

Indonesia

1 Bilateral trade relations

The ASEAN was the 5th largest trading partner of China in 2006. According to China's Customs, the bilateral trade volume between China and ASEAN in 2006 reached US \$ 160.84 billion. The bilateral trade volume between China and Indonesia totaled US \$ 19.06 billion, up 13.5%, among which China's export to Indonesia was US \$ 9.45 billion, up 13.2%, while China's import from Indonesia reached US \$ 9.61 billion, up 13.9%. China had a deficit of US \$ 160 million. Major exports from China to Indonesia included petroleum oils and oils obtained from bituminous minerals other than crude, iron and steel, machinery, electromechanical products, electrical appliances, audiovisual equipment and components thereof, automobiles and spare parts, chemicals, textile materials such as woven fabrics of cotton and filaments, alliaceous vegetables, apples and pears, etc. Major imported products of China from Indonesia included petroleum oils and oils obtained from bituminous minerals, coal and other minerals, electronic equipment and auxiliaries, electromechanical products, electric and electronic products and components thereof, organic chemicals, rubber, wood and articles of wood, paper and paperboard, palm oil and its fractions, etc.

According to the Ministry of Commerce(MOFCOM), up to the end of 2006, the aggregate turnover of engineering contracts completed by Chinese companies in Indonesia reached US \$ 2.06 billion, and the aggregate volume of completed labor service cooperation contracts was US \$ 250 million.

According to MOFCOM, China's direct investment in non-financial companies in Indonesia, filed with and approved by MOFCOM in 2006, stood at US \$ 35.88 million.

According to MOFCOM, Indonesians invested in 115 projects in China in 2006, with a contractual investment of US \$ 470 million, and an actual utilization of US \$ 100 million.

2 Introduction to trade and investment regime

Major Indonesian laws governing trade and investment include Trade Law of 1934, Customs Law, Law regarding Authentication of Agreement Establishing the World Trade Organization, and Law regarding Industrial Affairs. Other laws related to trade consist of Law concerning State Treasury, Law concerning Prohibition of Monopoly Practice and Unfair Trade Competition, Law concerning Foreign Investment, and Law concerning Domestic Investment, etc.

2.1 Trade administration and its development

2.1.1 Tariff policy

While most imported products are subject to ad valorem duty, certain products such as rice and sugar are subject to specific duties in Indonesia.

There are two types of import duties in Indonesia, the MFN Tariff Rate and the Preferential Tariff Rate. According to the Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN, starting from 2007, tariff rates for all imports from China will be reduced to 8%, and the current MFN rate of 5% will drop to zero as of 2009. By 2010, China and Indonesia shall have made progressive reductions on tariffs with most of the products duty free.

2.1.2 Major import administrative policies

The Indonesian Government requires certain imports to go through import licensing procedures, classified as automatic and non-automatic licensing. Nine categories of goods are subject to automatic licensing, including CFC, methyl bromide, hazardous goods, alcoholic beverages and their immediate raw materials containing alcoholic substances, industrial salts, ethylene and propylene, explosives and their immediate materials, wastes and scraps, and used clothing. Six categories of goods subject to non-automatic licensing include Cloves, textiles, iron and steel, synthetic lubricating oil, sugar, and agricultural hand tools.

At the same time, the Indonesian Government conducts quota and license administration over automatic and non-automatic licensing. Quota system applies only to imports of alcoholic beverages and their immediate raw materials containing alcoholic substances. Import quotas are allocated only to appointed domestic companies. Import licenses for industrial salts, ethylene and propylene, explosives, motor vehicles, wastes and scraps, and hazardous goods are reserved for qualified companies, which shall only use any of these imported goods solely for their own production. Licenses to import synthetic lubricating oil, artificial sweeteners and agricultural hand tools are issued only to approved importers.

2.1.3 Major export administrative policies

Indonesia bans the exportation of certain live fishery products, rubber of low quality, rubber materials, crude leather of reptiles, ferrous scrap/waste (except if originating in Batam Island), round wood and wood chips, CITES-protected wild animals and natural plants, and urea. Besides, all exports to Israel are prohibited.

Indonesia exercises export control by dividing exports into two types, "supervised" exports and "regulated" exports. Export approval requirements must be met for "supervised" products, including certain live bovine animals, live fish, palm nuts/kernels, lead and bauxite ores/concentrate, petroleum oils, urea fertilizer, crocodile leather, unprotected wild animals and plants, unprocessed silver/gold, and

waste/scrap of metals, etc. Indonesia also conducts licensing and quota administration over regulated exports, involving coffee, textiles and clothing, rubber, plywood or similar laminated wood, teakwood, and mixed rattan and semi prepared rattan.

2.2 Investment administration

Indonesia bans domestic and foreign investment in businesses in the following 9 sectors: cultivating and processing of marijuana and the like; collection/utilization of sponge; harmful chemicals, chemical weapons, weapons and related components; cyclamate and saccharine; alcoholic drinks; casino and gambling facilities; air traffic system providers, ship certification and classification inspections; management and operation of Radio Frequency Spectrum and Satellite Orbit Monitoring Stations; and mining of radioactive minerals.

