

## Our position

# Towards a Comprehensive Economic Partnership Agreement between the EU and Indonesia



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2016, directly supports more than 4.5 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

## Executive summary

The American Chamber of Commerce to the European Union (AmCham EU) supports the negotiations for a comprehensive free trade agreement between the EU and Indonesia.

Conclusion of a Comprehensive Economic Partnership Agreement between the EU and Indonesia could encourage open, free and unrestricted reciprocal access between both markets, increase transparency and encourage non-discriminatory regulatory treatment. Enhanced market access could increase the trade flow in goods and services, and encourage growth, jobs and innovation in both regions. Passage of the deal could further benefit the ASEAN region as a whole and set the stage for an interregional trade agreement between the EU and ASEAN in the future.

Swift conclusion and ratification is key, particularly considering the likely graduation of Indonesia from the EU's Generalised Scheme of Preferences. The US business community stands ready and willing to assist both parties in their efforts to quickly and effectively conclude this important negotiation.

### Introduction

The American Chamber of Commerce to the European Union (AmCham EU) supports negotiations for a comprehensive free trade agreement (FTA) between the EU and Indonesia.

Bilateral trade in goods amounted to more than €25.3 billion in 2015. A comprehensive FTA could significantly enhance trade volumes and investment flows between the two regions, and create new opportunities for businesses and consumers. It will also will encourage open, free and unrestricted reciprocal access between both markets, increase transparency and encourage non-discriminatory regulatory treatment.

AmCham EU's membership is composed of producers, exporters, importers and users of products and services across all sectors. Considering that Indonesia has the highest GDP of all ASEAN countries, a free trade agreement (FTA) could facilitate substantial opportunity for import, export and consumption of goods and services originating there. For many US businesses, Indonesia is one of the major sourcing and manufacturing countries.

Successful conclusion of the EU–Indonesia FTA could also benefit the broader ASEAN region. Not only would it encourage bilateral growth and opportunity between Indonesia and its neighbours, it could also set the stage for an interregional trade agreement between the EU and ASEAN in the future. Swift conclusion and ratification is key, particularly considering the likely graduation of Indonesia from the EU's Generalised Scheme of Preferences (GSP).

### Cross-sectoral issues and concerns

In addition to full and immediate tariff reduction on goods, AmCham EU supports a comprehensive approach in relation to the scope of the FTA which:

- Removes non-tariff barriers (NTBs);
- Harmonises standards and avoids unnecessary technical barriers to trade (TBTs);
- Agrees on practical rules of origin;
- Secures high protection of intellectual property rights (IPRs);
- Includes ambitious provisions on investment, as well as the broadest range of services, public procurement and trade facilitation.

### *Market access and tariff liberalisation*

EU negotiators must press for commercially meaningful tariff liberalisation for EU exports to Indonesia. We support the stated goal of a full tariff liberalisation for a minimum 90% of tariff lines for Indonesian and European exports across all tariff lines of the Harmonised System.

- Negotiators should press for full and immediate liberalisation of duties for footwear, apparel, and sports equipment;
- US businesses experience increased applied tariffs introduced to protect local producers for a range of products, such as electronics, electrical and non-electrical milling, chemicals, cosmetics, medicines, wine and spirits, iron wire and wire nails. For example, several important medicines are still subject to a 5% import tariff in Indonesia. Removal could help to ensure a level playing field;
- US companies from the wine and spirits industry have experienced an increase in tariffs, ranging from 90 to 150% *ad valorem*, as well as a WTO incompatible quantitative import limitation, halving the quota for beer, wine and spirits. We urge the parties to eliminate these tariffs, to bring the quota in line with the General Agreement on Tariffs and Trade (GATT) Article XI, and to refrain from introducing new excise taxes which would offset the benefits of the agreement;
- The toy industry experiences difficulties concerning the non-alignment of classification regimes, where Indonesia does not recognise Harmonised System (HS) codes with more than 8 digits, resulting in all products with such HS codes to be classified as 'other toys' and as such are subject to a higher duty than normal;
- Currently, Indonesia is a member of the Information Technology Agreement (ITA), but has as yet not joined the expansion of the agreement concluded in Nairobi in December 2015. Indonesia should join ITA 2.0 in parallel to the agreement.

### *Market access issues and non-tariff barriers*

Emphasis should be put on the removal of NTBs within Indonesia to improve access for European exporters, service providers and ICT services. This will also improve business conditions for companies operating in Indonesia. Indonesia should ensure that they fully respect their WTO commitments and eliminate any WTO-incompatible measures prior to the conclusion of the FTA.

