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INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

REQUEST FOR CONSULTATIONS BY THE UNITED STATES

The following communication, dated 10 January 2013, from the delegation of the United States to the delegation of Indonesia and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the Republic of Indonesia ("Indonesia") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 19 of the *Agreement on Agriculture* ("Agriculture Agreement") and Article 6 of the *Agreement on Import Licensing Procedures* ("Import Licensing Agreement"), concerning certain measures imposed by Indonesia on the importation of horticultural products¹, animals and animal products² into Indonesia.

Indonesia subjects the importation of horticultural products, animals and animal products into Indonesia to non-automatic import licenses and quotas, thereby restricting imports of goods.

Indonesia imposes a non-automatic import licensing regime for horticultural products pursuant to which an importer must complete multiple steps prior to importing a horticultural product into Indonesia. First, an importer must obtain a Horticulture Product Import Recommendation ("RIPH")³ certificate from the Ministry of Agriculture. When issuing the RIPH certificate, the Ministry of Agriculture considers the production and availability of similar products domestically, domestic consumption of the product, and the potential of the imported product to distort the market. Second, an importer must apply to receive a designation as a Producer Importer for Horticultural Products or a Registered Importer for Horticultural Products from the Ministry of Trade. Third, for each imported product, the importer must apply to the Ministry of Trade for Import Consent/Approval by submitting the RIPH certificate and the designation.

Indonesia also imposes a non-automatic import licensing regime for animals and animal products pursuant to which an importer must complete multiple steps prior to importing an animal or animal product into Indonesia. First, importers must receive an Import Approval Recommendation ("RPP")⁴ from the Ministry of Agriculture to import animals or animal products. Quotas are set by the Indonesian government twice a year, and the Ministry of Agriculture allocates the quota, specifying the quantity of each animal or animal product allocated to each importer. After receiving the RPP, an importer must then apply for an import license with the Ministry of Trade. The Ministry of Trade only allows the importation of the product if domestic

¹ Including products originating from fruits, vegetables, vegetable ingredients, and floriculture, therein including fungi, mosses, and aquatic plants that serve as vegetable, vegetable ingredients, and/or aesthetic materials, that are still fresh or have been processed/manufactured. Ministry of Trade Regulation 60, Art. 1(1), 1(2).

² Including all materials derived from fresh and/or processed or prepared animals for the purpose of consumption, pharmaceuticals, agricultural, and/or other uses for fulfillment of human needs and well-being. Ministry of Trade Regulation 24, Art. 1(5). The Indonesian measures at issue also cover carcasses, meats, edible offals, and/or processed products thereof. Ministry of Agriculture Regulation 50, Art. 2(1).

³ *Rekomendasi Impor Produk Hortikultura*.

⁴ *Rekomendasi Persetujuan Pemasukan*.

production and supply of the product do not meet "demand for public consumption at reasonable price."⁵

These licensing regimes have significant trade-restrictive effects on imports and are used to implement what appear to be WTO-inconsistent measures. The multi-step licensing process is more administratively burdensome than absolutely necessary to administer the measure. The issuance of RIPH and RPP recommendations, a critical part of the licensing process, appears to be delayed or refused by the Indonesian authorities on non-transparent grounds. The Indonesian licensing measures do not inform traders of the basis for granting licenses. The licensing regimes do not appear to be administered in a uniform, impartial and reasonable manner, because the measures are applied inconsistently and unpredictably.

The legal instruments through which Indonesia imposes and administers these measures include, but are not limited to, the following instruments:

- Law of the Republic of Indonesia Number 13 of Year 2010 Concerning Horticulture ("Law 13");
- Regulation of the Minister of Agriculture Number 60/Permentan/OT.140/9/2012 ("MOA Regulation 60");
- Regulation of the Minister of Trade Number 30/M-DAG/PER/5/2012 Regarding Provisions on Import of Horticultural Products ("MOT Regulation 30");
- Regulation of the Minister of Trade Number 60/M-DAG/PER/9/2012 Regarding Second Amendment of Regulation of the Minister of Trade Number 30/M-DAG/PER/5/2012 Regarding Provisions on Import of Horticultural Products ("Regulation 60");
- Law of the Republic of Indonesia Number 18/2009 on Animal Husbandry and Animal Health ("Law 18");
- Regulation of the Minister of Agriculture Number 50/Permentan/OT.140/9/2011 Concerning Recommendation for Approval on Import of Carcasses, Meats, Edible Offals and/or Processed Products Thereof to Indonesian Territory ("MOA Regulation 50"); and
- Regulation of the Minister of Trade Number 24/M-DAG/PER/9/2011 Concerning Provisions on the Import and Export of Animal and Animal Product ("MOT Regulation 24");

as well as any amendments, related measures, or implementing measures.

Indonesia's measures appear to be inconsistent with Indonesia's obligations under the following provisions of the covered agreements:

- (i) Articles X:3(a) and XI:1 of the GATT 1994;
- (ii) Article 4.2 of the Agriculture Agreement; and
- (iii) Articles 1.2, 3.2 and 3.3 of the Import Licensing Agreement.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

⁵ Ministry of Trade Regulation 24, Art. 3(2).