Foreign investment is prohibited in the following 8 areas: germ plasm cultivation; concession for natural forests; contractors in the field of lumbering; taxi/bus transportation services; small scale sailing; trading and trading supporting services; media services; motion picture production industry.

Conditions are attached to businesses between foreign and domestic capital in the following 8 areas: building and operation of seaports; electricity generation, transmission and distribution; shipping; processing and provision of potable water for public use; atomic power plants; medical services; basic telecommunications; regular/non regular commercial airliners.

2.3 Major competent authorities

The Ministry of Industry and Trade (MIT) is the competent authority for trade administration. The Customs under the Ministry of Finance administers imports and exports in accordance with the policies made by the Ministry and existing laws.

The Agency for Agriculture Quarantine (AAQ) under the Ministry of Agriculture is responsible for carrying out animal, fish, and plant quarantine.

Indonesia's Investment Coordinating Board (BKPM), directly responsible to the President of the Republic of Indonesia, is mainly in charge of assessing and formulating national investment policy, coordinating and promoting foreign investment.

3 Barriers to trade

3.1 Technical barriers to trade

All the imported medicines must be registered with the Food and Drug Authority Balai Pengawas Obat dan Makanan (BPOM) before they are processed or sold in Indonesia. There are two types of registration procedures: one for traditional medicine,

the other is for chemical medicine. Different requirements are made with regard to different procedures. The registration of chemical medicine should be made by the Indonesian sales agent or wholesaler appointed by the manufacturer of such medicine in the exporting country. If the medicine is to be produced in Indonesia, an application is to be submitted by an appointed Indonesian medicine manufacturer, and the manufacturer of the exporting country has no right to make the application. Such measure deprives the manufacturer from the exporting country of the right to register the medicine and tends to hurt the interests of export enterprises.

On 24 November 2006, Directorate General of Agriculture and Chemical Industry of the Indonesian Ministry of Industry issued the Draft decree on Mandatory Indonesia National Standard for Safety Glass of Vehicle, covering SNI 15 0048 2005 Tempered Safety Glass of Vehicle and SNI 15 1326 2005 Laminated Safety Glass of Vehicle, and the Draft decree on Mandatory Indonesia National Standard for Cement, covering SNI 15 0129 2004: White Cement, SNI 15 0302 2004: Portland Pozzolan Cement, SNI 15 2049 2004: Portland Cement, SNI 15 3500 2004: Portland Mixed Cement, SNI 15 3758 2004: Masonry Cement, SNI 15 7064 2004: Portland Composite Cement. The above 8 mandatory national standards specify term and definition, type, quality requirements, sampling, testing method, acceptance, marking and packaging requirements for safety glass and cement. Pursuant to the requirements of the decree, all safety glass and cement, imported or produced within the country, shall comply with the above mandatory national requirements, and producers and importers of the above items must have Product Certificate for using SNI Marking. The product certificate on SNI marking shall be issued by a Product Certification Body which has been accredited by National Accreditation Body of Indonesia namely Komite Akreditasi Nasional(KAN) through: 1. testing of the conformity of the quality of the product against SNI requirements; 2. audit on the application of QMS SNI 19 9001 2001/ISO 9001 2000 or its revision; 3. testing of the conformity of the quality and audit of QMS periodically. The testing and audit of QMS can be subcontracted to testing laboratories and QMS certification bodies within Indonesia which have been accredited by KAN or accredited by accreditation body which has signed Mutual Recognition Arrangement(MRA) with KAN. Directorate General of Agriculture and Chemical Industry, Ministry of Industry is the institution that is responsible for the implementation of the decree and shall provide with technical guidance of the decree. The Chinese side is of the opinion that the above decree only recognizes the testing and audit conducted by the accredited bodies within Indonesia, and subjects the importers to repeated audits, which exert an extra burden on importers. It is hoped that Indonesia will follow the principle of mutual recognition in the WTO/TBT Agreement and conduct negotiations with China on a MRA, whereby the conformity assessment results implemented by Chinese testing bodies will be recognized and accepted by Indonesia.

3.2 Sanitary and phytosanitary measures

On 29 May 2006, the Indonesian Agency for Agricultural Quarantine issued the Draft

Decree of the Minister of Agriculture concerning Requirements of Wood Packaging and Plant Quarantine Action to Imported Wood Packaging Material into Republic of Indonesia, prescribing for the definition of wood packaging, general and special requirements for wood packaging, plant quarantine actions, list of plant quarantine pests in wood packaging, types of treatments and marking on wood packaging, and packing declaration.

On 17 August 2006, the Agency for Agricultural Quarantine, Ministry of Agriculture issued the Draft Decree of Minister of Agriculture concerning Inspection and Quarantine Action on the Importation of Pathologic Substance and/or Veterinary Drug Materials. The draft decree specifies some requirements on the importation of pathologic substance and/or veterinary drug materials, including certificate issued by authorized agency from country of origin, designated point of entry, and quarantine actions.

