

Sustainable trade?

Testing the EU-Indonesia Free Trade Agreement



The need for trade to serve people and the environment

The EU is currently negotiating a trade agreement with Indonesia, the fourth most populous country in the world. It is known as the Indonesia-EU Comprehensive Economic Partnership Agreement (CEPA). According to the European Commission, the objective is to "facilitate and create new market access, increase trade between the EU and Indonesia as well as to expand direct investment."

Friends of the Earth Europe recently published its vision for a new trade agenda with concrete proposals on how trade agreements could support a sustainable and fair economy (www.foeeurope.org/new-trade-agenda). On this basis, we are now testing if the text proposals on CEPA published by the European Commission indeed support a sustainable and equitable trade regime.

VERDICT

A clear fail: The current CEPA draft indicates that the agreement is not going to contribute to creating sustainable and fair economies - it scored only 4.5 out of 20 points in our check. The proposed agreement would not promote the exchange of sustainable products or reduce the trade in unsustainable ones. Instead, it is set to give unjustified privileges to large companies, and harm local economies and small-scale farmers. Small tweaks would not be enough to improve this agreement – the EU needs to start afresh and put sustainability and equity at the core of its approach to international trade.

TRANSPARENCY AND DEMOCRATIC SCRUTINY

A democratic European trade policy must be fully transparent and allow for wide participation. While this cannot be evaluated yet for some aspects, the EU-Indonesia negotiations fall short in most others. Notably, the most important texts – the ones agreed between the EU and Indonesia, and the mandate – have not been made public, making it much harder to critically analyse the agreement in sufficient time.

SCORE : 1 / 2

ENVIRONMENTALLY SUSTAINABLE TRADE

A fair and sustainable trade policy will discourage trade in unfair and polluting goods and services, and instead promote trade in fair and environmentally friendly goods and services. But the draft text of this trade deal doesn't come up with any binding rules for green goods or climate friendly services. A vague reference to international environment agreements cannot balance the objectives for increased trade and reduced trade barriers for any kind of product or service. In addition, the Indonesian government wants to get better market access for palm oil with disastrous impacts on climate, ecosystems and affected communities

SCORE : 0,5 / 3

Was the draft mandate subject to parliamentary debate at EU and national level, including participation of civil society?

The European Parliament discussed the mandate and passed a resolution¹. The explanatory memorandum accompanying the draft mandate talks of extensive consultation with civil society. However, discussion of the mandate by national parliaments seems to be lacking. A letter of concern published by civil society organisations stated: "The decision to launch these trade negotiations has occurred without prior meaningful public consultation, either with elected representatives or civil society in any of the countries concerned."²

Were draft texts and consolidated negotiating texts made public, for the scrutiny of civil society?

In recent years, the European Commission has begun to publish its proposals on a website, which is a step forward. However, this does not extend to the consolidated texts – the ones that have been agreed with the negotiation partner and will form the agreement. Their publication is necessary for civil society, researchers and other independent observers to analyse the content of the agreement in due time. In the case of the negotiations with Indonesia, not even the mandate, on whose instructions the European Commission negotiates, has been made public.

Was balanced and transparent consultation and participation guaranteed for all stakeholders at every stage of the process?

Since the negotiations are still ongoing, it is not possible to evaluate the participation of stakeholders at every stage of the process.

Were the findings of the human rights and sustainability impact assessment fully incorporated in the trade agreement?

The sustainability impact assessment is still being carried out. Therefore it is not possible to evaluate in how far the results are being taken into account.

Does the mandate specify altering tariffs respective to the climate impact of goods and services, hence fostering the development of sustainable economies?

The mandate does not specify tariff rules for so-called green goods and services. Bracketed text in the Trade in Goods chapter (Article 20) could be interpreted as allowing the EU's new trade defence instruments to reflect on international labour and environmental agreements, and to adapt antidumping measures respectively.

