

Opportunities for Economic Integration under an Indonesia-Australia Comprehensive Economic Partnership Agreement

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The Australia Indonesia Business Council Submission
to the Department of Foreign Affairs and Trade,
Canberra



**AUSTRALIA INDONESIA
BUSINESS COUNCIL**

Contents

1	Introduction	1
2	Policy context	2
3	AIBC objectives for engagement in the negotiation of the IA-CEPA	3
4	AIBC aspirations for the IA-CEPA	3
	Liberalised trade in goods	5
	Liberalised trade in services	6
	Facilitation of two-way investment	7
	Reducing at-the-border and behind-the-border barriers	8
	Barriers to trade in goods	8
	Barriers to trade in services	10
	Harmonisation and mutual recognition	11
	Facilitation of cross-border, integrated industries	11
	Development of cooperative supply chains (to external markets)	12
	Movement of skilled people	13
	Capacity building and economic cooperation	13
5	Business engagement with the IA-CEPA negotiations	15
	Business engagement characteristics	15
	Business associations in Australia	16
6	Other areas for inclusion in the IA-CEPA	17
	Customs procedures	17
	Standards, technical regulations and conformity assessment procedures	17
	Government procurement	18
	Competition policy	18
	Intellectual property rights	18
	Legal certainty and dispute resolution	19
7	Sector-specific summary of barriers to trade and investment	20
8	Conclusions	27
	Summary of Key Recommendations	27



1 Introduction

The Australia Indonesia Business Council (AIBC) wholeheartedly supports the concept and vision for the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA). This agreement should be broadly based, encompassing trade, investment, trans-border business, economic cooperation and capacity-building to reflect the strategic significance of the economic relationship. The IA-CEPA should facilitate the achievement of our vision for greater economic integration between Australia, ASEAN (Association of Southeast Asian Nations) and APEC (Asia-Pacific Economic Cooperation) regions and the achievement of the World Trade Organisation's objectives for the liberalisation of multilateral trade.

The geographical proximity of our two countries and our complementary economies also provides unique opportunities for this agreement to extend well beyond the concept of a traditional Free Trade Agreement to become a bilateral partnership agreement emphasising broader economic cooperation and integration at a multitude of levels.

This Submission has been prepared for two key purposes:

- To set out the AIBC's position which outlines our desired outcomes of the IA-CEPA
- To provide a framework which engages business, including AIBC members, into business-to-business (B to B) discussions and business-to-government (B to G) discussions and the negotiation process, supporting successful government-to-government (G to G) negotiations.

In the preparation of this Submission, the AIBC has conducted extensive consultations amongst the business community, across all key sectors. The Submission seeks to distil the breadth of these consultations.

The AIBC has also established an ongoing **expert consultative network** which covers the spectrum of trade and investment activities between Australia and Indonesia. The network will keep a close watching brief on the IA-CEPA as it develops, will seek to participate in business consultations as appropriate and will develop more detailed positions on issues of importance as they arise.

Key IA-CEPA contacts within the AIBC are provided at the end of this document.

2 Policy context

The ASEAN – Australia New Zealand Free Trade Agreement (AANZFTA) of 2009 and APEC Leaders’ Declaration of November 2009 indicate the aspirations of all regional governments for closer economic relations. Box 1 and Box 2 provide extracts from these. The spirit of these declarations informs the AIBC’s views.

Box 1 ASEAN – Australia New Zealand Free Trade Agreement (Preamble)

- “this Agreement ...will strengthen economic partnerships, serve as an important **building block** towards **regional economic integration** and support sustainable economic development”
- “**the important role ...of business in enhancing trade and investment** ...the need to further promote and facilitate co-operation and utilisation of the **greater business opportunities** provided by this Agreement”

Box 2 APEC Leaders’ Declaration November (2009)

- “We reaffirm our commitment to the Bogor Goals of free and open trade and investment”
- “We will accelerate our work to strengthen regional economic integration in the Asia-Pacific, taking a comprehensive approach that focuses our work on **trade liberalisation ‘at the border’; improving the business environment ‘behind the border’; and enhancing supply chain connectivity ‘across the border’**”

ASEAN countries are pursuing an even more ambitious agenda for the establishment of the ASEAN Economic Community (AEC) by 2015. The AEC will encompass not only economic integration but also comprehensive connectivity of key infrastructure and services. Enhanced people-to-people and government-to-government relations will support the AEC and regional cohesion. The key aspects of the AEC are set out in Box 3.

Box 3 ASEAN Economic Community

“The AEC envisages the following key characteristics: **(a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy**”

“The ASEAN single market and production base will comprise five core elements: **(i) free flow of goods; (ii) free flow of services; (iii) free flow of investment; (iv) freer flow of capital; and (v) free flow of skilled labour**”

Source: ASEAN Economic Community Blueprint

The concept of the IA-CEPA is undoubtedly complementary to the ASEAN, AANZFTA, APEC and WTO agendas. The final Agreement must also be complementary and support these agreements. The characteristics of the AEC provide benchmarks for both the AANZFTA and the IA-CEPA to provide significant opportunities for the IA-CEPA to leverage the rapid progress towards ASEAN economic integration.



The IA-CEPA will also help to fulfil the aspirations of the both Governments and strengthen their *strategic partnership*, a concept which the AIBC strongly supports.

3 AIBC objectives for engagement in the negotiation of the IA-CEPA

The AIBC wishes to be closely engaged in the B to B and B to G discussions to develop content and facilitate the implementation of the IA-CEPA. The AIBC's objectives for engagement in the process are:

- To ensure networked coordination of Australian businesses for their engagement in the negotiations
- To ensure a high level of productive interaction between Australian and Indonesian businesses
- To facilitate the delivery of a comprehensive IA-CEPA in line with the AIBC's organisational objectives
- To enhance the role of the AIBC as the peak national body for business engagement with Indonesia
- To engage a wide range of other industry associations – in both Australia and Indonesia – in B to B and B to G discussions. AIBC is pleased that the Australian Chamber of Commerce and Industry (ACCI) and its Indonesian counterpart, KADIN, have recently signed a memorandum of understanding to cooperate in IA-CEPA discussions. Sectoral associations also have key roles. AIBC points out, however, that AIBC and its counterpart, the Indonesia Australia Business Council (IABC), are the two industry bodies that have an exclusive focus on Indonesia-Australia business and as such have expertise in on-the-ground conduct of trade and investment.

