standards, thus making it even harder for developing countries like Indonesia to comply with EU standards. Therefore, Indonesia’s business communities argue that the benefit of market access opening arising from Indonesia-EU CEPA will not be that significant, if the EU doesn’t commit on reducing and streamlining its NTBs as much as it does to tariff reduction.

The non-tariff policy regime in EU is **not only stringent by nature, but also still very much inconsistent and less transparent in the implementation, as well as tends to leave private standards and NGO unregulated.** It is **inconsistent** in a sense that some of the EU members often implement a set of trade-related regulation that somewhat diverge from and more restrictive than the one set out at the regional/EU level. Moreover, in many cases, business community often finds that some of the EU’s standards and technical regulation are implemented in a **less-transparent** manner, meaning that they put more burden than necessary and sometimes there’s no legitimate objective and scientific justification in doing that. It is also **imperative to be cautious on the development of private standards and the role of NGO in the EU market.** Although not mandatory, the NGO provocation and the failure to comply with large retailer standards can make a product become not eligible to be further distributed.

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\(^2\) Computed from the World Bank Integrated Trade Solution (WITS) database (2014). The EU applied tariff data represents the year of 2012.

\(^3\) It is supported by the data from Henson and Olale (2011) showing that from 2002 to 2008 there are 285 cases of rejection of Indonesia’s food and feed products by the EU border authority, which is equivalent to 16.5 billion USD in term of export value. Indonesia is among the top 10 countries receiving the highest rejection by EU authority, with 41 cases of rejection happened every year from 2002 to 2008. Fish and fishery products in Indonesia is the most rejected products by the EU authority, mostly because they still contain of drug-cemical residue, heavy metal, and biotoxins/contaminants which are perceived to be dangerous for human safety as well as detrimental for the environment.

in the EU market. In spite of their significant effect in creating barriers to trade, there's no strong will from the EU commission to further regulate them.

In order to ensure significant market access opening in the EU market, APINDO emphasizes the need to tackle stringent non-tariff barriers in EU, specifically, through five main strategies as follow:

- **Aiming for regulatory convergence with the EU, wherever possible, especially through signing Mutual Recognition Agreement (MRA)** covering mutual acceptance on standards, certification and testing, especially for Indonesia's key export commodities.
- **Creating more intensive and effective capacity building program for private sectors** which aims at improving their compliance towards EU and other international standards.
- **Engaging the EU to invest in establishing EU's laboratory and testing center in Indonesia** as well as to contribute in improving the state of equipment and human resources of the Export Quality Infrastructure (EQI) system in Indonesia.
- **Reinforcing EU's commitment on policy transparency, consistency, and certainty in the application of any non-tariff barriers**, including the commitment to regulate private standards.
- **Proposing any programs under the Indonesia-EU CEPA which enable Indonesia to counter any misleading information and provocation by international NGO in the EU.**

The following section specifies the voice of several private sector communities in Indonesia regarding NTBs application in the EU, and recommendation on the best position should be taken in order to overcome those NTBs.

**Sector 1: Timber & Timber Products**

Indonesia and the EU have both **ratified the Voluntary Partnership Agreement (VPA)** which regulates timber and timber products export to the EU. However, the **FLEGT license** required to verify the legality of Indonesia’s timber and timber products exports has not yet been issued, due to incompletion of systems that allow them to control, verify, and license legal timber (legal assurance system). Apart from slow progress of timber legal assurance system development, the delay in the issuance of FLEGT license is also caused by policy inconsistency from the EU side, i.e. additional requirements for FLEGT license issuance that are not part of initial commitment.

To overcome barriers applied in forestry sector and its derivative as well as to expedite the FLEGT license issuance, APINDO recommends the GoI to take the following positions:

- **Indonesia-EU CEPA should include the clause of reinforcing greater policy transparency**, especially regarding the application of non-tariff barriers in forestry sectors (i.e. timber, and timber products)
- **APINDO calls on the EU to improve policy consistency and commitment to expedite FLEGT license issuance**, if possible, prior to the Indonesia-EU CEPA negotiation

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This section is summarized from APINDO Focus Group Discussion (FGD) meeting series as well as private sector associations’ position papers.
APINDO urges the GoI to put FLEGT license issuance as conditionality for Indonesia-EU CEPA negotiation, meaning that Indonesia-EU CEPA negotiation cannot be started unless the FLEGT license for Indonesia’s timber and timber products has been issued.