Can governments tax imports according to their environmental impacts (to the same level as domestic producers)?

The agreement simply refers to the existing World Trade Organisation rules (Article III and Article XX of the General Agreement on Tariffs and Trade - GATT). They do allow for product taxation under certain circumstances. However, in order to make trade relations more sustainable, the EU and Indonesia should further clarify and extend the existing rules, for example, by explicitly allowing environmental process and production measures to be taken into account.

Are goods and services that are responsible for high levels of greenhouse gas emissions, environmental impacts or human rights violations excluded from tariff reductions?

The mandate demands the liberalisation of trade in goods at the highest possible level, without mentioning the exclusion of unsustainable goods and services. There is no language in the draft Trade in Goods chapter that differentiates between sustainable and unsustainable goods. While the exact schedules for tariff reductions will only be published at the end of the negotiations there is no indication whatsoever that they will exclude harmful and unsustainable goods.

Are mechanisms and criteria specified to encourage the trade of 'green' goods?

The mandate asks for the agreement to "facilitate and promote trade in environmental goods, services and technology." Similarly, the draft chapter on Trade and Sustainable Development echoes this aim to "promote trade in goods that contribute to enhanced social conditions and environmentally sound practices". However, there is no mention of green goods in the key Trade in Goods chapter. Whether the trade in green goods is actually supported will only be assessable when the full text has been published.

SUSTAINABLE INVESTMENT

Trade agreements should facilitate sustainable investments that benefit host communities and societies rather than solely foreign investors. Unfortunately, the EU proposals for the trade agreement with Indonesia perpetuate the flaws of the EU's approach, limiting the ability of governments to channel investment in support of sustainable development, while entrenching far-reaching, one-sided protections for investors.

SCORE : 0 / 4

REGULATORY STANDARDS

Products and services should be subject to high regulatory standards to ensure the protection of the environment, workers and consumers. CEPA reinforces the role trade decisions have in setting various standards for food, environmental and other policies in its mandate. But interestingly, the EU doesn't suggest having permanent regulatory committees for the specific chapters as in the deal with Canada.

SCORE : 0 / 2

Does the trade mandate exclude a dispute settlement mechanism that allows foreign investors to bypass domestic courts and challenge governments in an international dispute settlement body?

The addition to the mandate, instructing the Commission to negotiate investment provisions, is not public. However, Commission documents clearly and unambiguously indicate that the EU is negotiating for the inclusion of the Investment Court System – a dispute settlement mechanism solely available to foreign investors.

Does the agreement include measures through which foreign investors can be held accountable at the international level for complicity in violations of human rights or environmental destruction, including details of how affected communities and civil society can gain access to legal remedy?

No, the draft chapter on Trade and Sustainable Development (TSD) only encourages the EU and Indonesia to promote voluntary guidelines and initiatives such as the OECD Guidelines for Multinational Enterprises (Article X.9). This is also reflected in the new Commission 'non-paper' on the reform of TSD chapters³. Among the 15 actions listed, the Commission proposes to further promote guidelines like the ones developed by the OECD (item 5), but is silent on the question of access to remedy for affected communities.

Does the agreement allow governments to regulate foreign investment, including setting conditions such as hiring local workers or using local materials?

An unpublished draft of the investment chapter shows that the EU wants to introduce restrictions on how governments can regulate investment. In particular, it would not allow setting conditions such as hiring a certain percentage of local workers or requiring the use of domestic content – both important tools for governments to stimulate local economic development.

Does the agreement include measures to harmonise corporate taxes at a higher level?

There is no indication that the agreement would encourage harmonising corporate taxes at a higher level. To the contrary, a minor and insufficient commitment on information exchange on taxes as pertaining to trade issues was even deleted from the draft mandate. Member states thus actively decided against any kind of information exchange on tax issues, let alone coordination on raising corporate taxes.

