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主旨：有關汶萊、印尼、馬來西亞及泰國將於本(2009)年第1次資深官員會議(SOM I)期間接受APEC個別行動計畫同儕檢視(IAP Peer Review)案，請惠檢視專家所提印尼及汶萊IAP專家研究報告中 貴管相關部分並研提問題(中英文)，俾供我方與會代表運用，請 查照惠復。

說明：

- 一、依據APEC秘書處執行長Mr. Michael Tay本年1月19日電子郵件辦理(詳附件1)；本局本年1月15日貿亞字第09826500150諒達。
- 二、按2009年APEC SOM I於2月13日至14日期間對汶萊、印尼、馬來西亞及泰國進行個別行動計畫(IAP)同儕檢視。有關印尼及汶萊IAP專家研究報告電子檔項電郵提供 貴單位在案，請惠檢視專家所提研究報告中 貴管相關部分並研提問題(中英文)，並於2月3日前電郵本局承辦人彙辦(舒志宏；聯絡電話：02-2397-7406；電子郵件：alfredoshu@trade.gov.tw)。
- 三、另馬來西亞之專家報告俟收到後隨即提供。

正本：教育部、國家通訊傳播委員會、中央銀行、行政院公共工程委員會、行政院農業委員會、行政院勞工委員會、行政院公平交易委員會、行政院體育委員會、行政院衛生署、行政院環境保護署、行政院新聞局、行政院文化建設委員會、行政院大陸委員會、行政院金融監督管理委員會、行政院經濟建設委員會財經法制協調服務中心、行政院經濟建設委員會綜合計劃處、行政院經濟建設委員會經濟研究處、行政院勞工委員會職業訓練局、行政院農業委員會動植物



國章

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院衛生署食品衛生處、行政院衛生署藥政處、行政院衛生署醫事處、中央健康保險局、外交部領事事務局、財政部關政司、財政部關稅總局、財政部賦稅署、法務部檢察司、法務部法律事務司、內政部營建署、內政部地政司、內政部社會司、內政部兒童局、內政部入出國及移民署、內政部警政署航空警察局、交通部航政司、交通部路政司、交通部郵電司、交通部民用航空局、交通部觀光局、交通部運輸研究所、經濟部投資業務處、經濟部投資審議委員會、經濟部標準檢驗局、經濟部工業局、經濟部智慧財產局、經濟部能源局、經濟部國營事業委員會、經濟部商業司、經濟部水利署、台灣經濟研究院中華台北APEC研究中心、中華經濟研究院、中華郵政股份有限公司、本局多邊貿易組、本局雙邊貿易一組、本局貿易服務組、本局電子商務小組、本局APEC專案小組

副本：外交部國際組織司、本局局長辦公室、徐副局長辦公室（均不含附件）

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局長 黃志鵬

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**Indonesia 2008-2009
Individual Action Plan Study Report**

Tze-Wei Chen and Peter A. Petri

**Asia Pacific Economic Cooperation
12 January 2009**

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9. GOVERNMENT PROCUREMENT

The Presidential Decree No. 80 of 2003 establishes the legal foundation of the current government procurement practice. In practice, National Agency for Government Procurement Policy currently assumes the responsibility of coordination.

The basic formats of procurement methods are not too different from the practices around the world. According to information submitted to APEC by Indonesia, there are four types of procurement processes. "Public tenders" is the open invitation to all qualified bidders. The purpose is to solicit the maximal number of capable bidders to compete. Announcements are made through national newspapers and government procurement websites. However, qualified bidders must be either listed on the List of Capable Contractors or pre-qualified by the Tender Committee. "Limited tenders" must have at least five qualified bidders solicited through public announcements. For smaller contracts between Rp. 15 million and 50 million, "direct selection" can be used. The process includes comparing price and technical offers of three or more bidders listed on the List of Capable Contractors. The final price can be reached by negotiations. Procurements under Rp. 15 million are reserved for small, economically weak group of contractors and cooperatives. Only SMEs can bid on this type of projects. For this type of procurement, the procurement team may then directly award the tender after determining that the bid is fair and reasonable. ✓

Recent reforms have revised the Presidential Decree No. 80 of 2003, Presidential Decree No. 8 of 2006 being the fourth, to strengthen efficiency, transparency, accountability, fair competition, non-discrimination and anti-corruption capability of the government procurement procedure. A certification of professional procurement personnel mechanism is also in place to enhance the competence of officials handling government procurement projects. Officials who pass the examination will be assigned a procurement ID number for accountability purpose and officials have to retain training hours after passing the certification examination to remain eligible.

