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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Comprehensive Economic Partnership Agreement between the European Union and the Republic of Indonesia

PROTOCOL
ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

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ARTICLE 1

Scope

1. The Parties shall assist each other in the manner and under the conditions laid down in this Protocol, to ensure the correct application of their customs laws and regulations, in particular by preventing, investigating and combatting operations in breach of those customs laws and regulations.

2. Assistance in customs matters, as provided for in this Protocol, applies to the respective administrative authorities of each Party which are competent for the implementation of this Protocol. That assistance shall not prejudice the provisions governing mutual assistance in criminal matters. It shall not cover information obtained under powers exercised on request of a judicial authority, except if communication of that information is authorised by that authority.

3. Assistance to recover duties, taxes or fines is not covered by this Protocol.

ARTICLE 2

Definitions

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For the purposes of this Protocol, the following definitions apply:

(a) "applicant authority" means an administrative authority requesting administrative assistance in customs matters under this Protocol and which has been designated by a Party as competent for this purpose;

(b) "customs laws and regulations" means customs laws and regulations as defined in point (h) of Article 1.3;

(c) "information" means any data, whether or not processed or analysed, document, image, report, communication or authenticated copy, in any format, including electronic;

(d) "operation in breach of customs laws and regulations" means any violation or attempted violation of customs laws and regulations;

(e) "person" means person as defined in point (z) of Article 1.3;

(f) "personal data" means personal data as defined in point (i) of Article 10.2; and

(g) "requested authority" means an administrative authority requested to provide administrative assistance in customs matters under this Protocol which has been designated by a Party as competent for this purpose.

ARTICLE 3

Assistance on request

1. On request of the applicant authority, the requested authority shall provide the applicant authority with all relevant information which may enable the applicant authority to ensure that customs laws and regulations are correctly applied, including information related to any activities, including concluded, planned or ongoing activities, which are or could be operations in breach of customs laws and regulations.

2. On request of the applicant authority, the requested authority shall inform the applicant authority whether:

(a) goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods; or

(b) goods imported into the territory of one of the Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

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3. On request of the applicant authority, the requested authority shall, within the framework of its laws and regulations, take the necessary steps to ensure surveillance of, and to provide the applicant authority with information on:

(a) persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs laws and regulations;

(b) goods, either in transport or in storage, for which there are reasonable grounds for believing that those goods have been or are intended to be used in operations in breach of customs laws and regulations;

(c) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that those goods have been or are intended to be used in operations in breach of customs laws and regulations; and

(d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that those means of transport are intended to be used in operations in breach of customs laws and regulations.

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ARTICLE 4

Spontaneous assistance

The Parties shall assist each other, on their own initiative and in accordance with their respective laws and regulations, if they consider that to be necessary for the correct application of customs laws and regulations, by providing information on concluded, planned or ongoing activities which constitute or appear to constitute operations in breach of customs laws and regulations and which may be of interest to the other Party. That information shall focus in particular on:

(a) persons, goods and means of transportation; and

(b) new means or methods employed in carrying out operations in breach of customs laws and regulations.

ARTICLE 5

Form and substance of requests for assistance

1. Requests under this Protocol shall be made in writing, either in print or in electronic format. Those requests shall be accompanied by documents that enable compliance with those requests. In cases of urgency, the requested authority may accept oral requests, but those oral requests shall be confirmed by the applicant authority in writing promptly thereafter.

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2. Requests pursuant to paragraph 1 shall include the following information:

(a) the applicant authority and the responsible official that would be the contact point of the request;

(b) the information or type of assistance requested;

(c) the object of and the reason for the request;

(d) the laws and regulations and other legal elements involved;

(e) indications as exact and comprehensive as possible on the persons who are the target of the investigations;

(f) a summary of the relevant facts and of the enquiries already carried out; and

(g) any additional available details to enable the requested authority to comply with the request.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority, English always being an acceptable language. This requirement does not apply to any documents that accompany the request pursuant to paragraph 1.

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4. If a request does not meet the formal requirements set out in paragraphs 1, 2 and 3, the requested authority may require the correction or the completion of the request. Precautionary measures may be ordered pending the submission of a corrected or completed request.

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ARTICLE 6

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, by supplying information already in its possession, by carrying out the necessary enquiries or by arranging for them to be carried out by the appropriate authority.

2. Requests for assistance shall be executed in accordance with the laws and regulations of the requested Party.

ARTICLE 7

Form in which information is to be communicated

1. The requested authority shall communicate the results of enquiries to the applicant authority in writing together with relevant documents, certified true copies or other items. That information may be provided in electronic format.