Sector 2: Palm Oil

Palm oil constitutes the highest share of Indonesia’s export to the EU. Business communities in palm oil sector argue that the non-tariff barriers applied in EU are a more pressing issue than tariff barriers. There are three key NTBs issues that are currently being faced by domestic palm oil industry in exporting to the EU. Firstly, the EU applies very high standards for any palm oil products entering EU market, such as Roundtable Sustainable Palm Oil (RSPO) and Renewable Energy Directive (RED). Although Indonesia already has Indonesia Sustainable Palm Oil (ISPO), which Indonesia’s business sees as comparable to the international standards, the EU still requires Indonesia’s palm oil exporter to comply with the RSPO, arguing that ISPO is not reliable where the institutional aspect as well as the EQI system to support it are perceived to be still lacking.

Secondly, the implementation of technical regulation and standards in the EU pertaining to the palm oil products is characterized by high inconsistency, especially at the national level. Business communities find that each of EU member states often set higher level of regulation and standards than the ones applied in regional level for palm oil products entering to its market. For example; Indonesia’s palm oil industry can meet RED applied at the regional level, but oftentimes each member states tends to invoke additional requirements that are more excessive, such as additional import tariff, sales tax, and additional technical regulations. Thirdly, Indonesia’s palm oil export to the EU suffers from NGO provocation (black campaign) and private standards (i.e. voluntary labeling). There’s a massive black campaign provoked by international NGO based in the EU countries stating that Indonesia’s palm oil products are resulted from environmentally and socially harmful business activity, e.g. forest burning, conversion of peat land, etc. Moreover, large-modern retailers in the EU, in cooperation with the NGO, often require palm oil exporters to comply with its private standards, mainly in the form of voluntary labeling, which is not regulated officially at the EU level.

To address those issues in a permanent basis, APINDO argues that the solution of those 3 key issues regarding NTBs application in palm oil sector has to be embedded and institutionalized in the Indonesia-EU CEPA, with specific strategies as follow:

- Signing Mutual Recognition Agreement (MRA) with the EU in palm oil product which cover mutual acceptance on standards, certification, and testing (ISPO-RSPO convergence).
- Requesting the EU to commit to better regulate diverging standards applied in national level, especially pertaining to palm oil products.
- Requesting the EU to start regulating private standards applied excessively, especially by large-modern retailers in the EU.
- Creating a program to counter black campaign from the NGO and to socialize the actual best-practice of Indonesia’s palm oil business, not only in Brussels, but also in other EU’s capital cities, e.g. Paris, London, Berlin, Amsterdam, etc.
Sector 3: Tobacco Sector

The EU has formally approved the revision of the Tobacco Product Directive (TPD) that governs the manufacture, presentation and sale of tobacco and related products (including flavor/ingredients bans and large graphic on health warning). Business community in Indonesia sees the newly revised TPD applied in the EU as having a significant counterproductive effect to Indonesia’s tobacco export performance. Another regulation of tobacco products that might hamper Indonesia’s tobacco export to the EU is the proposal to establish plain packaging regulation. It will diminish the value added of Indonesia’s tobacco products, thus reducing its export performance. To address this issue, the Indonesia-EU CEPA should stress the commitment of both parties, especially the EU, to follow WTO principles in the application of any non-tariff barriers, which are transparent and based on scientific justification, as well as supported by scientific evidence. Otherwise, Indonesia-EU CEPA will not produce business-friendly outcome, and furthermore the very foundation of multilateral trade will be broken.

C.2. Position on Trade in Services, Public Procurement, and Investment

Unlike trade in goods, Indonesia tends to be disadvantaged with regards to services trade liberalization agenda in the EU CEPA. There’s a significant imbalance on the level of development on services sector between Indonesia and the EU, whereby Indonesia is a net-importer while the EU is a net-exporter. Indonesia’s services trade deficit with the EU grew quite significantly from only -147.7 Million Euro in 2005 to as high as -1330.3 Million Euro in 2012. It means that Indonesia’s services trade deficit with the EU grew almost tenfold during the period. It is caused mainly by Indonesia’s services import from the EU growing much higher than its export. APINDO sees that the scope of Indonesia-EU CEPA on services liberalization seems quite ambitious, while Indonesian services sector is still a fledgling industry with limited expansion capacity to the EU in the foreseeable future. Therefore, APINDO recommends the GoI to tactfully determine the sectors to be liberalized to bring greatest multiplier effect to domestic economy. The following section summarizes request and recommendation of Indonesia’s business communities with regards to the proposal of services, public procurement, and investment liberalization under the Indonesia-EU CEPA.

