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INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

REQUEST FOR CONSULTATIONS BY NEW ZEALAND

The following communication, dated 30 August 2013, from the delegation of New Zealand 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*, Article 6 of the *Agreement on Import Licensing Procedures* ("Licensing Agreement"), and Articles 7 and 8 of the *Agreement on Preshipment Inspection* concerning certain measures imposed by Indonesia affecting the importation of animal products, animals and horticultural products into Indonesia.

Indonesia imposes prohibitions and restrictions affecting imports of a range of animal products, animals and horticultural products.¹ These prohibitions and restrictions include quotas, import restrictions, and discretionary or non-automatic import licensing schemes.

The Indonesian Government's stated basis for these measures is to restrict imports of certain agricultural products where domestic production is deemed sufficient to satisfy domestic demand. Quotas are set and allocated annually at ministerial-level coordination meetings followed up by inter-ministerial technical meetings. For instance, Indonesia has introduced diminishing import quotas for frozen beef of 73,000 tonnes (2010), 50,000 tonnes (2011), 34,000 tonnes (2012) and 32,000 tonnes (2013) with similar quotas applied to other products. These quotas and restrictions are administered through discretionary and non-automatic import licensing schemes that restrict the quantity, type², and country of origin of imports during upcoming "semesters".

Indonesia does not appear to administer these quotas and restrictions in a uniform, impartial or reasonable manner as they are applied inconsistently and unpredictably. Indonesia has also failed to publish or provide relevant information, including overall quota details, sufficient for governments and traders to become acquainted with them.

¹ The animal products and animals are listed in the various laws and regulations referred to in this request. They include, but are not limited to, carcasses, meats, edible offals and/or processed products thereof as well as all materials derived from fresh, processed or prepared animals for the purpose of consumption, pharmaceutical, agricultural, and/or other uses. The horticultural products are also listed in the various laws and regulations referred to in this request. They include, but are not limited to, fruits, vegetables, medicinal plant ingredients, floriculture, aesthetic materials and all products derived from fresh or processed horticultural crops.

² Including prohibiting imports of fresh horticultural products for consumption that were harvested more than six months previously.

Indonesia's discretionary and non-automatic import licensing procedures require importers to complete multiple steps prior to importing into Indonesia. First, an importer must obtain an Import Approval Recommendation ("RPP"³ or "RIPH"⁴) from the Ministry of Agriculture. Second, an importer must apply and receive a designation as a "Registered Importer for Animal and Animal Products", "Registered Importer for Horticultural Products" or "Producer Importer of Horticultural Products" from the Ministry of Trade.⁵ Finally, for each product, the importer must apply for an import licence from the Ministry of Trade.

These licensing procedures have trade-restrictive and -distortive effects and are broader in scope, and more administratively burdensome, than necessary. They do not allow licence holders to choose the source of imports, and do not appear to be administered in a uniform, impartial or reasonable manner as they are applied inconsistently and unpredictably. Indonesia has also failed to publish or provide relevant information regarding the measures, including the basis for granting and allocating licences, sufficient for governments and traders to become acquainted with them.

Furthermore, Indonesia imposes measures affecting the internal sale, offering for sale, purchase, distribution and use of agricultural products that accord less favourable treatment to imported products than to like domestic products, including restrictions limiting the sale of imported beef to the hotel, restaurant and catering sectors and of imported horticultural products to distributors.

Finally, as of June 2013, Indonesia's preshipment inspection authority, *PT. Surveyor Indonesia (Persero) dan PT. Sucofindo (Persero)*, has limited the provision of preshipment inspection activities in New Zealand to a sole company, *Bureau Veritas*, resulting in delays and further impediments to trade.

The trade impact of these various measures is significant. Since the introduction of these restrictions, New Zealand's exports to Indonesia of beef and a range of horticultural products, including apples and onions, have fallen by up to 80 per cent at considerable commercial cost to New Zealand industries.

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

For Animal Products and Animals

- Law of the Republic of Indonesia Number 18 of 2009 on Animal Husbandry and Animal Health ("Animal Law");
- 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 ("Ministry of Agriculture Regulation 50/2011") as amended by Regulation of the Minister of Agriculture Number 63/Permentan/OT.140/5/2013 Concerning Amendment of Regulation of the Minister of Agriculture Number 50/Permentan/OT.140/9/2011 Concerning Import Approval Recommendation of Carcass, Meat, Offal, and/or their Derivatives into the Territory of the Republic of Indonesia ("Ministry of Agriculture Regulation 63/2013");
- Regulation of the Minister of Trade Number 22/M-DAG/PER/5/2013 Concerning Import and Export of Animals and Animal Products ("Ministry of Trade Regulation 22/2013") which repeals and replaces Regulation of the Minister of Trade Number 24/M-DAG/PER/9/2011 ("Ministry of Trade Regulation 24/2011");
- Law of the Republic of Indonesia Number 18 of 2012 Concerning Food ("Food Law");

³ *Rekomendasi Persetujuan Pemasukan*. RPPs are required to import certain animal products and animals, currently listed in Appendices I to III of Ministry of Agriculture Regulation 50/2011 as amended by Ministry of Agriculture Regulation 63/2013.

