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Committee on Import Licensing

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IMPORT LICENSING SYSTEM OF INDONESIA

REPLIES FROM INDONESIA TO THE UNITED STATES

The following communication, dated 2 May 2017, is being circulated at the request of the delegation of Indonesia.

The United States has long had questions about Indonesia's import licensing requirements for cellphones, handheld computers, and tablets. The United States, with the European Union, submitted questions regarding this import licensing in documents G/LIC/Q/IDN/25 and G/LIC/Q/IDN/26 in 2013. The United States submitted additional questions in document G/LIC/Q/IDN/31 in 2014. We appreciate Indonesia's earlier responses to our questions regarding these requirements in documents G/LIC/Q/IDN/28, G/LIC/Q/IDN/29, and G/LIC/Q/IDN/33/Add.1.

The United States understands that Indonesia's Ministry of Trade recently issued Regulation 41/M-DAG/PER/5/2016, which is the third amendment to Ministry of Trade Regulation 82/M-DAG/PER/12/2012 (previously amended by MOT Regulation 48/M-DAG/PER/8/2014) regarding provisions on imports of cellular telephones, handheld computers, and tablet computers, and that the Ministry of Industry recently issued Regulation 68/2016, which appears to set forth requirements for obtaining recommendations for designated importers.

As a general matter, we continue to question the purpose of the requirements and procedures related to imports of cellular phones and handheld and tablet computers. In addition, we have a number of specific questions about the changes to the import licensing requirements for these products.

- Q1: We ask that Indonesia notify this regulation (Regulation 41/M-DAG/PER/5/2016) to the Committee as it contains new requirements for obtaining an import license.

Response

Indonesia has notified the regulation to WTO under document number G/LIC/N/2/IDN/36 on 22 March 2017.

We further request Indonesia's written response to the general observations and concerns, as well as to the questions that follow:

Article I.1 of Regulation 41/2016 appears to amend Article 4 of MOT Regulation 82/2012 to establish separate requirements for cellphones, handheld computers, and tablets depending on whether the products are 3G or 4G LTE enabled.

- Q2: What is the rationale for establishing separate requirements for products that include 4G LTE technology as opposed to those that do not?

Response

The requirement is to facilitate and expedite the importation of cellphones, handheld computers, and tablets.

- Q3: Are there similar separate requirements for domestically-produced cellphones, handheld computers, and tablet computers based on whether they are 3G or 4G LTE enabled? If so, please provide the legislative or regulatory references for those requirements.

Response

The requirements apply to all companies which applies for Registered Importer establishment on cellular phone, hand-held computers, and tablet computers.

Under Article 4(1)a, as amended, it appears that companies applying for recognition as a Registered Importer (IT) to import 3G enabled devices can be holders of either an Importer Identity Number-General (API-U) or an Importer Identity Number-Producer (API-P). However, under Article 4(1)b, as amended, companies applying for an IT who intend to import 4G LTE enabled devices must hold an API-P.

- Q4: What is the purpose of requiring importers to obtain an IT designation?

Response

Registered Importer is an instrument for importation management. It is used as a requirement to obtain an Import Approval for the import of cellular phone.

- Q5: How is the IT requirement different than the requirement to obtain an API-U or an API-P? For example, what different purposes do these requirements serve, if any? How do the procedures to obtain an IT and an API-U or an API-P differ?

Response

The Importer Identification Number (API) serves as an identity for companies that carry out importation activities. Whilst, the Registered Importer (IT) of cellular phone, hand-held computer, and tablet computer is a requirement to import cellular phone, hand-held computer, and tablet computer.

- Q6: Are domestic companies also required to obtain separate designations to produce and to sell these products in the Indonesian market? If so, please provide the legislative or regulatory references for those requirements.

Response

The requirements apply to all companies which apply for Registered Importer establishment on cellular phone, hand-held computers, and tablet computers.