Services

Based on intensive dialogue with key industry player and business association of services sector, APINDO concludes that there are three main objectives worth to be pursued in the services liberalization agenda of Indonesia-EU CEPA. Each objective implies a different set of negotiation stance to be adopted.

Objective 1: Promoting Indonesia’s services sector expansion to the EU market

Among services sectors that have a very good chance to expand to the EU market is airlines and construction services. To gain better access to the EU market, the following aspects should be negotiated under Indonesia-EU CEPA:

- Requesting the EU to give flying permit for all Indonesian airlines to access all EU countries (it implies the removal of EU’s travel ban imposed on all Indonesian airlines, except for Garuda Indonesia that already has flying access to the EU because of business-to-business approach).
To improve the likelihood of Indonesian construction services provider to participate into the EU’s procurement, in a long term the GoI should aim at signing Mutual Recognition Agreement (MRA) on construction certification with the EU. In a short term, the following steps have to be taken, particularly in order to close the gap of quality between EU and Indonesian construction services.

- Conducting technical assistance for Indonesian construction services in order to be able to comply with the EU’s standards and technical regulation.
- Establishing national standards and certification system for construction services that are adopted from the EU and other relevant international standards.
- Signing MRA on construction/procurement certification.

Objective 2: Encouraging the presence of high quality and robust services providers to support industrial growth

High quality and robust services sector is essential to drive industrial growth. However, considering the situation of Indonesia’s services sector that is still at the early stage of development, the ambition of services liberalization under the Indonesia-EU CEPA should balance between the need to protect domestic interest and boosting industrial competitiveness by making more reliable services providers available domestically. APINDO argues that it is feasible for Indonesia to commit on liberalizing services sector which requires large-scale investment and where domestic players are not yet competitive, such as IT, telecommunication, large-scale infrastructure, energy, and electricity sectors. As for other services sectors that are still considered as sensitive, further nurturing is still needed, and therefore APINDO recommends the creation of mutual partnership program between Indonesia and EU companies to develop and strengthen business network in those sectors. This includes, but not limited to: logistics, transportation, retail, distribution, accommodation, leisure, finance, and insurance sectors.

Objective 3: Facilitating free movement of skilled labor, especially for Indonesian skilled workforce to enter the EU market

There are two key aspects in realizing this particular objective. Firstly, there must be an easy access for Indonesian professionals to enter the EU market. And secondly, mutual recognition on skills and professionals should be developed in order to maintain the quality of professional entering the EU market. To meet the objective, APINDO urges the GoI to highly consider the following recommendations.

- Indonesia-EU CEPA should include the commitment to simplify and facilitate visa application for Indonesian business/professionals to access EU
- Indonesia-EU CEPA should cover liberalization in education sectors, especially at the level of Vocational Education and Training (VET) as well as University/College. Liberalization on VET and university/college escalates the standardization of skilled-labor which is critical as a foundation to the mutual recognition on skills and professionals between Indonesia and the EU in the future. The mutual recognition, then, will enable Indonesia to proceed with the agenda of movement of skilled workforce between the two countries.
- The GoI should aim at signing mutual recognition on skills and professional services to facilitate greater movement of Indonesian skilled workforce to enter EU market. In addition, EU’s taxation on professional services must be further negotiated and lowered down in order to improve the competitiveness of Indonesian professionals.
Public Procurement

Public procurement liberalization agenda under the EU CEPA is too ambitious. APINDO argues that the EU’s proposal to aim for full liberalization on public procurement market would be politically and economically difficult in the near future. This is because there are too many small-and-medium local operators relying so heavily on small-scale project, especially the one procured by local government. This is a sensitive area to negotiate, as Indonesia need to secure sufficient space for small and medium local operators to grow, thus sustaining the economy. APINDO views that the benefit of liberalization in public procurement market would not be symmetrically distributed between the parties. EU’s operator with better technical capacity and financial resources as well as high compliance to standards will easily compete in Indonesia’s public tendering process. While Indonesia’s operator will most likely have a “difficult time” in competing with more efficient international operator in EU’s public tendering process, not to mention in complying with EU’s stringent technical standards.

