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Brussels, 22 June 2017

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MEETING DOCUMENT

From:	European Commission
To:	Trade Policy Committee (Deputies)
Subject:	EU-Indonesia FTA negotiations - EU initial proposals as sent to Indonesia

EUROPEAN COMMISSION
Directorate-General for Trade

Directorate C - Asia and Latin America
South and South East Asia, Australia, New Zealand

Brussels, 22 June 2017
Limited[1]

NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE

SUBJECT: ***EU-Indonesia FTA negotiations - EU initial proposals as sent to Indonesia***

ORIGIN: **Commission DG Trade Unit C2**

[redacted]

[redacted]

OBJECTIVE: ***For information***

Delegations will find attached the EU initial negotiating proposals on Trade in Goods, Trade and Sustainable development, Dispute settlement, as sent to Indonesia.

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*This **document** is the European Union's (EU) proposal for a legal text on dispute settlement in the EU-Indonesia FTA. It has been tabled for discussion with Indonesia. The actual text in the final agreement will be a result of negotiations between the EU and Indonesia.*

***DISCLAIMER**: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER [XX]

DISPUTE SETTLEMENT

SECTION 1

OBJECTIVE AND SCOPE

Article X.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.

Article X.2

Scope

This Chapter shall apply with respect to any dispute between the Parties concerning the interpretation and application of the provisions of this Agreement (hereinafter referred to as "covered provisions"), unless otherwise provided in this Agreement.

SECTION 2

CONSULTATIONS

Article X.3

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article X.2 (Scope) by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the measure at issue and the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made shall reply to the request promptly, but no later than 10 days after the date of its receipt. Consultations shall be held within 30 days of the date of receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. The consultations shall be deemed concluded within 30 days of the date of receipt of the request, unless the Parties agree to continue consultations.

4. Consultations on matters of urgency, including those regarding perishable goods or seasonal goods or services, shall be held within 15 days of the date of receipt of the request. The consultations shall be deemed concluded within those 15 days unless the Parties agree to continue consultations.

5. During consultations each Party shall provide sufficient factual information so as to allow a complete examination of the manner in which the measure at issue could affect the application of this Agreement. Each Party shall endeavour to ensure the participation of personnel of their competent governmental authorities who have expertise in the matter subject to the consultations.

6. Consultations, and in particular all information designated as confidential and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

7. If the Party to which the request is made does not respond to the request for consultations within 10 days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article X.4 (Initiation of Panel Procedures).

SECTION 3

PANEL PROCEDURES

Article X.4

Initiation of Panel Procedures

1. If the Parties fail to resolve the dispute through recourse to consultations as provided for in Article X.3 (Consultations), the Party that sought consultations may request the establishment of a panel.

2. The request for the establishment of a panel shall be made by means of a written request delivered to the other Party. The complaining Party shall identify the measure at issue in its request, and explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly.

Article X.5

Establishment of a Panel

1. A panel shall be composed of three panellists.

2. Within 10 days of the date of receipt by the Party complained against of the written request for the establishment of a panel, the Parties shall consult with a view to agree on the composition of the panel.

3. If the Parties do not agree on the composition of the panel within the time period provided for in paragraph 2, each Party shall appoint a panellist from the sub-list of that Party established under Article X.6 (Lists of Panellists) within five days from the expiry of the time period established in paragraph 2. If a Party does not appoint a panellist from its sub-list within that time period, the co-chair of the [institutional body to be defined] from the complaining Party shall select by lot, within five days from the expiry of that time period, the panellist from the sub-list of that Party. The co-chair of the [institutional body to be defined] from the complaining Party may delegate such selection by lot of the panellist.

4. If the Parties do not agree on the chairperson of the panel within the time period established in paragraph 2, the co-chair of the [institutional body to be defined] from the complaining Party shall select by lot, within five days from the expiry of that time period, the chairperson of the panel from the sub-list of chairpersons established under Article X.6 (Lists of Panellists). The co-chair of the [institutional body to be defined] from the complaining Party may delegate such selection by lot of the chairperson of the panel.

5. The date of establishment of the panel shall be the date on which all three selected panellists have notified their acceptance of appointment according to Annex [X] (Rules of Procedure).

6. If any of the lists provided for in Article X.6 (Lists of Panellists) have not been established or do not contain sufficient names at the time a request is made pursuant to paragraphs 3 or 4, the panellists shall be drawn by lot from the individuals who have been formally proposed by one Party or both Parties in accordance with Annex [X] (Rules of Procedure).

Article X.6

Lists of Panellists

1. The [institutional body to be defined] shall, no later than six months after the date of entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as panellists. The list shall be composed of three sub-lists:

   (a) one sub-list of individuals established on the basis of proposals by the European Union;

   (b) one sub-list of individuals established on the basis of proposals by Indonesia; and

   (c) one sub-list of individuals that are not nationals of either Party and who shall serve as chairperson to the panel.

2. Each sub-list shall include at least five individuals. The [institutional body to be defined] shall ensure that the list is always maintained at this minimum number of individuals.

3. The [institutional body to be defined] may establish additional lists of individuals with expertise in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article X.5 (Establishment of a Panel).

Article X.7

Requirements for Panellists

1. Each panellist shall:

   (a) have demonstrated expertise in law, international trade, and other matters covered by this Agreement;

   (b) be independent of, and not be affiliated with or take instructions from, either Party;

   (c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

   (d) comply with Annex [XX] (Code of Conduct for Panellists and Mediators).

2. The chairperson shall also have experience in dispute settlement procedures.

3. In view of the subject-matter of a particular dispute, the Parties may agree to derogate from the requirements listed in subparagraph 1 (a).

Article X.8

Functions of the Panel

The panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;

(b) shall set out, in its decisions and reports, the findings of facts, the applicability of the covered provisions and the basic rationale behind any findings and conclusions that it makes; and

(c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

Article X.9

Terms of Reference

1. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the terms of reference of the panel shall be:

   "to examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel, to make findings on the conformity of the measure at issue with the provisions of this Agreement referred to in Article X.2 (Scope) and to deliver a report in accordance with Articles X.11 (Interim Report) and X.12 (Final Report)."

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

Article X.10

Decision on Urgency

1. If a Party so requests, the panel shall decide, within 10 days of its establishment, whether the case concerns matters of urgency.

2. In cases of urgency, the applicable time periods set out in Section 3 (Panel Procedures) in this Chapter shall be half the time prescribed therein except for the time periods referred to in Article X.5 (Establishment of a Panel) and Article X.9 (Terms of Reference).

