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

REQUEST FOR CONSULTATIONS BY THE UNITED STATES

The following communication, dated 30 August 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"), 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.

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's measures restrict the importation of these products whenever domestic production is deemed sufficient to fulfill domestic demand. Under the measures, Indonesia also sets quotas both annually and semi-annually through ministerial-level coordination meetings followed up by inter-ministerial technical meetings. The Ministry of Agriculture allocates the quotas, and specifies the quantity of each product allocated to each importer.

With respect to horticultural products, Indonesia's non-automatic import licensing regime involves multiple steps. First, an importer must obtain a Horticulture Product Import Recommendation ("RIPH")³ certificate from the Ministry of Agriculture. The RIPH certificate restricts the quantity, type, and country of origin of the imported horticulture product per six-month period. RIPH certificates do not permit the importation of fresh horticulture products for consumption that were harvested more than six months ago. 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 Approval by submitting the RIPH certificate and the designation.

¹ The relevant Indonesian measure defines horticultural products as "all products derived" from "fruits, vegetables, medicinal plants ingredients, and floriculture including mushrooms, mosses, and water plants that serve as vegetables, medicinal plants ingredients, and/or aesthetic materials" that are still "fresh" or have been "processed." Ministry of Trade Regulation 16, Art. 1(1), 1(2).

² The relevant Indonesian measure defines animal products as including "all materials originating from animals that are still fresh and/or have been treated or processed for the purpose of consumption, pharmaceutical, agricultural, and/or other uses for fulfillment of human needs and welfare." Ministry of Trade Regulation 22, 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*.

With respect to animals and animal products, Indonesia's non-automatic import licensing regime likewise involves multiple steps. First, importers must receive an Import Approval Recommendation ("RPP")⁴ from the Ministry of Agriculture to import animals or animal products. Second, importers who import for the business purpose of trading or transferring to another party must apply to receive a designation as a Registered Importer for Animals and Animal Products. Third, an importer must then apply to the Ministry of Trade for an Import Approval by submitting the RPP and the designation.

Indonesia's non-automatic import licenses and quotas restrict imports, without any apparent justification other than to protect Indonesian producers. The multi-step licensing process is more administratively burdensome than necessary to administer the measures. The Indonesian licensing measures failed to provide relevant information sufficient for governments and traders to become acquainted with them, including overall quota details, country shares of quotas, and the basis for granting and allocating 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. And, the licensing measures fail to allow license holders to choose the source of imports.

Indonesia's measures limit the purchase, sale, or use of imported horticultural products, animals, and animal products, without posing comparable restrictions on domestic products. For example, Indonesia's measures limit the sale of imported horticulture products to distributors, and limit the sale of imported beef to the hotel, restaurant and catering sectors.

Indonesia's measures impose preshipment inspection requirements. Indonesia 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, Indonesia's measures impose import restrictions contingent upon trigger domestic prices.

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 47/Permentan/OT.140/4/2013 Concerning Recommendation on the Importation of Horticulture Products ("MOA Regulation 47"), which repeals and replaces Regulation of the Minister of Agriculture Number 60/Permentan/OT.140/9/2012 ("MOA Regulation 60");
- Regulation of the Minister of Trade Number 16/M-DAG/PER/4/2013 Concerning Provisions on Horticulture Product Import ("MOT Regulation 16"), 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") 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");
- 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") 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

⁴ Rekomendasi Persetujuan Pemasukan.

Approval Recommendation of Carcass, Meat, Offal, and/or their Derivatives into the Territory of the Republic of Indonesia ("MOA Regulation 63");

- 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"), which repeals and replaces 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");
- Decree of the Minister of Trade Number 699/M-DAG/KEP/7/2013 Concerning Beef Price Stabilization ("MOT Decree 699");
- Law of the Republic of Indonesia Number 18/2012 Concerning Food ("Food Law");
- Law of the Republic of Indonesia Number 19/2013 Concerning Protection and Empowerment of Farmers ("Farmers Law");

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 III: 4, X: 1, X: 3(a), XI: 1, XIII: 2(a), XIII: 2(c), and XIII: 2(d) of the GATT 1994;
- (ii) Article 4.2 of the Agriculture Agreement;
- (iii) Articles 1.3, 3.2, 3.3, 3.5(a), 3.5(b), 3.5(c), and 3.5 (k) of the Import Licensing Agreement;
- (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 for consultations.
