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Committee on Import Licensing

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IMPORT LICENSING SYSTEM OF INDONESIA

REPLIES FROM INDONESIA TO QUESTIONS FROM CANADA, THE EUROPEAN UNION, JAPAN, NEW ZEALAND AND THE UNITED STATES (G/LIC/Q/IDN/30)

The following communication, dated 13 May 2014, is being circulated at the request of the delegation of Indonesia.

1 ANIMAL AND ANIMAL PRODUCTS

Ministry of Agriculture (MOA) Regulation 84 of 2013 and Ministry of Trade (MOT) Regulation 46 of 2013 are the latest revisions to Indonesia's import permit system for animal and animal products. The United States and other trading partners had raised concerns about the precursor regulations – MOA Regulation 50 and MOT Regulation 24 – in this WTO Committee and in other WTO Committees. We note that we, along with Canada and the European Union, last submitted a series of questions, contained in G/LIC/Q/IDN/23, regarding Indonesia's import permit system for animal and animal products in October 2012. The United States continues to have a number of questions and concerns regarding the complex import permit system, even as the regime has been revised under these new regulations.

We note that Indonesia has yet to notify MOT Regulation 46 and MOA Regulation 84, as required by Articles 1.4, 5, 7.3 and 8.2 of the Agreement on Import Licensing Procedures ("Import Licensing Agreement"). When does Indonesia intend to do so? We request that Indonesia provide these copies immediately, preferably in English, of each of the regulations themselves to the WTO Secretariat as required under Article 1.4 of the Import Licensing Agreement.

Answer

We have already notified MoT Regulation No. 46/2013 (G/LIC/2/IDN/19 in Committee on Import Licensing, and MoA Regulation No. 84/2013 will be notified to the Committee on Import Licensing immediately.

Pursuant to Article 3.5 of the Import Licensing Agreement, please provide all the relevant information concerning the following: 1) the administration of the import licensing regime under MOA Regulation 84 of 2013 and MOT Regulation 46 of 2013; 2) the "Import Recommendation of Horticulture Products" and "Import Approvals" granted over a recent period; 3) the distribution of such licensing among supplying countries; 4) import statistics (i.e. value and/or volume) with respect to the products subject to import licensing.

Answer

MOA Regulation 84 of 2013 and MOT Regulation 46 of 2013 do not regulate the import of horticulture but they regulate import of animal and animal products.

Pursuant to Article 5 of the Import Licensing Procedures Agreement, please state whether the import licensing procedure established in MOA Regulation 84 and MOT Regulation 46 is automatic or non-automatic. If automatic, please provide the reason why Indonesia considers its licenses to be automatic in light of the definition contained in the Import Licensing Procedures Agreement. If the licensing procedure is considered automatic, please identify the licensing procedure's

administrative purpose. If the licensing procedure is non-automatic, please identify the underlying measure being implemented through the licensing procedure. In either case, please specify the expected duration of the licensing procedure.

Answer

The import licensing procedure under MoA Regulation No. 84/2013 and MoT Regulation No. 46/2013 shall be considered as an automatic import licensing. Under those regulations, the license of importation for animal and animal products may be granted to all applicants as long as the applications fulfil the requirements set in the regulations. The approval process of a complete application for the license did not exceed the 10 days period as required in Art. 2 of the Agreement on Import Licensing Procedure.

In addition, we reserve our right to raise issues regarding these regulations in accordance with additional WTO Agreements, such as the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.

General Questions

Both regulations note that they resulted from the "Economic Limited Coordination meeting on 27 August 2013 related to Trading System Policy of Beef, Horticulture and others." What is the role of the "Economic Limited Coordination" meeting? Whom does this group represent? How often does this group meet? What authorities and/or responsibilities does this group have? Please provide a copy of document Number S-169/M.EKO/08/2013 of 27 August 2013 to the Secretariat for circulation to Members.

Answer

- The role of limited coordination meeting is to discuss the national situation in the area of food security.
- The group Coordinated by Coordinating Ministry of Economic Affairs and attended by representatives of Ministry of Trade, Ministry of Agriculture, Ministry of Industry Ministry of Finance, Ministry of Transportation, BULOG and other concerned Ministries.
- The group meets as needed.
- The group has the authority to decide appropriate policy/ies related to food security.

What factors did the government consider in determining whether an animal or animal product should be listed in Appendix I or Appendix II of both the MOA 84 and MOT 46? Also, please explain how products not included in either Appendix are treated. For instance, chicken products within HS 0207.13 and 0207.14 are not listed in either MOA 84 or MOT 46. There are also a number of bovine offal products within HS 0206, such as sweetbread, kidneys, tripe and lungs that are not listed in either MOA 84 or MOT 46. Please explain why these products are not listed.

Answer

Consideration in determining whether animal or animal products should be listed in appendix I and appendix II MOA 84/2013 is based on economic purposes and financial and trade needs of Indonesia.

Products under HS 0206, except fancy meat, liver and heart, are not listed in the appendix based on the consideration that the products concerned are not guaranteed to fulfill ASUH requirements.

With regard to chicken products (HS 0207.13 and 0207.14), Indonesia remains seriously concerns over halalness of food to be consumed by most of Indonesian. Managing slaughtered chicken based on Islamic law is a sensitive and very important issue for Indonesian Muslim consumers, which is approximately 87% of the total population of Indonesia.

Please also explain why some animal products are only listed on the Appendices to MOA 84 and MOT 46 in their frozen, but not fresh form (for example, amongst others, Tri-Tip/Bottom, Sirloin Triangle, Top sirloin, Sirloin Butt, Fillet of loin, Chuck loin, and Short Ribs are listed under Ex.0202.30.00.00 but not Ex 0201.30.00.00).