Article X.11

Interim Report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of establishment of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. The panel shall, under no circumstances, deliver its interim report later than 120 days after the date of establishment of the panel.

2. Each Party may deliver to the panel a written request to review precise aspects of the interim report within 10 days of its receipt. A Party may comment on the other Party's request within six days of the delivery of the request.

Article X.12

Final Report

1. The panel shall deliver its final report to the Parties within 120 days of the date of establishment of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. The panel shall, under no circumstances, deliver its final report later than 150 days after the date of establishment of the panel.

2. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address the comments of the Parties.

Article X.13

Compliance Measures

1. The Party complained against shall take any measure necessary to comply promptly with the findings and conclusions in the final report in order to bring itself in compliance with the covered provisions.

2. The Party complained against shall, no later than 30 days after receipt of the final report, deliver a notification to the complaining Party of the measures which it has taken or which it envisages to take to comply.

Article X.14

Reasonable Period of Time

1. If immediate compliance is not possible, the Party complained against shall, no later than 30 days after receipt of the final report, deliver a notification to the complaining

Party of the length of the reasonable period of time it will require for compliance. The Parties shall endeavour to agree on the length of the reasonable period of time to comply with the final report.

2. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party may, at the earliest 20 days after the receipt of the notification in paragraph 1, request in writing the original panel to determine the length of the reasonable period of time. The panel shall deliver its decision to the Parties within 20 days of the date of receipt of the request.

3. The Party complained against shall deliver a written notification of its progress in complying with the final report to the complaining Party at least one month before the expiry of the reasonable period of time.

4. The Parties may agree to extend the reasonable period of time.

Article X.15

Compliance Review

1. The Party complained against shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report.

2. When the Parties disagree on the existence or the consistency with the covered provisions of any measure taken to comply, the complaining Party may deliver a request, in writing, the original panel to decide on the matter. The request shall identify any measure at issue and explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly. The panel shall deliver its decision to the Parties within 46 days of the date of receipt of the request.

Article X.16

Temporary Remedies

1. The Party complained against shall, upon request by and after consultations with the complaining Party, present an offer for temporary compensation if:

   (a) the Party complained against delivers a notification to the complaining Party that it is not possible to comply with the final report; or

   (b) the Party complained against fails to deliver a notification of any measure taken to comply within the deadline referred to in Article X.13 (Compliance Measures) or before the date of expiry of the reasonable period of time; or

(c) the panel finds that no measure taken to comply exists or that the measure taken to comply is inconsistent with the covered provisions.

2. In any of the situations referred to in subparagraphs 1(a) to (c) the complaining Party may deliver a written notification to the Party complained against that it intends to suspend the application of obligations under the covered provisions if:

(a) the complaining Party decides not to make a request under paragraph 1; or

(b) the Parties do not agree on the temporary compensation within 20 days after the expiry of the reasonable period of time or the delivery of the panel decision under Article X.15 (Compliance Review) when a request under paragraph 1 is made.

The notification shall specify the level of intended suspension of obligations.

3. The complaining Party may suspend the obligations 10 days after the date of delivery of the notification referred to in paragraph 2, unless the Party complained against made a request under paragraph 5.

4. The suspension of obligations shall not exceed the level equivalent to the nullification or impairment caused by the violation.

5. If the Party complained against considers that the notified level of suspension of obligations exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original panel before the expiry of the 10 day period set out in paragraph 3 to decide on the matter. The panel shall deliver its decision on the level of the suspension of obligations to the Parties within 30 days of the date of the request. Obligations shall not be suspended until the panel has delivered its decision. The suspension of obligations shall be consistent with this decision.

6. The suspension of obligations or the compensation referred to in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article X.32 (Mutually Agreed Solutions);

(b) the Parties have agreed that the measure taken to comply brings the Party complained against into conformity with the covered provisions; or

(c) any measure taken to comply which the panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into conformity with those provisions.

Article X.17

Review of Any Measure Taken to Comply after the Adoption of Temporary Remedies

1. The Party complained against shall deliver a notification to the complaining Party of any measure it has taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days from the receipt of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2, the Party complained against may terminate the application of such compensation within 30 days from receipt of its notification that it has complied.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the covered provisions within 30 days of the date of receipt of the notification, the complaining Party shall deliver a written request to the original panel to decide on the matter. The panel shall deliver its decision to the Parties within 46 days of the date of the receipt of the request. If the panel finds that the measure taken to comply is in conformity with the covered provisions, the suspension of obligations or compensation, as the case may be, shall be terminated. When relevant, the complaining Party shall adjust the level of suspension of obligations or of compensation in light of the panel decision.

3. If the Party complained against considers that the level of suspension implemented by the complaining Party exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original panel to decide on the matter.

Article X.18

Replacement of Panellists

If during dispute settlement procedures, a panellist is unable to participate, withdraws or needs to be replaced because he or she does not comply with the requirements of Annex [XX] (Code of Conduct for Panellists and Mediators), the procedure provided for in Article X.5 (Establishment of a Panel) applies. The time period for the delivery of the report or decision shall be extended for the time necessary for the appointment of the new panellist.

Article X.19

Rules of Procedure

1. Panel procedures shall be governed by this Chapter and Annex [X] (Rules of Procedure).

2. Any hearing of the panel shall be open to the public unless otherwise provided in Annex [X] (Rules of Procedure).

Article X.20

Suspension and Termination

At the request of both Parties, the panel shall suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months. The panel shall resume its work before the end of the suspension period at the written request of both Parties, or at the end of the suspension period at the written request of either Party. The requesting Party shall deliver a notification to the other Party accordingly. If a Party does not request the resumption of the panel's work at the expiry of the suspension period, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated. In the event of a suspension of the work of the panel, the relevant time periods under this Section shall be extended by the same period of time for which the work of the panel was suspended.

Article X.21

Receipt of Information

1. At the request of a Party, or upon its own initiative, the panel may seek, from the Parties, relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for such information.

2. Upon the request of a Party or its own initiative, the panel may seek any information it deems appropriate from any source. The panel also has the right to seek the opinion of experts, as it deems appropriate, and subject to any terms and conditions agreed by the Parties, where applicable.

3. The panel shall consider amicus curiae submissions from natural persons of a Party or legal persons established in a Party in accordance with Annex [X] (Rules of Procedure).