- Q7: What is the rationale for allowing both API-U and API-P holders to import 3G devices, while only allowing API-P holders to import 4G LTE devices? How do the procedures to obtain an API-U versus an API-P differ?

Response

The holders of API-P could import 3G and 4G enabled devices as long as they have met their obligation to establish cellular phone, handheld computer, tablet computer industry in Indonesia or has conducted cooperation with domestic industries of those products. While the holders of API-U, which haven't met their obligation to establish cellular phone, handheld computer, tablet computer industries in Indonesia, could only import 3G enabled devices.

- Q8: What is the difference between the “recommendation” for 3G enabled devices in Article 4(1)a.4 and the “industry investment recommendation” for 4G LTE enabled devices in Article 4(1)b.4? Please include an explanation of any differences in light of MOI Regulation 68/2016.

Response

Recommendation for 3G: It notes that the company has not yet conducted any cooperation with domestic cellular phone, handheld computer, and tablet computer industries or has not yet made a commitment to develop related industries in Indonesia.
Recommendation for 4G: It notes that the company has conducted cooperation with domestic cellular phone, handheld computer, tablet computer industries or has developed related industries in Indonesia.

- Q9: What is the rationale for requiring importers to show a relationship with at least three distributors? Are domestic producers also required to use three distributors?

Response

It is to ensure that the importers would only conduct importation activities, and do not conduct direct selling of the said products to consumers or retailers, as it is emphasized in Article 9 of MOI Regulation 82/2012. Yes, the provision also applies to domestic producer.

- Q10: Please explain how the new regulation’s requirements are “no more administratively burdensome than absolutely necessary” as set forth in Article 3.2 of the Import Licensing Agreement.

Response

In MOI Regulation 41/2016, there are several administrative requirements that have been eliminated to facilitate the importation of cellular phone, handheld computer, and tablet computer. The administrative requirements that have been eliminated are as follows:

- **A copy of Business Permit (SIUP) or other similar business permits, TDP, NPWP, NIK, NPIK.**
- **IT-Certain Products and PIB as the experience proof of being importer.**
- **Proof of distributor experience at least for 3 years in the form of SIUP, Registration Letter of Goods Distributor and Designation Letter of Cooperation as distributor.**

In addition, the administrative requirements regarding PI submission which has been eliminated are as follows:

- **Import plan.**
- **Statement from principal which shows import plan.**
- **Certificate of Labelling in Bahasa (SKPLBI)**

Therefore, the requirements are no more administratively burdensome than the previous one.

As we understand the requirement in Article 4(1)b.1, which provides that importers of 4G LTE enabled devices must hold an API-P, importers may only import 4G LTE devices for further processing, and cannot import finished 4G LTE enabled cellphones, handheld computers, and tablets for sale.

- Q11: Please confirm our understanding. If our understanding is not correct, please explain.

Response

The provision regulates that the importation of cellular phone, handheld computer, and tablet computer with 4G network could be conducted by the holder of API-P who has established cellular phone, handheld computer, and tablet computer industries in Indonesia, and has established cooperation at least with three domestic distributors.

- Q12: Please explain how, if at all, companies who have an API-U instead of an API-P would be able to import these products into Indonesia.

Response

The companies are required to have API-P to import 4G LTE enabled devices. The holder of API-U could only import 3G enabled devices.

- Q13: Please identify the WTO-consistent measure that Indonesia is implementing through this import licensing.

Response

As noted before that the current regulation has eliminated several administrative requirements, so the regulation is no more administratively burdensome. As to that reason, we believe that the regulation is consistent with the WTO provisions.

In the response contained in G/LIC/Q/IDN/33/Add.1, Indonesia indicated that the previous requirement to "develop industry" did not "generate any trade distortions." Under the new requirements, it appears that importers can no longer import finished 4G LTE enabled cellphones, handheld computers and tablets.

