UNIVERSITAS PELITA HARAPAN
CITI CENTER FOR INTERNATIONAL TRADE & INVESTMENT

# Indonesian Trade and Investment Quarterly

1st Quarter 2016

## In This Issue



# A Force to be Reckoned with: E-commerce, FDI and the Indonesian Economy

Bayan Edis*

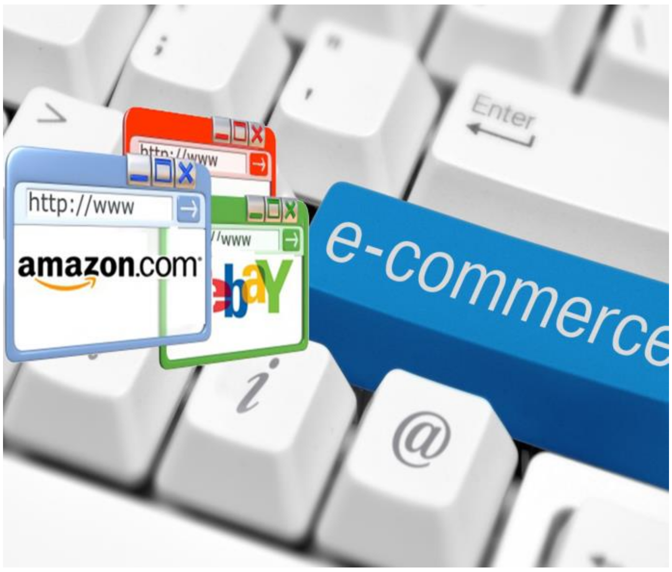
Recent announcements that foreign direct investment (FDI) rules will be relaxed for the e-commerce sector have fueled optimism amongst the growing number of e-commerce businesses operating in Indonesia. After a review of the negative investment list, the country's Investment Coordinating Board (BKPM) revised the list to remove e-commerce, although foreigners can only hold complete control of a business under a high investment threshold. The revision allows for foreigners to control 100 percent of a business if their investment surpasses RP 100 billion. Investment between RP 10 billion and 100 billion allows for 49 percent foreign ownership while investments below the RP 10 billion threshold still do not allow for foreign ownership. The potential impact of a more liberalized investment landscape for e-commerce is immense. World Economic Outlook data suggests that e-commerce attracted some 37 million consumers in 2015 alone. Projections estimate that these numbers will rise, resulting in the e-commerce industry adding USD 130 billion to the Indonesian economy by 2020.

Major players, such as MatahariMall, Lazada, Tokopedia and Tiket, to name just a few, currently dominate the industry, although the majority of e-commerce businesses in Indonesia are of much smaller scale. Publically available figures for these larger companies highlight substantial growth in earnings and in terms of consumer reach. The removal of e-commerce from the negative investment list paves the way for more competition to access this growth in the burgeoning Indonesian e-commerce sector. It also reflects positively on the Central Government's recent sentiments towards a more outward oriented economic growth strategy. A recently released 'e-commerce roadmap' by the Ministry of Communication and Information signals a more appealing investment climate for foreign investment into the e-commerce industry, including plans for government subsidized loans for start-ups and a Technology Board to be established at the Indonesia Stock Exchange in the

*The author is visiting researcher at UPH-CITI

next two years. The changes signal growing recognition that the infant industry possesses great potential for the future of Indonesia's economy to catch wind on the sails of the digital and mobile commerce revolution, and foreign investment will be crucial.

The FDI changes have been widely understood as a nod to foreign investors. And there is no mystery why the revision of the negative investment list will catch their eye. McKinsey Global Institute analysis projects that by 2030, approximately 90 million Indonesians will have joined the 'consuming class', since 2010. That constitutes and ever-widening pool of Indonesians with buying power. Coupled with the growing accessibility of the Internet and digital payment methods through more and more affordable smartphones, investors are presented with a landscape that, at least in theory, promises abundant opportunity.