4. Any information obtained by the panel under this Article shall be disclosed to the Parties and the Parties may provide comments on that information.

Article X.22

Rules of Interpretation

The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law, including those codified in the 1969 Vienna Convention on the Law of Treaties. The panel shall also take into account relevant interpretations in reports of WTO panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO. Reports and decisions of the panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.

Article X.23

Reports and Decisions of the Panel

1. The deliberations of the panel shall be kept confidential. The panel shall make every effort to draft reports and take decisions by consensus. If this is not possible, the panel shall decide the matter by majority vote. In no case shall separate opinions of arbitrators be disclosed.

2. The decisions and reports of the panel shall be accepted unconditionally by the Parties. They shall not create any rights or obligations with respect to natural or legal persons.

3. Each Party shall make the reports and decisions of the panel and its submissions publicly available, subject to the protection of confidential information.

4. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel in accordance with Annex [X] (Rules of Procedure).

Article X.24

Choice of Forum

1. When a dispute arises regarding a particular measure in alleged breach of an obligation under this Agreement and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.

2. Once a Party has selected the forum and initiated dispute settlement procedures under this Section or under another international agreement, the Party shall not initiate dispute settlement procedures under the other agreement with respect to the particular measure referred to in paragraph 1, unless the forum selected first fails to make findings for procedural or jurisdictional reasons.

3. For the purposes of this Article:

   (a) dispute settlement procedures under this Section are deemed to be initiated by a Party's request for the establishment of a panel under Article X.4 (Initiation of Panel Procedures);

   (b) dispute settlement procedures under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO;

   (c) dispute settlement procedures under any other agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

4. Without prejudice to paragraph 2, nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of another international agreement to which the disputing Parties are party. The WTO Agreement or the other international

agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under this Section.

SECTION 4

MEDIATION MECHANISM

Article X.25

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

Article X.26

Request for Information

1. At any time before the initiation of the mediation procedure, a Party may deliver a written request for information regarding a measure adversely affecting trade or investment between the Parties. The Party to which such request is made shall, within 20 days of receipt of the request, deliver a written response containing its comments on the requested information.

2. When the responding Party considers it will not be able to deliver a response within 20 days of receipt of the request, it shall promptly notify the requesting Party, stating the reasons for the delay and providing an estimate of the shortest period within which it will be able to deliver its response.

3. A Party is normally expected to avail itself of this provision before the initiation of the mediation procedure.

Article X.27

Initiation of the Mediation Procedure

1. A Party may at any time request to enter into a mediation procedure with respect to any measure by a Party adversely affecting trade or investment between the Parties.

2. The request shall be made by means of a written request delivered to the other Party. The request shall be sufficiently detailed to present the concerns of the requesting Party clearly and shall:

   (a) identify the specific measure at issue;

(b) provide a statement of the adverse effects that the requesting Party considers the measure has, or will have, on trade or investment between the Parties; and

(c) explain how the requesting Party considers that those effects are linked to the measure.

3. The mediation procedure may only be initiated by mutual agreement of the Parties in order to explore mutually agreed solutions and consider any advice and proposed solutions by the mediator. The Party to which the request is made shall give sympathetic consideration to the request and deliver its written acceptance or rejection to the requesting Party within 10 days of its receipt. Otherwise the request shall be regarded as rejected.

Article X.28

Selection of the Mediator

1. The Parties shall endeavour to agree on a mediator within 10 days of the initiation of the mediation procedure.

2. In the event that the Parties are unable to agree on the mediator within the time period laid down in paragraph 1, either Party may request the co-chair of the [institutional body to be defined] from the complaining Party to select the mediator by lot, within five days from the request, from the sub-list of chairpersons established under Article X.6 (Lists of Panellists). The co-chair of the [institutional body to be defined] from the complaining Party may delegate such selection by lot of the mediator.

3. Should the sub-list of chairpersons referred to in Article X.6 (Lists of Panellists) not be established at the time a request is made pursuant to Article X.27 (Initiation of the Mediation Procedure), the mediator shall be drawn by lot from the individuals formally proposed by one or both of the Parties for that sub-list.

4. A mediator shall not be a national of either Party or employed by either Party, unless the Parties agree otherwise.

5. A mediators shall comply with Annex [XX] (Code of Conduct for Panellists and Mediators).

Article X.29

Rules of the Mediation Procedure

1. Within 10 days of the appointment of the mediator, the Party which invoked the mediation procedure shall deliver to the mediator and to the other Party a detailed written description of its concerns, in particular of the operation of the measure at issue and its possible adverse effects on trade or investment. Within 20 days of the receipt of

this description, the other Party may deliver written comments on this description. Either Party may include any information that it deems relevant in its description or comments.

2. The mediator shall assist the Parties in a transparent manner in bringing clarity to the measure concerned and its possible adverse effects on trade or investment. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. The mediator shall consult with the Parties before seeking the assistance of, or consulting with, relevant experts and stakeholders.

3. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution, or agree on a different solution. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement.

4. The mediation procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, particularly if the measure relates to perishable goods or seasonal goods or services.

6. Upon request of either Party, the mediator shall deliver a draft factual report to the Parties, providing:

   (a) a brief summary of the measure at issue;

   (b) the procedures followed; and

   (c) if applicable, any mutually agreed solution reached, including possible interim solutions.

7. The mediator shall allow the Parties 15 days to comment on the draft report. After considering the comments of the Parties received, the mediator shall, within 15 days, deliver a final factual report to the Parties. The factual report shall not include any interpretation of this Agreement.

8. The procedure shall be terminated:

   (a) by the adoption of a mutually agreed solution by the Parties, on the date of the adoption thereof;

   (b) by mutual agreement of the Parties at any stage of the procedure, on the date of that agreement;

(c) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration; or

(d) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

Article X.30

Confidentiality

Unless the Parties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential. Any Party may disclose to the public the fact that mediation is taking place.

Article X.31

Relationship to Dispute Settlement Procedures

1. The mediation procedure is without prejudice to the Parties' rights and obligations under Sections 2 (Consultations) and 3 (Panel Procedures) or under dispute settlement procedures under any other agreement.

2. A Party shall not rely on, or introduce as evidence, in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:

   (a) positions taken by the other Party in the course of the mediation procedure or information exclusively gathered under paragraph 2 of Article X.29 (Rules of the Mediation Procedure);

   (b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

   (c) advice given or proposals made by the mediator.

