

## **FEDIOL's Position Paper on EU-Indonesia free trade negotiations**

Trade negotiations between the European Union and Indonesia were launched on 18 July 2016. In resuming negotiations at the end of 2017, the two parties agreed to exchange offers at the next round and expressed their will in reaching a political agreement on the deal possibly by the end of 2018. FEDIOL – representing the EU vegetable oil and protein meal industry – would like to acknowledge risks and opportunities of this trade agreement and highlight the sector's priorities and sensitivities in the negotiations.

### The trade context

Indonesia is one of the ten members of the Association of South East Asian Nations (ASEAN) and represents its largest and most populated economy. The oils and fats imports value of the EU from Indonesia amounted to 2.5 billion Euros in 2016, representing 17% of total EU imports value from the country. This equals the exports value to Indonesia of much bigger sectors such as machinery and transport equipment, each representing about 25% of total EU exports value to Indonesia. These figures provide a measure of the challenges that trade in tropical oils bears for our industry and should discourage the European Commission from considering using our sector as a leverage for promoting additional EU export on other sectors.

### Economic aspects

Indonesia is the main producer of palm oil in the world with about 35 million tons per year, representing around 55% of global production. The country also leads in terms of production of palm kernel oil (3,7 million tons or around 53% of the global production).

About 40% of palm oil is produced by smallholders in Indonesia. The socio-economic importance of sustainable palm oil for the livelihoods of millions of people, most notably smallholder farmers, is also reflected in its significant contribution to the realization of the Sustainable Development Goals (SDGs) agenda, from forest conservation or restoration (SDG13 on climate and SDG 15 on life on land) to poverty eradication (SDG1) and responsible consumption and production (SDG12).

The European market represents about 15% of total Indonesian palm oil exports. Yet Indonesia is the first palm oil provider to the EU, representing almost half (49%) of total EU palm oil imports.

Banning palm oil for use in biodiesel – as proposed by the European Parliament in the framework of the Renewable Energy Directive review – would entail a substantial drop in overall palm oil imports, is likely to trigger reactions by Indonesia and other palm oil producing countries in the form of trade retaliation on other sectors and potentially lead to the initiation of WTO disputes.

### Sustainability aspects

The palm oil production in Indonesia is seen as a key tool to combat poverty and protect smallholders, while at the same time recognising the existence of sustainability issues. As the international leader of palm oil production, it is important for Indonesia to mitigate environmental impacts of palm oil plantations and ensure sustainable production. There is a need for the European Commission to engage with Indonesia in a dialogue allowing sustainability to be discussed, but also to work with its government on aspects that are more prominent on their agenda, such as poverty alleviation and economic development. Meeting sustainability objectives should take into account the country's needs as it may trigger different types of support through financial aid and know-how, such as for economic and social development of rural populations, technical or legal assistance, support to improve the governance and the capacity of relevant public authorities, etc.

A government-to-government discussion is needed and can take place bilaterally around an agenda that should be adapted to this country. If, for example, the EU considers that the local rules for agricultural production in Indonesia are not appropriate, simply imposing stricter rules on the trade flows that reach the EU market may only trigger a shift in trade flows, while doing little to improving the rules and conditions of production overall towards more sustainable practices.

In line with the United Nations Development Programme's mission to help countries such as Indonesia find ways to ensure sustainable economic growth and empower the poor and marginalized population, the Indonesian Government in 2011 launched the Indonesian Sustainable Palm Oil (ISPO). This standard was due to set a certification policy system on palm oil cultivation and processing designed by the Indonesian Ministry of Agriculture. Compared to a voluntary initiative like the Roundtable on Sustainable Palm Oil (RSPO), the ISPO system is mandatory and applies to all oil palm growers operating in Indonesia, from large plantation companies to smallholders, although at different scale.