Instead of proceeding with broad and ambitious EU’s proposal on liberalizing most of public procurement area, APINDO strongly suggest the negotiating team to aim only for specific and limited liberalization of public procurement market focusing on the most critical sectors for Indonesia’s development, such as large-scale infrastructure and utilities project, where the capacity of local operators/firms is still lacking.

Investment

What have been the expectation from the Indonesian business community is that for the Indonesia-EU CEPA to bring more EU FDI to Indonesia. This is of serious concern considering the fact that while EU is the second largest FDI source for Indonesia and Indonesia ranked as the second recipient of EU FDI in ASEAN, Indonesia’s share is much lower than the Singapore’s. APINDO is in position that the success of Indonesia-EU CEPA is reflected by the extent to which trade liberalization committed in the agreement can bring improvement in investment. It brings positive effect if it makes Indonesia more attractive as an investment and production base, instead of only market for imported goods from the EU. As a part of this endeavor, APINDO strongly suggests the creation of “Memorandum of Understanding (MOU) on Investment, Industrial, and Technological Cooperation” between Indonesia and the EU covering programs such as technology transfer and investment promotion (e.g. investment fair, trade fair, etc.). APINDO also urges the GoI to continuously improve investment climate and encourages the EU’s companies to invest and establish manufacturing plants in Indonesia, and position Indonesia as EU’s manufacturing hub in the ASEAN and Asia region.

Another important element in the investment chapter is dispute settlement mechanism. APINDO is in the position that Investor-State Dispute Settlement (ISDS) provisions should be inclusive of general health, safety, and environment exceptions. Thus, the ISDS would not be used in an arbitrary measures to interfere with government’s sovereignty to protect public welfare objectives.

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6 Indonesia received 12%, compared to Singapore (63%), of all EU investments flowing into ASEAN countries in 2004 – 2011.
C.3. Position on the Elements Critical to Fair and Competitive Indonesia-EU CEPA: IPR, Competition Policy, Trade Defense, and Agriculture Subsidy

APINDO argues that the Indonesia-EU CEPA can stimulate fair and competitive business climate, only if it respects intellectual property rights, enforces competition law properly, implements robust trade defense system, as well as commits on a non-distortive agriculture policy. However, significant gap on how those elements being implemented in the two parties will make such goals rather difficult to achieve, thus requiring more active negotiation stances to be advocated. Therefore, the focus of the positions on these elements should not be directed to only protect the domestic interest, but also to demand any programs that contribute to close the gap of implementation between the two parties.

**Intellectual Property Rights (IPRs) and Competition Policy**

APINDO position on “Intellectual Property Chapter” is the following:

- APINDO recommends the GoI to identify its offensive export interest related to IPRs in order to make sure that these interest are protected and not undermined by excessive regulations applied in the EU; for example:
  - Protection of traditional Indonesian tobacco trademarks that may be affected by labelling measures in the EU, such as plain packaging for tobacco products, or the ban of “Kretek” cigarettes.
  - Protection to the apparel & clothing that is based on “Batik” motif as an attempt to preserve the cultural heritage of Indonesia.

APINDO position on “Competition Policy Chapter” is as follow.

- APINDO calls on the EU to give more intensive capacity building and technical assistance program, especially with regards to strengthening Indonesia’s capacity to enforce, implement, and monitor the competition law in Indonesia.

**Trade Defense/Trade Remedies**

The chapter on trade defense/trade remedies is often forgotten in the study and consultation stage of any CEPA/FTA negotiation. Whereas, it constitutes a significant part of the attempt to establish fair and competitive business climate under the Indonesia-EU CEPA. In order to create a robust trade remedies/trade defense system surrounding the Indonesia-EU CEPA, the following positions need to be highly considered.

- APINDO recommends to put the “Trade Remedies” provision into a separate chapter and to be taken out from “Trade in Goods” chapter, because the trade remedies measures can also be applied for trade in services—especially with regards to safeguards measures.