US companies have and continue to experience many market access issues when operating in Indonesia. AmCham EU calls for:

- The removal of forced localisation measures, such as foreign equity caps, for example on retail store ownership and pharmaceutical companies;
- The removal of various requirements on local content and local manufacturing and establishing enterprises providing e-commerce services as well as requirements on partnerships with local SMEs;
- The removal of various requirements for data centres locally to store Indonesian consumers' data to conduct any business activities;
- Greater consistency in import licensing systems, preventing the need to re-register import licenses;
- More transparency by the Indonesian Government when setting policies and regulations, as well as overall simplification to avoid redundancy, with appropriate consultation of stakeholders including foreign companies.

#### *Regulatory issues and technical barriers to trade (TBT)*

AmCham EU supports further harmonisation or mutual recognition of standards and testing requirements, whilst respecting both parties' right to regulate. However, the parties should strive to implement international standards in as many areas as possible, and to eliminate all discriminatory measures.

AmCham EU calls for:

- The reduction of the frequency of pre-shipment inspection in Ports of Origin for importation of goods for importers who have demonstrated a history of compliance in reducing shipment overtime;
- Greater alignment and acceptance of international standards in the area of care and usage instructions, including language requirements and detailed labelling of material composition;
- The removal of the burdensome Indonesian National Standard (SNI) where baby garment samples and toys need to be labelled, which includes burdensome testing and licensing requirements;
- The reduction of the inspection frequency of testing requirements for importers of toys demonstrating a history of compliance, and the elimination of the discriminatory practice which allows a longer testing interval requirement for domestic products, as well as a streamlining of documentation to avoid unnecessary duplication of documents;
- The recognition of test results from International Laboratory Accreditation Cooperation (ILAC) accredited laboratories across the world;

- The prevention of lengthy delays in the approval of registration of new food supplements, wine, beer and spirits, as these significantly hamper trade by postponing the introduction of such products on the market;
- Clear interpreting rules on the halal certification to prepare for compliance and implementation, as well as the establishment of mutual recognition with foreign halal certification providers and/or agencies, as drafted in the implementing regulation;
- Improved alignment of EU and Indonesian product definitions and standards in the area of wine and spirits, especially in the area of raw materials and methods of production.

### *Rules of origin*

AmCham EU members call on the parties to adopt clear, simple, transparent and flexible rules of origin (RoO) procedures. Many US businesses operate in highly proliferated global value chains, where complex and diverging rules can be cumbersome and severely limit the market access benefits of FTAs.

For the agreement to reach its full potential, it is important to secure RoO that allow for the use of regional hubs – a cornerstone of many economic operators' supply chain models that facilitate economies of scale. Appropriate RoO are key to the growth of European exports in the region, as well as imports to the EU. The hub model is a necessity to keep pace with modern supply chain models.

For example, Asian hubs such as Singapore enable operators to ship goods from Europe, consolidate shipments of non-country specific goods, and apply country-specific labels and tax stamps on some goods such as wine and spirits, before shipping on to final markets. This model significantly decreases order fulfilment time for customers, provides for significant cost savings and adds flexibility.

AmCham EU advocates for the harmonisation of RoO across ASEAN partners and the region. Our members support extended cumulation with countries that parties have FTAs with, as well as with all ASEAN countries. For the FTA to reflect business realities created under the current Generalised Scheme of Preferences (GSP), cumulation with current ASEAN GSP beneficiaries is essential. Restricting cumulation only to those ASEAN countries that have signed an FTA with the EU will result in increased complexity, leading to substantial additional costs and making compliance with rules complicated for businesses.

For the textiles and clothing sector, an agreement to adopt the single transformation rule for all apparel products is particularly key. The single transformation rule would take into account the specificities of the Indonesian industry which – at this stage – cannot cope with demand by solely relying on local fabric production. A move toward a single-transformation rule would provide significant benefits for the garment industry in Indonesia and for the European consumer.

### *Intellectual property rights (IPRs)*

Ensuring a high-quality intellectual property regime in Indonesia is of critical importance to US

companies. Consumers trust that products produced by US businesses are safe and produced to the highest quality. It is important to ensure efficient mechanisms are implemented to swiftly identify counterfeit goods and remove them from the market. An effective IPR regime with efficient enforcement is essential for branded goods manufacturers to trade with Indonesia and to produce in Indonesia, including enhancement of the protections afforded to key geographical indications.

Members in the wine and spirits industry, for example, often encounter imitations and knock-offs that attempt to capitalise on the reputation of their brands. These compete unfairly with legitimate European products. Innovative pharmaceuticals companies, meanwhile, currently face a substandard level of protection and difficult enforcement conditions in Indonesia. Companies are particularly concerned about the Indonesian government's use of compulsory licensing for pharmaceutical products as standard practice, without prior consultation, nor possibility of appeal. This runs counter to Indonesia's commitments under the WTO TRIPS agreement, and undermines incentives for investment in Indonesia.