2. Original documents shall be transmitted in accordance with the requested Party's laws and regulations, and only upon request of the applicant authority, in cases where certified true copies would be insufficient. The applicant authority shall return the original documents at the earliest opportunity.

3. The requested authority shall, upon request and subject to the requested Party's laws and regulations, deliver to the applicant authority, any information related to the authenticity of the documents issued or certified by official agencies within its territory in support of a customs declaration.

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ARTICLE 8

Presence of officials of one Party in the territory of the other Party

1. Duly authorised officials of a Party may, with the agreement of and subject to any conditions set by the other Party, be present in the offices of the requested authority, or of any other concerned authority referred to in Article 6(1), to obtain information relating to activities that are or could be operations in breach of customs laws and regulations, which the applicant authority needs for the purposes of this Protocol.

2. Duly authorised officials of a Party may, with the agreement of and subject to any conditions set by the other Party, be present at enquiries carried out in requested Party's territory.

3. The presence of duly authorised officials of a Party in the territory of the requested Party shall solely be in an advisory capacity, and while present those authorised officials shall:

(a) at all times be able to furnish proof of their official capacity;

(b) neither wear uniform, nor carry weapons; and

(c) enjoy the same protections as afforded to officials of the requested Party, in accordance with the requested Party's laws and regulations.

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ARTICLE 9

Delivery and notification

1. On request of the applicant authority, the requested authority shall, in accordance with the laws and regulations applicable to that authority, take all necessary measures in order to deliver any documents or to notify any decisions of the applicant authority that fall within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

2. Requests for delivery of documents or notification of decisions referred to in paragraph 1 shall be made in accordance with the procedures applicable in the territory of the requested authority.

ARTICLE 10

Automatic and advance exchange of information

1. The Parties may exchange:

(a) any information covered by this Protocol on an automatic basis; and

(b) specific information in advance of the arrival of consignments in the territory of a Party.

2. The Parties shall, for the purposes of exchanging the information referred to in paragraph 1, establish arrangements on the type of information they wish to exchange, the format and the frequency of transmissions.

ARTICLE 11

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements if a Party considers that assistance under this Protocol would:

(a) be likely to prejudice the sovereignty of Indonesia or that of a Member State requested to provide assistance under this Protocol;

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(b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to in Article 12(5); or

(c) violate an industrial, commercial or professional secret.

2. The requested authority may postpone the assistance under this Protocol on the grounds that such assistance will interfere with ongoing investigations, prosecutions or proceedings. In that case, the requested authority shall consult with the applicant authority to determine if assistance can be provided subject to terms or conditions as the requested authority may require.

3. If the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to that request.

4. In the cases referred to in paragraphs 1 and 2, the requested authority shall communicate its decision and the reasons for that decision to the applicant authority without delay.

ARTICLE 12

Information exchange and confidentiality

1. The information received under this Protocol shall be used solely for the purposes established in this Protocol.

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2. The use of information obtained under this Protocol in administrative or judicial proceedings instituted in respect of operations in breach of customs laws and regulations, shall be considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with this Protocol. The requested authority may subject the supply of information or the granting of access to documents to the condition that it is notified of that use.

3. If a Party wishes to use information obtained under this Protocol for purposes other than those established in this Protocol, it shall obtain prior written consent of the authority which provided the information. That use shall then be subject to any restrictions laid down by the authority that provided the information.

4. Any information communicated under this Protocol, irrespective of the format in which it is communicated, shall be of a confidential or restricted nature, in accordance with the laws and regulations applicable in each Party. That information shall be covered by professional secrecy and shall enjoy the protection granted to similar information pursuant to the relevant laws and regulations of the recipient Party. Each Party shall inform the other Party about its applicable laws and regulations in that respect.

5. Personal data may be transferred only in accordance with the data protection laws and regulations of the Party providing the data. Each Party shall inform the other Party about its relevant data protection laws and regulations and the Parties, if needed, make best endeavours to agree on additional protection of transferred personal data.

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ARTICLE 13

Experts and witnesses

The requested authority may authorise its officials to appear, within the limitations of the authorisation granted, as experts or witnesses in judicial or administrative proceedings of the Party of the applicant authority regarding the matters covered by this Protocol, and produce information and evidence, including documents or certified true copies thereof, as may be needed for the proceedings. The request for appearance shall indicate before which judicial or administrative authority the official is requested to appear, the matters at issue and the title or qualification by virtue of which the official is to be questioned.