- APINDO recommends to include “Lesser Duty Rule” approach in the trade remedies provision. The approach will encourage any party to impose anti-dumping or countervailing duty to the level that is less than the margin of dumping or countervailable subsidies. Considering that there are many Indonesia’s products being imposed by EU’s anti-dumping and anti-subsidy duty, the adoption of “Lesser Duty Rule” approach will give them more space to relax, thus facilitating greater trade between the two parties.
APINDO calls on the EU to commit to a greater policy transparency in the application of any trade remedies measures, such as anti-dumping and countervailing duty, as well as safeguards measure. In doing so, APINDO emphasizes the need to create concrete actions and program, such as:

- **Exchange information on the assessment system required to invoke any trade defense measures** (to stimulate common understanding on the assessment framework implemented by each country)
- **Establishing a joint committee on trade remedies** which can be utilized to update each party about the regulatory changes with regards to trade remedies as well as to serve as a dialogue mechanism in settling any trade remedies related issues

**Agriculture Policy and Subsidy**

Agriculture sector in the EU is highly protected and extensively subsidized under its flagship program, namely the Common Agriculture Program (CAP), which accounts for 46% of total EU expenditure. Subsidy is counterproductive with the spirit of Indonesia-EU CEPA as it will unfairly make goods seemed cheaper and act as a barrier to competition. If Indonesia-EU CEPA seeks to gain sufficient political and public support to smoothen the negotiation process, the issue of subsidy and protection in the EU’s agriculture sectors needs to be seriously addressed. This is because agriculture and food products are among the highly exported commodities to the EU market and thus very essential in further driving economic development in Indonesia.

In order to create the foundation of business climate that is fair and competitive under the Indonesia-EU CEPA, APINDO calls on the EU to commit to eliminate any trade-distorting practices in its agriculture policy, specifically by:

- Eliminating all market support measures under the CAP, i.e. export subsidy and price guarantee
- Reducing significantly the import tariff rate for its agriculture products, especially for the ones which have extremely high tariff rate and receive significant subsidy in the form of price guarantee and export refund, such as tobacco, dairy produce, beef, and etc.
- Committing to improve transparency and to bring greater certainty and consistency in the application of technical measures, i.e. TBT and SPS, especially with regards to agriculture products.

**C.4. Position on Cooperation and Capacity Building Program**

The implementation of Indonesia-EU CEPA will have **three major consequences** for Indonesian economy: (i) business environment will be tougher and private sector will be forced to adapt with stringent compliance system in the EU; (ii) liberalization agenda, especially in services sector, will require significant regulatory and policy reform; and (iii) investment in infrastructure and education will need to be improved so that Indonesia’s business sector and human resources are able to utilize the opportunity provided by the Indonesia-EU CEPA in a competitive basis. APINDO recommends that the “Cooperation and Capacity

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7 This section draws heavily from APINDO Focus Group Discussion (FGD) meeting series as well as private sector associations’ position papers.
Building Chapter "should be built under the ambition to help Indonesia to overcome those three major consequences. Furthermore, APINDO emphasizes the need to benefit from EU's technological advantage and to ensure technology and technical know-how spillover to domestic industry, but in a way that is still market/business friendly.

APINDO recommends the creation of cooperation initiative that has long term, if not permanent, impact to Indonesian economic development, like the followings.

- **Cooperation with the EU in the area of infrastructure development, by providing capital/funding** for projects such as port development, shipping, logistics, large-scale highway road, urban rapid transit system, IT & telecommunication infrastructure (e.g. fiber optic, etc.), water infrastructure, sanitation, as well as energy infrastructure.

- **Cooperation on further developing Export Quality Infrastructure (EQI)** system in Indonesia, by requesting the EU to establish more advanced testing and laboratory center as well as certification infrastructure in Indonesia that is based on the EU's standards and recognized by the EU commission.