Is the European precautionary principle – which asserts that products should only be allowed onto European markets when proven to be safe for consumers, the environment and public health – explicitly referred to in the mandate?

No, the mandate does not explicitly or implicitly refer to the precautionary principle which steers the EU's environmental and food safety political framework. It merely bears some non-binding references to environmental cooperation and international environmental standards and lacks of any reference to the specific WTO Chapter (Para 1.2 mandate and WTO Chapter on Sanitary and Phytosanitary measures (SPS) Art 5.7).

Have regulatory cooperation mechanisms been excluded from the trade agreement?

No, regulatory cooperation is explicitly mentioned in the mandate as one objective to facilitate the trade between the EU and Indonesia. But a significant difference to other trade deals such as CETA (EU-Canada) is that the EU is not suggesting permanent regulatory cooperation committees for areas such as SPS (human, animal or plant safety).

0 point 0,5 point 1 point Non-verifiable

LOCAL AND SUSTAINABLE ECONOMIES

Governments must be allowed and encouraged to set their economies on a sustainable path. The EU proposals for public procurement aim to open the market for EU companies and exclude local supply as criteria. In addition, the trade deal weakens the right to regulate and protect domestic sectors for the Indonesian government.

SCORE : 2 / 4

SUSTAINABLE AGRICULTURE

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SCORE : 0 / 2

Does the mandate emphasise the importance of policy space necessary for domestic measures that would promote the protection of the environment, short food supply chains, and the protection of workers?

The mandate does not emphasise the importance of policy space directly. While the preamble mentions the right for governments to take measures to achieve legitimate public policy objectives and set levels of protections, it already limits these to measures that do not restrict international trade. The inclusion of investment protection in the negotiations based on the EU's model severely limits the space governments have to regulate in the public interest.

Does the agreement encourage public procurement schemes to be geared towards local benefits and sustainability?

Partly. The unpublished EU draft chapter refers to labour and environmental considerations (Article X.3.8), provided they are non-discriminatory. But local supply is excluded as criteria for public procurement tenders under EU law.

Are subsidies and other incentives for the production and use of sustainable energy and clean goods and services protected from being challenged under the trade agreement?

There is a general exception for challenging subsidies under the agreement (Article X.5 competition chapter). This would include sustainable energy and green goods, but this is not explicitly mentioned in the draft texts.

Are countries in the Global South able to asymmetrically shield domestic sectors from international competition to strengthen local economies and transition to a sustainable development model?

Overall, the agreement would reduce the ability of the Indonesian government to shield its domestic sectors from asymmetrical competition and strengthen local economic development. Notably, the chapter on trade in goods prohibits the introduction of new customs duties (Article X.6.1) and the application of export duties (Article X.7.1), reducing the tools available to encourage local economic development. The mandate furthermore instructs the EU to seek "the highest possible level of trade liberalisation" with a similar level of market access for both sides at the end, while minimising phase-out time for tariffs (Title 2).

Does the mandate specify conditions for opening up agricultural markets in relation to upholding or improving food safety, environmental, labour and animal welfare standards?

No, the mandate does not specify any conditions on improving standards of agricultural trade in regards to food safety, environment or social conditions. The only reference to agriculture links to imports with 'serious injury to its domestic industry'.



Are mechanisms in place that enable countries in the Global South to develop and protect regional food markets and help to build up food reserves?

No text available for agriculture.



Are agricultural production and processing methods recognised as legitimate reasons to deny market access to certain imports?

Not explicitly. The EU draft food safety chapter (SPS) underlines that any measure to regulate food safety shall not create unnecessary obstacles to trade (Article X.3 and X.7.4), this means that a reference to food from cloned animals or genetically modified food cannot be used to block import.



Does the agreement propose specific measures that would contribute to improved access to sustainable and healthy food for citizens?

No information available.

