

**Submission to the Joint Standing Committee on Treaties on the  
Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA)  
August 2019**

**Introduction – AIBC and the IA-CEPA**

1. This submission is made by the Australia Indonesia Business Council (AIBC), the peak member-based business association leading promotion and facilitation of trade, investment and business cooperation between Australia and Indonesia. AIBC has been active for more than 25 years.
2. AIBC has Chapters operating in all Australian States and Territories, and enjoys a close relationship with its counterpart organisation in Indonesia, the Indonesia Australia Business Council (IABC), operating in five Indonesian cities.
3. AIBC membership encompasses a broad spectrum of industry sectors, including education, agribusiness, tourism, manufacturing, healthcare, professional services, mining and METS, oil and gas, and engineering and construction.
4. AIBC has been advocating for a Free Trade Agreement with Indonesia for many years. It has been advising on the concept, features, content and negotiation of the IA-CEPA since the FTA feasibility study was announced in 2007 by Australian and Indonesian Trade Ministers, Hon Mark Vaile MP and HE Mari Pangestu.
5. AIBC's aspirations for the IA-CEPA are detailed in its 2016 position paper (Appendix 1).
6. With IABC, and in partnership with the Australian Chamber of Commerce and Industry (ACCI) and Kamar Dagang dan Industri Indonesia (KADIN – Indonesian Chamber of Commerce and Industry), AIBC established the Indonesia-Australia Business Partnership Group (IA-BPG) in 2012. IA-BPG was augmented in 2016 with additional representation from Australian Industry Group (AI Group) and Asosiasi Pengusaha Indonesia (APINDO – Indonesian Employers Association). IA-BPG delivered a comprehensive position paper in 2012 and an updated paper in 2016.
  - a. IA-BPG and its consensus position papers represent a first for both Indonesia and Australia. Never before has business in either of these trade and investment partners formed a bilateral business committee with another nation and delivered consensus position papers.

- b. The position papers (see Appendix 2 for 2016 position paper) were ambitious documents providing stretch goals to both governments for inclusion in the IA-CEPA and for its implementation.
  - c. The IA-CEPA as delivered goes a substantial way to meeting the aspirations of the IA-BPG and AIBC, but there is more to be achieved.
  - d. The operations of the IA-BPG, including the development of its two submissions, were funded by DFAT. All members of IA-BPG participated in a voluntary capacity. The DFAT funding ceased with the submission of the 2016 position paper.
7. AIBC notes the intention of both the Australian and Indonesian Governments to move to ratify IA-CEPA as soon as practicable and preferably before the end of 2019.
8. AIBC notes that IA-CEPA has been designed to deliver balanced outcomes for both countries, and puts emphasis on cooperative initiatives, enabling the countries to work together to exploit opportunities regionally and globally. Provisions of IA-CEPA are also inherently dynamic, with several chapters containing commitments to work together to design and implement enhanced and additional mechanisms to facilitate trade, investment and movement of people.
9. The Australian Government's aspiration for IA-CEPA and other contemporary trade agreements is that they are 'high quality' agreements. AIBC holds that IA-CEPA is a comprehensive, high quality agreement that recognises the characteristics of each economy and the economic relationship. IA-CEPA addresses the priorities for boosting the trade and investment relationship, including specifics on reducing non-tariff measures that inhibit it.
10. In common with many other business bodies, AIBC's preference is for more open global and regional trading systems that make it easier and simpler for firms to trade and invest freely between all economies. Currently, however, multilateral trading systems fall short of contemporary needs, and currently there is disruption and substantial threat to the global trade order. Therefore, bilateral trade agreements such as IA-CEPA not only fill the institutional gaps, but also are tailored to the unique circumstances of trade and investment relationships and capabilities of the parties. Further, IA-CEPA, through its *powerhousing* objective and economic cooperation provisions, will actively facilitate the two economies working together to engage in greater multilateral trade.
11. AIBC notes the development of overarching Comprehensive Strategic Partnership between Indonesia and Australia, with *Enhancing Economic and Development Partnership* as the first of five pillars. Implementation of IA-CEPA is at the centre of

this pillar, as is conclusion of the Regional Comprehensive Economic Partnership Agreement (RCEP). Three other pillars are also relevant to trade and investment relationships and joint prosperity: Pillar Two – Connecting People; Pillar Four – Maritime Cooperation; and Pillar Five – Contributing to Indo-Pacific Stability and Prosperity.

