



## INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS, ANIMALS AND ANIMAL PRODUCTS

### REQUEST FOR THE ESTABLISHMENT OF A PANEL BY NEW ZEALAND

The following communication, dated 18 March 2015, from the delegation of New Zealand to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 8 May 2014, New Zealand requested 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* ("DSU"), 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* ("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<sup>1</sup> and animals and animal products<sup>2</sup> into Indonesia. New Zealand held consultations with Indonesia on 19 June 2014. Those consultations unfortunately did not resolve the dispute.

As described below, Indonesia: (a) imposes trade-restrictive import licensing regimes and related requirements on imports of horticultural products and of animals and animal products; (b) imposes prohibitions and restrictions on imports of such products; and (c) prohibits and restricts importation of such products when domestic production is deemed sufficient to fulfill domestic demand.

#### I. HORTICULTURAL PRODUCTS

Indonesia imposes prohibitions and restrictions on the importation of horticultural products through its import licensing regime<sup>3</sup> for horticultural products.

##### a. Indonesia's Trade-Restrictive Import Licensing Regime

Indonesia's import licensing regime for horticultural products involves at least three distinct application and approval processes: (1) an Importer Designation from the Ministry of Trade ("MOT") as a Registered Importer ("RI") or Producer Importer ("PI") of horticultural products; (2) a horticultural product Import Recommendation ("RIPH")<sup>4</sup> from the Ministry of Agriculture ("MOA"); and (3) an Import Approval from the MOT. Importers must apply for and receive each of these approvals in order to import horticultural products into Indonesia.

<sup>1</sup> The relevant Indonesian instruments define 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.

<sup>2</sup> The relevant Indonesian instruments 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). This includes "carcasses, meats, and/or their derivatives." Ministry of Agriculture (MOA) Regulation 139/2014.

<sup>3</sup> We use the term "import licensing regime" to refer to the set of requirements and procedures that must be complied with in order to import products into Indonesia.

<sup>4</sup> *Rekomendasi Impor Produk Hortikultura*.

Indonesia's import licensing regime for horticultural products includes, but is not limited to, the following trade-restrictive requirements:

- RIPHs and Import Approvals are valid for limited time periods, usually six months. Importers may apply for RIPHs and Import Approvals only during limited time periods before the start of each validity period, and Indonesia issues RIPHs and Import Approvals only at the start of each period. Importers must complete all importations of horticultural products covered by the RIPHs and Import Approvals issued for a validity period within that period, *i.e.*, all imported horticultural products must be shipped, arrive, and clear customs within the period. Indonesia prohibits or restricts the importation of horticultural products covered by RIPHs and Import Approvals issued for a previous period.
- When applying for RIPHs and Import Approvals, importers must indicate the specific products they will import, as well as the quantity, country of origin, port of entry, and intended use of such products. Once issued, RIPHs and Import Approvals together specify the type, quantity, country of origin, port of entry, and use of the products that each importer may import during the relevant six-month period. Importers are prohibited or restricted from importing products of a different type, in a greater quantity, from another country, through a different port, or for a different use than those specified in their RIPHs and Import Approvals.
- Furthermore, importers are required to import a certain percentage, currently 80 percent, of the quantity of each type of product specified on their Import Approvals for the applicable six-month period. Importers may have their RI/PI Importer Designations suspended or revoked if they fail to meet this requirement.

New Zealand understands that the legal instruments through which Indonesia maintains the measures described above include those in Annex I.

New Zealand considers that the measures described above, when viewed as a single regime and also when viewed as requirements operating separately or in combination, are inconsistent with Indonesia's obligations under the following provisions<sup>5</sup>:

- Article XI:1 of the GATT 1994 as these measures are "prohibitions or restrictions other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia.
- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties."

#### **b. Prohibitions and Restrictions on the Importation of Horticultural Products Made Effective Through Indonesia's Import Licensing Regime**

In addition to the trade-restrictive requirements described above, Indonesia imposes, through its import licensing regime, the following prohibitions and restrictions on the importation of horticultural products:

- Importation of certain horticultural products is prohibited or restricted when the domestic market price of such products falls below a certain reference price set by a

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<sup>5</sup> To the extent that Indonesia's import licensing regime for horticultural products falls within the scope of the disciplines of Article 3 of the Import Licensing Agreement, New Zealand considers that the import licensing requirements and procedures, as described above and as set out in sections I(b) and I(c), would be inconsistent with Article 3.2 of the Import Licensing Agreement because they have trade-restrictive or trade-distortive effects additional to those caused by the imposition of the restriction, do not correspond in scope and duration to any measure they could be implementing, and are more administratively burdensome than absolutely necessary to implement any such measure. To the extent that Indonesia's import licensing regime falls within the scope of Article 2 of the Import Licensing Agreement, New Zealand considers that Indonesia's import licensing requirements and procedures, as described above and as set out in sections I(b) and I(c), would be inconsistent with Article 2.2(a) of the Import Licensing Agreement because they are administered in such a manner as to have restricting effects on imports.

ministerial body.<sup>6</sup> For instance, RIPHs are issued only if the market price of certain products remains above a set reference price.