PRIMACY OF ENVIRONMENTAL AND HUMAN RIGHTS TREATIES

Trade agreements should support and not hinder the implementation of international agreements on climate change, human rights and sustainable development. While the EU and Indonesia have both ratified most of the core agreements, the envisaged free trade agreement does not seem to support their implementation. For example, the EU proposes a much weaker enforcement mechanism for the sustainability provisions than for the rest of the agreement – meaning that trade and investment concerns will trump everything else.

SCORE : 1 / 3

Does the mandate demand binding and enforceable sustainability clauses, referring explicitly to key international treaties on labour and human rights, climate and the environment?

The mandate does not demand the enforceability of the TSD chapter and the new Commission 'non-paper' does not propose to use the enforcement mechanism available for the rest of the agreement, which would include sanctions or a suspension of parts of the agreement in case of a breach of the TSD provisions. The mandate does however highlight the importance of international agreements on social and environmental issues and asks for the inclusion of provisions to promote adherence and effective implementation.

Is the adoption and implementation of and adherence to key international environmental and human rights treaties a prerequisite for engaging in trade negotiations?

While Indonesia has ratified the majority of key international environmental, human rights and labour treaties and conventions, important ones are missing, such as the ILO Convention 169 on indigenous peoples' rights or the Protocol aiming for the abolition of the death penalty (CCPR-OP2-DP). This shows that for the EU, the ratification of these international instruments was not a precondition to starting the negotiation for a free trade agreement. An overview of the multilateral environmental agreements ratified by Indonesia can be found here⁴ - of Human Rights Treaties ratified and not ratified here⁵ - of ILO Conventions ratified here⁶ and not ratified here⁷.

Are sustainability obligations enforceable by the agreement's dispute settlement mechanism?

The provisions for the dispute settlement of the TSD chapter were omitted from the draft. However, the Commission's new 'non-paper' proposes to continue the EU's approach of excluding the TSD chapter from the dispute settlement mechanism of the trade agreement.

Does the agreement contain a supremacy clause to ensure that, in case of a conflict, international treaties on labour and human rights, climate and the environment take precedence over trade and investment rules?

There is no indication so far, but it will only be verifiable once the complete text has been made public.

SCORE : 4,5/20

1. (http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/dase20080624_resolutionford_/DASE20080624_ResolutionFord_en.pdf).
2. <https://www.bilaterals.org/?statement-of-concern-regarding-the>
3. (http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf)
4. <https://www.informeia.org/en/countries/ID>
5. http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN
6. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102938
7. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::NO::P11210_COUNTRY_ID:102938

URGENTLY NEEDED: A NEW WAY OF DOING TRADE

Many rules governing trade and investment today hinder efforts to achieve more sustainable economies. A new trade regime is needed which can help address global challenges. We urgently need a system which contributes to solving problems like accelerating climate change, a broken agricultural model and a loss of trust in democratic processes, rather than aggravating them.

Our key proposals for a fair and sustainable trade system include:

- Promoting and fostering the trade of sustainable goods and services rather than focusing on increasing trade flows;
- Creating a framework to hold corporations to account internationally rather than providing investors with more privileges;
- Improving standards internationally rather than facilitating their weakening by corporate lobbyists;
- Strengthening the implementation of international agreements on climate change and sustainability rather than creating trade rules that override them;
- Fostering local economies rather than dispersing production and consumption ever more across the globe;
- Supporting sustainable agriculture and promoting regional trade rather than a global trade in agricultural commodities;
- Submitting trade negotiations to democratic scrutiny rather than negotiating the agreements in secret. Only with this kind of fundamental change in how Europe trades can we construct a more democratic, fair and sustainable Europe.



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July 2018

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Friends of the Earth Europe gratefully acknowledges financial assistance from the European Commission's LIFE Programme and from Directorate General for international cooperation of the Dutch Ministry for Foreign Affairs (DGIS). The contents of this documents are the sole responsibility of Friends of the Earth Europe and cannot be regarded as reflecting the position of the funders mentioned above.