Answer

Those animal products which are listed in appendices MOA 84 and MOT 46 based on the request of importers concerned.

Pursuant to Article 3.5 of the Import Licensing Agreement, please provide all the relevant information concerning the following: 1) the administration of the import licensing regime under MOT Regulation 46 and MOA Regulation 84 and; 2) the "Recommendations" and "Import Approvals" granted over a recent period; 3) the distribution of such licensing among supplying countries; 4) import statistics (i.e. value and/or volume) with respect to the products subject to import licensing.

Answer

1) The import licensing procedures under MoT Regulation No. 46/2013 are as follow:

- a. **To obtain import approval, the registered importers of animal and animal product whose imported products are listed on the first attachment should submit their application by electronic to coordinator and UPP with attaching:**
 - **Determination of registered importer of animal and animal product;**
 - **Recommendation from Minister of Agriculture or appointed officials by the Minister of Agriculture for imports of animals and fresh animal products as stated under first attachment of covered products.**
- b. **To obtain import approval, the registered importers of animal and animal product under second attachment of covered product should submit their application by electronic to coordinator and UPP with attaching:**
 - **Recommendation from Minister of Agriculture or appointed officials by the Minister of Agriculture for import of animals and animals product as stated under second attachment of this regulation; or**
 - **Recommendation from the Head of National Agency of Drug & Food Control (BPOM) or appointed officials by the Head of BPOM for import of processed animal products and recommendation from Minister of Agriculture or appointed officials by the Minister of Agriculture for import of processed animal products as stated under second attachment of this regulation.**

The Import requirements under MoA Regulation No. 84/2013 are as follow:

- a. **Requirement of business operator, social institution, representative of foreign countries/international institution and state-owned enterprises;**
- b. **Requirement of country of origin and business unit; and**
- c. **Requirement of packaging, labelling and forwarding.**

The detailed for each requirement stated in Article 6 to Article 18 of this regulation.

- 2) During the period of December 2013, MoA granted 244 recommendations for 89 importers.**
- 3) The distribution among supplying countries will depend on the application received by MoA and those countries approved by MoA.**

Questions Regarding MOA Regulation 84

CHAPTER I

GENERAL PROVISION

Article 1.10 states that "Processed Meat" is meat that has been processed in a specific manner or method, with or without additives. Can Indonesia give examples of what would constitute a qualifying "specific manner or method"?

Answer

Specific manner or method refers to method using for instance heating or pressure.

Article 1.19 states that "Importation Business Unit...is a business unit in the country of origin which performs production of carcass, meat, offal, and/or their derivative regularly and continuously for commercial purposes." How does Indonesia define "regularly and continuously"?

Answer

The meaning of "regularly and continuously" is the business unit concerned must produce the same products regularly and continuously.

Article 2

This regulation is intended to implement importation to protect public health and inner peace, animal health, and environmental health. Are domestic producers required to ensure the same protections? What are the domestic legal requirements in this regard? How do imports harm "inner peace"?

Please explain how imports can be implemented to "provide fluidity and certainty for the importation of carcass, meat, offal, and/or their derivative"? How does Indonesia define "fluidity and certainty"? What does this article intend to accomplish?

Answer

- a. **Yes. Domestic producers are required the same protections and legal requirements, as well as the importers. In accordance with Article 58 (4) Law 18/2009, all animal products imported and domestically produce must have veterinary certificate and Halal certificate. Without Veterinary certificate and Halal Certificate Indonesian consumers cannot be guarantee that the products to be consumed have fulfilled ASUH requirements. In this regard, imported products could only be imported if accompanied by veterinary and Halal Certificate.**

The intention of this regulation is to provide legal instruments to facilitate importer to do their business.

CHAPTER II

REQUIREMENTS AND IMPORTATION PROCEDURES

Part One

General

Article 4

Please define "social institution". What is the difference between a "business operator," which is permitted to conduct importation and an "importation business unit"? We note that the MOT Regulation 46 does not include similar categories of entities. Do all of these entities have to receive import approval from the Ministry of Trade to import animal and animal products for which they have received recommendations from the Ministry of Agriculture?

Answer

Please find the definition of "Lembaga Sosial" in Article 6 and Article 22 Para 2 (b) and (c) for its qualification of the MoA Regulation No. 84 of 2013. This answer has been provided by Indonesia in Document WT/DS466 dated 23 September 2013.

All of the entities which are not included in the MOT 46 must have recommendation before applying for import license.

Part Three

Importation Procedures

Article 20

Paragraphs (1) and (2): What are the procedures for obtaining the required recommendation “as intended in Article 4 paragraph (6)”? How does an importer find the required application and websites for submitting such application? Where are these published so that an importer can have access to the websites? Are instructions for filling out and submitting the application on-line published? If so, where?

Answer

As stipulated by Article 20 of MoA Regulation No 86/2013 for obtaining the recommendation, the applicant must submit an application on-line or direct to the Director of Veterinary Public Health and Post-Harvest with a copy to the Director General of Livestock and Animal Health.

The required application can be found and the submission of such application can be addressed to the following website: <http://www.kesmavet.ditjennak.deptan.go.id>.

Instruction for filling out and submitting the application on line are published in the website: <http://www.kesmavet.ditjennak.deptan.go.id>.

Article 21

We note that the application periods for both the recommendation from the Ministry of Agriculture and the import approval from the Ministry of Trade as provided for under Article 12 of Ministry of Trade Regulation 46 of 2013 are in December, March, June and September. Please confirm that the application period for both the recommendation and the import approval are each open for a month. How are the open application periods announced? How are applications handled – on a first come, first serve or simultaneous basis?

