

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

Questions from the United States and the European Union to Indonesia

Indonesian Import Restrictions on Horticultural Products

The following communication, dated 12 September 2012, is being circulated at the request of the delegations of the United States and the European Union.

Ministry of Agriculture (MOA) Regulation 03 and Ministry of Trade (MOT) Regulation 30 threaten to seriously impede imports by establishing a non-transparent, complicated, and discretionary import permit system for fresh and processed horticulture products. Although Indonesia has postponed implementation of this import permit scheme until 28 September 2012, interested foreign and domestic stakeholders are perplexed by the complex requirements of the new system and are concerned that, if implemented, the new requirements would have substantial consequences for access to Indonesia's market for a wide range of fresh and processed horticulture products. In light of Article 1.4(b) of the WTO Agreement on Import Licensing Procedures (also known as, the "Import Licensing Agreement"), the United States and the European Union request that the Indonesian government not implement Regulations 03 and 30 until we and other Members are given the opportunity to discuss our concerns with Indonesia, and so that Indonesia, in turn, will be able to "... give due consideration to these comments and results of discussion." In this regard, we note that Article 1.4(a) of the Import Licensing Agreement requires that "Copies of these publications (including Regulation 38) shall also be made available to the Secretariat." When will Indonesia make such copies available to WTO Members in light of this obligation?

We also observe that Indonesia has failed to notify Regulation 03, published on 1 February 2012 in the State Gazette of The Republic of Indonesia of 2012 No. 148, to the WTO. This regulation, which involves the issuance of import permit recommendations by Indonesia's Ministry of Agriculture to the Ministry of Trade, is an essential component of the proposed new system and must be notified, per Article 5.1 of the Import Licensing Agreement, which stipulates that Members "shall notify the [Import Licensing] Committee ... within 60 days of publication".

In addition, we have serious concerns about Indonesia's regulations in light of other WTO Agreements, such as the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures. We reserve our right to raise issues in the context of additional WTO Agreements and their committees that arise as a result of Indonesia's regulations.

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

Comments on Notifications G/LIC/N/2/IDN/5 and G/LIC/N/2/IDN/6

Section 2a): The notification states that the following products are subject to the licensing procedures: "Ornamental Products, HS No. 0603; Fresh Horticultural Products, HS No. 0701, 0703, 0704, 0706, 0709, 0710, 0803, 0804, 0805, 0806, 0807, 0808, 0810; and Processed Horticultural Products, HS No. 0712, 0904, 2001, 2004, 2005, 2007, 2008, 2009, 2103." However, in MOT Regulation 30 we note that Appendix 1 does not list all of the tariffs within each of these four-digit headings. If a horticultural product is not in this list, can it be freely imported without an import permit and without restriction? Please identify each tariff within these 4-digit categories that is not subject to MOT Regulation 30 and MOA Regulation 3. In addition, please confirm that MOT Regulation 30 and MOA Regulation 3 cover the same products.

Section 2c): Indonesia identified only one administrative body for the submission of applications. MOA Regulation 3 and MOT Regulation 30, however, specify several administrative bodies from which an importer must seek approval in order to meet the requirements to obtain a Product Import Recommendation (RIPH) and/or import license. Therefore, we ask that Indonesia please list each administrative body from which an importer must seek written approval in order to obtain a RIPH and/or import license.

Section 2e): How does Indonesia justify its import licenses as "automatic" under Article 2 of the Import Licensing Agreement? It appears that the licenses are not considered or issued until after the importer obtains a number of additional licenses, permits, certificates, etc., from a number of different sources. That is, according to each notification (**G/LIC/N/2/IDN/5 and G/LIC/N/2/IDN/6**):

"Application for securing the appointment as IT of Certain Products shall be submitted in writing to the Director by enclosing the following copy documents of:

- a. Trading License (SIUP)
- b. Corporate Registry Number (TDP);
- c. Taxpayer Code Number (NPWP);
- d. General Producer Importer Identity Number (API-U);
- e. The proof of ownership of cold storage;
- f. The proof of ownership of refrigerated transportation equipment;
- g. The proof of the sales contract of horticultural products with at least 3 (three) distributors for at least 1 (one) year;
- h. The proof of experience as a distributor of horticultural products for 1 year;
- i. Sufficient stamp duty statement stating that it will not sell horticultural products directly to consumers or retailers."

and:

"Application for securing the appointment as Producer Importer of Horticultural Products (IP-Produk Hortikultura) shall be submitted in writing to the Director General by enclosing the following copy documents of:

- a. Industrial Business License or other similar business permit that use Horticultural Product raw materials, issued by the competent authority or technical service;
- b. Corporate Registry Number (TDP);
- c. Taxpayer Code Number (NPWP);
- d. Producer Importer Identity Number (API-P);
- e. The proof of ownership of cold storage;
- f. The proof of ownership of refrigerated transportation equipment;
- g. The recommendation of Horticultural Product Import (RIPH) from the Ministry of Agriculture or designated official."

