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INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

REQUEST FOR CONSULTATIONS BY NEW ZEALAND

The following communication, dated 8 May 2014, 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* ("Agriculture Agreement"), Article 6 of the *Agreement on Import Licensing Procedures* ("Import Licensing Agreement") and Articles 7 and 8 of the *Agreement on Preshipment Inspection* concerning certain measures imposed by Indonesia on the importation of horticultural products,¹ animals, and animal products² into Indonesia.

As described below, Indonesia: (1) imposes prohibitions or restrictions on imports of horticultural products, animals, and animal products; (2) imposes unjustified and trade-restrictive non-automatic import licensing requirements on imports of such products; (3) accords less favourable treatment to imported products than to like products of national origin; (4) has imposed unreasonable and discriminatory pre-shipment inspection requirements; and (5) has failed to notify and publish sufficient information concerning its import licensing measures.

With respect to horticultural products, Indonesia's non-automatic import licensing regime involves at least three elements: (1) designation from the Ministry of Trade ("MOT") as a Producer Importer ("PI") or Registered Importer ("RI") for Horticultural Products; (2) a horticultural product Import Recommendation ("RIPH")³ from the Ministry of Agriculture ("MOA"); and (3) an Import Approval from the MOT. The PI/RI designation restricts the uses for which horticultural products may be imported. RIPHs and Import Approvals are valid for one six-month period.⁴ Applications for these documents may only be submitted, and the documents issued, during two time periods in the year.⁵ Import Approvals specify, *inter alia*, the total quantity and country of origin of a horticultural product that an importer may import during that period.

¹ The relevant Indonesian measure defines horticulture as "all matters relating to fruits, vegetables, plant medicinal materials, and floriculture" and horticultural products as "all products originating from fresh or processed horticultural plant." Ministry of Trade (MOT) Regulation 16/2013, Articles 1(1) and 1(2) as amended by MOT Regulation 47/2013.

² The relevant Indonesian measures define animal products as "all materials originating from animal that are fresh and/or processed for consumption, pharmaceutical, farming, and/or other purposes for fulfilling the needs and welfare of human." MOT Regulation 46/2013, Article 1(5). The Indonesian measures at issue also cover "carcasses, meats, edible offals, and/or their derivatives." Ministry of Agriculture (MOA) Regulation 84/2013.

³ *Rekomendasi Impor Produk Hortikultura*.

⁴ For chili and shallots, the Import Approval validity period is three months, see MOT Regulation 16/2013, as amended by MOT Regulation 47/2013, Article 14, and the RIPH validity period is not specified, see MOA Regulation 86/2013, Article 13(4).

⁵ The time periods for applications vary for chili and shallots, see MOT Regulation 16/2013, as amended by MOT Regulation 47/2013, Article 14B.

With respect to animals and animal products, Indonesia's non-automatic import licensing regime involves at least four elements: (1) satisfying the MOA requirements for importers; (2) a RI-Animals and Animal Products designation from the MOT;⁶ (3) a Recommendation⁷ from the MOA; and (4) an Import Approval from the MOT. Recommendations restrict the quantity, type, country of origin, and intended use of the imported products. They are valid for a specified period, up to the end of the current year, and may only be applied for during four time periods throughout the year.⁸ Import Approvals are valid for one three-month period, and applications may only be submitted and permits issued during four time windows throughout the year. Import Approvals specify, *inter alia*, the total quantity and country of origin of product the holder may import during the specified period.

Indonesia's import licensing regime is not an automatic licensing regime, and it cannot be justified as a non-automatic licensing regime implementing a WTO-consistent measure.

Indonesia's non-automatic import licensing regime prohibits and restricts imports in the following ways:

- With respect to horticultural products, RIPH certificates do not permit the importation of fresh horticultural products for consumption that were harvested more than six months ago.
- With respect to animals and animal products, any animal products not listed in the appendices to the import licensing regulations may not be imported at all.⁹
- With respect to horticultural products, animals and animal products, importers may apply for Import Approvals only during specified time periods that can be months ahead of the time of importation, and, once issued, an Import Approval restricts imports during the specified time periods to set products, in set quantities, from set countries, and under set conditions.
- Importers must predict in advance the quantity of product they will wish to import during a given period, and apply accordingly for a specific amount, to be stated on their Import Approval covering that three- or six-month period. Importers face having their designation as a RI/PI suspended or revoked if the actual quantity imported is less than a certain percentage of the stated quantity.
- The importation of horticultural products and animals and animal products with respect to certain types of intended use, sale, purchase, and/or distribution is prohibited or restricted.
- The importation of horticultural products, animals, and animal products is prohibited when domestic production is deemed sufficient to fulfill domestic demand.
- Imports of certain horticultural products, animals and animal products are prohibited or restricted when the prices of those products falls below certain reference prices, which are set by a ministerial body (either the Price of Horticulture Product Monitoring Team or the Beef Price Monitoring Team).¹⁰

⁶ With respect to animals and animal products listed in Appendix II, this requirement appears to apply only to importers that are business operators and not to other categories of importers, such as social institutions or State Owned Enterprises. See MOT Regulation 46/2013, Articles 4, 9, and 10; MOA Regulation 84/2013, Article 22.