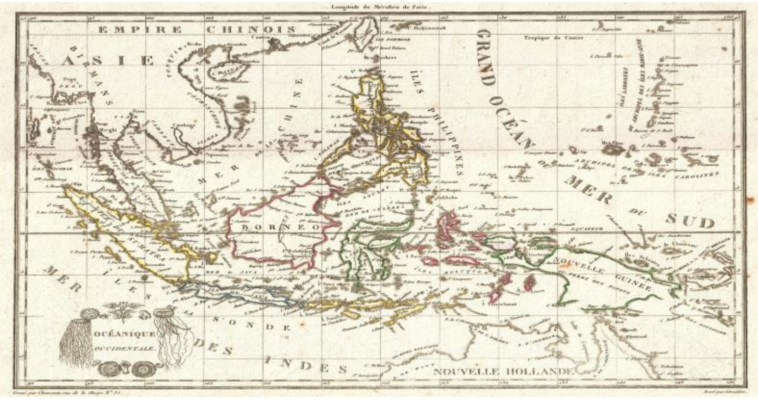



In fact, the change has already prompted e-commerce giant eBay to announce the opening of an office in Indonesia. The move may very well be underlined by a recognition of the impact that FDI will have as a whole on the e-commerce industry in Indonesia. Foreign investment also brings with it knowledge and experience which can be transferred into fueling the emerging industry in Indonesia. While short-term costs may be incurred in supporting the e-commerce industry, the long term gain of an Indonesia with strong local and international e-commerce resources are invaluable. This cannot happen without a more liberal FDI scheme.

"The move to alter the negative investment list marks a welcome change at a time when there is concern over a slower performing economy."

The move to alter the negative investment list marks a welcome change at a time when there is concern over a slower performing economy. It would seem that Indonesian decision makers might be recognizing that strong economic nationalist sentiment is scaring away foreign investors and creating a testy environment for trade and investment more broadly. Negative investment lists and regulatory burdens for foreign businesses in general are rarely a pleasant thought for proponents of trade liberalization. Perhaps the slowing economy has acted as a wakeup call for decision makers who have been sitting on the fence. Still, the investment list changes have not come without controversy. Some critics worry that foreign investment thresholds may create disproportionately large foreign e-commerce giants, nudging out fledgling Indonesian businesses. Others maintain broader protectionist stances that disprove of a smaller negative investment list. While such concerns cannot be completely overlooked in a democracy such as Indonesia, emotional responses to the prospects of more foreign investment are baseless. The true potential of such an important global economy as Indonesia's cannot be realized when domestic vested interest is masked by the spread of fear for incoming foreign trade and investment.

While the recent findings of the BKPM present an encouraging picture of the direction of FDI measures, there are still complex systemic challenges that the emerging e-commerce industry will face. These include regulatory, infrastructure, the reach of digital payment systems and unique Indonesian consumer spending habits. Many of these points have been addressed, at least in principle, by the government's e-commerce roadmap, which strives to take a holistic approach to supporting the growth of the e-commerce sector. It remains to be seen, however, how these lofty goals are implemented in practice. Nevertheless, there is no doubt that e-commerce in Indonesia, buoyed by FDIs, will create a force to be reckoned with, both locally and abroad, as the industry inevitably matures.




Indonesian Trade and Investment Quarterly

1st Quarter 2016

# Indonesia's Halal Port: Favorable Wind or Crushing Tide?

Oscar Fernando*

Halal is a complex religious concept which can have far-reaching implications for daily consumer products. Halal does not only mean that a product is free from pork or alcohol, but also produced in a halal system and not contaminated with non-Halal materials, from farm to fork. One important aspect of trading halal products is the logistics. In February 2016, the Majelis Ulama Indonesia (MUI) signed an MOU with a state-owned company to develop a Halal certified port in Tanjung Priok. A ceremonial signing marked the beginning of the construction process, and by the end of March 2016 the Halal port in Tanjung Priok will be fully operational. Widely regarded as the first Halal port in Indonesia, it will be built on 6 hectares land. The Main purpose of the port is to accommodate the logistics of Halal products in the region.