A robust IPR chapter should cover all major or relevant sources of counterfeits, for example local production, street markets and imports from third countries including direct to consumers e-commerce. The implementation of the mechanisms aimed at identifying and removing counterfeit goods from the market is fundamental in reinforcing the efforts that brand owners already make in this regard, including in the framework of their supply chain management.

AmCham EU encourages the Indonesia government to work closely with ASEAN countries, the European Commission and the EU Intellectual Property Office to further update and harmonise its systems for IP creation, protection, administration and enforcement, in line with international IP standards and with the ASEAN IPR Action Plan 2016-2020.

AmCham EU specifically recommends the EU and Indonesia to:

- Work together to bring Indonesia's recently introduced Patent Law closer to EU standards by removing additional patentability criteria of 'enhanced efficacy' for certain forms of innovation, as well as clarifying provisions regarding local working requirements and compulsory licensing;
- Work together with industry to find long-term alternatives to compulsory licensing, in order to ensure access to medicines for Indonesian patients while maintaining adequate and effective IP protection and fostering innovation;
- Develop and/or adapt IP management and information tools to enhance the efficiency of their operations and the quality of their services in the areas of trademark and design administration;
- Build a mechanism to facilitate the exchange of IP rights-related data among enforcement agencies, IP Offices and rights holders;
- Adopt stricter penalties for companies and individuals caught infringing IP rights;

- Support technical cooperation and encourage training of both judges and enforcement authorities to enhance protection of European geographical indications (GIs).

### *Investment*

Removing investment barriers in Indonesia is important to ensure effective operation of US business activities in Indonesia, as well as the continued promotion of investment, job creation and economic growth in the country, and the creation of a level playing field for investors.

Many American companies encounter increasing difficulties when investing in Indonesia. These include local content requirements which require them to use domestically manufactured goods or services in order to operate. Many sectors are frequently taken on and off the Negative Investment List, resulting in e-commerce, distribution and warehousing, and various oil, gas and mining services being closed to foreign investment.

AmCham EU regrets that Indonesia has chosen to terminate, or let expire, many Bilateral Investment Treaties (BITs) without adequate replacement. A clear framework to address and resolve any concerns in a neutral manner is in the best interests of both the Indonesian government and US investors.

### *Cross-border data flows, digital economy and public procurement*

The EU-Indonesia FTA should contain provisions for the facilitation of the digital economy, including clear benchmarks for freedom of expression and the free flow of information online. The FTA should further ensure cross-border data flows and remove data localisation requirements. Data flow commitments should be negotiated to complement cross-border services commitments and promote responsible and accountable treatment of data. This should be achieved through binding provisions in the EU-Indonesia FTA, balancing the need to protect data with the right to move data.

Jointly developed approaches to data security and protection will instil confidence in, and reduce resistance to, cross-border data flows. As such, the government's perceived need to restrict data flows and provide greater opportunities for cross-border trade in services will be reduced.

Indonesia is an observer, but not a member, of the WTO Agreement on Government Procurement. The EU and Indonesia should explore avenues that would allow Indonesia to make a smooth transition from observer to full member. Part of that process could include addressing regulations requiring procuring entities to use foreign content and components only when strictly necessary. Right now local content requirements vary between 35 and 85 per cent.

### *Trade facilitation*

AmCham EU encourages the establishment of efficient, coherent and simplified procedures to accelerate the release and customs clearance of goods, and improved transparency of regulatory information and procedures.

The inclusion of the WTO Trade Facilitation Agreement into the FTA would ensure its immediate implementation by both parties, committing both parties to implement its obligations and further enhancing opportunities for cross-border trade. Both sides would benefit from improved transparency, as well as increased opportunities to participate in global value chains and the reduction of corruption.

Specific attention should be paid to the following areas: expediting movement; release and clearance of goods; measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues; and technical assistance and capacity building.

## Conclusion

The US business community believes that conclusion of a comprehensive free trade agreement (FTA) between the EU and Indonesia will bring a range of societal and economic benefits for both parties. First and foremost, the agreement increase opportunities for trade and investment between two key partners, and provide new and improved opportunities for businesses and consumers. At a time of increased protectionism globally, the agreement will further demonstrate both parties' continued commitment to free trade, open markets and the rule of law. It could also help to strengthen political relations between the EU and Indonesia and promote regional stability in Asia.

The US business community stands ready and willing to assist both parties in their efforts to quickly and effectively conclude this important negotiation.