Please explain the difference between Article 21(1) and (3). Paragraph (1) appears to indicate that business operators have to submit the application for a recommendation in December, March, June and September. But paragraph (3) seems to indicate that business operators can apply “at any time based on the results of the Limited Coordination Meeting.”

When does the Limited Coordination Meeting convene? What factors will this group consider in determining whether to re-open the application process? How would the new application open period be announced?

Please explain why there are differences in the application times for business operators (paragraph 1), and “social institution” and “representatives of foreign country and international institution” (paragraph 2).

Answer

Application periods for recommendation and import license approval are December, March, June and September.

The application handled on a first come first served basis.

Basically business operators have to submit the application for recommendation in December, March, June and September. However, if the limited coordination meeting decided to import beyond the aforementioned periods the application can be submitted at any time based on the result of the meeting.

The limited coordination meeting convenes at any time as necessary.

The limited coordination meeting may consider to reopen the application process beyond the stipulated application period in the event if there is changes in the source of import due to occurrence of disease outbreak in the original source country or to stabilized price of carcass, meat, and/or edible offal in the country.

The new application open period will be communicated through the association of meat importer.

The differences in the application times for business operators, social institution, representatives of foreign country and international institution is based on the consideration that the social institution and representatives of foreign country and international institution import the product concern normally in a small quantity and not to be distributed commercially.

Article 22

- We note that Registered Importers (RI) for Animal Products have to provide the certificate of business establishment, trading license, company identification card, and tax identification number to be designated as an RI for animal products. Why are companies required to provide such complex information and why must they provide it a second time since it would already have been confirmed as part of the designation process?
- What is the difference between the MOA Veterinary Public Health Technical Recommendation and the technical recommendation from the provincial public veterinary health department? Are domestic companies required to obtain both a provincial recommendation and a MOA recommendation?
- Why are registered importers required to provide evidence of the ownership of storage and transportation when this information is also required for their determination as a registered importer for animal products?

Answer

The MoA Veterinary Public Health technical recommendations related to country and establishment requirements, handling and transportation carcass, meat, edible offal and/or derivatives from the country of origin to Indonesia.

The technical recommendation from the provincial veterinary public health related to technical requirements of storage facilities and transportation vehicle used to store and distribute in Indonesia.

Domestic companies required to obtain both provincial and MoA recommendation if the company concerned imports and distributes imported products.

The requirements for registered importer to provide evidence of the ownership of storage and transportation is intended to guarantee the availability of storage and transportation concerned to ensure the quality of the products being distributed.

Article 27

Please clarify what "amount" means. Does it mean the "amount" of imports? Please explain further how the amount in the recommendation is stipulated. What factors are considered by the Ministry of Trade in determining the amount? Does the Ministry of Trade consult with any other agencies in determining this "amount"? Are these "amounts" published anywhere? Are applicants able to apply for "amounts"? If so, what is the application process?

Furthermore, Article 29 appears to list the elements that are included in the recommendation, but this list does not include the amount referenced in Article 27.

How do these articles relate/fulfil the requirements of the WTO Import Licensing Agreement? How do they simplify and bring transparency to international trade? How do they fulfil Article 1.2 of the Agreement?

Answer

"Amount" means Amount of Imports.

There is no amount stipulated in the recommendation. Recommendation of MoA only regulates technical requirements from Veterinary Public Health aspects.

This answer has been provided by Indonesia in Document WT/DS466 dated 23 September 2013.

Articles 27 and 29 are consistent with Article 1.2 of the WTO Import Licensing Agreement.

Article 29

Why is it necessary to issue the Recommendations for a specific country of origin, specific business unit supplier, and specific end use?

Answer

Recommendations for specific country of origin, specific business unit supplier are needed to order to ensure that each country of origin and specific business units meet the technical requirements.

Specific end use also subject to recommendation due to the fact that not all end users meet the Technical requirements.

Article 31

Are there similar restrictions on intended use for domestic companies as included in paragraphs (1) and (2)?

Please explain what is meant in paragraph (4) by "to fulfil the need and activity of market operation".

Answer

Similar requirements applied on intended use for domestic companies.

The meaning of "to fulfil the need" is to meet domestic demand. The meaning of "activity of market operation" is to stabilize supply and demand.

Article 32

Please explain how this article and its referenced Appendix relate to and fulfil the requirements of Article 1.2 of the Import Licensing Procedures Agreement?

Answer

This Article and its appendix are consistent with Article 1.2 of the import licensing Agreement due to the fact that they are operated appropriately taking into account economic purposes and financial and trade needs of Indonesia.

Article 33

Why are business operators, "social institution," "representative of foreign country/international institution" or "State Owned Enterprise" prohibited from proposing changes to their country of origin, entry point, type/category of carcass, meat, offal, and/or their derivative on the recommendation that has been issued." Does this mean that a firm cannot appeal a decision? If not, why not?

Answer

For administrative reasons, changes of country of origin, entry points, type/category of carcass, meat, offal, and/or their derivative on the recommendation that has been issued, cannot be made. However, new proposal of country of origin, entry points, type/category of carcass, meat, offal, and/or their derivative can be done for the new recommendation.

Article 36

Which provision of the WTO Import Licensing Procedures Agreement does Indonesia believe that Article 36 upholds? Please explain. (This article applies to control internal domestics distribution).

Answer

Article 36 has nothing to do with WTO import licensing Agreement due to the facts that this article applies to products to control internal domestic distribution.

Questions Regarding MOT Regulation 46

Article 1

Please provide more information about the Beef Price Monitoring Team. What is the purpose of this team? Who is represented on the team?

Answer

The main purposes of the establishment of Beef Price Monitoring Team are monitoring domestic market price of beef product in various timeframe basis (daily, weekly, monthly, quarterly, annually), providing analysis and reviewing market price in comparison to reference price, and deliver policy suggestion.