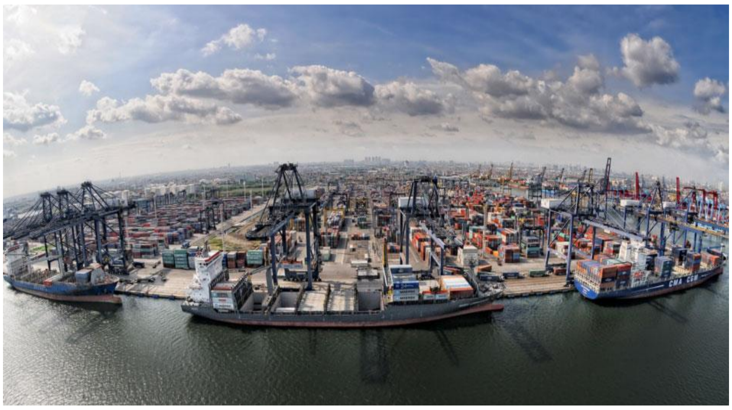
Although the development of the port is being hailed by certain interest groups, a number of unanswered questions remain to be answered. The main idea of a Halal port is to separate between Halal and non-Halal products, so contamination can be prevented. The functionality of the Halal port, however, is still ambiguous. It is still unclear whether Tanjung Priok will be the only port that can process imports and exports of Halal products or whether other ports will still be allowed to do so. It is also still unknown whether the Halal port will provide certification processes or only provide logistics services.

Indonesia's Halal standards are known as one of the highest Halal standards in the world. Currently, Indonesia only acknowledge 43 Halal Certifier Bodies from 24 countries. However, one country often has several Halal Certifier Bodies. If the Halal port will only serve those acknowledged labels, the possibility of discrimination between labels could give rise to negative implications for international trade. Under such a standard, imported products that arrive at Indonesia's borders with labels from a Halal Certifier Body that is not acknowledged will be rejected. This has geographical and financial implications for foreign businesses and creates a non-tariff barrier.

Another issue is customs clearance and dwell times under a Halal port. Last year, the issue of dwell times was picked up in headlines across Indonesia. This year, Tanjung Priok has succeeded in cutting down the dwell time to less than a week, according to the Director General of Customs. In relation to a Halal port, there will be certain procedures that need to be carried out in order to ensure the Halalness of a product. Taken together with the process of customs clearance, the process of analysing the Halalness of a product can prolong the process. At this stage, there has been no clarification of whether the Halal port will provide customs clearance services or not. If customs clearance services are not provided, the dwell time in the port will increase due to another check about the Halalness of the product in the Halal port. This is an issue, especially for horticulture and perishable goods considering Indonesia's currently applied strict regulation for the importation of horticulture products.

Having Indonesia's only Halal port in Tanjung Priok, Jakarta, versus other Indonesian locations, is not so much an issue at present as Jakarta is the country's largest market. However, if Halal ports are established throughout Indonesia in the future, and non-Halal products are restricted to ports at a distance far the main markets, trade

*The author is research associate at UPH-CITI barriers may arise. It will likely add significant cost to businesses to bring their products to non-Halal ports and then transport them to main markets like Jakarta. Not to mention the costs of such transportation if the products are perishable goods, which require specific transport conditions at a higher cost to maintain the quality.



Whenever cost to businesses increases, consumers are generally the ones who suffer. Adding costs to logistics, in the form of a Halal port, will likely affect the price, as producers tend to share the burden on consumers. Consumers will not be able to afford the products if the price is too high. In terms of food, price hikes ultimately will relate to problems of food security. The food may be available in the market, but the people may not have access to buy food if the price is too high. In this case, the government's objective of food security will be hard to achieve.

The idea of a Halal port and halal hub system is understandably good if the government wants to seize the opportunity that Halal markets provide. However, the interests of all stakeholders need to be addressed. In doing so, the ultimate cost to the consumer must be calculated. It is important for decision makers to make a thorough assessment in terms of what extent the Halal port will operate. Otherwise, the consumers will bear the cost of having a Halal port and only certain interest groups will benefit from establishing such an infrastructure.