**Recommendation 1**

**AIBC recommends that the Committee endorses the IA-CEPA and recommends to the Parliament that binding treaty action be taken as soon as practicable.**

**IA-CEPA is in the national interest**

12. IA-CEPA is unequivocally in Australia's national interest:

- a. It delivers worthwhile gains in access to fast-growing Indonesian goods and services markets.
- b. It provides greater access to Indonesia for Australian investors in a number of industries.
- c. It provides greater certainty for Australian-based exporters across several goods and services lines and for Australian investors.
- d. It reduces opportunities for unilateral and arbitrary changes to rules in relation to trade, investment and movement of professionals.
- e. It provides certainty for Australia's exporters of agricultural products.
- f. It locks-in future reforms to trade and investment rules for Australian organisations.
- g. It reinforces vital people-to-people linkages with Indonesia through liberalised rules for movement of professionals, a pilot program for work experience exchange and a much-expanded working holiday visa program.
- h. Through the economic cooperation provisions in the unique Economic Cooperation chapter as well as other chapters, IA-CEPA will add to longstanding cooperation to build Indonesia's trade-related economic governance, enabling the Indonesian economy to become more connected with other economies, to grow faster and to build opportunities for Australian good, services and investment.
- i. A key objective of IA-CEPA is *powerhousing*: enabling collaborations between the two economies that utilises each other's economic complementarity, comparative advantages, competitiveness and productivity

in order to target markets in third countries as well as being key participants in global value chains. *Powerhousing* will enable businesses in Australia and Indonesia, working together, to achieve trade and economic outcomes greater than each economy could achieve on their own.

- j. Through building trade and investment to enhance economic growth, Indonesia will become a strong, stable and vital economic and strategic partner to Australia and leader in the ASEAN region.
- k. The IA-CEPA further cements the relationship between Australia and Indonesia, and will play a significant role in our joint regional security, including through the upcoming Comprehensive Strategic Partnership.

### **Prompt ratification is needed**

- 13. While the IA-CEPA has taken many years to negotiate and finalise, it is important that the current momentum is maintained.
- 14. Australian ratification before end 2019 will help deliver prompt ratification by Indonesia and ensure that Australian farmers and other businesses in both countries are able to reap the benefits immediately and into the future.

### **Implementation is crucial**

- 15. Inherent to the design of IA-CEPA is that it is a dynamic agreement that locks in progressive trade-related reform and embeds capacity-building initiatives. Further economic reform will enable Indonesia to build a stronger, more outward-looking economy that will increase market opportunities for Australia, and provide potential for bilateral supply chain cooperation that enables both economies to access new markets for new goods and services.
- 16. Both Governments need to ensure ongoing focus on IA-CEPA implementation and its further development in order for it to achieve its potential. There may be temptations for government agencies or lobby groups to seek to delay implementation or erode IA-CEPA implementation. Both Governments need to be alert to this and assert their commitment to implementation both to the letter and in spirit.
- 17. Businesses in Australia and Indonesia have much at stake and much to contribute to facilitating the effective implementation of IA-CEPA by both nations.

**Recommendation 2**

**AIBC recommends that the Committee notes in its recommendation to the Parliament the criticality of speedy and effective implementation of IA-CEPA.**

**IA-CEPA features**

18. With exceptions, provisions of the IA-CEPA have not gone as far as the stretch goals AIBC and the IA-BPG had proposed. Such an outcome was anticipated. IA-CEPA is nevertheless a most valuable platform to enhance economic linkages between South East Asia's two largest economies and with Australia's largest neighbour. AIBC and IA-BPG advocate that IA-CEPA must be a dynamic agreement, with further provisions being agreed as the two nations grow closer together economically and strategically.
19. IA-CEPA builds significantly and usefully on provisions of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA):
  - a. AANZFTA already contains significant tariff reductions, with additional tariff concessions in IA-CEPA welcome by business.
  - b. Australia's agricultural exports to Indonesia will be enhanced, with substantial immediate reductions in tariffs have been granted, followed by pathways for further reductions, plus larger and certain quotas for key exports.
  - c. Tariff reductions beyond AANZFTA on key manufactured goods such as steel, copper and plastics are also useful and welcome.
  - d. Similarly for services, reforms add to those in AANZFTA and provide greater certainty.
20. For Australian goods entering Indonesia, there will be progressive elimination of tariffs to where 99.9% will enter duty free or under preferential arrangements. Indonesian goods will enjoy immediate tariff free entry into Australia on entry into force of IA-CEPA. This short term asymmetry of tariff treatment is justified in order to build inwards trade from Indonesia as a lever to achieve more exports to that economy.
21. Reduced tariffs, expanded and firm quota arrangements and preferences for certain Australian goods together provide greater certainty for Australian exporters – an important achievement in this sometimes volatile market and regulatory environment.
22. For Australian services, IA-CEPA achieves major gains for several sectors in the comparatively restricted Indonesian services trade environment. For several sectors