The ISPO Initiative aims to increase smallholders' capacity and improve livelihoods, while focusing on good agricultural practices (resulting in higher yield/productivity) and working towards forests protection, biodiversity conservation and GHG emissions reduction, with a view to establishing national and provincial platforms to ensure transparency in the sector and promote sustainable palm oil. To help achieve these objectives, in 2014 the Ministry of Agriculture and its partners also launched a multi-stakeholder platform (FoKSBI) aimed at coordinating the entire sector and existing initiatives focused on the sustainability of palm.

One of the current and future challenges towards ensuring a commitment to sustainable practices throughout the entire sector is represented by the lack of a single national map of existing lands and plantations. Currently several basic maps exist which can differ between departments and other institutions, triggering land conflict because of overlapping land claims and hampering the effective management of conservation areas and the protection of ecosystems.

A national government policy map bringing together data on land use and tenure into a single database is one of the main objectives established by FoKSBI via a National Action Plan. Support by the European Union in this sense would certainly be instrumental in ensuring that proper monitoring systems are in place so that legal certainty on sustainable palm oil production can be ensured across the country.

Beyond that, many existing cases show how the public and private sectors and civil society can work together to address the environmental, social and human rights issues linked to palm oil production with a view to creating sustainable value chains.

In this sense, several FEDIOL companies active in South-East Asia have developed policies towards zero deforestation throughout supply chains that are most at risk of deforestation, by addressing this risk through a landscape or jurisdictional approach. Many companies operating in this region are implementing NDPE policies (No Deforestation, no Peat, no Exploitation) in response to requests made across the chain to suppliers to refrain from clearing forests and peatland for new oil plantations. For most companies, palm oil should be subject to full traceability or the production should be controlled through remote sensing tools to ensure it comes from non-deforested agricultural land and from plantations that are respecting the environmental and social laws of their origin countries.

The different palm oil coalitions in Europe (ESPOAG, which gathers FEDIOL, IMACE, CAOBISCO, AIBI and FEDIMA; EPOA, the European Palm Oil Alliance; several national palm oil alliances) coordinate extensively towards the overall objective of achieving 100% sustainable palm oil across the chain by 2020.

The role of the EU could be to accelerate the numerous existing private initiatives by setting momentum and designing a policy framework focused on a coherent design of different policy tools. One of the critical questions today is about how to provide incentives for owners of forests and intact habitats land and owners of degraded habitat land to combine efforts to intensify agriculture in the degraded areas and both expand/retain agricultural production potential without destroying pristine habitats.

### Import and export duties

As mentioned earlier in the text, on the global scale and in imports to the European Union, Indonesia represents a significant supplier of palm oil, palm kernel oil and coconut oil. Around 55% of global palm oil production, 53% of global palm kernel oil production and 31% of total coconut oil production come from Indonesia. These volumes equal about 49%, 40% and 20% of EU total supplies respectively.

Under the current framework, the European Union already imports crude palm oil for technical use (CN code 151110.10) at zero duty, while it applies a higher duty on imports from Indonesia of refined palm oil for food use (CN code 151190.99) compared to the crude palm oil for food use (CN code 151110.90). On the other side, Indonesia applies a differential export tax (DET) system consisting of a fixed

and a variable component, both for food and for technical use. This regime covers crude and refined palm oil and palm kernel oil (CN codes 151321, 151329), fatty acids (CN code 382319) and biodiesel (CN code 382600) in order to favour exports of the latter products.

In the context of a Comprehensive Economic Partnership Agreement with Indonesia, FEDIOL supports a gradual liberalisation of trade in oils and fats between the two sides if this is based on a level playing field ensuring a mutual level of commitment in phasing out existing import and export duties. Therefore, as long as the Indonesian DETs are not abolished, the EU should refrain from phasing out existing import duties on processed palm oil and palm kernel oil.

Unlike crude palm oil for technical use, the EU still applies import duties on crude palm kernel oil (CN code 151321) and crude coconut oil (CN code 151311) and - as mentioned - on crude palm oil for food use (CN code 151110.90). Since these products represent essential raw materials for the European refining sector, we would like the existing import duties to be eliminated via a swift liberalisation process in the context of this trade agreement.