# Fighting unhealthy products: Where is the limit?

Iman Pambagyo*

Indonesia, together with Cuba, Honduras and the Dominican Republic, is challenging Australia's plain packaging measures on tobacco products at the World Trade Organization (WTO). The first substantive hearing between the panelists, co-complainants, the respondent and more than 30 third parties took place on 1st through 5th June 2015 in Geneva in what many considered as the largest dispute case held by the WTO in term of number of parties. At the heart of the arguments put forth by the co-complainants is that the policy violates internationally accepted obligations as provided under the Trade-Related Intellectual Property Agreement and the Agreement on Technical Barriers to Trade.

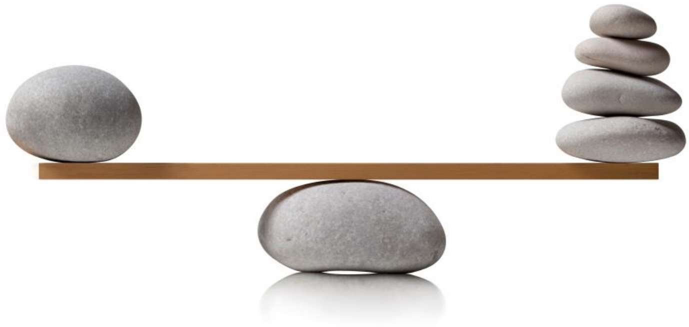
The theory of plain packaging is that by mandating the use of a uniform, ugly color and denying brand owners the use of their trademarks on their products can deter consumers from consuming unhealthy products. Therefore, as the logic of this theory goes, any product deemed unhealthy by the government could potentially be stripped of all brandings and preferred colors. If this is permitted under the WTO agreements, nothing will prevent the same from being applied to any other product believed to be harmful to human health.

"If a plan packaging requirement with the elimination of trademarks is deemed appropriate to pursue a public health objective, it will certainly be adopted to pursue others."

The co-complaining countries will of course let the panelists do their work to come to a legal finding whether or not the measures adopted by Australia is indeed breaching the existing WTO Agreements. But looking around the corner, it is surprising to learn how discussions on ways to curb the so-called unhealthy products or diets have evolved in a strikingly similar way than that of tobacco products. On May 2014, for example, the UN Special Rapporteur on the right to food, Olivier De Schutter, called for a new global agreement to regulate unhealthy diets. He insisted that "*[u]nhealthy diets are now a greater threat to global health than tobacco. Just as the world came together to regulate the risks of tobacco, a bold framework convention on adequate diets must now be agreed*." Earlier in March 2014 World Health Organization (WHO) launched a public consultation on its draft guideline on sugar intake. Further, in February 2015, the *Lancet*, one of the world's oldest and best known medical

*The author is former Indonesian Ambassador to the WTO. A version of this article appeared in the Jakarta Post on 11/8/15: *'Opinion: Fighting Unhealthy Products: Where is the Limit?'*

journals, published a special edition on obesity prevention and called for greater government control and advocates bringing about healthier environment through social engineering.