3. Unless the Parties agree otherwise, a mediator shall not serve as a member of a panel in dispute settlement procedures under this Agreement or under any other agreement involving the same matter for which he or she has been a mediator.

SECTION 5

COMMON PROVISIONS

Article X.32

Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article X.2 (Scope).

2. If a mutually agreed solution is reached during the panel or mediation procedure, the Parties shall jointly notify that solution to the chairperson of the panel or the mediator, respectively. Upon such notification, the panel or the mediation procedure shall be terminated.

3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.

4. No later than at the expiry of the agreed time period the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

Article X.33

Time Periods

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act to which they refer.

2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

3. Under Section 3 (Panel Procedures), the panel may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal.

Article X.34

Costs

1. Each Party shall bear its own expenses derived from the participation in the panel or mediation procedure.

2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the panellists and of the mediator. The remuneration of the panellists and of the mediator shall be in accordance with that foreseen for a chairperson of an arbitration Panel in accordance with Annex [X] (Rules of Procedure).

Article X.35

Annexes

The [institutional body to be defined] may modify the Annexes [X] (Rules of Procedure) and [XX] (Code of Conduct for Panellists and Mediators).

ANNEX [X]

RULES OF PROCEDURE

ANNEX [XX]

CODE OF CONDUCT FOR PANELLISTS AND MEDIATORS

*This **document** is the European Union's (EU) proposal for a legal text on trade and sustainable development in the EU-Indonesia FTA. It has been tabled for discussion with Indonesia. The actual text in the final agreement will be a result of negotiations between the EU and Indonesia.*

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CHAPTER [XX]

TRADE AND SUSTAINABLE DEVELOPMENT

Article X.1

Objectives and Scope

1. The objective of this Chapter is to enhance the integration of sustainable development in the Parties' trade and investment relationship, notably by establishing principles and actions concerning labour[1]and environmental aspects of sustainable development of specific relevance in a trade and investment context.

2. The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Declaration on Social Justice for a Fair Globalisation of 2008 of the International Labour Organisation (ILO), and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" and the UN 2030 Agenda for Sustainable Development of 2015.

3. Consistent with the instruments referred to in paragraph 2, the Parties shall promote:

   (a) sustainable development, which encompasses economic development, social development and environmental protection, all three being inter-dependent and mutually reinforcing; and

   (b) the development of international trade and investment in a way that contributes to the objective of sustainable development.

Article X.2

Right to Regulate and Levels of Protection

1 For the purposes of this Chapter, the term "labour" means the strategic objectives of the ILO under the Decent Work Agenda, which is expressed in the ILO 2008 Declaration on Social Justice for a Fair Globalisation.

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental and labour protection it deems appropriate and to adopt or modify its relevant laws and policies. Such levels, laws and policies shall be consistent with each Party's commitment to the internationally recognised standards and agreements referred to in Articles X.3 (Multilateral Labour Standards and Agreements) and X.4 (Multilateral Environmental Governance and Agreements).

2. Each Party shall ensure that its relevant laws and policies provide for and encourage a high level of environmental and labour protection and shall strive to improve such laws and policies and their underlying levels of protection.

3. The Parties should not weaken the levels of protection afforded in domestic environmental or labour laws in order to encourage trade or investment.

4. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour laws in order to encourage trade or investment.

5. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour laws in order to encourage trade or investment.

Article X.3

Multilateral Labour Standards and Agreements

1. The Parties reaffirm their commitment to promote the development of international trade in a way that is conducive to decent work for all.

2. In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, each Party shall respect, promote and effectively implement in their laws and practices the internationally recognised core labour standards, as defined in the fundamental ILO Conventions, which are:

   (a) freedom of association and the effective recognition of the right to collective bargaining;

   (b) the elimination of all forms of forced or compulsory labour;

   (c) the effective abolition of child labour; and

   (d) the elimination of discrimination in respect of employment and occupation.

3. The Parties shall regularly exchange information on their respective progress with regard to the ratification of ILO Conventions or protocols that are classified as up-to-date by the ILO to which they are not yet party.

Recalling that the elimination of forced labour is among the objectives of the Agenda 2030, the Parties underline the importance of ratification and effective implementation of the 2014 Protocol to the Convention on Forced Labour.

4. In order to support multilateral governance and a level playing field, each Party shall effectively implement the ILO Conventions and Protocols ratified by Indonesia and by the Member States of the Union respectively.

5. The Parties shall consult and cooperate, as appropriate, on trade-related labour issues of mutual interest, including in the context of the ILO.

6. Recalling the ILO Declaration on Social Justice for a Fair Globalisation of 2008, the Parties note that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

7. Each Party shall promote decent work as expressed in the Declaration on Social Justice for a Fair Globalization of 2008 adopted by the International Labour Conference at its 97th Session.

8. Particular attention shall be paid by each Party to:

   (a) developing and enhancing measures for occupational safety and health, including prevention of occupational injury or illness and compensation in cases of such injury or illness, as defined in the relevant ILO Conventions and other international commitments;

   (b) decent working conditions for all, with regard to, inter alia, wages and earnings, working hours and other conditions of work;

   (c) labour inspection, in particular through effective implementation of relevant ILO standards on labour inspection aimed at securing the enforcement of legal provisions relating to working conditions and the protection of workers; and

   (d) non-discrimination in respect of working conditions, including for migrant workers.

Article X.4

Multilateral Environmental Governance and Agreements

1. The Parties recognise the importance of multilateral environmental governance and agreements as a response of the international community to global or regional environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment policies.

2. In order to support multilateral governance and a level playing field, each Party shall effectively implement the multilateral environmental agreements (hereinafter referred to as "MEAs"), protocols and amendments to which it is a party.

3. The Parties shall regularly exchange information on their respective progress as regards the ratifications of MEAs, including their protocols and amendments.

4. The Parties shall consult and cooperate, as appropriate, on trade-related environmental matters of mutual interest, including in the context of multilateral environmental agreements.

5. The Parties acknowledge the right of each Party to further the objectives of MEAs to which it is a party.

Article X.5

Trade and Climate Change

1. The Parties recognise the importance of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (hereinafter referred to as "UNFCCC") in order to address the urgent threat of climate change and the role of trade to this end.

2. Pursuant to paragraph 1, each Party shall:

   (a) effectively implement the UNFCCC and the Paris Agreement established thereunder;

   (b) promote the positive contribution of trade to the transition to a low-carbon economy and to climate-resilient development; and

   (c) cooperate with the other Party on trade-related climate change issues bilaterally, regionally and in international fora as appropriate, including in the UNFCCC, the WTO and the Montreal Protocol on Substances that Deplete the Ozone Layer.