Please indicate "the measure being implemented through the import licensing procedure" as requested in the notification template.

Regulations 03 and 30

We have numerous concerns regarding Ministry of Trade (MOT) Regulation 30 and Ministry of Agriculture (MOA) Regulation 03. Together these regulations constitute an import permit system for horticultural products that appears complex, discretionary, non-transparent, and trade distorting. These regulations raise questions in light of Article 3.2 of the Import Licensing Agreement which states that "Non-automatic licensing shall not have trade-restrictive or - distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure." Inasmuch as we question whether the administrative procedures used to implement Indonesia's import licensing regime "are in conformity with the relevant provisions of GATT 1994..." (See Article 1.2, Import Licensing Agreement), Indonesia's regulations could significantly impair trade.

We are particularly concerned that these regulations may result in unscheduled quantitative restrictions, similar to the ones already in place for livestock products. Furthermore, we question to what extent Indonesia imposes these new restrictions on domestically produced goods. How is the widening gap between the treatment of domestic versus imported products consistent with Indonesia's General Agreement on Tariffs and Trade (GATT)/ World Trade Organization (WTO) commitments?

While we were relieved that Indonesia agreed to postpone the implementation of these regulations from June until the end of September (as per Regulation 38), we still have many serious outstanding questions and remain concerned that they cannot be addressed by September. Our questions relating to the Import Licensing Agreement are included below. We reserve our right to bring additional questions to Indonesia's attention in accordance with Article 1.4(b) of the Import Licensing Agreement.

Until we can engage in a full and productive discussion with Indonesia regarding our concerns, as Article 1.4(b) of the Import Licensing Agreement requires, we seek indefinite suspension of the measures in question.

QUESTIONS REGARDING REGULATIONS 3 AND 30

What is the present status of Regulations 03 and 30?

On 9 July 2012, Indonesia notified "Regulation of the Minister of Trade No. 38/M-DAG/PER/6/2012 dated 14 June 2012 concerning to The Amendment of The Regulation of The Minister of Trade Number 30/M-DAG/PER/5/2012 concerning The Provisions on the Import of Horticultural Products" (G/LIC/N/2/IDN/6). What is Regulation 38's present status and what is its relationship to Regulation 03 and Regulation 30?

On 1 February 2012, Indonesia enacted "REGULATION OF MINISTER OF AGRICULTURE OF THE REPUBLIC OF INDONESIA, NO. 03/Permentan/OT.140/1/2012," and published it in the "STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2012 NO. 148." The requirement to notify this Regulation is contained in Article 5 of the Import Licensing Agreement. When will Indonesia notify this Regulation to the WTO in light of its obligation?

In its notification of Regulation 38 (G/LIC/N/2/IDN/6), Indonesia did not respond to the question contained in Section 1(b), i.e., "If the notified measure refers to a change in an already notified import licensing procedure, please indicate the document symbol of the notification to which

change(s) has(ve) been introduced." What is Indonesia's response to this question? Please confirm whether the postponement applies to both Regulations 03 and 30. When Indonesia notifies Regulation 03, can the government confirm that it will respond to the question contained in Section 1(b) of the WTO notification form?

SPECIFIC QUESTIONS

REGULATION 03 OF MINISTER OF AGRICULTURE OF THE REPUBLIC OF INDONESIA

We are concerned about the government's apparent disregard for its commitments under the WTO Agreement on Import Licensing Procedures. We expect Indonesia to notify Regulation 03 and to provide copies of its publication to the Secretariat for Members' to examine (see Article 1.4 of the Import Licensing Agreement). In accordance with our understanding of Regulation 03, we offer the following initial comments and questions:

Article 7 contains the criteria for determining whether to grant an import permit, including: production of similar product domestically; domestic consumption; horticulture product to be imported; availability of similar horticulture product domestically; product's potential to distort the market; and harvest time of the horticulture product. How is Regulation 03 consistent with the WTO principles of non-discrimination and national treatment; and, how is it consistent with Article 1.3 of the Import Licensing Agreement, which states that "The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner."?