- Indonesia prohibits or restricts the importation of fresh horticultural products for consumption that were harvested more than six months previously.
- The MOT and MOA limit the type and quantity of horticultural products allowed to be imported by limiting the types and quantities of products specified in an RIPH or Import Approval.

New Zealand understands that the legal instruments through which Indonesia maintains these measures include those in Annex I.

New Zealand considers that the measures described above, when viewed as elements of Indonesia's import licensing regime and also when viewed as distinct measures, are inconsistent with Indonesia's obligations under the following provisions:

- Article XI:1 of the GATT 1994 as these measures are "prohibitions or restrictions other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia.
- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties."

**c. Prohibitions and Restrictions on Importation Relating to the Use, Sale, Offering for Sale, Distribution, Storage, or Transportation of Imported Horticultural Products Made Effective Through Indonesia's Import Licensing Regime**

Indonesia also imposes, through its import licensing regime, the following prohibitions and restrictions on the importation of horticultural products that relate to the use, sale, offering for sale, distribution, storage, or transportation of imported products:

- RIs are permitted to import horticultural products only for sale to distributors and are prohibited from importing such products for sale directly to consumers or retailers.
- PIs are prohibited from importing horticultural products other than as materials for industrial production processes and are prohibited from trading or transferring any excess products.

If importers fail to comply with these requirements, they are subject to sanction by revocation of their RI or PI Importer Designation, and ineligibility for a future Importer Designation for two years.

- Further, as a condition of being able to import horticultural products into Indonesia, importers are required to own storage facilities and means of transport for imported horticultural products.

New Zealand understands that the legal instruments through which Indonesia maintains these measures include those in Annex I.

New Zealand considers that the measures described above, when viewed as elements of Indonesia's import licensing regime and also when viewed as distinct measures, are inconsistent with Indonesia's obligations under the following provisions:

- Article XI:1 of the GATT 1994 as these measures are "prohibitions or restrictions other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia.<sup>7</sup>

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<sup>6</sup> These products currently are listed in Article 14B of MOT Regulation 16/2013, as amended by MOT Regulation 47/2013.

<sup>7</sup> To the extent that these measures are measures affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, New Zealand considers that they would be inconsistent with Article III:4 of the GATT 1994 because Indonesia does not impose similar limitations on the internal sale,

- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties."

## II. ANIMALS AND ANIMAL PRODUCTS

Indonesia imposes prohibitions and restrictions on the importation of animals and animal products through its import licensing regime for animals and animal products.

### a. Indonesia's Trade-Restrictive Import Licensing Regime

Indonesia's import licensing regime for animals and animal products involves at least three distinct application and approval processes: (1) an Importer Designation from the MOT for animals and animal products; (2) an animal and animal products Import Recommendation from the MOA; and (3) an Import Approval from the MOT. Importers must apply for and receive each of these approvals in order to import covered animals and animal products into Indonesia.

Indonesia's import licensing regime for animals and animal products includes, but is not limited to, the following trade-restrictive requirements:

- Recommendations and Import Approvals are valid for limited time periods. Recommendations are valid, at the latest, up to the end of the current year, and Import Approvals are valid for three-month periods. Importers may apply for Recommendations and Import Approvals only during limited time periods before the start of each validity period, and Indonesia issues these documents only at the start of each period. Importers must complete all importations of animals and animal products covered by the Recommendations and Import Approvals within a given validity period, *i.e.*, all imports must be shipped, arrive, and clear customs within the period for which the associated Import Approval is valid. Indonesia prohibits or restricts the importation of animals and animal products covered by Recommendations and Import Approvals issued for a previous period.
- When applying for Recommendations and Import Approvals, importers must indicate the specific products they will import, as well as the quantity, country of origin, port of entry, and intended use of such products. Once issued, Recommendations and Import Approvals together specify the type, quantity, country of origin, port of entry, and use of the products that each importer may import during the relevant three-month period. Importers are prohibited or restricted from importing products of a different type, in a greater quantity, from another country, through a different port, or for a different use than those specified in their Recommendations and Import Approvals.
- Furthermore, importers are required to import, on a yearly basis, a certain percentage, currently 80 percent, of the quantity of each type of product specified on their Import Approvals. Importers may have their Importer Designations, Recommendations, and/or Import Approvals suspended or revoked if they fail to meet this requirement.

New Zealand understands that the legal instruments through which Indonesia maintains the measures described above include those in Annex II.