Article 3

Paragraph (1) provides the situations where animal import is allowed to be conducted: "a. improve the genetic quality and diversity; develop science and technology; overcome deficiency of domestic Seed, Seedling and/or Feeder; and or fulfil the need for research and development." Are these the only situations in which imports will be permitted?

Paragraph (2) states: "animal export ... can only be performed if the domestic requirement of seed, seedlings, and/or feeder has been fulfilled and preservation of local livestock is guaranteed." Who determines whether the "domestic requirement: has been "fulfilled and preserved"? What factors are considered in making this determination?

Answer

Paragraph (1) should be interpreted as "importation of animals as mentioned in Article 2 paragraph (2) was conducted to:

- a. improve the genetic quality and diversity;**
- b. develop science and technology;**
- c. overcome deficiency of domestic Seed;**
- d. Seedling and/or Feeder; and or**
- e. Fulfill the need for research and development."**

Government of Indonesia will determine whether the domestic needs of seed, seedlings, and/or feeder cattle has been fulfilled and preservation of local livestock is guaranteed.

Various factors are put into consideration. One of the most important is numbers of domestic supply of seed, seedlings, and/or feeder cattle in comparison to its demand.

Article 4

Please explain why there is no process for determining Producer Importers of animal and animal products. Are producer importers permitted to import animal and animal products? If so, what are the procedures that a producer importer must follow? Please provide a legislative and regulatory reference. How does this differentiation in treatment between producer importers and registered importers comply with the requirements of the WTO Import Licensing Agreement?

Answer

According to MOT Regulation 46 of 2013, Producer importers are permitted to import animal and animal products by submitting as Registered Importers.

Article 5

- What is the purpose of requiring a Certificate of Business Establishment? What does obtaining this certificate entail? What are the requirements to obtain the certificate? Are domestic companies subject to the same requirements?
- What is the purpose of requiring a copy of the Trading License? What does obtaining this license entail? Where are the procedures published? What are the requirements to be a competent institution or technical service to provide such a license? Are domestic companies subject to the same requirements?
- Can companies with either an API-U or an API-P apply?
- Why are registered importers required to provide evidence of the ownership of storage and transportation? How does Indonesia justify this requirement in light of the Import Licensing Procedures Agreement?
- Why does the Ministry of Trade plan to conduct a field inspection to verify each and every applicant? Why does the Ministry believe that three 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?

Answer

- **Certificate of Business Establishment is required for validation purposes, in order to check legitimacy of the company's establishment. According to Law no.40 year 2007 regarding Incorporated Company (UU no.40 tahun 2007 tentang Perseroan Terbatas), Certificate of Business Establishment is mandatory requirement to establish a company in Indonesia.**
- **Trading license is required for validation purposes, in order to check company's legitimacy for conducting trading activities. Every company who wish to conduct trading activities in Indonesia are required to have a trading license.**
- **Yes, companies with either an API-U or an API-P may apply.**
- **Ownership of storage and transportation are mandatory in order to ensure that all the animal and animal products being imported will be taking care in professional manner according to health and safety standards.**
- **Field inspection is required for validation purposes, in order to review the ownership's legitimacy of storage and transportation.**

Indonesian is of the view that no trade distortions will arise with the imposition of those following requirements.

Article 6

What are the procedures for extending the determination as a RI-Animal and Animal Product? How long is the extension? Is the procedure of extension expedited since a company has already been approved as a RI?

Answer

Registered Importers for Animal and Animal Product is valid for 2 years and can be extended by applying for extension to Ministry of Trade. The extension will be granted automatically and valid for another 2 years.

Article 11

Please explain the factors in determining the two different application procedures for Appendix I and Appendix II. 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?

Is the MOA recommendation in Article 11(2)a and b the same as the Recommendation required for import approval in Article 11(1)b?

- If so, then the application for the MOA recommendation would require a company to provide a determination as an RI-Animal and Animal Products to obtain the recommendation. Please explain why that is necessary since Article 9 does not require such a determination to import products on Appendix II.
- If not, what are the procedures for obtaining the recommendations in Article 11(2)? Please provide a legislative and regulatory reference.

What are the procedures for obtaining a recommendation from the Head of the Agency of Drug and Food Control for importing processed animal product as required in Article 11(2)b? Please provide a legislative and regulatory reference for these requirements.

Answer

- **Products under HS 0206, except fancy meat, liver and heart, are not listed in the appendix based on the consideration that the products concerned are not guaranteed to fulfill ASUH requirements.**
- **With regard to chicken products (HS 0207.13 and 0207.14), Indonesia remain seriously concerns over halalness of food to be consumed by most of Indonesian. Managing slaughtered chicken based on Islamic law is a sensitive and very important issue for Indonesian Muslim consumers, which is approximately 87% of the total population of Indonesia.**

Article 12

Please explain the difference in the validity periods between the import approval and the MOA recommendation. According to MOA 84 Article 30, the recommendation is valid "from the date of issuance up to a maximum on 31 December of the current year," while the validity period for the import approval is three months. Does this mean that a company that obtains a recommendation in March that is valid for the rest of the year can use the same recommendation in applying for import approvals later in the year? How does this impact the "amount" that is listed in the recommendation as noted in MOA 84 Article 27?

Answer

MOA recommendation is related to SPS requirements and valid for 1 year. While Import Approval is related to business plan for importers to conduct importation.

Once Importers already obtained MOA recommendation , they may choose to apply for importation anytime from the given period (1st, 2nd, 3rd, 4th trimester).

As for several commodities, Recommendation can be used multiple - times to apply for import permit, as long as it is still valid, consist of same commodities, and same country of origin.