Article 17 stipulates that import permits "shall be valid for a period of three (3) months for one (1) time import." Import permits obtained from the Ministry of Trade under Regulation 30, however, are valid for one year. How does Indonesia reconcile these differing requirements and the burden placed on importers under Regulation 3?

Why does Regulation 3 require "every person who will perform import of horticulture product to Indonesian territory" to obtain a "Horticulture Product Import Recommendation" (RIPH)? Are domestic producers of like horticultural products also required to meet similar licensing requirements?

How does this Regulation ensure "that import licensing procedures are not utilized in a manner contrary to the principles and obligations of GATT 1994 (Preamble to the Import Licensing Agreement)?"

What precisely are the GATT 1994-consistent measures (identified by Article and paragraph) that Indonesia's RIPH is intended to administer (see Article 1.2 of the Import Licensing Agreement)?

In light of Article 1.2 of the Import Licensing Agreement, how does Regulation 03 comply with Article 3.2 of the Import Licensing Agreement which states that "Non-automatic licensing shall not have trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure."?

How does Indonesia believe that, with the multiple layers of review contained in the import license system created by Regulations 3 and 30, including those required of an importer in the lead-up to actual application for the RIPH, the government is fulfilling its commitment under Article 1.6 of the Import Licensing Agreement?

***REGULATION 30 OF MINISTER OF AGRICULTURE OF THE REPUBLIC OF INDONESIA:
ARTICLE-BY-ARTICLE QUESTIONS***

In light of Regulation 03, and according to our understanding of Regulation 30 as amended by Regulation 38 and notified to the Import Licensing Committee, we have the following specific questions regarding Regulation 30:

ARTICLE 2

- 1) Why does Indonesia consider the availability of domestic horticultural product when determining if horticultural imports are permissible (Article 2(1)b)? What specific impact does this consideration have on the issuance of the license? How is consideration of domestic horticultural product in this manner consistent with Indonesia's WTO obligations?

What is meant by "goal setting of Horticultural Product of production and consumption" in Article 2(1)c? Does this mean that import quotas will be set or that the quantity of horticultural imports will be limited? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

- 2) How is the determination made as to whether domestic production is insufficient and imports will be allowed? Who makes the decision? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

ARTICLE 3

If a product is not listed in Appendix I, do the import requirements not apply? Can those products be freely imported without an import license and without restriction?

ARTICLE 4

- 1) How will the "Coordination meeting of ministerial level" process work? Would import volumes be publicly announced? How often would this meeting take place? Which agencies would participate in the Coordination Meeting?
- 2) How will the process of Echelon-1 level officials making company-specific import determinations work? Does the Ministry plan to make determinations by category (i.e. an amount for all PI-Horticultural Product (PIHP) importers and an amount for all RI-Horticultural Product (RIHP) importers)? Will the Ministry make a determination for specific importers? Who will be involved? Will these decisions be made public? Who will make them public and in what publication will they appear?

ARTICLE 5

What is the policy objective of classifying companies into either a RIHP or PIHP category? Please explain what companies in each category will be permitted to do. What is the significance of using the word "acknowledgement" vs. "stipulation"? How does this "simplify and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices"? How does this differentiation comply with Article 1 of the Import Licensing Agreement, including Articles 1.2, 1.3 and 1.4?

ARTICLE 7

- 1a) What is the purpose of requiring a copy of the Industrial Business License? What does obtaining this license entail? What are the requirements to be a competent institution or technical service to provide such a license? Are domestic producers subject to the same requirements?
- 1e, f) Why are horticultural importers required to provide evidence of the ownership of cold storage and cold transportation? How would this requirement work for products that do not require immediate cold storage (e.g., onions)?
- 1g) The paragraph states that the RIPH is "a letter issued by a related competent technical unit/institution official and constituting the requirement for the issuance of Import Permit". Please clarify which Ministry issues each RIPH. How does this paragraph comply with Article 1.6 of the WTO Import Licensing Agreement which stipulates that "...Applicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies."?
- 2) Why does the Ministry of Trade plan to conduct an on-site visit to verify each and every applicant for PIHP or RIHP status? Who is part of the field inspection team? Why does the Ministry believe that five days will be sufficient to complete the inspection? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

ARTICLE 8

What is the basis for limiting imports to "material or support material for the need of industrial production process that is owned by the company...?" Does the prohibition on trading and transferring imported goods mean that a company with a PIHP license must re-export imported products that it cannot use for whatever reason? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

ARTICLE 9

- 1h) Would the requirement that all importers have one year of experience as a horticulture products importer restrict commercial activities to current importers? How would new importers enter the system?
- 1i) What is the rationale behind the requirement for importers to sell to distributors only, and not directly to retailers? Do domestically-produced horticultural products face the same distribution requirements? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

ARTICLE 11

Given the considerable amount of information required to be submitted, how can the Ministry assert that 5 days is sufficient to process/publish the import permit?