ARTICLE 14

Assistance expenses

1. Subject to paragraphs 2 and 3, each Party hereby waives any claim against the other Party for reimbursements of expenses incurred in the application of this Protocol.

2. Expenses and allowances paid to experts, witnesses, interpreters and translators, other than public service employees, shall be borne as appropriate by the Party of the applicant authority.

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3. If expenses of an extraordinary nature are required to carry out the request, the Parties shall determine the terms and conditions under which the request shall be executed, as well as the manner in which those costs shall be borne.

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ARTICLE 15

Implementation

1. The implementation of this Protocol shall be entrusted, on the one hand, to the customs authorities of Indonesia and, on the other hand, to the competent services of the European Commission and the customs authorities of the Member States, as appropriate. They shall decide on all practical measures and arrangements necessary for the implementation of this Protocol, taking into consideration their respective applicable laws and regulations, in particular those for the protection of personal data.

2. Each Party shall keep the other Party informed of the implementation measures it has taken in accordance with this Protocol, in particular with respect to the duly authorised services and officials designated as competent to send and receive the communications provided for in this Protocol.

3. For the Union, this Protocol shall not affect the communication of any information obtained under this Protocol between the competent services of the European Commission and the customs authorities of the Member States.

ARTICLE 16

Other agreements

This Protocol shall take precedence over any bilateral agreement on mutual administrative assistance in customs matters, which has been or may be concluded between a Member State and Indonesia insofar as the provisions of those bilateral agreements are incompatible with this Protocol.

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ARTICLE 17

Consultations, arrangements and amendments

1. This Article complements and further specifies Article 24.4.

2. Without prejudice to Chapters 2 (National Treatment and Market Access for Goods), 21 (Bilateral Dialogue Mechanism) and 22 (Dispute Settlement), the Parties shall consult each other in the Committee on Trade in Goods, Customs matters, and Sanitary and Phytosanitary matters in its specific configuration for Chapters 3 (Rules of Origin and Origin Procedures), 4 (Customs and Trade Facilitation), and 12 (Intellectual Property) for issues related to border enforcement (hereinafter referred to as the "Committee" for the purposes of this Protocol), in relation to and with a view to resolving any matter that may arise regarding the interpretation and implementation of this Protocol.

3. The Committee may establish arrangements in relation to this Protocol:

(a) pursuant to Article 10(2); or

(b) in respect to specific sectors or matters in accordance with the Parties' respective laws and regulations, with a view to enhancing the mutual administrative assistance under this Protocol.

4. The Trade Committee may adopt a decision pursuant to Article 24.2 to amend this Protocol in accordance with the Parties' respective laws and regulations.

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PROTOCOL
ON ENHANCING THE POTENTIAL OF THIS AGREEMENT
TO SUPPORT TRADE IN SUSTAINABLE PALM OIL

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ARTICLE 1

Overarching considerations

The Parties agree to this Protocol in view of the following overarching considerations:

(a) the importance of palm oil in their bilateral trade relations;

(b) the opportunities that this Agreement provides for the facilitation of bilateral trade in palm oil and products derived therefrom and for supporting their sustainability, including through the dismantlement of tariffs, as well as disciplines on the sound environmental and social governance of the palm oil sector and the promotion of responsible business practices across the palm oil value chain;

(c) the positive contribution that palm oil production can make to growth and development in producing countries, in particular for smallholders, SMEs and other vulnerable groups, as well as the environmental and social risks that can be associated with palm oil production;

(d) the need to continue to enhance this positive contribution and address these risks by designing and implementing effective domestic measures and by fostering joint cooperation activities, with a view to maximising the economic, environmental and social benefits of sustainable growth;

(e) the shared goal of building on their respective efforts undertaken to enhance the sustainability of palm oil, including by addressing deforestation and the management of peatland, supporting biodiversity conservation, promoting labour rights, enhancing transparency and the involvement of stakeholders in a manner that respects the interests of all actors;

(f) the ongoing efforts on the design, implementation and dissemination of sustainability assurance schemes, including the Indonesian Sustainable Palm Oil (hereinafter referred to as "ISPO") scheme and Indonesia's objective to apply the scheme to the entirety of its domestic production of palm oil;

(g) the importance of supporting the efforts of smallholders, SMEs and other persons in vulnerable situations and enhancing their ability to participate in sustainable palm oil supply chains, including through economic cooperation and capacity building;

(h) the importance of pursuing continuous innovation in practices aimed at enhancing the sustainability of palm oil production and of promoting the sharing of knowledge and technical cooperation in that respect; and

reaffirming their commitments to relevant international instruments, including the CBD, the Paris Agreement, and the United Nations Sustainable Development Goals.

