



## INDONESIA - MEASURES CONCERNING THE IMPORTATION OF BOVINE MEAT

### REQUEST FOR CONSULTATIONS BY BRAZIL

The following communication, dated 4 April 2016, from the delegation of Brazil 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.

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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:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), Article 6 of the Agreement on Import Licensing Procedures ("Import Licensing Agreement"), Article 14 of the Agreement on Technical Barriers to Trade ("TBT Agreement") and Article 19 of the Agreement on Agriculture ("Agriculture Agreement") concerning certain measures imposed by Indonesia on the importation of meat from cattle of the species *Bos taurus*, hereinafter referred to as bovine meat.

For the past years, Brazil has undertaken efforts to gain access to the Indonesian bovine meat market. Despite Brazil's best endeavours to obtain approval for the importation of Brazilian bovine meat into Indonesia's territory, Indonesia has maintained and adopted restrictive rules and procedures which effectively prohibit or restrict Brazilian bovine meat from entering the Indonesian market. Indonesia does so through a general measure imposed by means of a positive list and through the specific measures indicated below.

#### (a) General measure

Indonesia's restrictive measures are imposed through a combination of legal instruments, administrative actions and omissions that result in an import ban on certain bovine meat products (secondary cuts, offal and carcass); in a quantitative restriction on other bovine meat products (prime cuts); and in an evident discrimination between Brazil and other suppliers of these products.

#### (b) Specific measures

Indonesia imposes prohibitions or restrictions on the importation of bovine meat through (1) the maintenance by Customs of positive lists that do not include several Harmonized System codes for bovine products; (2) the imposition of quarterly import quotas, randomly defined by the Indonesian authorities, which represent a quantitative restriction on the importation of products authorized in the positive lists; (3) discriminatory assignment of the mentioned quota among importers; (4) sanitary measures which are not based on international standards, guidelines or recommendations nor are scientifically justified, and which are also more restrictive than necessary for achieving a given appropriate level of protection; (5) technical regulations applied in a discriminatory manner and (6) non-transparent and restrictive import licensing requirements.

In addition, Brazil has reason to believe that in connection with these restrictions there are other measures and regulations adopted by Indonesia which appear to further constrain Brazilian exports of bovine meat, such as: importation of bovine meat is prohibited when domestic

production is deemed to be sufficient to fulfill domestic demand; imports of certain animals and animal products are prohibited or restricted when the prices of those products fall below certain reference prices; importation is only allowed to certain types of use; and there are trade-restrictive rules regarding shipping, warehousing, and transportation.

Brazil takes issue in particular with the fact that Indonesia only accepts imports of bovine meat from countries that have their entire territory declared as free of Foot and Mouth Disease (FMD), regardless of the fact that bovine meat from disease-free states or regions, with or without vaccination, holds the same sanitary status. By failing to adopt the principle of regionalization, Indonesia imposes a *de facto* prohibition on the importation of Brazilian bovine meat into its territory, by means of a sanitary measure that is against the relevant international standard and guideline governing the issue, without any sort of scientific justification or without being based on a proper risk assessment. Furthermore, the measure is more trade-restrictive than necessary to achieve the appropriate level of protection, and does not recognize pest- or disease-free areas.

Brazil also understands that Indonesia adopts technical regulations concerning the *halal* condition of bovine meat which are less-favorable to the products of foreign origin. While Brazil has no issue in what concerns the international standard for *halal* products in itself, it is concerned with the different treatment bestowed on bovine meat from different origins.

With regard to the import-licensing regime, Indonesia unduly restricts the access to its market of bovine meat through a non-transparent and intricate process. It requires at least five formal steps: (i) "Trade Operation Permit" (SIUP), as foreseen in MoT Regulation 36/2007; (ii) "Certificate of Customs Registration" (SRP), established by the Decree of the Minister of Finance number 454/KMK.04/2002, as amended by Decree of Minister of Finance number 549/KMK.04/2002; (iii) "Importer Identification Number" (API), defined in MoT Regulation 48/2015; (iv) "Recommendation from the Minister of Agriculture", as provided for in MoA Regulation 58/2015, according to Article 10 of Regulation 05/2016; and (v) "Import Approval from the Minister of Trade", according to Article 9 of MoT Regulation 05/2016.

These licenses and recommendations - with strict deadlines - may restrict the ports of entry of the imports, and are not administered in a transparent manner. Brazil understands that Indonesia has failed to comply with notification obligations and publication requirements under the Import Licensing Agreement and the GATT 1994, thus creating trade-restrictive and distortive effects on imports of bovine meat, which add to the inconsistencies with WTO obligations maintained by Indonesia.