4 AIBC aspirations for the IA-CEPA

The AIBC vision for the IA-CEPA is for a comprehensive economic partnership agreement which transcends the traditional concept of a free trade agreement to encompass opportunities for a deeply entrenched economic partnership between two large neighbours and *strategic partners*.

The concept of “partnership” has arisen consistently throughout the AIBC's consultations with business on the IA-CEPA. It has been used variously in the context of ambitions for the IA-CEPA to deliver a strong platform for:

The AIBC strongly supports the concept of 'partnership' underpinning and guiding the ambitions of the IA-CEPA, to transcend the traditional concept of a Free Trade Agreement.



- Partnerships between Australian and Indonesian companies to navigate opportunities within domestic markets
- Partnerships between Australian and Indonesian companies to seek opportunities in third markets
- Partnerships between Australian and Indonesian academic institutions for the provision of education and training services that will support business in both countries as well as bilateral business
- Partnerships between respective governments and industry associations to map, recognise and enhance qualifications and standards



- Partnerships between national and provincial governments as well as business, to build economic cooperation through capacity-building and business facilitation.

The AIBC also suggests the IA-CEPA should include provisions for:

- Liberalised trade in goods and services
- Greater facilitation of two-way investment
- Reducing at-the-border and behind-the-border barriers
- Harmonisation and mutual recognition of standards and qualifications
- Facilitation of cross-border, integrated industries
- Development of cooperative supply chains (to external markets)
- The movement of skilled people
- Capacity building and economic cooperation.

Each of these is discussed in more detail below. In some cases, it is in the interest of Australian businesses for the IA-CEPA to facilitate assistance to *Indonesian* business to open supply chains to and within Australia. In this way, business in Indonesia can further develop export markets, improve international competitiveness and reduce their fears of domestic competition. Australia can assist the Indonesian government to improve performance and overall economic competitiveness. In turn, this will help to open markets for Australian firms in Indonesia.

Liberalised trade in goods

The goods sectors of both nations are largely complementary and in general do not compete head-to-head in the marketplace. While the minerals and energy sectors supply some common markets, the nature of global minerals and energy trade means that the suppliers are complementary. It is imperative that this essential complementarity is understood by companies in both countries to foster cooperation at a deeper level and to foster corporate partnerships between individual businesses in the two countries.

The AANZFTA provides for the progressive reduction of tariffs and for most products, elimination of tariffs facing Australian goods exports for ASEAN nations, including Indonesia. Consistent with Australia's liberalisation agenda, tariffs on imports from ASEAN nations will be reduced to zero by 2020. Nearly 94 per cent of Indonesian tariffs will be reduced to zero by 2025, with the remainder set at 5 per cent or less.

The AIBC believes that the IA-CEPA should seek to eliminate tariffs not addressed under the AANZFTA.

The IA-CEPA negotiations should consider accelerating the AANZFTA commitments to tariff reduction to ensure both countries reap the benefits of liberalised markets in a timely manner. Accelerating this reduction for some goods will be feasible where it can be demonstrated that it is in Indonesia's interests to do so, particularly when linked to industry development capacity-building (see Economic Cooperation section below). In many cases there are more effective and efficient ways to build domestic industry than maintaining restrictions on import competition, which can serve to reduce domestic industry



competitiveness. Elimination of these harmful tariffs and import restrictions should be prioritised.

In some cases, notably for several agricultural products, it is in Indonesia's strategic interests to build a supply relationship with a reliable and efficient producer and production partner to achieve win-win outcomes by stabilising food prices, ensuring food security and developing food production capacity.

Liberalised trade in services

The AANZFTA provides a solid *framework* for liberalisation of trade in services, but does not offer significant new commitments in liberalisation of services sectors. Australia's services sector is responsible for 77 per cent of Australia's total industry value added and 85 per cent of total employment. Relative to this, services *exports* underperform, delivering only 20 per cent of exports. Australia has strong interests in increasing its services exports. Australia is also a major importer of services, in part to facilitate rapid growth of infrastructure, mining and related sectors.

Australia's comparative advantages in business services complement many of Indonesia's needs, in particular for 'high end' services in economic reform, business development and infrastructure delivery.

The AIBC believes that liberalising bilateral services trade will assist Indonesia to capitalise on its own comparative advantages in the services sector.

The Indonesian services sector contributes about 45 per cent of GDP, with the Government targeting 55 per cent by 2025. Indonesia also needs services of many kinds to facilitate its rapid growth across all sectors. A key to expanding the Indonesian services sector and its capability is greater imports and investment, particularly of knowledge-intensive services. Somewhat counter-intuitively, removing restrictions on foreign investment and operations of foreign firms in the knowledge-intensive sector, in most cases, will result in growth of that sector in Indonesia. Currently, restrictions with the stated policy purpose of protecting domestic services firms are perversely leading to greater imports and are actually inhibiting domestic growth.

Indonesia also has latent comparative advantages in several services sectors, for example, skilled labour services, technology deployment and business process outsourcing (BPO). Being able to realise these opportunities requires capacity-building, particularly in education and training and in the new field of BPO. In turn, this provides opportunities for Australian education and business advisory services to expand and develop themselves in Indonesian markets.

Negotiations in WTO and ASEAN are increasingly focussed on services trade and investment liberalisation. AIBC understands that Indonesia is engaging closely with these negotiations. IA-CEPA can leverage and extend these discussions on services.



Facilitation of two-way investment

Two-way investment is very low but is rising. Indonesian investment in Australia may be higher than recorded due to use of offshore companies as vehicles. The low Australian investment may be similarly influenced by international companies with strong Australian connections acting as investment vehicles. That said, two-way investment must be increased substantially if the economic relationship is to be 'normalised'.

Investors in both Australia and Indonesia need to be made aware of the benefits of investment flows between our countries, both for personal economic gain and for greater regional gains. In particular, Australian investors have expressed their need to be informed of the opportunities for investment and of the regulatory environment which exists through sector-group discussion sessions, seminars and tailored publications.

Low Indonesian investment in Australia is principally due to historic low Indonesian offshore investment generally, with most investment internally focused, and inadequate attention toward investment opportunities in the Australian market. This is changing, with Indonesian investors now looking outward to develop more diversified portfolios across a range of sectors, including mining, agriculture and property. More can be done by Australia to alert Indonesian investors to opportunities in Australia and to facilitate their investment.

