

Civil society letter of concern on the occasion of the 2nd round of negotiations for an EU-Indonesia Comprehensive Economic Partnership Agreement (CEPA)

**A call for a moratorium on the Indonesia-EU CEPA negotiations:
Human rights must take precedence over free trade**

From 24-28 January 2017, the second round of negotiations towards a Comprehensive Economic Partnership Agreement (CEPA) will take place between the EU and Indonesia.

These negotiations are very much driven by the interests of the world's large transnational corporations. This is reflected in the agenda for the negotiations that continues to closely mirror those for TTIP and TPP. The negotiations ignore the substantial and growing public consensus that more unbridled market access and protection for big business is not a sustainable way forward.

The undersigned civil society organisations from Indonesia, ASEAN and Europe call on the negotiators to halt the negotiations until an inclusive consultation to map the potential impacts of a CEPA agreement is undertaken with civil society in the broadest possible sense. A comprehensive Sustainability Impact Assessment (SIA) as well as a dedicated Human Rights Impact Assessment (HRIA) to map the potential economic, environmental, social and human rights impacts of the proposed agreement must precede and inform further trade talks.

Human rights treaty bodies and special procedures of the Human Rights Council have regularly called upon States to prepare human rights impact assessments of the trade and investment agreements that they conclude. Human rights impact assessments can be an important tool for States in negotiating trade and investment agreements, particularly to ensure that they will not make demands or concessions that will make it more difficult for them, or for the other party or parties, to comply with their human rights obligations.

Any SIA and HRIA processes must guard against corporate capture, i.e. privileged access of (big) business interests.

The proposed CEPA agreement covers far-reaching liberalisation and deregulation that can have severe impacts on society, people and the environment. For instance, the insistence on commercialisation and market access for foreign investors threatens to compromise the right to universal and affordable access to basic public services.

The EU, in the name of its corporate interests, actively pursues limiting the extent to which governments can use their public procurement policies to boost local employment and domestic industries. The EU wants to strengthen the protection of patents and other intellectual property, which benefits the world's largest pharmaceutical companies, but conflicts with policies to ensure cheaper brand-less medication for all.

In the CEPA negotiations, the European Commission – which conducts the negotiations on behalf of the EU and its member states – wants to impose its ambition to achieve far reaching liberalisation and deregulation of the services sector. In addition, as in its other trade and investment agreements, the European Commission insists on a broad investment chapter with far reaching protection for foreign investors, without corresponding responsibilities and enforceable through an ICS investor-state dispute settlement mechanism.

The proposed investment chapter aims to offer enhanced market access to foreign investors from the other party, with the risk that domestic industry and small and medium-sized businesses (SMEs) are crowded out.

Bans on ‘performance requirements’, which stipulate how foreign investors must operate in the host country, hinder governments in their policy space to impose obligations on foreign investors to ensure they contribute to sustainable domestic development. Policies such as Indonesia’s requirements that (foreign) investors process more raw materials domestically before exporting them can come under pressure.

The EU’s agenda to ensure extensive rights for foreign investors without corresponding responsibilities conflicts with Indonesia’s new focus on reform of its model for bilateral investment agreements (BITs). In its BITs, Indonesia aims to include more foreign investor obligations to ensure that foreign investment benefits the country and its people. Indonesia also aims to limit the scope for foreign investors to sue the government before international dispute settlement tribunals, outside the domestic legal system. Citizens have no corresponding means to bring foreign investors to account in case of corporate malpractice.

The undersigned civil society organisations from Indonesia, ASEAN and Europe call for a moratorium of the CEPA negotiations.

Social, environmental and human rights considerations must take precedence over enhanced market access and protections for transnational corporate industry. Negotiations towards a CEPA cannot proceed without a prior comprehensive sustainability and human rights impact assessment.

We ask Indonesia and the EU to protect basic rights of people in the negotiation the CEPA by taking on board the recommendations below.

These also extend to other EU negotiations in ASEAN, including with the Philippines, Thailand and Myanmar.

1. The CEPA should retain full policy space and flexibility to pursue domestic development objectives aimed at promoting a fairer income distribution; strong public social security; high-quality public services, in particular in areas such as health, education, housing and social protection; and protection of the environment.
2. To ensure protection and promotion of human rights, it is vital that an in-depth assessment of the CEPA’s impact on human rights is conducted prior to the start of the negotiations, involving not only the ASEAN Governments and the European Commission, but also the parliaments of both parties, academia, affected communities and civil society organisations. This human rights impact study should be completed in time to form the basis of the EU CEPA negotiations.
3. The CEPA should provide full transparency in the negotiating process. All negotiating documents should be made publicly available to allow a meaningful public debate and the necessary political scrutiny.
4. In the negotiations, the EU should refrain from 1) targeting export measures implemented by Indonesia to promote domestic processing of raw materials with a view to enhancing domestic value addition; and 2) local content requirements aimed at the promotion of equality, social and environmental protection and human rights.
5. A CEPA must not include any kind of international investor-state dispute settlement system and thus not include the EU’s new Investment Court System. Any foreign investor protections must be balanced with corresponding responsibilities and obligations for foreign investors. The EU must give space to Indonesia’s revised approach which seeks to make observance of investor responsibilities a precondition for investment protection.
6. *Ex post* monitoring of the impacts of the CEPA is essential, particularly on human rights and environmental impacts; adverse impacts should lead to a review of the agreement.