Article X.6

Trade and Biological Diversity

1. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of trade in pursuing these objectives, consistent with the Convention on Biological Diversity (hereinafter referred to as "CBD"), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as "CITES"), other relevant international instruments to which they are a party, and the decisions adopted thereunder.

2. Pursuant to paragraph 1, each Party shall:

(a) implement effective measures to combat illegal wildlife trade, including with respect to third countries, as appropriate;

(b) promote the inclusion of animal and plant species in the Appendices to the CITES where the conservation status of that species is considered at risk because of international trade;

(c) promote trade in products obtained through a sustainable use of biological resources and contributing to the conservation of biodiversity, including with regard to combating deforestation;

(d) exchange information with the other Party on initiatives on trade with the aim of conserving biological diversity; and

(e) cooperate with the other Party bilaterally, regionally and in international fora on issues concerning trade and the conservation and sustainable use of biological diversity as well as illegal wildlife trade, including initiatives to reduce demand for illegal wildlife products.

Article X.7

Trade and Sustainable Management of Forests

1. The Parties recognise the importance of sustainable forest management and the role of trade in pursuing this objective.

2. Pursuant to paragraph 1, each Party shall:

(a) encourage the conservation and sustainable management of forests and the promotion of trade and consumption of timber and timber products from sustainably managed forests;

(b) implement measures to combat illegal logging and related trade, including, as appropriate, with respect to third countries, and promote trade in legally harvested forest products, in particular through the implementation of the EU-Indonesia Forest Law Enforcement Governance and Trade Voluntary Partnership Agreement;

(c) exchange information with the other Party on trade-related initiatives on sustainable forest management, forest governance and on the conservation of forest cover and cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies of mutual interest; and

(d) cooperate with the other Party bilaterally, regionally and in international fora on issues concerning trade and the conservation of forests as well as sustainable forest management.

Article X.8

Trade and Sustainable Management of Marine Biological Resources and Aquaculture

1. The Parties recognise the importance of conserving and sustainably managing, in a way that is consistent with achieving economic, social and environmental benefits, marine biological resources and their ecosystems as well as of promoting responsible and sustainable aquaculture, and the role of trade in pursuing these objectives.

2. Pursuant to paragraph 1, each Party shall:

   (a) implement long-term conservation and management measures and sustainable exploitation of marine living resources as defined in the main UN and FAO instruments relating to these issues[2];

   (b) act consistent with the principles of the UN Convention on the Law of the Sea, the Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the FAO Code of Conduct for responsible Fisheries and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate illegal, unreported and unregulated (hereinafter referred to as "IUU") fishing;

   (c) cooperate actively in the work of the Regional Fisheries Management Organisations (hereinafter referred to as "RFMOs") to which they are members, observers, or cooperating non-contracting parties, with the aim of ensuring the sustainable exploitation, management and conservation of marine biological resources and the marine environment. This includes the adoption of management, conservation and control measures by those RFMOs and their effective implementation and enforcement, including, where applicable, Catch Documentation or Certification Schemes;

   (d) implement comprehensive, effective and transparent measures to combat IUU fishing, implement effective policies and measures to exclude IUU products from trade flows, and cooperate to this end, including by facilitating the exchange of information;

   (e) cooperate with and within RFMOs and other international fora with the aim of achieving sustainable fisheries management; and

[2] The UN Convention on the Law of the Sea of 1982, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 1993, the UN Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995, the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of 2009.

(f) promote the development of sustainable and responsible aquaculture, including with regard to the implementation of the objectives and principles contained in the FAO Code of Conduct for Responsible Fisheries.

Article X.9

Trade and Responsible Management of Supply Chains

1. The Parties recognise the importance of sustainable and responsible management of supply chains through responsible business conduct and corporate social responsibility practices and through the provision of an enabling environment, and the role of trade in pursuing the objective of sustainable and responsible management of supply chains.

2. Pursuant to paragraph 1, each Party shall:

(a) promote corporate social responsibility or responsible business conduct, including by encouraging the uptake of relevant practices by businesses; and

(b) support the dissemination and use of relevant international instruments, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact and the UN Guiding Principles on Business and Human Rights.

3. The Parties recognise the utility of international sector-specific guidelines in the area of corporate social responsibility or responsible business conduct[3] and shall promote joint work in this regard. The Parties shall also implement measures to promote their uptake.

4. The Parties shall exchange information as well as best practices and, as appropriate, cooperate with the other Party, regionally and in international fora on issues covered by this Article.

Article X.10

Other Trade- and Investment-related Initiatives Favouring Sustainable Development

1. The Parties confirm their commitment to enhance the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions.

2. Pursuant to paragraph 1, the Parties shall:

[3] The OECD-FAO Guidance for Responsible Agricultural Supply Chains, the OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas and its supplements, the OECD Due Diligence Guidance for Meaningful Stakeholders Engagement in the Extractive sectors, the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector.

(a) promote trade and investment policies that support the objectives of the Decent Work Agenda, consistent with the 2008 ILO Declaration on Social Justice for a Fair Globalisation, including the minimum living wage, inclusive social protection, health and safety at work, and other aspects related to working conditions;

(b) facilitate trade and investment in environmental goods and services, including those of particular relevance for climate change mitigation such as sustainable renewable energy and energy efficient products and services, through inter alia addressing related non-tariff barriers, the adoption of policy frameworks conducive to the deployment of best available technologies and cooperating in relation to initiatives in this field;

(c) promote trade in goods that contribute to enhanced social conditions and environmentally sound practices, including goods that are the subject of voluntary sustainability assurance schemes such as fair and ethical trade schemes and eco-labels; and

(d) cooperate bilaterally, regionally and in international fora on issues covered by this Article.

Article X.11

Scientific and Technical Information

When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall take into account available scientific and technical information, relevant international standards, guidelines or recommendations, including the precautionary principle. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent labour hazards and environmental degradation.

Article X.12

Transparency

Each Party shall, in accordance with Chapter XX [Transparency], ensure that it develops, enacts and implements:

(a) measures aimed at protecting the environment and labour conditions that may affect trade or investment; or

(b) trade or investment measures that may affect the protection of the environment or labour conditions,

in a transparent manner, providing opportunities for non-state actors to submit views.