Low Australian investment in Indonesia is a product of the combination of: past difficulties with the formal investment regime and corruption; bad experiences of Australian companies, particularly in the late 1990s; the rise of other attractive investment destinations in Asia; and most recently, due to businesses being focused elsewhere, effectively ignoring Indonesia. While there have been recent welcome improvements to the investment regime, many hurdles remain, including:

- Difficulties in accessing land
- Difficulties in obtaining timely approvals
- Lack of coordination between national, district and provincial governments
- Inconsistent or ambiguous regulation
- Investment rules that limit foreign equity and provision of services by non-Indonesian companies
- Preferences for Indonesian companies that are overly discriminatory and lead to sovereign risk for foreign companies
- Difficulties in gaining approvals for foreign staff to work in Indonesia
- Poor quality infrastructure that results in higher costs than other investment destinations
- Corruption and patronage
- Sovereign risk associated with changes to laws and permits.

In mining, the results of the 2010 Fraser Institute mining survey¹ highlight that out of 79 locations in technical minerals prospectivity, Indonesia is ranked in the top 20, but in terms of 'policy potential' Indonesia is ranked in the bottom 10 and in the top five of 'room to improve'.

¹ Fraser Institute Survey of Mining Companies 2010/2011, <http://www.fraserinstitute.org/>



The Government of Indonesia has an imperative to attract foreign direct investment. It estimates that up to \$150 billion is required for infrastructure investment alone between 2011 and 2015. The total investment task to 2025 is estimated at up to \$465 billion. Two thirds of this amount needs to come from foreign direct investment, according to the Government.²

The Government of Indonesia is seeking to improve its investment climate and has put in place a range of changes, including adjustments to the Negative Investment List and a 'one stop shop' approvals arrangement through the Indonesian Investment Coordinating Board (BKPM). Much more needs to be done to attract the required level of investment.

The liberalisation of trade and investment leading up to the launch of the ASEAN Economic Community in 2015 will free up investment arrangements between ASEAN nations. The AANZFTA should capture part of the flow-on liberalisation, but the IA-CEPA will need to try to capture similar arrangements for Indonesia-Australia bilateral arrangements.

The IA-CEPA could assist with expanding two-way investment in a variety of ways, including:

- Identifying barriers to two-way investment that inhibit, in particular, Australian and Indonesian companies, and seeking to address these
- Through the IA-CEPA business engagement process and through Australian Trade Commission (Austrade) activities, identify investment opportunities, promote two-way investment, provide guidance to investors and overcome 'market failure' issues
- Capacity-building towards creating a better investment climate and best practice investment facilitation in Indonesia.

Reducing at-the-border and behind-the-border barriers

Many of the biggest gains from the IA-CEPA will be made by lowering both at-the-border and behind-the-border barriers for goods and services trade, investment and movement of people. Many of the barriers to services trade, investment and movement of people are common and often tend to interact.

Table 7 of this Submission sets out some specific barriers to two-way trade and investment by sector. These issues have been specifically raised by the AIBC membership in their areas of interest. Some of these can be addressed through the IA-CEPA negotiations directly, while others may be better addressed through G to B consultations in the margins of the negotiation process.

Barriers to trade in goods

While lowering of tariffs will enhance goods trade, many other barriers remain, including:

The AIBC has compiled sector-specific barriers to trade and

² Economic Masterplan presentations, Menko and Bappenas, February 2011



- Administration of import permits in Indonesia that create delays, uncertainty and sovereign risk
- Poor understanding of regulations by exporters that lead to problems in two-way goods trade, which are often exacerbated by supply chain failures

***investment in Table 7
of this Submission.***



- Delays in customs clearances at ports and airports in Indonesia, as a result of time-consuming administrative procedures, and the need for ‘official signatures’ to allow goods into and out of the country
- Discrimination in customs treatment of goods arriving in Indonesia from ASEAN and non-ASEAN sources
- Lack of supply chain capacity within Indonesian businesses that inhibit their ability to supply goods to Australia.

Legislating for the use of electronic customs procedures, implementation of the National Single Window and a review of the customs process will aid in streamlining this process as well as to reduce misinformation and assist record keeping for both Governments.

Barriers to trade in services

At- and behind-the-border barriers to trade in services are many and complex, both in Indonesia and Australia. In many cases, they no longer serve a good policy purpose, and in some cases, in both countries, they are anti-competitive. In summary, the barriers in Indonesia include:

- Market access restrictions on provision of services by foreign companies in many sectors
- Preferential treatment of Indonesian service providers and discrimination against foreign services and providers
- Restrictions on movement and residency of personnel
- Restrictions on the foreign ownership of service-oriented firms.

Australia too has restrictions on service provision by foreign companies, including:

- Overly restrictive regulation of some sectors and in some states
- Inconsistent regulations between states
- Restrictions on practice by persons, for example:
 - 30 occupations in Australia are regulated by only one or two states and not others
 - There are some 850 licenses for trades people across Australia, when only around 100 should be required
 - Some professions remain strictly regulated, effectively limiting access to foreign practitioners
- Restrictions on temporary entry of skilled workers that discriminate against people from non-English speaking nations
- Threats by some states to implement stronger local content provisions as part of project approvals and government procurement, creating uncertainty for international suppliers.

The AIBC strongly recommends that the IA-CEPA negotiations establish a mechanism for identifying barriers to services trade, with the assistance of industry.

The IA-CEPA negotiations should establish a framework for identifying these and other restrictions, and then seek to address them in both Indonesia’s and Australia’s best interests.



Harmonisation and mutual recognition

A key to greater trade, investment and cross-border industry is harmonisation of regulations and standards and of university and professional qualifications between Australia and Indonesia. The IA-CEPA should identify priority regulations and standards and contain mechanisms and timelines for harmonising them between countries. This may not be easy on the Australian side, as there remain problems with lack of compatibility of regulations and standards between states. In Indonesia, lack of standards across many industries will inhibit harmonisation.