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ARTICLE 2

Objectives and scope

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This Protocol aims to:

(a) maximise the opportunities created by this Agreement for enhancing trade between the Parties in sustainable palm oil and products derived therefrom, in particular with respect to preferential tariff treatment under Chapter 2 (National Treatment and Market Access for Goods), investment liberalisation between the Parties in Chapter 8 (Liberalisation of Investment and Trade in Services) and commitments to sustainability in Chapter 15 (Trade and Sustainable Growth and Development);

(b) facilitate compliance of operators with trade-related sustainability regulatory requirements of the Parties such as, where appropriate, criteria of relevance for palm oil and products derived therefrom;

(c) foster a level playing-field and competitive market conditions which are based on principles of openness, non-discrimination and transparency in accordance with the rights and obligations of the Parties under this Agreement, under the WTO Agreement and other international agreements;

(d) enhance cooperation activities between the Parties aimed at strengthening sustainable production throughout the palm oil supply chain, improving the understanding of their respective relevant trade-related sustainability requirements and facilitating their implementation with a view to fostering trade in sustainable palm oil between them and to support the implementation of horizontal commitments on sustainable development under Chapter 15 (Trade and Sustainable Growth and Development); and

(e) advance dialogue between the Parties on their respective requirements of relevance to trade and investment, for the sustainability of the palm oil sector and for the placement on their markets of palm oil and products derived therefrom.

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ARTICLE 3

Sustainability assurance schemes

1. The Parties acknowledge that sustainability assurance schemes, including voluntary schemes, can be useful in supporting sustainability efforts of economic operators that place palm oil on their markets in relation to the management of their supply chains and in facilitating compliance of operators with relevant trade-related sustainability regulatory requirements.

2. In view of paragraph 1, the Parties shall strive to increase knowledge and mutual understanding of their respective instruments and practices on sustainability and traceability of relevance for the palm oil sector. In this context, the Parties recognise the importance of promoting sustainability assurance schemes that:

(a) provide transparent, factual and non-misleading criteria that may facilitate compliance of operators with relevant trade-related sustainability regulatory requirements;

(b) are based on objective and verifiable evidence and data; and

(c) ensure impartiality, credibility, independence and accountability through a robust governance system, quality assurance mechanisms and monitoring and verification activities with a multi-stakeholder approach.

3. Each Party shall strive to provide guidance to stakeholders, including smallholders and SMEs, and to promote activities such as actions to raise awareness and information or public education campaigns, in relation to sustainability assurance schemes and other practices on sustainability and traceability of relevance for the palm oil sector referred to in paragraph 2.

4. The Parties recognise:

(a) the importance of effective implementation of their respective trade-related sustainability measures of relevance for palm oil products;

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(b) that compliance of operators with their respective applicable trade-related sustainability regulatory requirements is a necessary condition for the placement on their markets of palm oil products; and

(c) the importance of supporting compliance with such requirements, including through dialogue, technical assistance and capacity building to enable their respective economic operators to benefit from the market access opportunities provided for by this Agreement.

5. The Parties acknowledge the role that the ISPO scheme and other relevant sustainability assurance schemes can play in facilitating compliance of operators with trade-related sustainability regulatory requirements of relevance for palm oil products, if the laws and regulations of the Parties allow for the use of such schemes.

6. As part of the cooperation activities under Article 4.4, the Parties shall strive to develop initiatives to foster the contribution of the ISPO and other relevant sustainability assurance schemes to the sustainability of production throughout the palm oil supply chain and to enhancing trade between the Parties in sustainable palm oil products. These initiatives may include carrying out activities to improve the contribution of relevant sustainability assurance schemes to facilitating compliance of operators with trade-related sustainability regulatory requirements, including with a view to supporting the improvement of the ISPO scheme's ability to facilitate compliance of operators with the relevant trade-related sustainability regulatory requirements of the Union, as well as with a view to exploring practical arrangements, including requirements for possible future recognition in accordance with the relevant trade-related sustainability regulatory requirements of the Union.

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7. The Parties shall work together to strengthen their cooperation on matters covered by this Article, bilaterally, regionally and in international fora, as appropriate, including through the exchange of information, best practices and outreach initiatives. Such cooperation may include participation in the development of international sustainability assurance schemes or guidelines of relevance for the palm oil sector.