Article X.13

Working Together on Trade and Sustainable Development

The Parties recognise the importance of working together in order to achieve the objectives of this Chapter. They may work jointly on inter alia:

(a) labour and environmental aspects of trade and sustainable development in international fora, including in particular the WTO, the ILO, UN Environment, and MEAs;

(b) the impact of labour and environmental law and standards on trade and investment; and

(c) the impact of trade and investment law on labour and the environment;

as well as on trade-related aspects of:

(d) the implementation of MEAs and fundamental, priority and other up-to-date ILO Conventions of relevance in a trade context;

(e) the ILO Decent Work Agenda, including on the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, occupational health and safety, labour inspection, decent work in global supply chains, social protection and social inclusion, social dialogue, skills development and gender equality;

(f) MEAs, including customs cooperation and support for each other's participation in MEAs;

(g) the current and future international climate change regime, including means to promote low-carbon technologies and energy efficiency;

(h) the Montreal protocol and Kigali Amendment, in particular measures to control the production and consumption of and trade in Ozone Depleting Substances (ODS) and Hydrofluorocarbons (HFCs), introduction of environmentally friendly alternatives, updating of standards and combating illegal trade of substances regulated by these agreements.;

(i) transparent private and public sustainability assurance schemes, including eco-labelling;

(j) corporate social responsibility, responsible business conduct, responsible management of global supply chains and accountability, including with regard to adherence, implementation, follow-up, and dissemination of internationally agreed instruments;

(k) the sound management of chemicals and waste; and

(l) the promotion of the conservation and sustainable use of biological diversity, including combatting illegal wildlife trade, as referred to in Article X.6 (Trade and Biological Diversity);

(m) the promotion of the conservation and sustainable management of forests with a view to reducing deforestation and illegal logging, as referred to in Article X.7 (Trade and Sustainable Management of Forests); and

(n) the promotion of sustainable fishing practices and trade in sustainably managed fish products, as referred to in Article X.8 (Trade and Sustainable Management of Marine Biological Resources and Aquaculture).

Article X.14

[Body[4]] on Trade and Sustainable Development and Contact Points[5]

1. The Parties hereby establish a [body] on Trade and Sustainable Development (hereafter referred to as "…"). The [body] shall comprise senior officials from each Party, or their delegates.

2. The [body] shall meet [within the first year after the date this Agreement enters into force, unless otherwise agreed by the Parties, and thereafter as necessary][6] in accordance with Article X.X of Chapter XX [Institutional Provisions].

3. The functions of the [body] are to:

   (a) facilitate and monitor the implementation of this Chapter, including joint actions undertaken under Article X.12 (Transparency);

   (b) carry out the tasks referred to in Articles X.X and X.X [Dispute Settlement Procedures];

   (c) make recommendations to the [Joint Committee], including with regard to topics for discussion with [the civil society mechanisms] referred to in Article X.X of Chapter XX[7]; and

   (d) consider any other matter related to this Chapter as the Parties may agree.

[3bis. This [body] shall establish its own rules of procedure.[8]]

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4 Note: The name of the "body" will be determined in accordance with the overall institutional structure of the Agreement and terminology.

5 Note: Discussions on the text proposed for this Article are without prejudice to horizontal discussions on the institutional mechanisms and structures under the FTA.

6 Note: The bracketed text will be determined in accordance with horizontal provisions on the institutional mechanisms and structures under the FTA.

7 Note: The bracketed text will be determined in accordance with horizontal provisions on the institutional mechanisms and structures under the FTA.

8 Note: paragraph 3bis is to be included only in case there is no horizontal institutional provision on the rules of procedure for specialised committees.

4. Each Party shall designate a Contact Point within its administration to facilitate communication and coordination between the Parties on any matter relating to the implementation of this Chapter.

[Note: The EU will table dispute settlement provisions at a later stage]

*This **document** is the European Union's (EU) proposal for a legal text on national treatment and market access for goods in the EU-Indonesia FTA. It has been tabled for discussion with Indonesia. The actual text in the final agreement will be a result of negotiations between the EU and Indonesia.*

***DISCLAIMER**: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER [XX]

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article X.1

Objective

The Parties shall progressively and reciprocally liberalise trade in goods in accordance with the provisions of this Agreement. [The Parties hereby establish a free trade area in trade in goods that conforms to the provisions of Article XXIV of the GATT 1994.]

[N.B. to be moved to "General Provisions" and amended with inclusion of GATS article V.]

Article X.2

Scope

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods of a Party.

Article X.3

Definitions

For the purposes of this Chapter, the following definitions shall apply:

(a) "consular transactions" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation in connection with the importation of the good;

(b) "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of GATT 1994 contained in Annex 1A to the WTO Agreement;

(c) "customs duty" means any duty or charge of any kind imposed on or in connection with the importation of a good. A "customs duty" does not include any:

(i) charge equivalent to an internal tax imposed consistently with Article X.4 (National Treatment on Internal Taxation and Regulation);

(ii) anti-dumping, special safeguard, countervailing or safeguard duty applied in conformity with the GATT 1994, the Anti-dumping Agreement, the Agreement on Agriculture, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards, as appropriate; and

[N.B. should the Chapter on Trade Remedies mention the four WTO Agreements, this subparagraph could refer to conformity with Chapter [XX] (Trade Remedies)]

(iii) fee or other charge imposed on or in connection with importation that is limited in amount to the approximate cost of the services rendered.

(d) "good of a Party" means a domestic good as this is understood in the GATT 1994, and includes originating goods;

(e) "Harmonized System" means the Harmonized Commodity Description and Coding System, including all legal notes and amendments thereto developed by the World Customs Organization (the "HS");

(f) "import licensing procedure" means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body or bodies as a prior condition for importation into the territory of the importing Party;

(g) "export licensing procedures" means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body or bodies as a prior condition for exportation from the territory of the exporting Party;

(h) "repair" means any processing operation undertaken on a good to remedy operating defects or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended. Repair of goods includes restoration and maintenance but does not include an operation or process that:

(i) destroys the essential characteristics of a good, or creates a new or commercially different good;

(ii) transforms an unfinished good into a finished good; or

(iii) is used to improve or upgrade the technical performance of goods.

(i) "remanufactured good" means a good classified in HS Chapters 84, 85, 87, 90 or 9402 that:

(i) is entirely or partially comprised of parts obtained from goods that have been used;

(ii) has similar performance and working conditions compared to the equivalent good in new condition; and

(iii) is given the same warranty as the equivalent good in new condition.