The IA-CEPA could identify priority sectors for harmonisation, which standards could be harmonised, and what capacity-building is required to develop better standards in these

The AIBC recommends that the IA-CEPA establish a framework for professional associations and certification bodies to commence dialogue on mutual recognition – and harmonisation – of standards. Resulting MRAs would be negotiated outside the IA-CEPA itself.

sectors in Indonesia. As a priority, the IA-CEPA should establish a framework for professional associations and certification bodies to commence dialogue on mutual recognition – and harmonisation – of standards.

The resulting arrangements would take place outside the IA-CEPA itself, through Memoranda of Understanding and similar means. However, a Government-sanctioned framework will highlight the business case for prioritising Indonesian-Australian standards recognition and harmonisation, and thereby encourage greater activity in this area.

Mutual Recognition Arrangements (MRAs) for professional and skilled worker qualifications are also essential building blocks for greater movement of skilled people between nations (known as “movement of natural persons” – MNP). AIBC understands that MRA and MNP discussions within ASEAN are at an early stage. The IA-CEPA negotiations and capacity-building in MRA could parallel the ASEAN discussions, seeking the same or similar outcomes. Recent changes to regulations governing practice in the accounting sector requires MRAs between countries to enable foreign accounting professionals to work in Indonesia. An accounting MRA should therefore be considered a priority.

Facilitation of cross-border, integrated industries

A key field in which the IA-CEPA will differ from traditional FTAs is in the facilitation of cross-border industries with integrated supply chains. Cross-border industries can be feasible between neighbours that have complementary comparative advantages and economies. These industries have different parts of the supply chain located in each country, with an efficient connection between them. Australia and Indonesia already have numerous putative cross-border industries in both goods and services sectors.



Sectors with potential for integrated industries include:

- Agriculture and food, including beef and dairy
- Oil and gas production and processing
- Design and manufacturing, including automotive and TCF
- Business services of many kinds, including financial services, ICT services, technical services (such as engineering), accounting and legal services
- Construction goods and services
- Education services, including university and tertiary education
- Creative services.

The AIBC strongly recommends that the IA-CEPA include provisions for cross-border integrated industries.

The IA-CEPA can facilitate growth and development in these industries through lowering barriers to supply chains operating across borders, capacity-building in production and identification of market opportunities.

The AIBC strongly supports the IA-CEPA formally recognising an ambition for the development of greater cross-border industries and seeking to prioritise liberalisation and reform of behind-the-border measures for priority integrated industries. In addition, much activity designed to achieve this can take place outside of the IA-CEPA itself, through G to G, B to G and B to B economic cooperation activities. Cross-border integrated industries and supply chains should be a key pillar of the final economic cooperation program.

Development of cooperative supply chains (to external markets)

Allied to integrated industries is the development of cooperative supply chains between Australia and Indonesia to third markets that each country would be unable to access independently. These supply chains would take advantage of each country's comparative advantages to produce goods and services of consistent quality and supply through integrated marketing and supply chains, supported by both governments.

The IA-CEPA can facilitate the development of co-operative supply chains to external markets through the identification of market opportunities and capacity-building in production and supply chain. A form of incentive or assistance could be offered to Indonesian and Australian businesses who formally partner under a Government-sanctioned framework.

Sectors where this opportunity may be available include:

- Agriculture, including dairy, beef and horticulture produce
- Business services
- Manufacturing
- Creative services.

The AIBC strongly recommends that the IA-CEPA seeks to facilitate the development of cross-border supply chains to address opportunities in external markets. The AIBC will develop a separate and specific submission on this.

The AIBC is preparing a separate and specific submission on these opportunities.



Movement of skilled people

Essential to the success of the IA-CEPA is the free movement of skilled personnel between the two countries and their legal right to work in each country. AIBC members have reported on the difficulties of having Indonesians moving in and out of Australia for business and work, and for Australians moving in and out of Indonesia.

The AIBC recognises that in terms of public perceptions and politics in both countries, migration is a difficult issue. In terms of business and economic relations, however, it is essential to liberalise MNP. Australia and Indonesia have complementary demographics and skill sets. They both need the skilled people resources that each possesses. As discussed above, development of MRAs covering qualifications and certification are an essential element of workable MNP arrangements.

There is a clear need for more highly skilled professionals in Indonesia over the medium term to facilitate business, health, education, infrastructure and institutional reform. Australia has many of the skilled professionals that Indonesia needs.

In Australia, looming worker shortages, particularly those with 'trades' skills, make it imperative that Australia attracts more skilled workers. Indonesia has a latent workforce that, over time, could provide many of the skilled workers that Australia needs.

Indonesia, however, also needs to build its capacity in educating and skilling its people. It is able to access its 'demographic dividend' of a current young population, with 50 per cent aged under 29 and 2 million a year entering the workforce. But it cannot make the most of this dividend without better education and training outcomes. In technical and vocational education and training (TVET) in particular, Indonesia's formal sector is currently far too small to produce the skilled people that it needs, let alone those that Australia needs. TVET is the sector that has the most pressing needs for capacity-building. The university sector, too, is underperforming relative to the requirements for more graduates, better skills and higher degrees. Australia has the required experience and expertise to assist the development of education and training.

Capacity building and economic cooperation

The AIBC strongly supports the inclusion of economic cooperation, including capacity building partnerships, as a pillar of the IA-CEPA. AIBC acknowledges and supports the current economic cooperation initiatives administered by AusAID. These range from grass-roots capacity-building in some of Indonesia's poorer regions to high-end economic governance capacity-building in Government of Indonesia Ministries and technical assistance with infrastructure planning and delivery.

The economic cooperation pillar of the IA-CEPA should be additional to and complement the existing technical assistance activities. IABC also has the view that a large part of the IA-CEPA economic cooperation pillar should be focused on developing better business interaction. As the President of the Republic of Indonesia emphasised in his speeches in Australia in March 2010, economic relationships need to be driven by business, with governments simply the facilitators.



While economic cooperation has so far been characterised as capacity-building from Australia to Indonesia, capacity-building should contain elements that are two-way and that also build the capacity of Australia to do business with Indonesia.