- **Cooperation in the area of human resources development**, which focus on: (i) strengthening the capacity of Vocational Training and Development Center (Balai Latihan Kerja/BLK) both in National as well as in Local level; and (ii) establishing “EU-Indonesia Training and Education Center” in order to develop the capacity of Indonesian skilled workers to better access the EU market as well as to compete in the ASEAN region

- **Cooperation in the area of technology transfer**, by adopting the scheme applied in the Indonesia-Korea CEPA negotiation that is to create a separate Memorandum of Understanding (MoU) on “Industrial Technology Cooperation” but still parallel with Indonesia-EU CEPA negotiation. The rationale of this strategy is to develop a comprehensive plan to promote technological and technical know-how spillover that is considered as market/business friendly. The initial recommendation on the sectors/technologies that can be potentially included in the MoU is green technology, industrial machinery, agriculture tools & equipment, e-government, as well as the technology that is critical to support defense sector.

- **Establishment of “EU-Indonesia Trade & Investment Center”** that serves as “one-stop-shop” for private sectors in both countries. The center can take form of institution under the joint supervision of both parties or only an internet-based support system. It is proposed to have several roles as:
  - **Center of information for private sectors** that is able to provide thorough information on how to conduct trade and investment activities both in the EU and Indonesia. To make it useful and comprehensive, the information should be disaggregated into product-by-product basis.
  - **Center for Trade and Investment promotion** which actively conduct international exhibition. APINDO recommends the GoI to actively promote Indonesia's natural resources-based commodities in the international event in order to counter any negative perception from the international community, including the EU.
The capacity building program under Indonesia-EU CEPA should be targeted both to business sector as well as government official. The focus of capacity building program for business sector should be to increase the capability of domestic industries to comply with technical regulations, standards, and other policy measures related to trade and investment applied in the EU, so that they can better tap the opportunities arising from Indonesia-EU CEPA. Based on consultation with key players and business association, APINDO recommends the following capacity building programs to be negotiated in Indonesia-EU CEPA.

- **Technical assistance for smallholders in forestry sector** to increase their compliance towards certificate of timber legality in national (e.g. SVLK) as well as international level (e.g. EUTR). It is an important program because larger firms in forestry sector often buy its input from the smallholders. If Indonesia seeks to maintain the legality of timber and timber products along the supply chain, the smallholder is the most vital link to be upgraded.

- **Capacity building for TPT industries** with regards to the implementation of REACH (registration, evaluation, authorization, and restriction of chemicals), RED (radiation emitting devices), as well as technical requirements for SPS and TBT Measures.

- **Capacity building with regards to EU’s standards on sustainability and food safety aspects** for Indonesia’s agriculture and food producers.

- **Capacity building on the traceability aspects applied in the EU**, especially for Indonesia’s small-scale fisheries industry and fishermen (e.g. how to get certificate required to comply with EU’s traceability principle in fisheries sector, etc.).

- **Capacity building on other EU’s standards that are relevant to the export of agriculture, fisheries, forestry, and food products**, such as Renewable Energy Directive (RED), HACCP, Good Agriculture/Aquaculture practices (GAP), etc.

- **Capacity building on “Green Building” technology and professionals certification.**

- **Technical capacity building programs in the area of EU’s regulatory framework as well as international platform on public procurement.**

- **Capacity building programs for Indonesia’s services sector providers** that focus on two targets: (i) to boost Indonesian services sector competitiveness in general, as well as (ii) to improve the export capacity of Indonesian services providers to enter the EU market. It has to include the programs to gain thorough understanding about standards and technical regulation surrounding services sector in the EU as well as other capacity elements critical for boosting competitiveness.

While for capacity building targeted to government official, APINDO suggests that the program should aim at increasing the capacity of policy makers to perform regulatory reform and enforce the elements critical to the implementation of fair and competitive Indonesia-EU CEPA. The followings are the capacity building programs for government officials that might be of high relevance to be better prepared in facing the Indonesia-EU CEPA.
- Technical assistance for regulatory reform in services.
- Capacity building and technical assistance programs in the area of trade remedies, covering activities such as—but not limited to:
  - Training for trade remedies personnel in Indonesia, i.e. “Komite Anti-Dumping Indonesia” (KADI) and “Komite Pengamanan Perdagangan Indonesia” (KPPI), especially on the technical know-how.
  - Sharing session on the best practice of trade remedies policy in the EU.
  - Dispatching expert in the area of trade remedies to help improve the trade remedies implementation framework in Indonesia.
- Capacity building and technical assistance programs with regards to strengthening Indonesia’s capacity to enforce, implement, and monitor the intellectual property and competition law.
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