(j) "originating good" means a good qualifying under the rules of origin set out in Protocol [XX] (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation); and

(k) "staging category" means the timeframe for the elimination of customs duties ranging from [0] to [X] [years], after which a good is free of customs duty (unless otherwise specified in Annex [X] (Tariff Elimination Schedule)).

Article X.4

National Treatment on Internal Taxation and Regulation

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994[, including its Notes and Supplementary Provisions]. To this end, Article III of the GATT 1994 [and its Notes and Supplementary Provisions are] [is] incorporated into and made part of this Agreement, *mutatis mutandis.*

[N.B. reference to notes and supplementary provisions to be included, unless dealt in the horizontal provisions of the Agreement]

Article X.5

Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall reduce or eliminate customs duties on goods originating in the other Party in accordance with its Schedule in Annex [X] (Tariff Elimination Schedule).

2. For the purpose of paragraph 1, the base rate of customs duties shall be the one specified for each good in the Schedules in Annex [X] (Tariff Elimination Schedule).

3. If a Party reduces its applied most favoured nation customs duty rate, that duty rate shall apply to originating goods of the other Party for as long as it is lower than the customs duty rate determined pursuant to its Schedule in Annex [X] (Tariff Elimination Schedule).

4. [X] years after the entry into force of this Agreement, on the request of a Party, the Parties shall consult to consider accelerating the reduction or elimination of customs duties set out in the Schedules in Annex [X] (Tariff Elimination Schedule), or broadening the scope of tariff reduction or elimination under this Agreement. The [Joint Committee] may take a decision to amend Annex [X] to accelerate, or broaden the scope of, the tariff reduction or elimination.

Article X.6

Standstill

1. Except as otherwise provided in this Agreement, no Party shall increase any customs duty set as base rate in Annex [X] (Tariff Elimination Schedule) or adopt any new customs duty on a good originating in the other Party.

2. For greater certainty, a Party may raise a customs duty to the level set out in Annex [X] (Tariff Elimination Schedule) for the respective staging period following a unilateral reduction.

Article X.7

Export Duties, Taxes or Other Charges

1. No Party shall introduce or maintain any duty, tax or other charge of any kind imposed on, or in connection with, the exportation of a good to the other Party; or any internal tax or other charge on a good exported to the other Party that is in excess of the tax or charge that would be imposed on like goods when destined for domestic consumption.

2. Nothing in this Article shall prevent a Party from imposing on the exportation of a good a fee or charge that is permitted under Article X.8 (Fees and Formalities).

Article X.8

Fees and Formalities

1. Fees and other charges imposed by a Party on or in connection with importation or exportation of a good of the other Party shall be limited in amount to the approximate cost of services rendered, and shall not represent an indirect protection to domestic goods or taxation of imports or exports for fiscal purposes. No Party shall levy fees or other charges on or in connection with importation or exportation on an ad valorem basis.

2. Each Party shall promptly publish all fees and charges it imposes in connection with importation or exportation in such a manner as to enable governments, traders and other interested parties, to become acquainted with them.

3. No Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

Article X.9

Repaired Goods

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's customs territory after that good has been temporarily exported from its customs territory to the customs territory of the other Party for repair.[1]

2. Paragraph 1 does not apply to a good imported in bond, into free trade zones, or in similar status, that is then exported for repair and is not re-imported in bond, into free trade zones, or in similar status.

3. No Party shall apply a customs duty to a good, regardless of its origin, imported temporarily from the customs territory of the other Party for repair.[2]

Article X.10

Remanufactured Goods

1. No Party shall accord to remanufactured goods of the other Party a treatment that is less favourable than that it accords to equivalent goods in new condition.

2. For greater certainty, Article X.11 (Import and Export Restrictions) applies to import and export prohibitions or restrictions on remanufactured goods. If a Party adopts or maintains import and export prohibitions or restrictions to used goods, it shall not apply those measures to remanufactured goods.

3. A Party may require that remanufactured goods be identified as such for distribution or sale in its territory and that they meet all applicable technical requirements that apply to equivalent goods in new condition.

Article X.11

Import and Export Restrictions

1. No Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 [, including its Notes and Supplementary Provisions]. To this end, Article XI of the GATT

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1 In the EU, the outward processing procedure as laid down in Regulation (EU) No 952/2013 is used for the purpose of this paragraph.

2 In the EU, the inward processing procedure as laid down in Regulation (EU) No 952/2013 is used for the purpose of this paragraph.

1994 [and its Notes and Supplementary Provisions] are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. No Party shall adopt or maintain:

(a) export and import price requirements[3], except as permitted in enforcement of countervailing and antidumping duty orders and undertakings;

(b) import licensing conditioned on the fulfilment of a performance requirement;

[N.B. definition of performance requirement needs to be aligned with the definition used in the investment chapter]

(c) [N.B. the EU reserves the right to add further provisions]

Article X.12

Import and Export Monopolies

1. No Party shall designate or maintain a designated import or export monopoly. For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import a good from, or export a good to, the other Party.

2. For greater certainty, this Article is without prejudice to provisions in Chapter [XX] (Trade in Service and Investment) and Schedules, and does not include a right that results from the grant of an intellectual property right.

Article X.13

Transit

Article V of the GATT 1994 is hereby incorporated into this Agreement. The Parties recognize that Article V of GATT 1994 includes the movement of energy goods inter alia via pipelines or electricity grids.

Article X.14

Origin Marking

1. Where Indonesia requires a mark of origin on the importation of goods of the EU Party, Indonesia shall accept the origin mark "Made in the EU" or the equivalent in a language

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3 For greater certainty, this provision is not meant to prevent a Party from relying on the price of imports in order to determine the applicable rate of a customs duty [in accordance with this Agreement]

according to Indonesia origin marking requirements under conditions that are no less favourable than those applied to marks of origin of Member States of the Union.

2. For the purposes of the origin mark "Made in the EU", Indonesia shall treat the Union as a single territory.

Article X.15

Import Licensing Procedures

1. Each Party shall adopt and administer any import licensing procedures in accordance with Articles 1 to 3 of the Agreement on Import Licensing Procedures. To this end, Articles 1 to 3 of the Agreement on Import Licensing Procedures are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. A Party that institutes licensing procedures, or changes to existing licensing procedures, shall notify the other Party of such within [60] days of publication. The notification shall include the information specified in Article 5(2) of the Agreement on Import Licensing Procedures. A Party shall be deemed to be in compliance with this provision if it has notified the relevant import licensing procedure, or any modifications thereof, to the Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement, including the information specified in Article 5(2) of that Agreement.