As concerns refined coconut oil (CN code 151319), for which there are no DETs in place from the Indonesian side, we would like this product to be subject to a gradual liberalisation period following the entry into force of the trade deal.

#### Anti-dumping duties

As of November 2013, the EU has imposed definitive anti-dumping duties on imports of biodiesel from Indonesia for a period of 5 years. Earlier this year, the WTO issued a panel report stating the need for the European Commission to readjust these duties. In parallel, the General Court of the European Union in 2016 ruled against the imposition of anti-dumping duties on biodiesel imports from Indonesia. The decision was initially appealed by the European Council and hence moved to the European Court of Justice. However, the recent withdrawal of the appeal by the European Council and Commission might implicate, in case of confirmation by the ECJ of the initial General Court's judgement, that the duties imposed on biodiesel imports from Indonesia would go down to zero.

Within this complicated framework, which risks having a significant impact on our EU supply chain, FEDIOL urges the Commission to be extremely prudent when considering proposing any immediate concessions on biodiesel imports from Indonesia, in particular at a time when discussions on the legal perspective for the biofuel industry post-2020 – and palm oil specifically – are still ongoing.

#### Regulatory dialogue

The development of the EU regulatory context can unduly be considered as a means of protecting the EU market. Hence, supporting regular exchanges on regulatory developments, notably in the food and feed safety area, to explain the background of possible changes to contaminants and pesticides' policy, would prove important to enhance mutual understanding and to anticipate necessary adjustments in good agriculture practices.



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### Rules of Origin

In several existing free trade agreements, FEDIOL's potential benefits from tariff liberalisation and preferences are inhibited by restrictions in Rules of Origin. Therefore, in the context of the EU-Indonesia negotiations, FEDIOL suggests maintaining a soft approach - meaning that crushing, refining, fractionation, preparations of oils and fats, hydrogenation and inter-esterification should be considered as conferring origin.

We also believe that this approach should be harmonised across the different trade agreements the EU is currently negotiating. This is explained in more details in the Annex below.

## Annex FEDIOL's Rules of Origin position for EU-Indonesia free trade negotiations

For the Rules of Origin in the EU-Indonesia negotiations, FEDIOL supports the following approach:

- with regard to 15.07, 15.08 and 15.11 to 15.15 in Chapter 15 the change of sub-heading should confer the origin of the product. This will imply that oils from crushing, refining and fractionation would be considered as conferring origin.
- with regard to 15.16.20, 15.17.90, 23.04, 23.05 and 23.06 a change of heading should confer origin of the product. This will allow for meals from crushing, inter-esterification, hydrogenation and edible mixtures and preparations of oils and fats to be considered as conferring origin.

Bottling, packing or packaging would not confer origin.

Examples below illustrate in details:

Taric Code	Conferring origin	
<u>12.01.10</u> Soybeans <u>12.06.00.91</u> Sunflower seeds	Change of <b><u>chapter</u></b>  <b>Crushing</b> ☑	<u>15.07.10</u> Crude soybean oil <u>15.12.11</u> Crude Sunflower seed oil <u>23.06.30</u> Sunflower seed meal
Examples: 15.07. <u>10</u> Crude soybean oil 15.11. <u>10</u> Crude palm oil	Change of <b><u>subheading</u></b>  <b>Refining</b> ☑ <b>Fractionating</b> ☑	15.07. <u>90</u> Refined soybean oil 15.11. <u>90.19</u> Refined palm oil (solid fractions)
Example: 15. <u>07.10</u> Crude soybean oil 15. <u>11.90</u> Refined palm oil	Change of <b><u>heading</u></b>  <b>Hydrogenation</b> ☑ <b>Inter-esterified</b> ☑	15. <u>16.20</u> Partially hydrogenated soybean oil 15. <u>16.20</u> Inter-esterified vegetable oils
Example: 15. <u>16.20</u> Palm oil + soybean oil	Change of <b><u>heading</u></b>  <b>Preparation of oils and fats</b> ☑	15. <u>17.90</u> Edible mixtures and preparations of oils and fats