AIBC also holds the view that the economic cooperation pillar is a priority for implementation, as it will facilitate progress on the other two pillars in negotiation and implementation of the IA-CEPA. Capacity-building in Indonesia is needed to:

- Develop stronger bilateral business and investment links with other countries
- Build stronger understanding of and support for trade and trade liberalisation amongst business in Indonesia
- Build the capacity of Indonesian business to access international markets
- Improve economic governance so that the use and allocation of scarce public resources is more effective and is targeted to priority economic and social development initiatives at a national level
- Engage more effectively in trade in goods and services, facilitate increased domestic and foreign investment and create more jobs to, in turn, reduce poverty
- Engage in forums on international trade, the economy and the environment in a fully informed manner and implement agreed actions, focusing on the opening of markets for goods and services
- Develop effective infrastructure, utilities, transport and other services to encourage increased levels of competition and to drive down input costs for business, small & medium enterprise (SME) and consumers, while creating conditions for improved service delivery
- Develop effective corporate and market regulation, legal systems, governance and global standards for service delivery, consumer protection and dispute resolution to create a better business environment
- Adopt global standards of education, training and certification to allow more seamless movement of skilled people
- Develop robust public sector financial systems that provide macro-economic and fiscal stability – essential for a strong investment and business environment.

Capacity-building in Australia is needed to:

- Overcome ignorance of investment and business opportunities in Indonesia and negative perceptions of the business climate there
- Develop better bilateral business and investment links with Indonesia, focusing on B to B relationships
- Build a better understanding within the wider community of the rapidly emerging Indonesian nation, its people and economy, that together form a strategic link to Australia's economic and regional future
- Build the capacity of Australian business to access Indonesian markets.

As discussed below, the IA-CEPA business engagement and implementation process will be a key contributor to capacity-building between Indonesian and Australian business. The AIBC intends to prepare a separate and specific submission on economic cooperation under the IA-CEPA.



5 Business engagement with the IA-CEPA negotiations

As the IA-CEPA will differ significantly from trade agreements that have gone before it, so too should the process for negotiation and the engagement of business. The success of business engagement should be measured both through the outcomes that the IA-CEPA achieves and by the level of the engagement between key stakeholders from both parties. The negotiation of the IA-CEPA should provide a mechanism for engaging business communities in both countries and to help them to build mutually rewarding business linkages. Business involvement and input into the IA-CEPA process will lift awareness and utilisation rates of the resulting agreement. In this way, engaging business is part of the economic cooperation pillar.

The AIBC strongly believes that business involvement and input into the IA-CEPA process will lift awareness and utilisation rates of the resulting agreement.

There is a risk, however, that the current underperformance of bilateral trade and investment activity will carry through to low levels of business engagement in the IA-CEPA discussions. For this reason, the first stage of the IA-CEPA business engagement process needs to be a 'demystification' process that seeks to alert business to the opportunities and to have businesses enthusiastically engaged with consultations.

Business engagement characteristics

The AIBC proposes that the business engagement process will include the following:

- Businesses in both countries being invited to seminars that outline the opportunities in bilateral trade and investment, summarise the issues with doing business in both countries and discuss the aims and potential scope of the IA-CEPA. This is designed to alert business to the opportunities in bilateral business and to the potential for their business activities and to have business opt-in to the process. These activities could be auspiced jointly between governments and industry associations.
- Businesses in both Indonesia and Australia will be invited, principally through business associations but also individually, to provide input to the negotiation of the IA-CEPA through bilateral business workshops, G to B consultations and review of stakeholders' submissions. These could usefully occur in the margins of scheduled negotiation rounds or relevant summits/meetings.
- Bilateral workshops that will bring together businesses in common industry sectors, to identify opportunities and barriers and to clearly articulate to respective governments 'what business wants' from the IA-CEPA. The workshops will allow Australian and Indonesian companies to see each other less as competitors and more as partners.
- A program of engagement focusing on the interests of SMEs. Growth in bilateral SME engagement should be considered as a focus for business engagement, given the sector's overall size and the related value in enhancing people-to-people links.



In order to play a constructive and useful role during the IA-CEPA negotiations and beyond, the AIBC has established an ongoing **expert consultative network** which covers the spectrum of trade and investment activities between Australia and Indonesia, in particular in the following key sectors:

- Agriculture
- Manufacturing
- Education and training
- Health services
- Tourism and creative industries
- Resources
- Mining and petroleum
- Technical services, including architecture and engineering
- Financial services
- Business services, including legal and accounting.

The AIBC expert consultative network can be accessed through the Convenor of the IA-CEPA Advisory Committee.

Business associations in Australia

There is a range of business and industry associations which should be engaged during the negotiation and implementation of the IA-CEPA, in particular, the Australian Chamber of Commerce and Industry, the Business Council of Australia and the Australian Services Roundtable. Throughout the process, specific sector associations and key stakeholders should be kept informed of the progress of the IA-CEPA and be given the opportunity to participate in sector-specific discussion forums to comment on the progress of the negotiations, ensuring that the IA-CEPA is consolidated and inclusive.



6 Other areas for inclusion in the IA-CEPA

The following areas for possible inclusion have been extracted from the Joint Feasibility Study for an Australia Indonesia Free Trade Agreement and have been developed from consultations within the AIBC to date.

Customs procedures

Customs procedures play a pivotal role in facilitating trade between Australia and Indonesia. Harmonising and streamlining customs procedures have been priorities for international economic cooperation and must remain so.

The additional costs arising from paperwork and procedures broadly defined have been estimated in some studies to be as high as 10% of the value of goods traded. Anecdotally, there are variations and inconsistencies of treatment of goods:

- Exported from Australia and from ASEAN nations (e.g. Singapore), in some cases even if the goods originated from Australia and travelled via Singapore
- Between ports and airports of entry to Indonesia.

The stationing of Indonesian customs officers in Darwin to facilitate pre-clearances of goods (including live cattle) has been successful in increasing efficiency and reducing the cost of trade in goods, however there is still significant scope for improvement. Consideration of extending this practical scheme to other ports, such as Fremantle, may usefully be considered in the context of IA-CEPA negotiations.

An increased exchange of information will provide greater transparency, improve understanding and assist customs administrators in areas such as border security, counter terrorism, human trafficking, trade facilitation and technology transfer, to have a downward effect on the cost of trade in goods and services.

Standards, technical regulations and conformity assessment procedures

Standards, technical regulations and conformity assessment procedures have an important role in international trade and have proliferated in recent years due to concerns regarding healthcare and the environment.