⁷ *Rekomendasi Persetujuan Pemasukan*.

⁸ The timeframes appear to apply only to business operators and not to other types of importers. See MOA Regulation 84/2013, Article 21.

⁹ This applies to all animals and animal products not listed in the appendices to MOA Regulation 84/2013 and MOT Regulation 46/2013.

¹⁰ These products include the animals and animal products listed in Appendix I of MOT Regulation 46/2013 and the horticultural products listed in Article 14B of MOT Regulation 16/2013, as amended by MOT Regulation 47/2013.

- For the above reasons, and due to the regime's complexity, Indonesia's import licensing regime is a restriction on imports, is not as simple as possible, is more administratively burdensome than absolutely necessary, unnecessarily requires approaches to more than one administrative body, and is trade-restrictive.

In connection with its import licensing regime, Indonesia also has adopted measures limiting the internal sale, offering for sale, purchase, distribution, or use of imported horticultural products, animals, and animal products, in a manner that accords less favourable treatment than that accorded to like domestic products. For example, Indonesia's measures limit the internal sale of imported horticultural products to distributors, and limit the sale of imported beef to use in industry and the hotel, restaurant and catering sectors. Indonesia does not impose similar limitations on like domestic products.

Indonesia's measures include preshipment inspection requirements. Such requirements, which duplicate information already provided in the phyto-sanitary certificate, are more trade-restrictive than necessary, as is the administration of pre-shipment inspection activities which Indonesia has restricted to a sole company in New Zealand, Bureau Veritas. Indonesia has failed 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.

Finally, New Zealand understands that Indonesia, with respect to its import-licensing regime, has failed to comply with notification obligations under Article 5 of the Import Licensing Agreement and with publication requirements under Article 3 of the Import Licensing Agreement.

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

- Law of the Republic of Indonesia Number 7 of Year 2014 Concerning Trade ("Trade Law");
- Law of the Republic of Indonesia Number 13 of Year 2010 Concerning Horticulture ("Horticulture Law");
- Regulation of the Ministry of Agriculture Number 86/Permentan/OT.140/8/2013 Concerning Import Recommendation of Horticulture Products ("MOA Regulation 86/2013"), which repeals and replaces Regulation of the Minister of Agriculture Number 47/Permentan/OT.140/4/2013 Concerning Recommendation on the Importation of Horticulture Products ("MOA Regulation 47/2013"), which repealed and replaced Regulation of the Minister of Agriculture Number 60/Permentan/OT.140/9/2012 ("MOA Regulation 60/2012");
- Regulation of the Minister of Trade Number 16/M-DAG/PER/4/2013 Concerning Provisions on Horticulture Product Import ("MOT Regulation 16/2013"), which repeals and replaces Regulation of the Minister of Trade Number 30/M-DAG/PER/5/2012 Concerning the Provisions on Import of Horticultural Products ("MOT Regulation 30/2012") and 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 ("MOT Regulation 60/2012");
- Regulation of the Ministry of Trade Number 47/M-DAG/PER/8/2013 Concerning Amendment of Regulation of the Minister of Trade Number 16/M-DAG/PER/4/2013 Concerning Import Provision of Horticulture Product ("MOT Regulation 47/2013");
- Law of the Republic of Indonesia Number 18/2009 on Animal Husbandry and Animal Health ("Animal Law");
- Regulation of the Ministry of Agriculture Number 84/Permentan/PD.410/8/2013 Concerning Importation of Carcass, Meat, Offal and/or Their Derivatives into the Territory of the Republic of Indonesia ("MOA Regulation 84/2013"), which repeals and replaces 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 50/2011") 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 ("MOA Regulation 63/2013");

- Regulation of the Minister of Trade Number 46/M-DAG/PER/8/2013 Concerning Animal and Animal Product Import and Export Provision ("MOT Regulation 46/2013"), which repeals and replaces Regulation of the Minister of Trade Number 22/M-DAG/PER/5/2013 Concerning Import and Export of Animals and Animal Products ("MOT Regulation 22/2013"), which repealed and replaced 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 24/2011");
- Law of the Republic of Indonesia Number 18/2012 Concerning Food ("Food Law"); and
- Law of the Republic of Indonesia Number 19/2013 Concerning Protection and Empowerment of Farmers ("Farmers' Law");

as well as any amendments, replacements, 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 III:4, X:1, XI:1 of the GATT 1994;
- (ii) Article 4.2 of the Agriculture Agreement;
- (iii) Articles 1.2, 1.5, 1.6, 2.2, 3.2, 3.3, 5.1, and 5.2 of the Import Licensing Agreement; and
- (iv) Articles 2.1 and 2.15 of the Agreement on Preshipment Inspection.

We look forward to receiving your 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 May 8, 2014, we propose that consultations be held jointly with the United States.