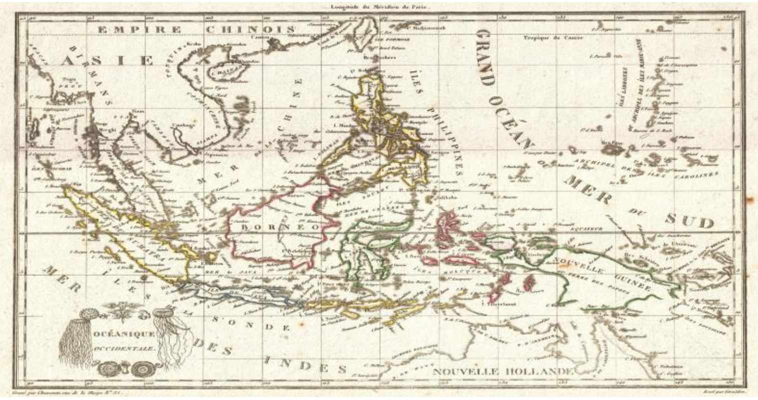


Similar calls were made to curb the consumption of alcoholic beverages in countries like Ireland, Thailand, the United Kingdom, and Turkey. Back in 2012, the UK Parliament's Health Committee held an inquiry on government's proposal so far as they relate to health issues, and in particular looked at plain packaging and marketing bans on alcoholic beverages. It is interesting to note that the European Alcohol Policy Alliance, "*euro care*," finds that alcohol drinks score worse than tobacco in terms of risk for a third person, number of persons at risk, cost to the economy and society, appeal to young people and children, and social acceptance, and scores better only in term of level of regulation.

Those are just a few examples how discussions on curbing unhealthy products have been evolving, and it can be expected that they will follow the same path as curbing the prevalence of smoking: first, mandated labelling, followed by the adoption of mandatory graphic warnings to provide illustrations to the public of the adverse impacts of the product in questions. If graphic warnings are not deemed enough, plain packaging will be seen as the next step to limit the consumption of the product. Interestingly, this trend does not finish with the tobacco products. In addition to tobacco, there are already calls to follow the same path with a long list of other products, from infant milk formula and vegetable oils, to alcoholic beverages and products associated with higher blood tensions, obesity and diabetes.

There are a huge number of public policy priorities being considered or adopted by countries around the world. If a plan packaging requirement with the elimination of trademarks is deemed appropriate to pursue a public health objective, it will certainly be adopted to pursue others. This is, as shown above, not mere speculation but a clear reality. Hence, the importance of the ongoing WTO case to determine what can be done.

Like other countries, Indonesia has adopted or is considering the adoption of measures to combat unhealthy products including tobacco. With regard to the latter, Indonesia adopts graphic health warning on 40% of the pack—stricter than half of the WHO Framework Convention on Tobacco Control's signatories. Indonesia also takes on a stricter regulation on tobacco billboard advertising than G8 countries like Germany and the United States, as well as a ban on smoking in public places. Challenging the implementation of Australia's plain packaging measures on tobacco products is not by any means to be interpreted as if Indonesia considered tobacco smoking not harmful to human health. Rather, Indonesia believes that the measures are more trade-restrictive than necessary to fulfill a legitimate objective. If the WTO Dispute Panel finds that governments could justifiably implement the plain packaging measures on tobacco products, we then need to prepare for the proliferation of plain packaging measures on other products. This could be the beginning of a slippery slope to fundamental disruption of global consumer markets with unprecedented consequences.




# Indonesian Trade Minister's Views on Trade and Economy

1st Quarter 2016

## Indonesia's Tom Lembong: 'Let's move away from playing games'

This piece is adapted from an interview by Maria A. Ressa of Rappler. The full interview can be found at:
http://www.rappler.com/thought-leaders/113434-indonesia-minister-tom-lembong-trade-politics

“The antidote is very simple,” he added. “Let’s move away from the cynicism. Let’s move away from playing games, right? On the trade front, let’s be honest. We all talk about free and even fair trade, but what do we do in practice? The truth is since the global financial crisis in 2008, most countries, including Indonesia, have been quietly rolling out protectionist measures,” Tom said.

“Correct. I’m so glad you said this,” Maria responded.

“Well, I think the cynical approach would be to deny it or to cover it up. Or engage in a bunch of rhetoric,” Tom continued. “Let’s start by telling the facts, by admitting the truth. And let’s look at something else very factually, very honestly. Have these measures been helpful? For the last 3 years, global economic growth has been very weak. Emerging markets, which would have been probably most active in rolling out these protectionist measures, have seen their currencies collapse,” Tom added

“Are we going to see this change?” Maria asked.