An IA-CEPA would complement commitments relating to the liberalisation of trade in goods and would also facilitate trade by committing the two countries to arrangements that are transparent and which promote certainty. An IA-CEPA could also:

- Improve access to information for both Australian and Indonesian businesses regarding sector-specific regulation
- Provide a mechanism for addressing issues on standards certification
- Build upon existing cooperation for the purpose of facilitation, recognition and acceptance of the results of conformity assessment
- Encourage the reduction of transaction costs between Australia and Indonesia in skill-based industries and trade in services.



Government procurement

Government procurement should promote transparency, value for money, open and effective competition, fair dealing, accountability and due process, and apply non-discrimination in decision making.

Opportunities for increased cooperation and issues which can be addressed in discussions on the nature and scope of any provisions could include:

- Consultation mechanisms
- Suppliers' rights
- Principles of non-discrimination and their application
- Coverage of any agreement
- Minimum procedure requirements in respect of procurement processes.

Given that government procurement did not feature under the AANZFTA, the IA-CEPA may prove an appropriate context in which to develop disciplines bilateral in this area. As a starting point – in order to raise the level of comfort – the Government of Indonesia could consider granting fair and equitable access to its government procurement market to Australian businesses that establish cross-border integrated supply chains with Indonesian companies (see Section 4 of this Submission).

Competition policy

Improvements to competition policy can contribute to the economic development of an economy by putting in place mechanisms that facilitate development of efficient markets, promote independent rivalry, encourage foreign investment, lead to more product research and innovation, ensure truthfulness of product claims, improve price and quality of products and services and enhance the efficiency of distribution systems, with benefits flowing to back to consumers.

The ongoing implementation of competition policy is a vital component of reforms to the Indonesian economy that are necessary to attract investment and underpin economic growth.

There are opportunities for capacity-building within agencies involved in market design and competition regulation, and for access to high level Australian services capabilities in these fields. Opportunities for increased cooperation include exchange of information between competition authorities to assist in the prevention of anti-competitive conduct and the increased detection and prosecution of anti-competitive conduct.

Intellectual property rights

The shortcomings in Indonesia's protection of intellectual property rights, particularly regarding copyright, significantly discourages investment flows from foreign firms and limits access for Indonesians to research and technology. While the issue of enforcement of IP laws likely falls outside of the scope of the IA-CEPA, the Agreement could establish a sound framework for capacity building in this area.



Legal certainty and dispute resolution

In order to facilitate trade and investment, there is a need to establish fair, transparent, timely and effective procedures in Indonesia to settle disputes.

There are two major legal disincentives for foreign investment in Indonesia – inefficiencies in the court system (to the extent that parties are unable to assert their legal and commercial rights effectively) and corruption.

There is much material, anecdotal and otherwise, to the effect that persons and corporations are unwilling to engage in commerce or invest in Indonesia because they are afraid that if something goes wrong, as it can, even in the best of relationships, they will have no effective redress. It is not an issue which only affects foreigners in Indonesia. Some of the difficulties with the Indonesian legal system, including entrenched inefficiencies, difficulties with enforceability and corruption, are as much of a concern to many Indonesians as they are to foreigners. The alternative dispute resolution procedure of mediation should be adopted as the primary method of solving commercial disputes. In keeping with the experiences of Australia and many other countries, it has proven to be not only efficient in terms of cost, but also timely and extraordinarily effective. Alternative dispute resolution is likely to provide a far more favourable climate for trade and investment in Indonesia with commensurate economic growth.

The AIBC recommends that the IA-CEPA promotes cooperation around effective alternatives to legal dispute resolution procedure, to avoid lengthy delays in the Indonesian legal system.

7 Sector-specific summary of barriers to trade and investment

Sector	Issue
Agriculture, forestry and fishing	<ul style="list-style-type: none"> • A number of items, for example, sugar, rice and wine, have been left out of the AANZFTA agreement on tariff reduction, while some livestock and red meat tariff lines were excluded from tariff elimination. • Indonesia's desire to become self-sufficient in beef by 2014 may pose a threat to Australia's exports in these areas. • Related to the above, import quotas, restrictions on the issuance of import permits and a ban on the importation of some products (certain offal items) negatively impacts the Australian boxed beef and live cattle trade. • Procedures and documentation for the importation of some food products, notably wine, wheat flour and dairy products, are complex. Precise information on what is required is often difficult to obtain and interpretation of regulations can vary. • Requirements for SNI (national standards), Badan POM (drug and food control) certification, ML registration numbers for wheat flour and full application of procedures even to sample quantities for testing does not reflect good international commercial practice and restricts trade. Similar problems face other processed food suppliers. • Imports of wine face an extremely high duty rate and are subject to complex and restrictive procedures and channelling through designated importers contrary to good international trade practice. Also permits to import wine are often withheld during Ramadan. • Halal certification requirements often create impediments to the export of dairy products, wheat flour and other processed food from Australia to Indonesia, for example, periodic insistence by Indonesia-based MUI inspectors to certify shipments although Australian halal certification is officially accepted by Indonesian authorities. • A broader halal issue is the perceived need to apply halal certification to products such as wheat flour and dairy that are unrelated to the slaughter of animals. • Dual labelling issues create additional complications, as well as difficulties faced in obtaining Indonesian National Standard (SNI) certification, certification from the Directorate General of Foreign Trade and certification from the National Agency of Drug and Food Control. • Requirement for pre-marketing registration and ML registration numbers for labels of all processed food products, particularly bulk dairy products. ML registrations are specific to importer and location as well as product and significantly complicate market development. Exporters report delays of 6 to 18 months to secure ML registration.