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ARTICLE 4

Facilitation of compliance of operators with trade-related sustainability regulatory requirements

1. The Parties acknowledge the importance of initiatives to facilitate trade in sustainable palm oil products. The Parties shall strive to facilitate the compliance of economic operators with their respective trade-related sustainability regulatory requirements, with a view to supporting trade between them in sustainable palm oil products.

2. The Parties recognise that actions taken to implement commitments under this Protocol and Chapter 15 (Trade and Sustainable Growth and Development) may contribute to compliance with their relevant trade-related sustainability regulatory requirements.

3. When implementing trade-related sustainability regulatory requirements, each Party shall take into account available scientific and technical information in accordance with Article 15.17 and, in accordance with its laws and regulations, give due regard to information exchanged between the Parties in the context of this Agreement as well as to actions taken to implement commitments under Chapter 15 (Trade and Sustainable Growth and Development) relevant for the implementation of its trade-related sustainability regulatory requirements.

4. The Parties shall work together to strengthen their cooperation to implement this Article, among others through the exchange of information and data, through sharing best practices and through outreach initiatives. In particular, the Parties shall put in place strategies, shall seek to mobilise resources, and may develop joint cooperation initiatives to facilitate compliance by relevant economic operators of the other Party, including smallholders and SMEs, with the trade-related sustainability regulatory requirements of relevance to palm oil of each Party, as appropriate. In line with the Parties' laws and regulations, such cooperation may include activities to strengthen the ISPO scheme, also in light of the relevant criteria and requirements under Union measures.

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ARTICLE 5

Transparency

1. In accordance with Chapters 19 (Good Regulatory Practices) and 20 (Transparency), each Party shall make publicly available all its relevant laws and regulations, guidelines and information of relevance for the palm oil sector, and shall promote awareness thereof among stakeholders, including smallholders and SMEs, in particular on traceability and due diligence requirements.

2. Each Party shall give due consideration to information received from interested persons on matters related to the implementation of this Protocol, and may involve stakeholders further in relevant activities.

ARTICLE 6

Cooperation between the Parties in the palm oil sector

1. The Parties shall undertake, as appropriate, cooperation initiatives of relevance for the facilitation of trade in sustainable palm oil in areas of mutual interest, in line with the forms and procedures pursuant to Articles 17.1, 17.4, and 17.6, including by ensuring the continuous involvement of all relevant stakeholders, including smallholders and SMEs, and identifying capacity building needs. Such cooperation and support may cover, among others:

(a) aspects related to the legality of palm oil production;

(b) aspects related to the traceability of palm oil supply chains, including data collection, information system access, data management and deforestation monitoring via satellite imagery;

(c) aspects related to enhancing the understanding of measures of the Parties of relevance for the palm oil sector, and their impact on trade and investment;

(d) measures to facilitate compliance by relevant stakeholders with applicable due diligence requirements in the palm oil sector, including the identification of risks and the implementation of risk mitigation measures;

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(e) actions to promote the sustainable palm oil sector in Indonesia, including scaling up agro-ecological solutions, identifying incentives for sustainable production, supporting investment in sustainable palm oil and favouring local transformation; and

(f) any other cooperation activity that may include the joint identification of relevant information and data, promoting technical dialogue and transparent exchanges, and addressing misleading practices or campaigns.

2. The Parties may cooperate for the purpose of enforcing their laws and regulations applicable to the palm oil sector, and to deter circumvention of these laws and regulations with a view to facilitating trade between the Parties in sustainable palm oil.

ARTICLE 7

Institutional arrangements

1. The Parties shall discuss and review regularly the implementation of this Protocol, including specific initiatives carried out thereunder, as part of the regular meetings of the Committee on Trade and Sustainable Growth in its specific configuration for Chapter 15 (Trade and Sustainable Growth and Development) and the Protocol on Enhancing the Potential of this Agreement to Support Trade in Sustainable Palm Oil, or by convening at the request of either Party a dedicated meeting at an appropriate level.

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2. The Parties shall encourage the involvement of relevant Union and Indonesian stakeholders in the implementation of this Protocol, including participants in the Civil Society Forum referred to in Article 24.2(4) and the domestic advisory groups established pursuant to Article 24.7 and other stakeholders active in the palm oil sector.

3. The Parties shall make use of the dialogue established under Chapter 21 (Bilateral Dialogue Mechanism), to exchange early information, discuss, and cooperate on the development and application of measures concerning the subject matters that are covered by this Protocol.

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