- Q14: Please explain what impact Indonesia anticipates the new requirements, including the requirement that an importer hold an API-P to import 4G LTE enabled devices, will have on imports of cellphones, handheld computers, and tablets. If Indonesia considers that these new requirements will not distort trade, please explain why.

Response

The new requirement is aimed at the creation of better administrative environment for the importation of cellular phone, handheld computer, and tablet computer. It is also aimed at protecting the rights of the consumers to obtain a clear information concerning the products as well as to assure that their rights to receive immediate response whenever there is any question or problem with the products would be fulfilled.

Under Article 4(2), as amended, the recommendation on industry investment for 4G LTE enabled devices must contain information regarding proof of development of, or proof of cooperation with, the domestic cellphone, handheld computer, or tablet industry.

- Q15: Please clarify the meaning of these requirements. What is considered proof of development of the domestic industry? What qualifies as proof of cooperation with the domestic industry? Please provide examples of the types of documents required.

Response

The proof of development of the domestic industry is the compilation of legal documents showing that the industry has already been established in Indonesia. Legal documents include company profile, industrial business license or any similar purpose legal document, and other licenses which is issued by the Government of Indonesia.

The proof of cooperation with the domestic industry is a legal document which contains related information of the commitment of cooperation between two or more parties to produce cellular phone, handheld computer, and tablet computer.

- Q16: Who is responsible for determining whether the proof provided is sufficient?

Response

Ministry of Industry of the Republic of Indonesia.

- Q17: Who provides this evidence? May an applicant choose to provide either evidence of proof of development of the domestic industry, or proof of cooperation with the domestic industry?

Response

The applicant should provide the evidence of proof of development of the domestic industry, or proof of cooperation with the domestic industry in order to obtain the recommendation. Yes, the applicant may choose one of those documents.

- Q18: Please explain what factors are considered in providing a "recommendation" for purposes of importing devices that are 3G enabled under Article 4(1). Please also identify what documents or other information are required in order to obtain a "recommendation."

Response

The documents or information, which is required to obtain the recommendation, differ based on which category the applicants would like to apply. The details of the requirements for each category are provided in Article 4, Article 5, and Article 6 of MOI Regulation 68/2016.

MOI Regulation 68/2016 appears to outline requirements for obtaining a "recommendation" required to be designated as a registered importer of cellphones, handheld computers and tablet computers.

- Q19: MOI Regulation 68/2016 does not refer to MOT Regulation 41/2016. Please explain whether and how this regulation relates to MOT Regulation 41/2016. Does MOI Regulation 68/2016 apply with respect to products incorporating 4G technology, 3G or lower technology, or both?

Response

MOI Regulation 68/2016 is in line with MOT Regulation 41/2016. It regulates the issuance of recommendation for importation of cellular phone, handheld computer, and tablet computer.

The MOI Regulation 68/2016 does not regulate the standard of technology, but the type of product, such as cellular phone, handheld computer, or tablet computer. The MOI Regulation 68/2016 requires several documents as follows:

- **The proof of development of the domestic industry;**
- ***Designation document of Registered Importer (IT)* for cellular phone, handheld computer, and tablet computer; or**
- **The previous proof of cooperation with producer of cellular phone, handheld computer, and tablet computer and other company legal documents.**

Also, the recommendation of the Ministry of Industry is given to importing company for aftersales service, or the company with particular specification and particular purposes.

- Q20: MOI 68/2016 appears to create three categories of applicants who can obtain a recommendation: Category A, B, and C. As we understand these categories, Category A are those who produce cell phones and computers in Indonesia; Category B are those that have a "cooperation agreement" with domestic producers that can provide "proof of industry development"; and Category C are those who are importing products with "special

specifications and special purposes" or importing for aftersales service. Please confirm or correct this understanding. In addition, please provide further detail on what qualifies as a "cooperation agreement" and what qualifies as "proof of industry development." Also, please explain what is meant by "special specifications" and "special purposes", and provide examples.