- where Indonesia needs to build its capacity, there have been breakthrough gains, notably vocational education and training, healthcare, and several mining services.
23. For a range of goods and services, and for several fields of investment, IA-CEPA contains special provisions that provide Australia with enhanced access. Importantly, investment rules provide greater certainty and security for Australian investors in Indonesia.
  24. For investment, IA-CEPA provides a more open, transparent and certain regime across a range of sectors. Market access outcomes for Australian investors represent a major advance in this notoriously restricted and risky market, with majority business ownership now permitted across a range of sectors.
  25. Other sectors, such as mining, remain very restricted, however. This is a major deterrent to Australian exploration and mining investors. This is Indonesia's loss as Australia is a major global mining investor, with high performance standards and attendant transfer of knowledge and technology. Many mining investors are therefore expected to continue to avoid Indonesia despite its prospectivity.
  26. While IA-CEPA investment provisions for Australian firms in Indonesia are welcome and a substantial advance, AIBC looks to Governments to continue efforts for further investment liberalisation in the interests of both economies, but in particular, Indonesia's. Achieving the full benefits of *powerhousing* will require much stronger bilateral investment than currently exists.
  27. The e-commerce provisions of IA-CEPA set a new standard for Australia's trade agreements and will enhance trade for both economies. They guarantee free flow of data between the two economies and guarantee no further restrictions on data flow, while also locking in any future liberalisation. This has been achieved in the face of proposals within Indonesia to mandate all data generated within Indonesia being stored within Indonesia – a proposition that would have crippled the e-commerce aspirations of Indonesian firms.
  28. Rules for movement of professionals have been enhanced both ways, but more needs to be achieved in future:
    - a. The evolving nature of trade means that movement of professionals is more important than ever. This is because services trade is growing faster than goods trade and many goods come with substantial embedded services. Services delivery inherently involves skilled human capital.
    - b. Successful *powerhousing* will require greater exchange of professionals within and between firms to create strong Australia-Indonesia linkages to global supply chains.

- c. Movement of professionals from Australia to Indonesia has become increasingly problematic, with sometimes erratic rule changes making it difficult for Australian firms to service their clients and investments. IA-CEPA provides some gains in movement of professionals, but more needs to be achieved to free-up movement of people. Australian professionals in Indonesia will never be a threat to employment of Indonesians and vice versa.

### **Addressing behind the borders barriers**

29. Notwithstanding the very welcome gains for Indonesian market access by Australian firms in the IA-CEPA, there remain a myriad of 'behind the borders' barriers to exports of goods and services, to investment and to movement of professionals. Some remain in Australia too.
30. Administrative permit systems for certain imports to Indonesia are a prime example, involving government interference in markets that are foreign to their efficient operation. The Indonesian Government may scrutinise permit applications for additional import of units of product to see if they are in line with a company's business plans, and will consult with local manufacturers, before issuing a permit based on the government's assessment of the supply-demand balance. This is administratively complex, time consuming and risky. By no means have all exports of all Australian products been addressed in the IA-CEPA and behind the borders barriers may well arise.
31. The same applies to some services, and the often opaque and sometimes volatile administration of investment and movement of professionals.
32. The implementation of IA-CEPA must anticipate and address these issues as they arise. Cooperative provisions of several chapters, including on non-tariff barriers, technical barriers and movement of people provide mechanisms. In some cases, future amendments to the IA-CEPA or its associated documents will be required to address such issues as they are identified as barriers to efficient trade and investment. Advice from business in both nations can assist governments to identify issues and design actions to address them. This can be part of the ongoing role of IA-BPG as proposed by its members, including AIBC.

### **Economic cooperation**

33. A first for an Australian bilateral trade agreement is the inclusion of an economic cooperation chapter in IA-CEPA. These provisions and an agreed initial program of work recognise and seek to redress asymmetry of capacity through cooperation in

implementing programs that enhance the ability of Indonesia to trade with Australia and others, for Indonesia to host investment, and for Indonesia and Australia to cooperate in trade and investment, in their joint and mutual interests. Other provisions of IA-CEPA, such as contained in Chapter 3: Non-Tariff Measures, Chapter 8: Technical Barriers to Trade and Chapter 12: Movement of Natural Persons commit the two parties to cooperation in identifying, designing and implementing enhancements to IA-CEPA provisions.