3.3 Barriers to trade in services

Some of the service sectors in Indonesia have been liberalized while others haven't.

3.3.1 Financial and banking services

Currently, there are 8 exclusively foreign owned banks in Indonesia. After the Asia Financial Crisis in 1998, the Indonesian Government started to impose restrictions on foreign banks regarding the opening of their branches in Indonesia, requiring a registered capital of Rp3 trillion (over US \$ 300 million). Paid in capital requirements for companies with a foreign joint venture partner are twice that of domestic companies. Foreign insurance companies may establish a joint venture in Indonesia. All insurance policies are to be taken out with either domestic Indonesian companies or joint venture companies unless the insured is a solely owned foreign entity or the risks are special and not covered in Indonesia.

3.3.2 Trade

While foreign investors may set up exclusively owned or joint venture trading companies, they are barred from domestic retail business and are only allowed to open supermarkets or shopping malls in large cities of Indonesia.

3.3.3 Legal services

In order to practice, all lawyers must hold Indonesian citizenship and a degree from an Indonesian legal faculty or other recognized institution. Foreign lawyers can only work in Indonesia as "legal consultants" and must first obtain the approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the Indonesian market must establish a cooperative relationship with a local firm.

3.3.4 Accounting services

According to relevant Indonesian regulations, licensed accountants must hold Indonesian citizenship. A foreign accounting seeking to enter the Indonesian market must form partnership with a local firm. Foreign accountants and auditors may act only as consultants and cannot sign audit reports.

3.3.5 Audio visual services

Foreign film and video distributors are not allowed to establish branches or subsidiaries in Indonesia. According to the Film Law of Indonesia, the importation and distribution of foreign films can only be handled by local companies.

3.3.6 Transportation services

Foreigners are banned from investing in domestic Indonesian public transportation services including taxi, public buses and shipping, but are allowed to operate ocean transportation services.

3.3.7 Construction and related engineering services

Foreign consultants working under government contract are subject to government billing rates. Foreign construction firms are only allowed to be subcontractors or advisors to local firms in areas where a local firm is unable to do the work. Besides, for government financed projects, foreign companies must form joint ventures with local firms.

3.3.8 Telecommunications services

Foreign investors may establish joint venture telecommunications companies in Indonesia, but foreign ownership is limited to 35%. Indonesia has opened its mobile communications services to foreign investors.

3.3.9 Medical services

Medical services are basically closed to foreign investment.

3.4 Intellectual property protection

In Indonesia, there is a protruding problem of frequent and malicious trademark squatting of famous Chinese names, such as “JD” diesel engines and generators, “PHOENIX” bicycles, “MARQUIS” pumps, “DAYANG” motorcycles, “Crevon” motorcycle chains from Qingdao, and “YUNNAN BAIYAO”. An Indonesian Chinese by the name of Dhalim Seokodanu alone has squatted over 50 well known names of traditional Chinese patent medicine, including “TONG REN TANG” and “PIENTZEHUANG”. Trademarks of most famous Chinese iron padlocks, such as “808”, “101”, “HORSE”, “THREE RINGS”, “DIAMOND”, AND “TIGER S

HEAD” have also been squatted by different Indonesians.

These Indonesian squatters either know something about these Chinese products or used to be the agents for the relevant products whose agency agreements have been somehow terminated. The rampant squatting of Chinese trademarks of famous names by these former agents has caused huge losses to relevant Chinese producers, and as a result, many famous and high quality Chinese products have been forced out of the Indonesian market. Such practice has led to the emergence of fake Chinese products in the Indonesian market which were exported deliberately from those who specialize in making fake products in China. This has not only hurt the rights and interests of the Indonesian consumers, but also disrupted the production and circulation order of both China and Indonesia, and ruined the reputation of famous Chinese names. Although certain individual Chinese producers have resorted to judicial means and provide grounds to safeguard their rights and interests, solving trademark squatting through judicial means is costly in Indonesia. Even though the case was eventually won, enforcement of court decisions would be difficult.

The Chinese side expresses a grave concern over the infringement on the intellectual property rights of Chinese companies in Indonesia as well as the lack of effective protection of the legitimate rights and interests of Chinese companies, and hopes that effective measures will be taken by Indonesia to improve its IPR protection system and provide a fair and reasonable environment for trade and investment between China and Indonesia.

3.5 Other barriers

“Grey Customs Clearance” is quite prominent in Indonesia. Most of the goods importing into Indonesia, especially Chinese containers, are handled by Indonesian clearing companies, which are estimated to be 300 approximately. As far as the current situation is concerned, these clearing companies charge a fee of US \$ 400—600 per container sized 20 inches and US \$ 600—1, 000 per container sized 40 inches, in addition to import duties and a VAT of 10%. As Chinese goods are moderately priced to achieve a high turnover, per unit value of the goods is quite low. Therefore, charging clearance fees based on the number of containers has a negative impact on Chinese imports to Indonesia.