As of the time of this study, the National Agency for Government Procurement Policy is just established by expending the scale of its predecessor and is still in the process of recruiting and training staff members while at the same time taking over the responsibility as the coordinating agency. According to the authorities, the staffing process is expected to be completed in the coming months. However, the procurement reform process continues. Presidential Decree No. 8 of 2006 also includes e-procurement and green procurement related works.

Government procurement practices in the past have seen manipulations. Negative news about procurement flaws suggest that bid-rigging does exist and KPPU has ruled against many cases. Indonesia recognizes the problem and appears to be active in preventing future violation of the law by revising laws/regulations and training of professionals.

As other chapters in Indonesia's IAP, government procurement is progressing in a very positive way. The results of this wave of reform are yet to be seen as the new policies and agency is still in the process of establishment.

11. WTO OBLIGATIONS

The government is committed to the "full and effective implementation of the Uruguay Round outcomes within the agreed timeframe and in a manner consistent with the letter and the spirit of the WTO Agreement." It is introducing legislation, where needed, to align national laws with WTO practices and is participating actively in training programs to implement WTO requirements. For example, since the last IAP review, Indonesia has bound additional service commitments under GATS and has ratified the GATS protocols in financial services and telecommunications. It has also drafted and submitted to Parliament an ambitious new law on Intellectual Property Rights (IPR) to provide legal foundations for more effective enforcement methods.

Overall, Indonesia has already implemented wide-ranging reforms to meet its Uruguay Round obligations. Since 1996, it has bound 95% of its tariff lines, reduced simple average tariffs to 8%, removed an extensive import surcharges, eliminated local content requirements in the automotive sector, discontinued non-tariff barriers on various agricultural products, modernized the legal foundations of its IPR regime, and expanded access to foreign participation in its financial, telecommunications and transport sectors.

Indonesia's efforts to streamline its trade policies continue. The current phase of the Tariff Harmonization Program, to be completed by 2010, will shift many tariff lines into fewer, lower bands. By 2020, virtually all Indonesian MFN tariffs lines will be subject to rates no higher 10%, broadly in line with the Bogor Declaration's commitment to free and open trade in the region.

12. DISPUTE MEDIATION

The framework for Indonesia's dispute mediation mechanism is a 1999 Law on Arbitration and Alternative Dispute Resolution. The system is facilitated by the Indonesian National Board of Arbitration (BANI), which has assembled a panel of accredited arbitrators and signed cooperation agreements with similar centers in other Asia Pacific economies. Several other institutions are also available to facilitate mediation. Mediation processes may be governed by the rules of BANI or by internationally accepted norms such as the UNCITRAL Arbitration Rules of 1976.

With respect to international disputes, Indonesia has been a complainant in a WTO case brought against Korea on antidumping duties applied to Indonesian paper exports, and was one of several complainants in a case against the United States on the Continued Dumping and Subsidy Act of 2000, usually referred to as the Byrd Amendment. These cases continue; although the United States took steps to repeal the Byrd Amendment, the complainants are not yet satisfied that the steps bring US policy in line with the Dispute Settlement Body's (DSB/WTO) recommendations.

Indonesia was the defendant in a dispute concerning the automobile case before the DSB/WTO brought by United States, European Union and Japan in 1996. The DSB decided that Indonesia's automobile policy should be removed. Indonesia was also a party in one dispute involving a Japanese claim on the customs classification of digital cameras in 2006, but the claim was resolved by Indonesia's decision to remove duties before the case was to be sent to the DSB/WTO for settlement.

14. INFORMATION GATHERING AND ANALYSIS

The transparency of rules and regulations is widely recognized as an important dimension of good governance. It serves several objectives—it lowers the costs of gathering information necessary for business decisions, it reduces uncertainty about the time and costs involved in implementing a project, and it removes the scope for illegal or unethical discretion by those involved in implementing government policy. The Internet has greatly reduced the costs of transparency and is increasingly used by governments, in Indonesia and elsewhere, to improve the climate for doing business. At the same time the wide availability of online information has created new, high standards for judging the transparency of government policies. Indonesia has substantially increased the amount of information it publishes online but, like other governments, it too faces rapidly rising expectations for the extent and quality of information available.