“I think so,” Tom answered. “Personally, I believe we’re just going back to what the Indonesian culture is actually anyway. We’re not a defensive culture. We’re not a closed culture. We’re not a culture of losers. You know, we’re a culture of winners. We’re a very diverse society full of tolerance for each other so our economic policy should be like that. Our trade policy should be like that. I mean, there should be other countries that have a culture of being very closed, very defensive, but I just don’t see where that applies to us,” Tom said.

## Indonesia in 'Big Push' to Open Up Economy to More Investment

*This piece is adapted from an interview by Bloomberg’s Haslinda Amin. The full interview can be found at:
http://www.bloomberg.com/news/articles/2016-02-10/indonesia-in-big-push-to-open-up-economy-to-more-investment

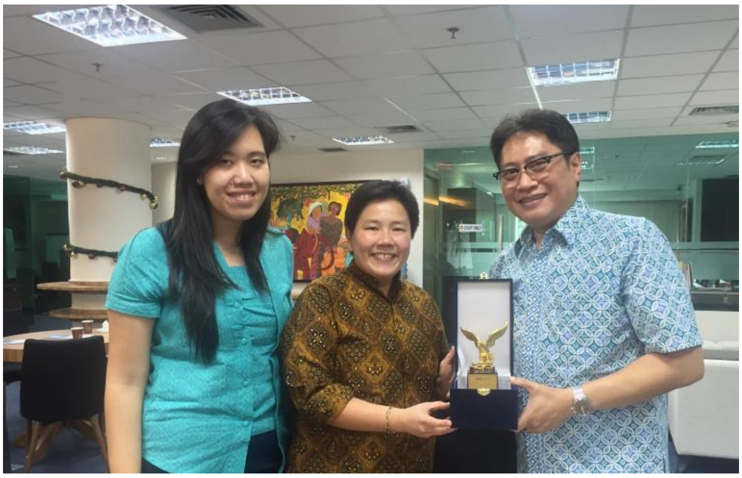
Indonesia is intent on opening up previously closed sectors of the economy to foreign capital, the trade minister said, as the government prepares to announce changes to its investment guidelines. Greater foreign investment and increased government spending on infrastructure will compensate for weaker export performance and drive economic growth in Indonesia to as fast as 5.2 percent this year, Minister Tom Lembong said in a Bloomberg Television interview.

“We are opening up and rationalizing our investment regime,” said Lembong, a Harvard graduate who joined the government as part of a cabinet reshuffle in August. “It’s a big push. We had fallen behind from where we should be.”

Lembong said he expected expansion this year to be between 5.1 and 5.2 percent, up from 4.79 percent in 2015, which was the slowest annual rate of expansion since 2009. Foreign direct investment rose 7 percent in the final three months of 2015 from the previous quarter. Investment was up 3 percent the full year.

“We are seeing financial stabilization now,” Lembong said during the interview at his office in central Jakarta. “Our infrastructure program is now snowballing. That is the engine of growth.”

CITI regularly hosts seminars, workshops, and conferences related to international trade and investment. The events are generously sponsored by the WTO Chairs Programme.