Response

Referring to MOI Regulation 68/2016, the understanding of those categories are as follows:

- **Category A: The applicant is a producer of cellular phone, handheld computer, and tablet computer;**
- **Category B: The applicant is an importer or a producer which have established a cooperation with domestic cellular phone, handheld computer, and tablet computer industry;**
- **Category C: The applicant is an importer with special specifications and purposes or for aftersales services.**

The cooperation agreement is a legal document that legally recognized by Indonesia's domestic law which contains related information of cooperation commitment between 2 or more parties to produce cellular phone, handheld computer, and tablet computer in Indonesia.

- Q21: Please explain whether MOI 68/2016 provides the requirements for a "recommendation" needed to be designated a registered importer (IT) for 3G devices under MOT 41/2016 Article 4(1)a, or the requirements for the "recommendation on industry investment" under MOT 41/2016 Article 4(1)b for 4G LTE devices, or the requirements for both. If MOI Regulation 68/2016 does not set forth the requirements for a "recommendation on industry investment," please indicate whether there is a separate regulation that sets forth those requirements, provide a citation for any such regulation, and explain what is required to obtain a "recommendation on industry investment."

Response

As noted above (No. 19), the MOI Regulation 68/2016 is not related to the standard of technology, but the type of product, such as cellular phone, handheld computer, or tablet computer. The recommendation is needed to be designated a registered importer (IT) for both 3G and 4G devices.

Article 7 of MOT Regulation 82/2012, as amended, appears to require that companies obtain an import approval (PI) in addition to the IT.

- Q22: What is the purpose of requiring importers to obtain a PI for these products?

Response

PI is a mechanism for importation in Indonesia.

- Q23: What is the difference between the PI issued by the Ministry of Trade and the TPP Import issued by the Ministry of Industry (MOI) under MOI Regulation 108/2012? Do the PI and TPP-Import serve different purposes?

Response

Yes, the purposes of the PI and TPP are different.

The Proof of Product Registration (TPP) is a letter which shows the registration of every cellular phone, handheld computer, and tablet computer that will be produced in

Indonesia or imported to the territory of Indonesia. The Import Approval (PI) is a permit which is given to conduct an importation into the territory of Indonesia.

- Q24: What is the average validity period for the PI?

Response

The expiration date for PI is adjusted to the expiration date of TPP which is issued by MOI.

- Q25: On what basis may a PI be rejected?

Response

The application would be rejected if a company is not fully filled the requirements as stated in MOT Regulation No 41/2016.

- Q26: Article 7(5), as amended, provides that the PI shall be sent via the Indonesia National Single Window. What information is included with the PI?

Response

The information which is included in PI, as follows:

- **The expiration date of PI;**
- **Quantity and specification of products;**
- **Company identity; and**
- **Destination port.**

Article 9, as amended, provides that cellphones, handheld computers, and tablets imported by IT holders can only be traded or transferred to distributors.

- Q27: Why may imported products only be traded or transferred to distributors? Why are importers not permitted to sell these products directly to retailers or service providers?

Response

This regulation is made based on the Trade Law. The Law states that each actor or distribution chain in importation activities should have specific role and functions. Each actor should perform in accordance to their own role and functions.

- Q28: Are domestic producers also required to sell cellphones, handheld computers, and tablets through distributors? If so, please provide the legislative or regulatory references for those requirements. If not, please explain why domestic products may be sold directly to consumers, while imported products may not.

Response

The provision also applies to domestic producers.

Article 24B states that holders of ITs issued before July 1, 2016, have to come into compliance with Article 4 as amended by September 1, 2016.

- Q29: What does this mean for existing holders of ITs who currently import 4G LTE devices for sale, in particular holders of API-Us?

Response

Article 24B regulates the transition period for IT which is issued before 1 July 2016. The holder of the said IT should make an adjustment to the current requirement which is stipulated in MOT Regulation No. 41/2016.