The laws, regulations and decisions through which Indonesia imposes and administers these measures in a manner that affects Brazil's rights under the WTO include, but are not limited to, the following legal instruments, as well as any further regulations, complementary provisions, amendments, replacements, related or implementing measures.

- Minister of Finance Decree No. 454/KMK.04/2002 on Registration of Importer as amended by Minister of Finance Decree No. 549/KMK.04/2002 ("MoF Decree 454/2002");
- Law of the Republic of Indonesia No. 16 of 1992 Concerning Animal, Fish and Plant Quarantine ("Law 16/1992");
- Law of the Republic of Indonesia No. 8 of 1999 Concerning Consumer Protection ("Law 8/1999");
- Government Regulation No. 82 of 2000 on Animal Quarantine ("GR 82/2000");
- Minister of Religious Affairs Decree No. 518 of 2001 on the Procedures for Auditing and Stipulating Halal Food ("MoRA 518/2001");
- Government Regulation No. 28 of 2004 on Security, Quality and Nutrition of food ("GR 28/2004");

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- Minister of Trade Regulation No. 36/M-DAG/PER/9/2007 on the Issuance of Trading Business License, as amended by Minister of Trade Regulation No. 46/M-DAG/PER/9/2009, and lastly by Minister of Trade Regulation No. 39/M-DAG/PER/12/2011 ("MoT Regulation 36/2007");
  - Law of the Republic of Indonesia No. 18 of 2009 on Husbandry and Animal Health ("Law 18/2009");
  - Minister of Agriculture Regulation No. 13/Permentan/OT.140/1/2010 Concerning Requirements for Ruminants Slaughterhouses and Meat Cutting Plants ("MoA Regulation 13/2009");
  - Decision number 137/PUV-VII/2009 of the Indonesian Constitutional Court, adopted on 27 August 2010.
  - Government Regulation No. 95 of 2012 on Veterinary Public Health and Animal Welfare ("GR 95/2012");
  - Law of the Republic of Indonesia No. 18 of 2012 concerning Food ("Law 18/2012");
  - Decision of the Ministry of Agriculture Concerning Importation of Animal and Animal Products from the United States of America No. 4390/Kpts./PD.620/2013 ("Decision of MoA 4390/2013");
  - Minister of Agriculture Regulation No. 65/Permentan/PD.410/5/2013 ("MoA Regulation 65/2013");
  - Minister of Trade Decree No. 699/M-DAG/KEP/7/2013 on Stabilization of Cattle (Sapi) Meat Price ("MoT Decree 699/2013");
  - Law of the Republic of Indonesia No. 19/2013 Concerning the Protection and Empowerment of Farmers ("Law 19/2013, Farmer's Law");
  - Law of the Republic of Indonesia No. 7 of 2014 Concerning Trade ("Law 7/2014");
  - Law of the Republic of Indonesia No. 41 of 2014 amending "Law Number 18/2009" Concerning Animal Husbandry and Animal Health ("Law 41/2014");
  - Law of the Republic of Indonesia No. 33 of 2014 concerning Halal Product Assurance ("Law 33/2014");
  - Minister of Trade Regulation 48/M-DAG/PER/7/2015 ("MoT Regulation 48/2015");
  - Minister of Agriculture Regulation 58/Permentan/PK.210/11/2015 ("MoA Regulation 58/2015");
  - Minister of Trade Regulation No. 70/M-DAG/PER/9/2015 ("MoT Regulation 70/2015");
  - Minister of Trade Regulation No. 87/M-DAG/PER/10/2015 ("MoT Regulation 87/2015");
  - Minister of Trade Regulation No. 05/M-DAG/PER/1/2016 ("MoT Regulation 05/2016").

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

- i. Articles I:1, II:1, III:4, III:9, VIII:1(c), VIII:3 X:3(a) and XI:1 of the GATT 1994;
- ii. Articles 2.1, 2.2, 2.3, 3.1, 3.2, 3.3, 5.1, 5.2, 5.4, 5.6, 5.7, 6.1, 6.2, 6.3, 7, 8 and Annex C of the SPS Agreement;

- iii. Articles 2.1, 2.2, 2.3, 2.4, 5.1 and 5.2 of the TBT Agreement;
- iv. Articles 4.2 and 14 of the Agreement on Agriculture;
- v. Articles 1.3, 3.2 and 3.3, 5.1 and 5.2 of the Import Licensing Agreement.

Brazil reserves the right to raise further factual and legal claims in the course of the consultations.

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

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