3. Upon request of a Party, the other Party shall promptly provide any relevant information, including the information specified in Article 5(2) of the Agreement on Import Licensing Procedures, regarding any import licensing procedure that it intends to adopt, has adopted or maintains, or changes to existing licensing procedures.

Article X.16

Export Licensing Procedures

1. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place, whenever practicable, 45 days before the procedure or modification takes effect, and in all events no later than the date such procedure or modification takes effect.

[N.B. publication rules are to be looked at in light of the relevant provisions for publication in the general provisions on transparency in the Agreement]

2. The publication of export licensing procedures shall include the following information:

(a) the texts of its export licensing procedures, or of any modifications it makes to those procedures;

(b) the goods subject to each licensing procedure;

(c) for each procedure, a description of the process for applying for a license and any criteria an applicant must meet to be eligible to apply for a license, such as possessing an activity license, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export license;

(e) the administrative body or bodies to which an application or other relevant documentation should be submitted;

(f) a description of any measure or measures that the export licensing procedure is designed to implement;

(g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication;

(h) if the Party intends to use a licensing procedure to administer an export quota, the overall quantity and, if applicable, the value of the quota and the opening and closing dates of the quota; and

(i) any exemptions or exceptions that replace the requirement to obtain an export license, how to request or use those exemptions or exceptions, and the criteria for granting them.

3. Within 30 days after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. A Party that institutes new export licensing procedures, or changes to existing licensing procedures, shall notify the other Party of such within 60 days of publication. The notification shall include the reference to the source(s) where the information required in paragraph 2 is published and include, where appropriate, the address of the relevant government Internet website(s).

4. For greater certainty, nothing in this Article requires a Party to grant an export license, or prevents a Party from implementing its obligations or commitments under United National Security Council Resolutions, as well as under multilateral non-proliferation regimes and export control arrangements, including Wassenar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the Australia Group, the Nuclear Suppliers Group, and the Missile Technology Control Regime.

Article X.17

Customs Valuation

Each Party shall determine the customs value of goods of the other Party imported into its territory in accordance with Article VII of the GATT 1994 and the Customs Valuation

Agreement. To this end, Article VII of the GATT 1994[, including its Notes and Supplementary Provisions], and Articles 1 to 17 of the Customs Valuation Agreement, including its Interpretative Notes, are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article X.18

Elimination of Sectoral Non-Tariff Measures

[1. The Parties undertake the commitments on sector-specific non-tariff measures on goods as set out in Annexes [XX], [YY] and [ZZ] (hereinafter referred to as "Sectoral Annexes").]

[Place holder for further paragraphs under this Article.]

Article X.19

General Exceptions

Nothing in this [Chapter] [Agreement] prevents the taking of measures in accordance with Article XX of the GATT 1994[, its Notes and Supplementary Provisions,] which are hereby incorporated into and made part of this Agreement.

Article X.20

[Institutional Provisions]

[N.B. provisions to be coordinated with the horizontal institutional provisions in the Agreement. This Article should include the below provisions on exchange of trade statistics for assessing the preference utilisation rate, unless these are included elsewhere in the Agreement.]

[1. For the purpose of monitoring the functioning of the Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics for a period starting one year after the entry into force of this Agreement until 10 years after the tariff elimination is completed for all goods according to the Schedules in Annex [X] (Tariff Elimination Schedule). Unless the [Trade Committee] decides otherwise, this period shall be automatically extended for five years, and thereafter this Committee may decide to subsequently extend it.

2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and those that received non-preferential treatment.]

***ANNEX* [*X-X*]**

ELIMINATION OF CUSTOMS DUTIES

SECTION A

GENERAL PROVISIONS

1. Except as otherwise provided in a Party's Schedule in this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article X.5 (Elimination of Customs Duties):

   [Staging categories to be inserted here]

2. Unless otherwise specified in the Schedules:

   (a) the customs duty must be reduced according to the staging categories beginning on the date this Agreement enters into force; and

   (b) the base rate is expressed as a percentage of the customs value of the good (ad valorem duty).

3. Interim staged rates shall be rounded down, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest [tenth] of [one] rupiah in the case of Indonesia and the nearest tenth of one cent in the case of the Union.

4. For purposes of this Annex and a Party's Schedule to this Annex, year one means the year of entry into force of this Agreement as provided for in Article [X.X] ([Entry into Force]).

5. For purposes of this Annex and a Party's Schedule to this Annex, beginning in year two, each annual stage of tariff reduction shall take effect on January 1 of the relevant year.

TARIFF SCHEDULE OF INDONESIA

GENERAL NOTES

1. Relation to Indonesia's [Classification Nomenclature/Tax Law] ([abbreviation]). The provisions of this Schedule are generally expressed in terms of the [abbreviation], and the interpretation of the provisions of this Schedule, including the product coverage of subheadings of this Schedule, shall be governed by the General Notes, Section Notes and Chapter Notes of the [abbreviation]. To the extent that provisions of this Schedule are identical to the corresponding provisions of the [abbreviation], the provisions of this Schedule shall have the same meaning as the corresponding provisions of the [abbreviation].

2. Base Rates of Customs Duty. Except as otherwise provided in this Annex, the base rates of customs duty set out in this Schedule reflect Indonesia's Most-Favoured-Nation (MFN) rates of duty in effect on [1 March 2017].

   [Insert Indonesia's schedule]

TARIFF SCHEDULE OF THE UNION

GENERAL NOTES

1. The provisions of this Schedule are generally expressed in terms of the Combined Nomenclature 201[X] ("CN 201[X]")[4], which is based on the Harmonised Commodity Description and Coding System. The interpretation of the provisions of this Schedule, including the product coverage of subheadings of this Schedule, shall be governed by the General Notes, Section Notes, and Chapter Notes of the CN 201[X]. To the extent that provisions of this Schedule are identical to the corresponding provisions of the CN 201[X], the provisions of this Schedule shall have the same meaning as the corresponding provisions of the CN 201[X].

2. Base Rates of Customs Duty. Except as otherwise provided in this Annex, the base rates of customs duty set out in this Schedule reflect the EU's Most-Favoured-Nation (MFN) rates of duty in effect on [1 January 2017].

   [Insert the Union's schedule]

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[4] CN 201[X] is set out in Commission Implementing Regulation (EU) No [XXX]/201[X] of [X] October 201[X] amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.