Article 13

Article 31 states that Registered Importers of Animal and Animal Product that have obtained an Import Approval “must realize the import of animal and animal product of at least 80 percent from accumulated import approval for 1 year.” What is the rationale for this requirement? How is it determined whether a company has realized 80 percent of its accumulated import? What consideration is given if it does not meet 80 percent realization because imports were postponed as provided for under Article 14(1)? What precisely are the GATT 1994-consistent measures (identified by Article and paragraph) that this requirement is intended to administer (see Article 1.2 of the Import Licensing Agreement)?

Answer

Mandatory 80% of import realization is imposed to ensure the supply of imported products to domestic market.

Every importers need to submit their report of import realization to <http://www.inatrade.kemendag.go.id> in monthly basis in order to monitor their import realization.

In certain circumstances, whereas the importers may not be able to meet the requirement of 80% import realization, evaluation will be put upon as consideration.

Mandatory 80% of import realization is not inconsistent with GATT 1994, as it does not cause any trade distortion. This measure even provides certainty for both importers and exporters from counterparts countries over the amount that will be imported.

Article 14

Please explain how the reference price is determined. What factors are considered? Is the price of beef secondary cuts considered an appropriate proxy for all of the products in Appendix I?

Paragraph (3) states: the beef reference price “can be evaluated at any time” by the Beef Price Monitoring Team. What factors would lead the Team to evaluate the reference price? Does the new beef reference price take immediate effect? What impact does that have on the recommendations and import approvals that have already been approved during the quarter?

Answer

Reference price is determined by various factors which mainly based on the average national retail price for beef, and taking into account the cost of production and distribution for domestic beef products, economic growth and market outlook and other variables.

Beef Price Monitoring team will evaluate the price reference under the certain circumstances where there has been significant changes in various factors aforementioned.

Article 17

Are there similar restrictions on intended use and distribution for domestic companies?

Answer

There are no restrictions on distributions and use in this regulation.

Article 18

Please explain the criteria used to determine when BULOG is able to import animal products to ensure food security? What is the rationale for allowing BULOG to distribute imported meat to the retail market?

Answer

Under the circumstances where there is shortage of beef supply in domestic market, BULOG as the state owned agency may be assigned by the GOI to fulfill the supply in order to ensure food security.

Article 25

We note that RI-Animal and Animal Product or company that has obtained an import approval have to submit an import report and import realization card under paragraph (1), but only RI-Animal and Animal Product must submit a cattle and beef distribution report under paragraph (2). Please explain why only the RI-Animal and Animal Product must submit a cattle and beef distribution report. What is the purpose of the cattle and beef distribution report? Also, how would a RI-Animal and Animal Product submit a report on cattle distribution since live cattle is covered in Appendix II?

Answer

Obligation to report the distribution of the report apply to ensure imported products have been distributed well in the context of food security, consumers protection and and logistics monitoring.

Articles 26 and 27

What is the difference between Articles 26 and 27? Please describe what is meant by "frozen". Is a company able to import while it's registration for RI-Animal and Animal Product is frozen?

Answer

The definition of Article 26 is registration for RI-Animal and Animal Product is being suspended if the company unable to fulfill the obligation.

Article 30

Please indicate which regulating legislation provides information on the fines that an importer or exporter would be subject to under paragraph (1).

Please explain why under paragraph (2) imports that are not in accordance "with quantity, type, business unit, and/or country of origin" in the import approval shall be "re-exported".

Answer

The regulation mentioned in paragraph 1 Article 30, is referring to set of regulations regarding customs, quarantine and other Laws.

The measure regarding re-export is a common practice in most countries. It is related to regulations in customs and it is the authority of every state in order to ensure the entry of goods is in accordance with the laws and regulations.

Article 33

Please specify and provide, preferably in English, the "regulating legislation" to which import of Animal and Animal Products are subject.

Answer

List of regulations related to Regulation no. 46/2013 is mentioned in the preamble article.

Article 34

This article indicates that the “Minister can form an integrated team consisting of representatives from related agencies to conduct: a. evaluation of the implementation of import and export policy of animal and animal product; and b. control of animal and animal product distribution.” Under what circumstances would the Minister form such a team? How would this team relate to the Limited Coordination Meeting and the Beef Price Monitoring Team? How does this relate to or fulfil the requirements of the WTO Import Licensing Procedures Agreement?

Answer

The role of limited coordination meeting is to discuss and evaluate current national situation in the area of food security.

The group Coordinated by Coordinating Ministry of Economic Affairs and attended by representatives of Ministry of Trade, Ministry of Agriculture, Ministry of Industry Ministry of Finance, Ministry of Transportation, BULOG and other concerned Ministries.

The group meets as needed, and/or regularly in weekly basis, and has the authority to decide future policies related to food security.

Article 35

Has the Director General issued any technical directions for implementing Regulation 46? If so, please provide a website or other instructions for where these can be found.

Answer

Technical directions will be provided shortly, and it will be available in <http://www.inatrade.kemendag.go.id>.

Article 36

Please indicate what “exemptions” are available and how companies would apply for such exemptions. Where are the procedures published?

Answer

Exemptions mentioned under Article 36 is refer to certain circumstances, emergencies, force majeure and other conditions that require immediate actions.

2 FRESH AND PROCESSED HORTICULTURE PRODUCTS

Ministry of Agriculture (MOA) Regulation 86 of 2013 and Ministry of Trade (MOT) Regulation 16 of 2013, as amended by MOT Regulation 47 of 2013, are the latest revisions to Indonesia’s import licensing procedures for fresh and processed horticulture products. The United States and other trading partners had raised similar concerns about the previous regulations on horticulture products – MOA Regulation 3 and MOT Regulation 30 – in this WTO Committee and in others (see G/LIC/Q/IDN/22). We continue to have a number of questions and concerns regarding the complex import permit procedures, even as the regime has been revised by the new regulations.