An overview of websites that Indonesia uses to make its policies known is provided in the Appendix. There is no doubt a large amount of information is available now online, but judging from the questions of some economies to Indonesia's IAP submission, there are still opportunities for improving the "user friendliness" of sources.

17. FTAS AND RTAS

Disappointments in the Doha Round have led to an acceleration of regional trade agreements involving Asian economies, including Indonesia. Indonesia's regional trade policy has been anchored on its participation in AFTA, but Indonesia has also pursued separate bilateral agreements as well as participating in agreements concluded by ASEAN with other trading partners. In the context of Indonesia's relatively liberal trade regime, these agreements have generated new opportunities for Indonesian exporters while helping to provide additional motivation for an open trade policy.

The reduction of tariff protection within AFTA is now almost complete; Indonesia has reduced 11,034 tariff lines facing other ASEAN economies to under 5% and has no products on the temporary exclusion list. NTMs are being eliminated through three annual work programs beginning with 2008, and Indonesia reports meeting the schedule so far (WTO, 2007).

As Annex 4 shows, Indonesia is a party to 14 FTA or Framework agreements and is in negotiations on two others, with Europe (as part of ASEAN) and with the United States. Most of Indonesia's agreements have been concluded in the ASEAN context, but in an important recent case Indonesia signed an Economic Partnership Agreement directly with Japan. This is an innovative agreement: in return for conventional concessions on market access, Indonesia was able to obtain Japan support for measures to transfer technology to Indonesia, which in turn could help to attract Japanese and other foreign investment (see Box 4). These measures will benefit both Japanese investors and Indonesian companies, and represent a new way to achieve bilateral gains from economic cooperation.

BOX 4. BEYOND THE WTO: COOPERATION IN EPAS

The Japan-Indonesia Economic Partnership Agreement (JIEPA) concluded in July 2008 aims to promote trade, stimulate Japanese investment in Indonesia, and enhance Indonesian economic and technological capacity. This last element is novel and important—from Indonesia's viewpoint it will enhance Indonesia's competitive edge in attracting Japanese investment and competing in third markets, and from Japan's viewpoint it will raise the productivity of Japan's investment outflows. Since Indonesian MFN trade barriers are higher than those in Japan, lowering bilateral barriers will benefit Japan through the conventional channel of increased exports. But since Japanese trade barriers are already low in many areas, the benefits associated with technological cooperation represent an especially important rationale for Indonesian participation. Such an exchange of different types of benefits would not have been possible within the conventional WTO negotiations.

The JIEPA identifies priority areas for cooperation in manufacturing, agriculture, forestry and fisheries, trade and investment promotion, human resource development, tourism, information and communication technology, financial services, government procurement, environment, energy and mineral resources. It even includes provisions for training Indonesian nurses to work in Japan.

Cooperative activities will include a new "Manufacturing Industry Development Center" in Indonesia to enhance Indonesian manufacturing capabilities. Its projects might include the provision of experts and equipment, visits to Japanese companies, and various types of training, including basic study, seminars and workshops.

Manufacturing sectors to be emphasized will include metal working; tooling (mold and die) techniques; welding techniques; energy conservation; small and medium enterprise promotion; export and investment promotion; automotive and auto parts; electric and electronic equipment; steel and steel products; textiles; petrochemicals; oleo-chemicals; non ferrous metals; food and beverages.

In agriculture, forestry and fisheries, Indonesia and Japan will work on the improvement of post-harvest handling and marketing; standardization and quality control, including thermal treatment against fruit flies on fresh mangoes; technical assistance to small and medium enterprises in the Indonesian fish and shrimp industry; sustainable fisheries; mangrove management; and the development of small diameter log processing.

A key goal of cooperation is to upgrade the qualifications of Indonesian suppliers so that they can participate more effectively in regional production networks. Such improved supplier capabilities, in turn, will also benefit Japan, since they will make Japanese companies that invest in Indonesia more productive and competitive.