## Distinguished Guest Seminar on "Nairobi 2015: A Make or Break Moment"

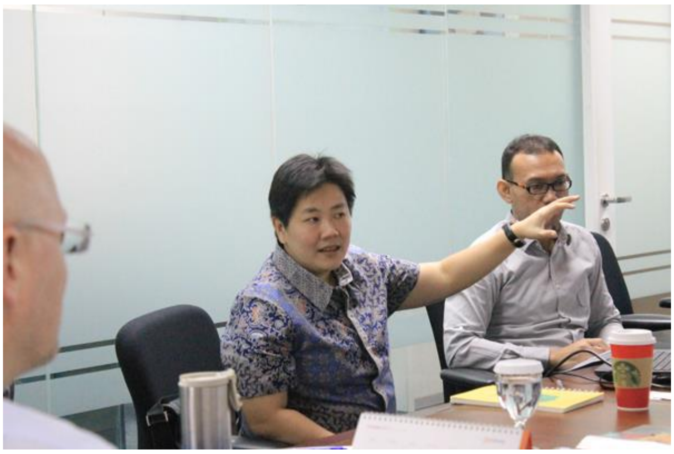
Jakarta, 8 December 2015

Center for International Trade and Investment (UPH-CITI) hosted a Distinguished Guest Seminar entitled, "Nairobi 2015: A Make or Break Moment". The seminar included H.E. Iman Pambagyo - former Indonesian Ambassador to the World Trade Organization (WTO) as the main speaker and Dr. Michelle Limenta, the UPH-CITI Director as the chair of the seminar. Ambassador Pambagyo talked about the progress of the Doha Development Agenda (DDA) and what is doable for the 10th WTO Ministerial Conference which was held in Nairobi.

## An interactive talk at EuroCham Indonesia Energy Working Group Meeting

Jakarta, 10 December 2015

Energy Working Group of EuroCham Indonesia invited Michelle Limenta, Ph.D. – Director of Center for International Trade and Investment (CITI) of Universitas of Pelita Harapan to discuss details and backgrounds of the recent laws/regulations in energy and natural resources sectors that have been challenged/changed based on Article 33 of the Constitution ( e.g. water law annulment, restriction in PLN pricing, oil and gas licensing, BP Migas, and recently PLN Union is challenging the 2009 law on Electricity).



## Guest Lecture by Former Indonesian Ambassador to the WTO on the Indonesian Trade Policy

Jakarta, 22 January 2016

On 22 January 2016, UPH-CITI invited Ambassador Iman Pambagyo, Former Indonesian Ambassador to the WTO to teach a session related to Indonesia's Trade Policy in Introduction to WTO Law Course at the Masters of Law Program in International Trade, Investment, and Competition Policy (MTIC).

UPH
UNIVERSITAS PELITA HARAPAN
CITI CENTER FOR INTERNATIONAL TRADE & INVESTMENT

CITI regularly hosts seminars, workshops, and conferences related to international trade and investment. The events are generously sponsored by the WTO Chairs Programme.

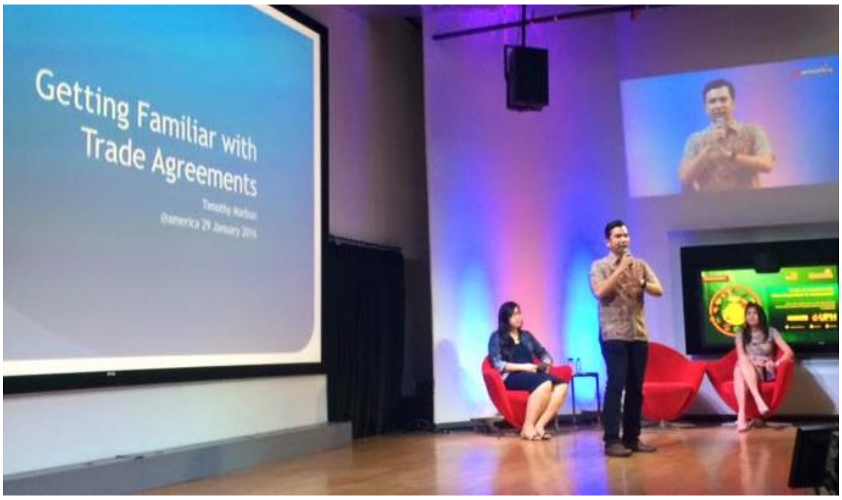
WTO CHAIRS PROGRAMME

## WCP Advisory Board Visiting UPH
Jakarta, 28-29 January 2016

Prof. Henry Gao – Member of Advisory Board of WCP met with Prof. Bintan Saragih – Dean of UPH Law School, John Riady – Executive Dean of UPH, and Joseph Koesnaidi – Trade Lawyer/Member of UPH-CITI Advisory Board and sharing his thoughts on the progress and development of WCP implementation in Indonesia.