General Questions

We note that Indonesia notified MOT Regulation 16 (G/LIC/N/2/IDN/14) on June 26, 2013. When will Indonesia notify MOT Regulation 47 and MOA Regulation 86 as the Agreement on Import Licensing Procedures requires? In this regard, we note that Article 1.4(a) of the Import Licensing Agreement requires that “Copies of these publications shall also be made available to the Secretariat.” When will Indonesia make such copies available to WTO Members in light of this obligation?

Answer

MoT regulation No. 47 has notified under WTO notification G/LIC/N/2/IDN/20 for MoT and MoA No 86 is still in the process of notification.

As a result of Indonesia's regulations, we reserve our right to raise issues relating to these regulations in the context of additional WTO Agreements and Committees, such as the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.

Pursuant to Article 3.5 of the Import Licensing Agreement, please provide all the relevant information concerning the following: 1) the administration of the import licensing regime under MOA Regulation 86 of 2013 and MOT Regulation 16 of 2013, as amended by MOT Regulation 47 of 2013; 2) the "Import Recommendation of Horticulture Products" and "Import Approvals" granted over a recent period; 3) the distribution of such licensing among supplying countries; 4) import statistics (i.e. value and/or volume) with respect to the products subject to import licensing.

Answer

The administration of the import licensing regime under MOA Regulation 86 of 2013 and MOT Regulation 16 of 2013, as amended by MOT Regulation 47 of 2013 are available in official website.

Import statistics for goods under the horticulture regulations is available in official website.

All other informations will be provided shortly.

Pursuant to Article 5 of the Import Licensing Agreement, please state whether the import licensing procedure established in MOA Regulation 86 and MOT Regulation 16 (as amended by MOT Regulation 47) is automatic or non-automatic. If the licensing procedure is automatic, please identify the procedure's administrative purpose. If automatic, please describe how Indonesia's procedures fulfil the Import Licensing Procedures Agreement's definition of automatic import licensing. If the licensing procedure is non-automatic, please identify the underlying measure being implemented by the licensing scheme. In either case, please specify the expected duration of the import licensing procedure.

Answer

Import licensing procedure established in MOA Regulation 86, and MOT Regulation 16, as amended by MOT Regulation 47 is automatic.

Import permit and Recommendation will be automatically granted once all the requirements has been completed.

Questions Regarding MOA Regulation 86

The regulation observes that it resulted from the "Economic Limited Coordination meeting on 27 August 2013 related to Trading System Policy of Beef, Horticulture and others." Please explain the role of the "Economic Limited Coordination" in Indonesia's trade regime and the purpose of the cited meeting? Who are this group's stakeholders? How often does this group meet? What authorities and/or responsibilities does this group have? Also please provide a copy of the document referenced: Number S-169/M.EKON/08/2013 of 27 August 2013.

Please explain the purpose of the "Import Recommendation of Horticulture Products... (RIPH)"? How is the information contained in the RIPH different from that contained in a certificate of health, the IP-HP or RI-HP registration, or the Ministry of Trade's import permit?

Answer

The role of limited coordination meeting is to discuss and evaluate current national situation in the area of food security.

The group Coordinated by Coordinating Ministry of Economic Affairs and attended by representatives of Ministry of Trade, Ministry of Agriculture, Ministry of Industry Ministry of Finance, Ministry of Transportation, BULOG and other concerned Ministries.

The group meets as needed, and/or regularly in weekly basis, and has the authority to decide future policies related to food security.

Please identify the GATT 1994-consistent measures, by Article and paragraph that Indonesia's RIPH is intended to administer (see Article 1.2 of the Import Licensing Procedures Agreement).

Answer

RIPH consist of technical requirements related to SPS measures.

This provision is being imposed in order to ensure the health and safety requirements of the product that will be imported.

Article XX (b) of GATT 1994 provides exceptions, where regulations are necessary to protect animal, human or plant life.

This provision of RIPH is to ensure the health and safety requirements of the product that will be imported.

Article 5(1) states: "Import of Horticulture Product can be conducted prior to harvest season, during harvest season and after harvest season within a certain period of time." Please define what the government means by "a certain period of time"? What factors are to be considered in determining the "certain period of time" when a horticulture product is allowed to be imported? Where is the "certain period of time" published?

Answer

Please see Article 13 of of MOA 86/2013; RIPH granted for 2 times per year. ie January to June and July to December.

Article 5(3) states that Article 5(1) "is not applicable to horticulture product of fresh chili and shallot for consumption." Why does Indonesia treat fresh chili and shallots differently from all other horticultural products for consumption?

Answer

Chili and shallot usually contribute much in the inflation and its already considered as strategic products, especially during national festive seasons (Hari Besar Keagamaan Nasional).

Article 5(4) states that "Issuance of RIPH of fresh horticulture products for consumption in the form of chili and shallot is based on determined reference price from the Minister of Trade." How does the Minister of Trade determine this reference price? Which GATT-1994 Article does this Indonesia article fulfil?

Answer

Reference price is determined by various factors which mainly based on the average national retail price for chilli and shallots, and taking into account the cost of production and distribution for domestic chilli and shallots products, economic growth and market outlook and other variables.

Reference Price Monitoring team will evaluate the price reference under the certain circumstances where there has been significant changes in various factors aforementioned.

Article 6 sets out what is included in the RIPH once issued. Please explain why it is necessary to issue RIPH for a specific country of origin for horticultural products. Please also explain why it is

necessary to specify the manufacturing location for horticultural products imported for industrial materials, and how this is determined if it is not required to be specified in the application under Article 9.

