

**NOTIFICATION UNDER ARTICLES OF THE AGREEMENT ON
IMPORT LICENSING PROCEDURES FROM INDONESIA¹**

**Replies from INDONESIA to the follow-up questions from
the EUROPEAN UNION²**

The following communication, dated 13 December 2010, is being circulated at the request of the delegation of Indonesia.

Indonesia wishes to refer to the follow up questions raised by the EU regarding Decree No. 56/M-DAG/PER/12/2008 (Decree 56) concerning Provision on Certain Product Import which replaces Decree No. 44/M-DAG/PER/10/2008 (Decree 44).

With regard to the additional information sought, Indonesia wishes to respond as follows in the order of the questions set:

1. Questions:

Indonesia maintains that Decree 56/2008 is not an import licensing scheme but that its purpose "is only to register importers". Indonesia also explains that "as long as the basic information stipulated under article 2 (3) is provided, registration is granted within 7 days" and that "once registered, import licenses are issued automatically".

- (a) If the import licenses are automatically granted on the basis of the quantities mentioned in the "import plan" as referred to in Article 2 (3) f. of Decree 56/2008, we believe that such decree institutes licensing procedures and that is therefore subject to the notification obligation of Article 5 of the WTO Agreement on Import Licensing Procedures. If Indonesia disagrees, please explain?
- (b) If the "import plan" as referred to in Article 2 (3) f. of Decree 56/2008 has no link to the subsequent (and allegedly automatic) issuing of the import licenses, could Indonesia please explain what is the legal basis for such licenses? Could Indonesia list the documents that have to accompany the application for such licenses? Could Indonesia please also describe the conditions under which the issuing of such licenses may be refused?

¹ See Understanding on procedures for the Review of Notifications (G/LIC/4).

² See document G/LIC/N/2/IDN/15.

Answer:

- (a) Indonesia is of the view that Decree No.56/2008 is not import licensing scheme, as it merely regulates importer registration. Although, this Decree requires "import plan" the purpose of such provision is to provide import database which eventually will contribute in maintaining Indonesia economic growth. However Indonesia sees it is necessary to notify this Decree
- (b) Companies importing certain products must obtain the status of "Registered Importers of Certain Products" or (IT-Importir Terdaftar Produk Tertentu). According to Article 2(3) of Decree 56/2008, the application to obtain the status as "Registered Importers of Certain Products" shall be submitted in writing to the Director of Import, Directorate General of Foreign Trade, Ministry of Trade by enclosing the following documents :
- Photocopy of Importer Identity Number (*API-Angka Pengenal Importir*);
 - Photocopy of Company Registration Card (*TDP-Tanda Daftar Perusahaan*);
 - Photocopy of Taxpayer Code Number (*NPWP*);
 - Photocopy of Special Importer Identity Number (*NPIK-Nomor Pengenal Importir Khusus*) for certain products whose import is subject to provision regarding NPIK;
 - Photocopy of Customs Identity Number (*NIK-Nomor Identitas Kepabeanan*);
 - Import plan for one year, covering quantity, kinds of goods, tariff heading/ HS 10 (ten) digits and destination port.

Applications would only be refused if the requirements of Article 2 of Decree 56 are not met.

2. Questions:

Indonesia admitted that the "requirement for an importer to demonstrate past performance" under Decree 44/2008 "may have been considered to contribute to the impression of a non-automatic import licensing procedure". We consider the requirement for an importer to demonstrate future performance via submitting an import plan of 1 (one) as referred to in Article 2 (3) f. of Decree 56/2008 as a factor characterising the import licensing procedure contained therein as non-automatic. If Indonesia disagrees, please explain?

Answer:

Article 12.4 of Decree 56/2008 stated that Decree 44/2008 has been revoked, thus the requirement for importers to demonstrate past performance is no longer required and conversely the Decree of 56/2008 requires importer to demonstrate future performance for statistical purposes instead of quantitative arrangement. Therefore, Indonesia sees that this requirement should not be defined as non-automatic import licensing procedure.

3. Questions:

Could Indonesia please describe the conditions under which an importer can obtain a "Special Importer Identity Number" whose submission is required pursuant to Article 2 (3) d. of Decree 56/2008?

Answer:

The Special Importer Identity Number (*NPIK- Nomor Pengenal Importir Khusus*) can be obtained by submitting the Import Identity Number (*API-Angka Pengenal Importir*) and the photograph of person in charge.

4. Questions:

Indonesia states that Decree 56/2008 "is designed to address illegal trade and safeguard health through the development of an effective tracking system". Would Indonesia qualify Decree 56/2008 as a measure necessary to secure compliance with other Indonesian laws and regulations? If so, could Indonesia please provide the references of such laws and regulations?

Answer:

Decree 56/2008 is not related to any other Indonesian Laws and Regulations.

5. Questions:

Indonesia states that "the selection of products is based on items that are the most sensitive to smuggling". Could Indonesia please explain the criteria on the basis of which it has concluded that the selected products are "most sensitive to smuggling"?

Answer:

Indonesia believes that the selected products are considered as the most sensitive products to smuggling. It is impossible to provide figures, data, and studies of such issue. Therefore, Indonesia sees that the most effective instrument to combat that problem is to monitor import through registration. Additionally, Indonesia also sees that the growth of the selected products should be maintained.

6. Questions:

Could Indonesia please provide the quantitative data on the basis of which it has concluded that the five selected ports "represent the vast majority of imports into Indonesia"?

Answer:

The 5 (five) loading ports are selected on the basis of its adequate infrastructure and the fact that they represent the vast majority of imports to Indonesia.

7. Questions:

We understand that in addition from being subject to the import licensing requirements contained in Decree 19/2005, textiles and apparel (HS 61-63) are simultaneously subject to the provisions of Decree 65/2008. We also note that "the Government [of Indonesia] will ensure that there are no duplicates of procedures". Could Indonesia please explain how concretely does it plan to avoid duplication?

Answer:

Decree 19/2005 has been revoked and no longer applied. Meanwhile, Decree 65/2008 does not regulate importation. Therefore, it can be assured that there is no duplication of procedures.

8. Questions:

While describing the content of the "Import Technical Investigation", Indonesia states that "verification of the quality of the goods will be conducted if it is necessary, such in the case of food and beverages". Could Indonesia please explain the procedures according to which such verification

of the quality of the goods will be carried out? Could Indonesia please also clarify whether the same quality controls are carried out in relation to the sale of like domestic food and beverages?

Answer:

In general, the technical verification at the port of exportation only covers the quantity and specification of the goods to be exported to Indonesia, but does not include quality control. However, whenever necessary, verification of the quality control could be conducted for the TBT and SPS purposes. The quality control is not carried out in relation to the sales of like domestic food and beverages.

9. Questions:

We note that Article 2.22 of the WTO Agreement on Preshipment Inspection states in relevant parts that " [...] user Members shall provide that [...] shipments whose value is less than a minimum value applicable to such shipments as defined by the user Member shall not be inspected, except in exceptional circumstances. This minimum value shall form part of the information furnished to exporters under the provisions of paragraph 6". Could Indonesia please explain how does it fulfil such obligation?

Answer:

Indonesia is of the view that Article 2.22 of the Preshipment Inspection (PSI) Agreement does not apply with Decree 56/2008 since the purpose of verification is only to fulfil the supplementary customs documents.