In the short period since the collapse of the Doha negotiations at the July 2008 WTO Ministerial, ASEAN has quickly concluded trade agreements with India, Japan and Australia and New Zealand.

As a result of these agreements and those completed earlier with China and Korea, much of Indonesia's trade is now under an FTA. Because of its generally open markets and the availability of a wide range of factors of production, Indonesia could become an especially attractive destination for investments designed to serve the emerging ASEAN-based trade hub.

If the agreements with Europe and the United States were also concluded, the share of Indonesia trade under FTAs would rise by a further 23%. President Yudhoyono recently called for a new strategic partnership with the United States, perhaps as a first step in reinvigorating the FTA negotiations between these economies. These developments have far-reaching implications for Indonesia—with the full hub complete, Indonesia would enjoy free access to nearly all of its important export markets, many of which are in APEC.

The economics of trade agreements does raise the concern that the proliferation of Indonesia's FTAs will lead to trade diversion and impede the development of an efficient pattern of global trade. In Indonesia's case these threats are likely to be limited; Indonesia's liberal trade regime limits the margin of preference offered to regional partners. In addition, as already noted, the Indonesia has tended to follow up on preferential tariff reductions by also reducing MFN rates.

Indonesian trade policy trends—which have been sustained in the face of a difficult political and economic environment in 1997-98 and beyond—suggest steady liberalization and continued progress toward open markets. These trends are likely to be challenged again, at least for a while, by the economic downturn taking shape in 2008. But by maintaining the clear strategy Indonesia followed in recent years, it is on track to meet the Bogor targets by 2020. Indonesia will have additional incentive to continue its liberalization in the context of the new wave of trade agreements that have been recently concluded or are underway in Asia. Just protection fell in the 1990s as a result of commitments it made in the Uruguay Round, so protection should decline further in the next decade as a result of commitments undertaken in ASEAN and with other partners in the emerging ASEAN-based free trade hub. The government's statement that "Indonesia is on track in its efforts to achieve free and open trade in 2010/2020 by progressively reducing its tariffs and enhancing the transparency of the tariff regimes" is consistent with the evidence and appears well justified.

2009 APEC IAP Peer Review Study Report: Brunei Darussalam

2009/SOM1/XXXX

2009 APEC IAP PEER REVIEW

STUDY REPORT

BRUNEI DARUSSALAM

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9. Government Procurement

Objectives:

APEC economies will:

- a. develop a common understanding on government procurement policies and systems, as well as on each APEC economy's government procurement practices;
- b. achieve liberalization of government procurement markets throughout the Asia-Pacific region in accordance with the principles and objectives of the Bogor Declaration, contributing in the process to the evolution of work on government procurement in other multilateral fora;
- c. increase the use of electronic means to conduct government procurement and in so doing seek to promote the uptake of e-commerce more broadly; and
- d. implement and maintain standards consistent with the APEC Leaders' Transparency Standards.

Brunei Darussalam's 2008 IAP contained no Chapter on government procurement. Brunei officials indicated there have been no changes since the previous IAP. Brunei Darussalam last included such information in its 2007 IAP.

As long as Brunei Darussalam's public sector is the main economic force in the country, government procurement will be a crucial matter. According to figures for various years, state acquisitions have been as high as 7% of GDP.

At the international level, Brunei Darussalam has not signed the WTO Government Procurement Agreement. Conversely, Trans-Pacific SEP features a broad coverage. The Financial Regulations, issued in 1983, are the main legislation on government procurement. Ministry of Finance circulars provide guidelines. Tenders over B\$500,000 are analyzed and approved by the State Tender Board; lower tenders are approved by Mini Tender Boards in every Ministry.

The Government invites firms to tender in procurements above B\$50,000, through either Open Tender, Selective Tender or Exemption (or Limited) Tender. The rules are published in the *Government Gazette* and the main domestic newspaper (*Pelita Brunei*). The Auditor General can obtain records of procurement decisions by the State Tender Board and Mini Tender Boards for check-and-balance purposes to ensure compliance to tender procedures.

Foreign firms can participate in tenders individually but it is advisable for them to form joint-ventures with selected local companies. This improves their chances of getting contracts as local partners can make easier registration, communication with the government, and recording activities.²⁹

²⁹ WTO, 2008, p. 51.

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