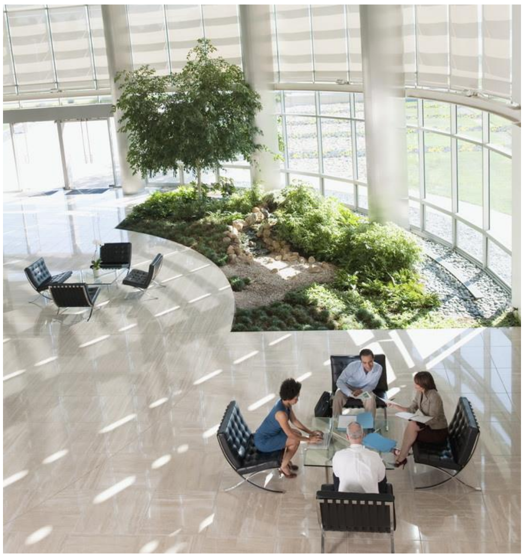
## Workshop on Trade and Investment: How Important to Indonesia (in collaboration with @America)
Jakarta, 29 January 2016

Jerry Shalmont – UPH CITI COO, Timothy Marbun – Journalist of Kompas Media and Sianti Candra – Law Practicioner gave a presentation about TPP Agreement to high school and undergraduate students. The workshop was held with the aim of promoting the importance of trade and investment and to build public awareness among young generation.




## Brown Bag Seminar on Disabling (Indonesia Halal) Labelling
Jakarta, 18 February 2016

The lunch seminar was presented by Michelle Limenta, Oscar Fernando and Bayan Edis. The seminar was focused on Indonesian Halal Law and its compliance with WTO TBT Agreement.



*Our goal: To be the preeminent center for thought leadership and expertise on trade and investment policy and law in Indonesia*

# Universitas Pelita Harapan - UPH

Founded in 1994 with the vision of educating a new generation of leaders for Indonesia and the wider ASEAN region, Universitas Pelita Harapan is the number one private university in Indonesia according to the QS World University Ranking 2013. UPH was the first University in Indonesia to introduce programs entirely taught in English, the first to offer a liberal arts curriculum, and the first to introduce a multi-disciplinary approach to its programs. While consistently underlining the vision of "knowledge, faith and character", UPH, in cooperation with overseas partner universities, has developed a very rich curriculum in many areas of study, ensuring that its graduates are respected globally and appreciated by modern business and industry.

# The Center for Trade and Investment -CITI

Established in September 2014, CITI's objective is to raise awareness in Indonesia of the importance of an outward-looking and liberal trade and investment policy, so as to ensure the country's continued commercial competitiveness and support its economic development goals. CITI runs a number of research, education and outreach initiatives with the generous support of both the Swiss State Secretariat for Economic Affairs (SECO) and the WTO Secretariat (WTO Chairs Program).

**Featured Contributor**

Ambassador Iman Pambagyo was the Indonesian Ambassador to the World Trade Organization (WTO) from September 2014 to October 2015. Ambassador Pambagyo also had many appointments, *inter alia*, as the Chair of WTO-G33 Developing Countries – Agriculture, Head of Indonesi's National AFTA Unit and Co-Chair for ASEAN-US Trade and Investment Framework.

Currently, Ambassador Pambagyo is the Chairman of Trade Negotiating Committee of the Regional Comprehensive Economic Partnership (RCEP) and Special Staff to Minister on Priority Policy on Global Trade. Ambassador Pambagyo is also Member of Advisory Board of UPH-CITI.

This quarterly newsletter seeks to provide updates, insights and analysis on current developments in trade and investment law and policy in Indonesia. Constructive feedback and comments are always welcome.

## Contact us:

UPH Executive Education Center
1st Floor Jl Garnisun Dalam No. 8
Semanggi, Jakarta, DKI 12930
Indonesia
Email: citi@uph.edu
Website: www.uph-citi.org

Mobile app: UPH CITI

WTO CHAIRS PROGRAMME

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Confederation

Federal Department of Economic Affairs, Education and Research EAER
**State Secretariat for Economic Affairs SECO**