Answer

This provision is being imposed in order to ensure the health and safety requirements of the product that will be imported.

Article 7 states that the horticultural products which require RIPH are stated in Attachment II. What is the process for importing horticultural products for consumption, fresh from industrial raw materials, processed for industrial raw materials and processed for consumption that are not listed on Attachment II? What criteria does Indonesia use to decide which products should be listed on Attachment II?

Answer

The provision of MOA Regulation 86 of 2013 does not regulate Horticulture products that is not covered in the Appendix II of MOA Regulation 86 of 2013.

Article 8 outlines the application requirements for obtaining the RIPH for fresh horticulture products for consumption, fresh and processed horticulture for industrial raw materials, and processed horticulture for consumption.

- Why must the importer provide a “statement of not importing horticulture products which exceed 6 (six) months after the harvest period.” After whose harvest period? What is the technical reason for not allowing imported horticulture products under this condition? Are domestic horticultural products banned from sale according to the same or similar conditions as the one stated in Article 8(1)(a) of MOA Regulation 86?
- Why is a technical letter from the Ministry of Industry required in order to obtain the RIPH for fresh and processed horticulture products for industrial raw materials? Also, why is an import approval letter from the National Agency of Drug and Food Control necessary to obtain a RIPH for processed horticulture for consumption? Are domestic products subject to similar requirements in order to sell such products?
- How many administrative bodies must applicants approach in order to obtain the RIPH and import permit for horticultural products?
- Please explain the purpose of the additional technical requirements in Article 8(2) and how these requirements comply with the Import Licensing Procedures Agreement. For instance, why is a certificate of good agriculture practices and a distribution plan required? Are domestic producers subject to similar requirements in order to sell their products in Indonesia? We note that many of these stipulations, including those involving storage and distribution facilities, are requirements for obtaining the Registered Importers of Horticulture Product (RI-HP) or the Importer Producer of Horticultural Products (IP-HP) determinations. Why must companies submit this information again? How do these requirements address Articles 1.5 and 1.6 of the Import Licensing Procedures Agreement?

Answer

- Referring to after six month harvest period of exporting country/ies.
- Usually fresh product of horticulture will be damage in very short time. To secure health safety of the consumer from abuse preservative treatment.

Yes. Equal treatment implemented for domestic horticulture production.

- Technical letter from the Ministry of Industry needed as an authority in industrial development in Indonesia in order to maintain the importation of horticulture product as a raw material for food & beverages industry and limited leakage to retail market.

- Import approval letter from the National Agency of Drug and Food Control needed to secure food safety of the processed horticulture products for industrial raw materials.
- MoA, MoT, MoI and National Agency of Drug and Food Control.
- To secure food safety during production, processing and distribution along of supply chain mechanism.
- Equal treatment also implemented for domestic horticulture product.
- To make sure the administration requirement being comply in every stage of the process.

Article 9(1) states that "Issuance of RIPH is conducted based on the application by the applicant." What does this statement mean?

Answer

We granted RIPH only to whom is really needed and comply with the requirement as stated in MoA Regulation No.86/2013.

Article 10 states that the only way to obtain the RIPH is online through "the specified portal". How does one access "the specified portal"? Where is this information published?

Answer

Everyone can access the specified portal <http://www.inatrade.kemendag.go.id>.

Article 11 discusses cases of *force majeure*. Please explain in detail how Article 11 of MOA Regulation 86 operates?

Answer

Cases of force majeure including: natural disaster causing no electricity (blackout and system breakdown).

Article 12: How or where does the importer find out the results of the document inspection?

Answer

The results of the document inspection can be found in Directorate of Domestic Market, DG. of Agriculture Processing and Marketing, MoA.

Article 13 provides information on the two semesters for which RIPHs are issued. How are the open application periods for the RIPH in November and May announced? Does the Ministry of Agriculture make an announcement on its website? What is the web link?

Answer

The open application periods for the RIPH in November and May announced through online or others media.

Yes, it is. <http://www.inatrade.kemendag.go.id>.

Questions Regarding MOT Regulation 16, as amended by MOT Regulation 47

Article 3 states: "Import of Horticultural Products can only be performed by companies which have been recognized as Producer Importer of HP or have been determined as Registered Import of HP by the Minister." Why does Indonesia divide importers into these two categories? Are domestic companies similarly divided?

Answer

This provision imposed to distinguish the importer based on its type of business (trader or industry).

Yes similar provisions has been imposed to domestic company.

Article 5 lists the requirements necessary to be recognized as a Producer Importer of Horticulture Product (IP-HP).

- Please explain the purpose of requiring a copy of the Industrial Business License? What procedures does obtaining this license entail? What are the requirements to be named a competent institution or technical service with the authority to provide such a license? Where are the names and addresses of these institutions or technical services published? Are domestic producers subject to the same requirements?
- Why are companies required to register as Producer Importers of HP when they have already been registered as Producer Importers (API-P) under Ministry of Trade Regulation 59/2012?
- Why are producer importers required to provide evidence of the ownership of storage and transportation? How does this requirement apply with regard to products that do not require immediate cold storage?

Please explain why producer importers must first receive a RIPH from the Ministry of Agriculture, while RI-HP must receive their registration before applying for the RIPH from the Ministry of Agriculture. 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 is this procedure not discriminatory? How does this differentiation comply with Article 1 of the Import Licensing Agreement, including Articles 1.2, 1.3 and 1.4?

Why does the Ministry of Trade plan to conduct an on-site visit to verify every applicant for IP-HP and RI-HP? Who is part of the field inspection team? Why does the Ministry believe that three 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?

Answer

Requirement of Industrial Business License is mandatory administrative requirement to ensure the company has been registered as a company engaged in the manufacture and industrial field.