34. The focus is on building Indonesian capacity in trade-related economic governance that will enable Indonesia to undertake reforms to further open its economy to trade and investment.
35. Implementing economic cooperation provisions and programs is critical to the success of the IA-CEPA. AIBC endorses the proposed activities set out in the Medium Term Objectives for Economic Cooperation (an associated document of IA-CEPA) as well as other cooperation programs and activities within IA-CEPA chapters and associated documents.
36. AIBC and its IA-BPG partners are pleased to be closely engaged in delivery of the Indonesia-Australia Skills Development Exchange Pilot Project. They look forward to involvement in other economic cooperation activities, including education and facilitation of business to take the opportunities presented by the two economies and IA-CEPA.
37. It is important that economic cooperation provisions of IA-CEPA are additional to existing and long standing programs of AustralianAID-sponsored economic capacity-building and do not simply substitute. This is consistent with the spirit of economic cooperation objectives of IA-CEPA. Australia's interests are well served by increasing cooperative activities that enable Indonesia to accelerate economic reforms and lift trade and investment.

### **Assisting Indonesia to trade with Australia**

38. The IA-CEPA contains several provisions, including in the Economic Cooperation chapter, which will enhance the ability of Indonesia to trade with Australia. This is important, as the more Indonesian firms are able to export to, invest in and partner with Australia, the more Australian firms will be able to access Indonesian markets and partner with Indonesian firms. Experience will demonstrate the mutual benefits from opening of two-way trade and investment, and this should facilitate further opening.
39. Australian goods and services, and the skills of its people, offer important inputs to the Indonesian economy. IA-CEPA recognises this and contains several specific



provisions tapping complementarities, such as for Australia facilitating delivery of world standard services in technical and vocational education and training to Indonesia.

### **Investor-State Dispute Settlement (ISDS)**

40. AIBC supports the ISDS mechanism in the IA-CEPA Investment Chapter and sees no reason why it should result in unnecessary trade disruption.
41. The ISDS provisions provide protection for Australian investors in Indonesia and contain sufficient safeguards against inappropriate use of the mechanism.
42. Some procedural issues with ISDS provisions have been identified by business and its advisers. These will be discussed with DFAT.

### **Labour market testing (LMT)**

43. AIBC notes that IA-CEPA does not include any further waivers of LMT beyond those already provided for in AANZFTA.
44. There is no reason to for concern that IA-CEPA could result in an influx of Indonesian workers that would supplant employment of Australians.
45. Therefore IA-CEPA does not give rise to LMT issues.

### **Business monitoring of IA-CEPA implementation**

46. The IA-BPG recommended an ongoing role for business representatives in Indonesia and Australia to monitor the implementation of IA-CEPA and make recommendations to both governments on enhancing implementation, business take-up and future development of the IA-CEPA.
47. DFAT publicly acknowledges that AIBC and the IA-BPG have been “instrumental” in achieving IA-CEPA in its current form. This unique transnational business partnership has much to contribute to implementation and to future development and success of the IA-CEPA.

#### **Recommendation 3**

**AIBC recommends that the Committee recommend to the Parliament that the IA-BPG be funded by the Australian Government to convene regularly, and provide ongoing advice on the promotion and implementation of IA-CEPA and its further development.**

## Overcoming market failure

48. Despite enormous bilateral economic potential and the comprehensive provisions of IA-CEPA aimed at boosting trade, investment and movement of people, there remains a concern that Australian and Indonesian business will fail to engage at the scale necessary to achieve the goals of IA-CEPA. This likely would be due to longstanding misunderstandings of each other's markets and business cultures, concerns about risks based on past experience or anecdotes, and structural underperformance in Australia's trade with South East Asian economies.

49. For this reason, there is a need for active promotion and facilitation of trade and investment beyond the worthy business-as-usual activities of the Australian Trade Commission (Austrade) and the Indonesian Ministry of Trade (MoT). AIBC proposes to work with its members and business association partners to identify and propose to DFAT and MoT practical business to business initiatives and cooperation activities with governments to:

- a. Identify and scope opportunities;
- b. Implement a brokering mechanism to bring firms together and activate opportunities.

### **Recommendation 4**

**AIBC recommends that the Committee notes the potential for market failure despite the IA-CEPA leading to ongoing underperformance of trade and investment relative to potential and the need for active mechanisms beyond business as usual to facilitate trade and investment by Australian and Indonesian firms.**

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