New Zealand considers that the measures described above, when viewed as a single regime and also when viewed as requirements operating separately or in combination, are inconsistent with Indonesia's obligations under the following provisions<sup>8</sup>:

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offering for sale, purchase, transportation, storage, distribution and use of like domestic products and, therefore, Indonesia's laws, regulations and requirements accord less favourable treatment to imported products than like domestic products.

<sup>8</sup> To the extent that Indonesia's import licensing regime for animals and animal products falls within the scope of the disciplines of Article 3 of the Import Licensing Agreement, New Zealand considers that the import licensing requirements and procedures, as described above and as set out in sections II(b) and II(c), would be inconsistent with Article 3.2 of the Import Licensing Agreement because they have trade-restrictive or trade-distortive effects additional to those caused by the imposition of the restriction, do not correspond in scope and duration to any measure they could be implementing, and are more administratively burdensome than

- Article XI:1 of the GATT 1994 as these measures are "prohibitions or restrictions other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia.
- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties."

**b. Prohibitions and Restrictions on the Importation of Animals and Animal Products Made Effective Through Indonesia's Import Licensing Regime**

In addition to the trade-restrictive requirements described above, Indonesia imposes, through its import licensing regime, the following prohibitions and restrictions on the importation of animals and animal products:

- Indonesia prohibits or restricts the importation of those covered animals and animal products not listed in the appendices to relevant import regulations, including all bovine offal products (except some cuts of tongue and tail), all secondary beef cuts (*inter alia* beef blade, knuckles, chuck, inside round and outside round), all bovine carcass, and poultry parts.<sup>9</sup>
- With respect to certain types of animal products, importation is only permitted on the condition that importing entities have "absorbed" meat from local slaughter houses.
- The MOT and the MOA limit the type and quantity of animal products allowed to be imported by limiting the types and quantities of products specified in a Recommendation or Import Approval.<sup>10</sup>
- Importation of certain animal products is prohibited or restricted when the domestic market price of such products falls below a specified reference price set by a ministerial body.<sup>11</sup>

New Zealand understands that the legal instruments through which Indonesia maintains these measures include those in Annex II.

New Zealand considers that the measures described above, when viewed as elements of Indonesia's import licensing regime and also when viewed as distinct measures, are inconsistent with Indonesia's obligations under the following provisions:

- Article XI:1 of the GATT 1994 as these measures are "prohibitions or restrictions other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia.<sup>12</sup>
- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties."

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absolutely necessary to implement any such measure. To the extent that Indonesia's import licensing regime falls within the scope of Article 2 of the Import Licensing Agreement, New Zealand considers that Indonesia's import licensing requirements and procedures, as described above and as set out in sections II(b) and II(c), would be inconsistent with Article 2.2(a) of the Import Licensing Agreement, because they are administered in such a manner as to have restricting effects on imports.

<sup>9</sup> Currently, all covered animals and animal products not listed in the appendices of both MOA Regulation 139/2014 and MOT Regulation 46/2013 are banned from importation.

<sup>10</sup> See, *e.g.*, Article 28 of MOA Regulation 139/2014 (stating that the quantity of animal product specified in a Recommendation is set by the Ministry of Trade).

<sup>11</sup> These products currently include the secondary cuts of the animal products listed in Appendix I of MOT Regulation 46/2013.

<sup>12</sup> To the extent that the absorption requirement is a measure affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, New Zealand considers that it would be inconsistent with Article III:4 of the GATT 1994 because it accords less favourable treatment to imported products than to like domestic products.

**c. Prohibitions and Restrictions on Importation Relating to the Use, Sale, Offering for Sale, Distribution, Storage, or Transportation of Imported Animals and Animal Products Made Effective Through Indonesia's Import Licensing Regime**

Indonesia also imposes, through its import licensing regime, the following restrictions on the importation of animals and animal products that relate to the use, sale, offering for sale, distribution, storage or transportation of imported products:

- Indonesia prohibits or restricts the importation of certain animals and animal products for certain uses and for distribution and sale through certain channels. For example, the importation of certain bovine products is only permitted for use in hotels, restaurants, catering and industry and for other special purposes. Importation of bovine products for sale directly to consumers at modern and traditional markets, which are the primary consumer retail channels for bovine products in Indonesia, is also restricted or prohibited.<sup>13</sup>
- As a condition of being able to import animals and animal products into Indonesia, importers are required to own storage facilities and means of transport for imported animals and animal products.

New Zealand understands that the legal instruments through which Indonesia maintains these measures include those in Annex II.

New Zealand considers that the measures described above, when viewed as elements of Indonesia's import licensing regime and also when viewed as distinct measures, are inconsistent with Indonesia's obligations under the following provisions:

- Article XI:1 of the GATT 1994 as these measures are "prohibitions or restrictions other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia.<sup>14</sup>
- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties."