ARTICLE 12

Again, what is the rationale behind the requirement for importers to sell to distributors only and not directly to retailers? Do domestically-produced horticultural products face the same

distribution requirements? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

ARTICLE 13

How does this Article align with Article 6 (3) of Regulation 3?

ARTICLE 14

- 1a) What are the laws and regulations referred to in this article with respect to packaging in direct contact with food? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?
- 1b) What are the Foods Packaging Logo and Recycle Logo, and where can businesses find these? Why are they necessary if all food products in Indonesia are under the oversight of the Ministry of Agriculture and are subject to food safety requirements? Is this logo marking required for domestic products, as well? Given the requirements that all horticultural products comply with food safety regulations, why an additional label marking required? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?
- 1c) What are the requirements for these markings? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?
- 2) Article 14 says, "The fulfilment of the packaging requirements as referred to in paragraph (1) shall be proven by a certificate of test results issued by a laboratory of a competent authority and recognized by the local government." Please explain this statement. Can the competent authority be in the exporting country or only in Indonesia? Who pays for the lab testing? What qualifies as a competent lab?

What is considered an "ornamental horticultural product" (Article 14(3))? Are all of the packaging requirements also required for domestically produced goods? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

ARTICLE 15

Do these labelling requirements apply to processed and fresh products? Is this different from the previous labelling requirements? Is a supplemental label acceptable? Please clarify at what stage in the process Bahasa labels will be required to be affixed to products? Can the label be applied upon entry and applied in a facility under the importer's control, subject to government approval? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

ARTICLE 16

Will labelling be at the item, pack, container, or tray level?

ARTICLE 18

- 1) Is the Label Inclusion Certificate in Indonesian Language (SKPLBI-Horticultural Product) different from the Bahasa labelling requirement? Are domestic products also required to meet

this labelling provision? What constitutes a "business player?" How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

- 1a) What is an Industrial Business License? Who issues it and what qualifications are needed to obtain one? How is it feasible for a business player to obtain all of this information and how long would the process take? How does this "simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices?" Are domestic businesses required to obtain the same kind of license and present it to the authorities before it is allowed to do business in Indonesia? What information must the domestic license contain?

What is the purpose of requiring an importer to obtain a power of attorney in order for Indonesia to grant a label compliance certification? Are domestic businesses required to obtain such power of attorney and present it to the authorities before it is allowed to do business in Indonesia?

- 3 and 4) How does Indonesia ensure that five days is sufficient to issue the SKPLBI-Horticultural Product? Is a SKPLBI-Horticultural Product needed for each and every type of product the business player may handle, or do all horticultural products fall under one umbrella?

How does one qualify for the Label Inclusion Obligatory Release Letter, which exempts a product from labelling provisions?

How is this article in compliance with the Agreement on Import Licensing Procedures?

ARTICLE 21

Please explain the import verification process further and provide information regarding who will be the relevant body, or company conducting surveying in foreign ports? What does a shipper do if an appointed surveyor is not present in a port of export? Why is this process required? Please describe how this process fulfils the requirements of the Import Licensing Agreement?

ARTICLE 22

- j) Please define what an analysis certificate is. Will this certificate be issued by BPOM? What are the requirements to obtain such a certificate? What is the scientific basis for requiring an analysis certificate? Are domestic interests required to obtain the same kind of analysis certificate? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

ARTICLE 26

- a) The article notes that recognition as a PIHP or RIHP may be revoked if import reports are not submitted three times. Will importers be warned after each indiscretion or simply banned after three failures to submit? May an importer reapply to obtain PIHP or RIHP status? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement? How does this article comply with Articles 1.7 and 1.8 of the Import Licensing Agreement?

ARTICLE 30

The article notes that a company may be subject to sanctions if not in accordance with packaging and labelling provisions. What flexibility will be offered if any requirements have not been properly addressed in early shipments? How are domestic products treated? How does this article comply with Articles 1.7 and 1.8 of the Import Licensing Agreement?

ARTICLE 33

Are the goods listed in Article 33(1) required in order to gain recognition as MIHP or RIPH? What specifically would this process entail? Why is there not a simpler process or general exemption for products that will not be sold or traded?