It is issued by Ministry of Industry, and applied to all companies engaged in the manufacture and industrial field.

Producer Importers (API-P) only serves as Importer's identification.

According to Article 5 MOT 16/2013, Producer Importers are required to provide evidence of possession of warehouse / storage and transportation. It is not mandatory to have cold storage.

Differences in the order of processing and applying the RIPH serves only as part of administrative process that does not cause any unfairness, or distortion to the whole process.

Field inspection is mandatory to examine the compatibility between the document requirements of warehouse storage and transportation vehicle with its physical condition. It is also imposed to check the health and safety requirements of the warehouse storage and transportation vehicle.

Article 7 states that a "Company that has received recognition as Producer Importer of HP can only import Horticultural Products as raw materials and auxiliary materials for its industrial production process and is prohibited from trading and/or transferring the product." Are domestic producers similarly restricted? What are the GATT 1994 provisions that call for such restrictions?

Answer

Both process for RI-HP and PI-HP can only be done through online application to ensure fairness, simplicity and transparency of the administrative procedures.

Article 8 lists the requirements for companies to obtain a determination as RI-HP.

- Please explain the purpose of requiring a copy of the Trading License? What procedures does obtaining this license entail? What are the requirements necessary to be named a competent institution or technical service to be allowed to provide such a license? Where are the names and addresses of these institutions or services published? Are domestic producers subject to the same requirements?
- Why are companies required to register as Registered Importers of HP when they have already been registered as Registered Importers (API-P) under Ministry of Trade Regulation 59/2012?
- Why are registered importers required to provide evidence of the ownership of storage and transportation? How does this requirement apply to products that do not require immediate cold storage?
- Why are registered importers required to provide proof of a sales contract with at least 3 distributors for at least 1 year? Is there a similar requirement for domestic companies?
- Why do registered importers also have to provide proof of one year of experience as a distributor? How would new importers be allowed to enter the marketplace?
- What is the rationale behind the requirement for importers to sell to distributors only and not directly to retailers or consumers in Article 8(1)i and Article 15? Do domestically-produced horticultural products face the same restrictions? How is this provision in conformity with the relevant provisions of GATT 1994, as required by Article 1.2 of the Import Licensing Agreement?

We note that the validity period for IP-HP is the same as the RIPH, while the validity period for RI-HP is 2 years. What is the rationale for the different validity periods?

Answer

- **Requirement of Trading License is mandatory administrative requirement to ensure the company has been registered as a company engaged in the trading field.**
- **It is issued by trade and industry office in provincial level (Dinas Perindag), and applied to all companies engaged in the trading field.**
- **Registered Importers (API-U) only serves as Importer's identification.**
- **According to Article 8 MOT 16/2013, Registered Importers are required to provide evidence of ownership of warehouse / storage and transportation, Proof of a sales contract with at least 3 distributors, and statement letter that importers wont sell directly to retailers or consumers. This provision is imposed in order to ensure the imported horticulture products will be treated in accordance to standard health and safety requirements and procedures.**
- **It is not mandatory for Registered Importers to have cold storage.**

Article 11(1) states: "Registered Importer of HP which will import Horticultural Products as intended in Article 2 must obtain Import Approval from the Minister." We do not see a similar requirement for Producer Importers. Why is there a difference? 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?

Answer

Article 3 MoT Regulation No. 16/2013 stated that Import of Horticulture products can only be done upon the obtainment of acknowledgement as Producer Importers or Establishment as Registered Importers from the minister.

Article 13 (A) provides information on the two semesters for import of horticulture products other than chili and shallots. How are the open application periods for the import permits in December and June announced? Does the Ministry of Trade make an announcement available on its website? Please explain the rationale for treating chili and shallots differently as outlined in Article 13(A)(2)?

Answer

The announcement of opening of each application periods will be announce 1 month before the beginning of each semester.

Article 14(A) states that Registered Importers of HP that have obtained an Import Approval are "required to make a realization of HP import of at least 80 percent." Please explain the rationale for this requirement.

Answer

Mandatory 80% of import realization is imposed to ensure the supply of imported products to domestic market.

Every importers need to submit their report of import realization to <http://www.inatrade.kemendag.go.id> in monthly basis in order to monitor their import realization.

In certain circumstances, whereas the importers may not be able to meet the requirement of 80% import realization, evaluation will be put upon as consideration.

Mandatory 80% of import realization is not inconsistent with GATT 1994, as it does not cause any trade distortion. This measure even provides certainty for both importers and exporters from counterparts countries over the amount that will be imported.

Articles 18 and 19 outline the labelling and packaging requirements for horticulture products. What are the laws and regulations referred to in this article with respect to packaging in direct contact with food?

Answer

List of regulations related to MoT Regulation No. 16/2013 is mentioned in the preamble article.

Articles 21 and 22 outline the verification (pre-shipment inspection) requirements for horticulture products. Why is this process required? Please confirm whether imported horticultural products which are not subject to Regulation 16/2013 are subject to verification (pre-shipment inspection) requirements, and provide information as to where any such requirements can be found.

Answer

Pre-shipment Inspection is a common practice in most countries. It is the authority of every state in order to ensure the entry of goods is in accordance with the laws and regulations.

Imported horticultural products which are not subject to Regulation 16/2013 are not subject to verification.

Articles 25A and 26 list the reasons for which recognition as IP-HP or determination as RI-HP can be revoked, including failure to achieve the 80 percent import realization and failure to submit the import realization report as many as 3 times. Please explain these articles in light of the Import Licensing Procedures Agreement.

Answer

Mandatory 80% of import realization is only mandatory for RI-HP.

This provision is being imposed in order to ensure the import realization as part of the monitoring process conducted by the GOI.