**III. PROHIBITIONS AND RESTRICTIONS ON AGRICULTURAL PRODUCTS BASED ON THE SUFFICIENCY OF DOMESTIC PRODUCTION TO FULFILL DOMESTIC DEMAND**

Indonesia prohibits or restricts the importation of horticultural products when domestic production is deemed sufficient to fulfill domestic demand.

New Zealand understands that the legal instruments through which Indonesia maintains this measure are:

- Law of the Republic of Indonesia Number 13 of Year 2010 Concerning Horticulture;
- Law of the Republic of Indonesia Number 18/2012 Concerning Food; and
- Law of the Republic of Indonesia Number 19/2013 Concerning Protection and Empowerment of Farmers.

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

Indonesia prohibits or restricts the importation of animals and animal products when domestic production is deemed sufficient to fulfill domestic demand.

<sup>13</sup> These products currently are listed in Appendix I of MoA 139/2014 and Appendix I of MoT 46/2013.

<sup>14</sup> To the extent that these measures are measures affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, New Zealand considers that they would be inconsistent with Article III:4 of the GATT 1994 because Indonesia does not impose similar limitations on the internal sale, offering for sale, purchase, transportation, storage, distribution and use of like domestic products and, therefore, Indonesia's laws, regulations and requirements accord less favourable treatment to imported products than to like domestic products.

New Zealand understands that the legal instruments through which Indonesia maintains this measure are:

- Law of the Republic of Indonesia Number 18/2009 on Animal Husbandry and Animal Health, as amended by Law of the Republic of Indonesia Number 41/2014 on Amendment of Law Number 18/2009 on Animal Husbandry and Animal Health;
- Law of the Republic of Indonesia Number 18/2012 Concerning Food; and
- Law of the Republic of Indonesia Number 19/2013 Concerning Protection and Empowerment of Farmers.

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

New Zealand considers that the measures described above are inconsistent with Indonesia's obligations under the following provisions:

- Article XI:1 of the GATT 1994 as this measure is a "prohibition or restriction other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia.
- Article 4.2 of the Agreement on Agriculture as this measure is "of the kind which have been required to be converted into ordinary customs duties."

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Therefore, New Zealand respectfully requests, pursuant to Article 6 of the DSU, that the Dispute Settlement Body establish a panel to examine this matter, with standard terms of reference as set out in Article 7.1 of the DSU. As the United States is also requesting the establishment of a panel related to the same matter, New Zealand further respectfully requests, pursuant to Article 9.1 of the DSU, that the Dispute Settlement Body establish a single panel to examine both complaints.

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**Annex I**

New Zealand understands that the legal instruments through which Indonesia maintains the measures set out in Part I of the Panel Request include<sup>15</sup>:

- 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, which repealed and replaced Regulation of the Minister of Agriculture Number 60/Permentan/OT.140/9/2012;
- 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 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; and
- 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").

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

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<sup>15</sup> New Zealand understands that the regulations listed were promulgated pursuant to the framework set out in the following laws:

- Law of the Republic of Indonesia Number 13 of Year 2010 Concerning Horticulture;
- Law of the Republic of Indonesia Number 18/2012 Concerning Food; and
- Law of the Republic of Indonesia Number 7 of Year 2014 Concerning Trade.

**Annex II**

New Zealand understands that the legal instruments through which Indonesia maintains the measures set out in Part II of the Panel Request include<sup>16</sup>:

- Regulation of the Ministry of Agriculture Number 139/Permentan/PD.410/12/2014 ("MOA Regulation 139/2014") Regarding Importation of Carcass, Meat, and/or Its Derivatives into the Territory of the Republic of Indonesia as amended by Regulation of the Ministry of Agriculture Number 02/Permentan/PD.410/1/2015 Concerning Amendment of Regulation of the Ministry of Agriculture Number 139/Permentan/PD.410/12/2014 Regarding Importation of Carcass, Meat, and/or Its Derivatives into the Territory of the Republic of Indonesia, which repealed and replaced 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 as amended by Regulations of the Ministry of Agriculture 96/Permentan/PD.410/9/2013 and Regulations of the Ministry of Agriculture 110/Permentan/PD.410/9/2014, 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 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; and
- 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") as amended by Regulation of the Minister of Trade No. 57/M-DAG/PER/9/2013 and by Regulation of the Minister of Trade 17/M-DAG/PER/3/2014, 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, 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.

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

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<sup>16</sup> New Zealand understands that the listed regulations were promulgated pursuant to the framework set out in the following laws:

- Law of the Republic of Indonesia Number 18/2009 on Animal Husbandry and Animal Health, as amended by Law of the Republic of Indonesia Number 41/2014 on Amendment of Law Number 18/2009 on Animal Husbandry and Animal Health;
- Law of the Republic of Indonesia Number 18/2012 Concerning Food; and
- Law of the Republic of Indonesia Number 7 of Year 2014 Concerning Trade.