	<ul style="list-style-type: none"> • Ambiguous regulations, administrative processes and frameworks create an uncertain trading environment. • Mandarins from China are duty free under the ASEAN-China FTA whereas Australian exports attract a duty rate of 25% (which will reduce to 5% with ratification of the AANZFTA). • Australia's standards for the importation of fruit from Indonesia, classified as a non-tariff barrier, are often not met, suggesting the need to provide technical and technological assistance to Indonesian growers and exporters. • Indonesian exporters of pulp have concerns about the Australian Illegal Logging Prohibition Bill in regard to the standards to be applied to imports from Indonesia. Indonesian suppliers would like Australia to adopt the Indonesian mandatory standard, SVLK (Sistim Verifikasi Legalitas Kayu or System for Verifying the Legality of Timber), and not the Forestry Stewardship Council standard which would exclude Indonesian plantation products. • The Australian market offers good opportunities for Indonesia provided that regulatory issues can be addressed effectively.
Education and training	<p>Foreign direct investment is limited to 49% in higher education and non-formal education. Thus the establishment of a partnership with a local institution is necessary. Some Australian universities are already offering joint degrees, including with Universitas Indonesia.</p> <ul style="list-style-type: none"> • Universities find that demand for courses from Indonesian students is high but it is difficult and expensive to get visas to come to Australia. • English language levels required for entry to tertiary education in Australia are challenging. • Australia Network Television and Radio Australia provide a powerful partnership in English language learning and possibly teacher training and other forms of distance education delivery. • The establishment of closer links between the education and cultural sectors can assist Australia to uses its strengths in both university and vocational education sectors to advance knowledge and understanding of Australia. • Portability of degrees and scholarships is difficult given lack of recognition/harmonisation of standards and qualifications. • Flexible business practices and new partnership models are needed. • Australian universities need to be seen as in-country partners, not merely providers of education in Australia . • Research exchanges and collaborations are important along with a more developed alumni database of returning Indonesian graduates. • There is a need for the Australian business community to support the growth of Indonesian language and cultural studies in Australia at both the

	<p>school and tertiary levels.</p> <ul style="list-style-type: none"> • Digital media platforms can give Indonesians access to information about Australian tertiary studies and about Australian society and culture generally. Indonesia's "digital divide" can cause limitations here. • Opportunities for new models of tertiary education cooperation including joint campuses and on line learning. <p>Tertiary / Higher Education: The university sector in Indonesia is developing rapidly but still underperforms relative to the tertiary education task facing Indonesia if it is to achieve sustained high levels of growth. The sector is not yet producing sufficient bachelor degree graduates and far too few people with higher degrees (Masters and PhD) for a nation of Indonesia's size and stage of development. Many Indonesian students study abroad, including in Australia, to access high quality bachelor degree courses and higher degree studies. There are also some joint degree courses between Indonesian and Australian universities as well as research partnerships. The ACICIS program, after languishing for some years due to a range of external factors, is increasing the range of medium and long-term study options for Australian students in Indonesia. There is a need for more foreign expertise and investment in Indonesian universities, but restrictions on investment and MNP severely hamper this.</p> <p>The IA-CEPA development process should explore opportunities for extending higher education cooperation across a range of modes, including joint courses, more student and staff exchange, more joint research and even joint campuses. There is also increased opportunity for online degrees and diplomas, for example, via Open Universities Australia. Recognition of online degrees by the Indonesian government is an issue as is the level of English required to enrol in English medium courses. To achieve closer relations between Australia and Indonesia on tertiary education, foreign investment in universities and MNP relating to higher education need to be liberalised.</p> <p>Technical and Vocational Training: There are very limited opportunities for vocational study in Indonesia; overall the number of vocational education students in Indonesia is 350, 000 compared to 1.6 million in Australia. (Source: McKinsey & Company, Indonesian Ministry of Education, presentation Nov. 2009)</p> <p>It is imperative to increase vocational education provision in Indonesia and there are good opportunities for Australian vocational education providers, including both Government TAFEs and private providers. TVET fees, however, are historically very low in Indonesia. There is a need to involve the Indonesian business and industrial community in building the quality of TVET training in Indonesia, with particular focus needed on "Train the Trainer" courses. The Australia Development Scholarships (Australia Scholarships) and Endeavour Awards need to give more focus to the TVET sector, as they are currently mainly focused on the postgraduate university sector.</p>
Health	<ul style="list-style-type: none"> • There are opportunities for Indonesian health professionals, particularly nurses, to work in Australia (for example, those working in Darwin)

services	<p>however high English language levels as measured by the IELTS test are required for registration in Australia and thus limit the opportunity for Indonesian nurses to work in Australia.</p> <ul style="list-style-type: none"> • There are opportunities for Australian investment in health facilities in Indonesia and in nurse/medical training, facilities and services. • In terms of occupational registration and accreditation, doctors are treated under AANZFTA. • There are restrictions on foreign physicians and surgeons operating in Indonesia other than as consultants. • There are difficulties for Indonesians in obtaining Australian visas to visit Australia for surgery. • There are concerns over the integrity of the regulatory process.
Tourism	<ul style="list-style-type: none"> • Australian work visas can be difficult for Indonesians to obtain. • Australian travel advisories have had a negative effect on Indonesian tourism in recent years. • There has been a decline in the number of Indonesian students in Australia in recent years mostly due to visa difficulties, rising \$A value and competition from Singapore, Canada and the USA. • There are opportunities for health tourism, a growing global industry which has the potential to be marketed in Indonesia, if visas were easier to obtain.
Minerals, energy and resources	<p>There are currently a vast array of areas in the Indonesian mining, energy and minerals sector which are underdeveloped and underexplored due to high set up costs and overly restrictive measures taken by the government to restrict the amount of Australian investment. There is also a lack of:</p> <ul style="list-style-type: none"> • Adequate infrastructure • Pre-competitive geo-scientific information • Transparent, fair and equitable taxation law <p>The Indonesian Mining Law of 1967 and 2009 need to be reformed, as do the 1999 and 2004 laws on regional administration. New forestry laws are also necessary to improve environmental protection and to reduce the effects of deforestation.</p>
Mining and petroleum services	<ul style="list-style-type: none"> • Indonesian state enterprises retain a significant market share in this sector, which impedes competition from private companies. • The Government of Indonesia restricts foreign investment and employment of nationals, to favour Indonesian service providers and domestic workers, restricting competitiveness, increasing costs and complexity of investment and creating an uneven playing field.