⁴ *Rekomendasi Impor Produk Hortikultura*. RIPHs are required to import certain horticultural products, currently listed in Appendix II of Ministry of Agriculture Regulation 47/2013.

⁵ In order to import the animal products currently listed in Appendix I of Ministry of Trade Regulation 22/2013 and the horticulture products currently listed in Appendix I of Ministry of Agriculture Regulation 16/2013.

- Law of the Republic of Indonesia Number 19 of 2013 Concerning Protection and Empowerment of Farmers ("Farmers Law");
- Decree of the Minister of Trade Number 699/M-DAG/KEP/7/2013 Concerning Beef Price Stabilization ("Ministry of Trade Decree 699/2013");
- As well as any amendments, replacements, related measures and implementing measures.

For Horticultural Products

- Law of the Republic of Indonesia Number 13 of 2010 Concerning Horticulture ("Horticulture Law");
- Regulation of the Minister of Agriculture Number 47/Permentan/OT.140/4/2013 Concerning Recommendation on the Importation of Horticultural Products ("Ministry of Agriculture Regulation 47/2013") which repeals and replaces Regulation of the Minister of Agriculture Number 60/Permentan/OT.140/9/2012 ("Ministry of Agriculture Regulation 60/2012");
- Regulation of the Minister of Trade Number 16/M-DAG/PER/4/2013 Concerning Provisions on Horticultural Products Import ("Ministry of Trade Regulation 16/2013") which repeals and replaces Regulation of the Minister of Trade Number 30/M-DAG/PER/5/2012 ("Ministry of Trade Regulation 30") and Regulation of the Minister of Trade Number 60/M-DAG/PER/9/2012 ("Ministry of Trade Regulation 60/2012");
- The Food Law;
- The Farmers Law;
- As well as any amendments, replacements, related measures and implementing measures.

Indonesia's measures appear to be inconsistent with Indonesia's obligations under the WTO Agreements, including:

- Article 4.2 of the Agreement on Agriculture as the quotas, import restrictions, licensing schemes and similar measures are of a kind "required to be converted into ordinary customs duties" and which Members shall not maintain, resort to, or revert to.⁶
- Article XI:1 of the GATT 1994 as the quotas, import restrictions, licensing schemes and other measures⁷ are "prohibitions or restrictions on imports other than duties, taxes or other charges".
- Article 3.2 of the Licensing Agreement as the non-automatic import licensing procedures have trade-restrictive and -distortive effects, are broader in scope and duration than any measure they purport to implement, and are more administratively burdensome than absolutely necessary.
- Article X:3(a) of the GATT 1994 and Article 1.3 of the Licensing Agreement as Indonesia does not administer the laws, regulations, decisions and rulings pertaining to the quotas, import restrictions or licensing schemes in a uniform, impartial and reasonable manner.
- Article X:1 of the GATT 1994 as the quotas and basis for their allocation are not promptly published in a manner so as to enable governments and traders to become acquainted with them.
- Articles 3.3 and 3.5(a) to (c) of the Licensing Agreement due to failure to publish or provide relevant and sufficient information, including overall quota details, country shares of quotas, and the basis for granting and allocating licences.

⁶ New Zealand would also like to consult with respect to import restrictions contingent upon "trigger" domestic prices that appear to be inconsistent with Article 4.2 of the Agreement on Agriculture and Article XI:1 of the GATT 1994.

⁷ Including limiting the provision of preshipment inspection activities in New Zealand to a sole company.

- Articles XIII:2(a), (c) and (d) of the GATT 1994 and Article 3.5(k) of the Licensing Agreement due to failure to fix and give appropriate notice of quotas and failure to permit licence holders to choose the source of imports.
- Article III:4 of the GATT 1994 as Indonesia's laws, regulations and requirements affecting the internal sale, offering for sale, purchase, distribution and use of agricultural products accord less favourable treatment to imported products than to like domestic products.
- Articles 2.1 and 2.15 of the Agreement on Preshipment Inspection due to failure to ensure that preshipment inspection activities do not result in unreasonable delays, are carried out in a non-discriminatory manner, and are applied on an equal basis to all exporters.

We look forward to receiving Indonesia's reply to the present request and to fixing a mutually convenient date and location for consultations. In light of the request by the United States for consultations on the same measures, dated 30 August 2013, New Zealand proposes that consultations be held jointly with the United States. New Zealand would be amenable to holding consultations in Jakarta.