	<ul style="list-style-type: none"> • Recent decrees have made it more complex and difficult to provide contract mining services in Indonesia. • Inadequate incentives for Australian companies' involvement in downstream processing and value add. • Indonesia's uncertain legal framework, rights and dispute resolution procedures often act as a disincentive for investment.
Technical services	<ul style="list-style-type: none"> • Telecommunications: Although there has been gradual reform in this area in recent years, foreign investors are still subjected to ownership limitations. • Construction: Firms are permitted to be subcontractors or advisors to local firms in areas where the Government believes that a local firm is unable to do the work. • Engineering and architecture services: While foreign engineering and architecture firms are able to operate in Indonesia (albeit within the foreign equity restrictions), investment and operations are smaller than they should be due to a range of other restrictions, led by MNP restrictions. This results in lower capacity than demand generated by potential clients. The net result is that more services are imported than would otherwise be the case.
Financial services	<p>Restrictions still exist on foreign bank lending and operations (for example technical experts are only permitted a three month stay in any given year). Market access for foreign banks, insurance companies and fund managers in Indonesia, including equity investment in local banks, is relatively liberalised, however it should be bound at the current levels (99% for banks, and approximately 80% for insurance companies and fund managers). Notwithstanding, there are recent suggestions that Indonesian authorities may consider restricting the level of foreign ownership of an Indonesian entity to levels which are much lower than the current 99% cap. This includes AANZFTA arrangements, whereby, Indonesia has committed to Foreign Equity up to 51% (this compares with 30% for Malaysia). An IA-CEPA should consider "grandfathering" the current ownerships levels so as to safeguard future Australian investment in the country. We would also welcome an IA-CEPA seeking to address/relax restrictions on the temporary entry of banking staff and the requirement that work permits for foreign bank personnel be first approved by Indonesia's Central Bank.</p>
Business services (legal, accounting and other)	<p>Business services in Indonesia generally lack capacity relative to the current and future needs of business and government. Australia has world class expertise and competitive advantages in business services. Growth in trade and investment in business services will not only advantage Australian business services firms, but will deliver increased capacity in the sector in Indonesia, as well as delivering better services to Indonesian clients. There are also opportunities for export of Indonesian business services to Australia, including through business process outsourcing.</p> <p>Legal services:</p> <ul style="list-style-type: none"> • Foreign law firms cannot establish offices in Indonesia. However, individual foreign lawyers may work for Indonesian law firms as employees or

	<p>experts in international law. There are also limits on the number (5) and percentages (20) of foreign lawyers who can work in Indonesian law firms.</p> <ul style="list-style-type: none"> • One fundamental issue stems from the fact that the Indonesian regulation of its own professional lawyers is barely adequate. Indonesian legal consultants were not licensed until 2003 and many are still not. • In relation to regulation of the legal profession, there is no real central authority (except in theory) and no insurance system. • Foreign lawyers are specifically restricted from being partners in any partnership and thus cannot commit to a firm in a formal agreement or option. While Indonesia wishes to welcome foreign lawyers to assist in business, the issue is how to license them. <p>Accounting services:</p> <p>There are severe restrictions on foreign accounting firms and personnel operating in Indonesia. Firms must operate in Indonesia through a cooperation agreement with a local public accountancy firm and cannot practise under their own name. Indonesian citizenship is necessary to become a licensed accountant. Foreign agents and auditors can only operate as consultants. Auditing is very restricted, with only partners in Indonesian audit firms able to sign-off audits, but, perversely, far from protecting and developing the Indonesian profession at large, this results in wholesale import of audit services. Australian accounting firms must operate in Indonesia through a cooperation agreement with a local public accountancy firm and cannot practise under their own name. New accounting laws threaten to further restrict foreign accountants' access to Indonesia, unless an MRA is in place with the country of origin. Therefore, development of an accounting MRA between Australia and Indonesia has become urgent. Associated capacity-building will also be required.</p>
Intellectual property	<p>Both Australia and Indonesia recognise that the effective protection, administration and enforcement of IP rights are key elements in fostering creativity, innovation and technological reform. Indonesia has made significant progress in improving its legal framework to improve enforcement of IP rights and reform its intellectual property laws. Indonesia and Australia have a strong IP relationship which could be reinforced and extended through an IP chapter in an IA-CEPA. Provisions should focus on cooperation with Indonesia around strengthening, in particular, Indonesian copyright laws, border protection measures and optical disc regulations.</p>
SME sector	<ul style="list-style-type: none"> • Import license complications: For example, if a business changes its address within the same city, it must obtain a new license and this infringes the business' ability to operate efficiently. In Australia, the license belongs to the company, so if they change address, the license remains, which is more effective. • "Red Tape": For example, some Australian companies invest in Malaysia rather than Indonesia, despite preferences toward Indonesia, due to complicated establishment procedures, high investment capital cost and lengthy delays until a business can commence operations. Economic cooperation assistance with a specific focus on SME concerns may be useful to address some of these issues.

	<ul style="list-style-type: none">• Indonesian regulatory frameworks do not sufficiently differentiate between SMEs and larger enterprises. For example, the “sunk cost” to open a business in Indonesia (across the board) is too high. Capital requirements of \$100,000 and investments of \$250,000 as establishment deposits and other measures are not appropriate for SMEs with restricted capital. This is a significant impediment and disincentive.
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8 Conclusions

By creating an IA-CEPA to enhance the solid base of the AANZFTA, the opportunities for both Australians and Indonesians are greatly increased. However, in order to achieve the most from the IA-CEPA, it needs to be implemented sooner rather than later. When all AANZFTA arrangements are in effect (by around 2020) the benefits of the bilateral agreement will become less impactful. An accelerated timetable on negotiating and implementing an IA-CEPA will have benefits for industry in both countries.

The AIBC hopes to engage with Government as it progresses down the path of negotiations and will seek to be a valued resource in Government's endeavour to create a commercially meaningful agreement.

Summary of Key Recommendations

- **The AIBC strongly supports the concept of 'partnership' underpinning and guiding the ambitions of the IA-CEPA, to transcend the traditional concept of a Free Trade Agreement.**
- **The AIBC believes that the IA-CEPA should seek to eliminate tariffs not addressed under the AANZFTA.**
- **The AIBC believes that liberalising bilateral services trade will assist Indonesia to capitalise on its own comparative advantages in the services sector.**
- **The AIBC strongly recommends that the IA-CEPA negotiations establish a mechanism for identifying barriers to services trade, with the assistance of industry.**
- **The AIBC strongly recommends that the IA-CEPA include provisions for cross-border integrated industries.**
- **The AIBC strongly recommends that the IA-CEPA seek to facilitate the development of cross-border supply chains to address opportunities in external markets. The AIBC will develop a separate and specific submission on this.**
- **The AIBC strongly believes that business involvement and input into the IA-CEPA process will lift awareness and utilisation rates of the resulting agreement.**
- **The AIBC recommends that the IA-CEPA promotes cooperation around effective alternatives to legal dispute resolution procedure to avoid lengthy delays in the Indonesian legal system.**



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