



17 August 2018

(18-5247)

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Original: English

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

**UNDERSTANDING BETWEEN NEW ZEALAND AND INDONESIA
REGARDING PROCEDURES UNDER ARTICLES 21 AND 22 OF THE DSU**

The following communication, dated 10 August 2018, from the delegation of New Zealand and the delegation of Indonesia to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

New Zealand and Indonesia would like to inform the Dispute Settlement Body of the attached "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding" between Indonesia and New Zealand with respect to the dispute *Indonesia – Importation of Horticultural Products, Animals and Animal Products* (DS477).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body.

Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding

*Indonesia – Importation of Horticultural Products, Animals and Animal Products
(DS477)*

In this dispute, the Dispute Settlement Body (DSB) adopted its recommendations and rulings on 22 November 2017. Pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Indonesia, the United States, and New Zealand mutually agreed that the reasonable period of time for Indonesia to comply with the recommendations and rulings of the DSB shall be 8 months. Accordingly, the reasonable period of time expired on 22 July 2018.

New Zealand and Indonesia (the "parties") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disputes:

1. Should New Zealand consider that the situation described in Article 21.5 of the DSU exists, New Zealand will request consultations. The parties agree to hold such consultations within 14 days from the date of circulation of such request. The parties agree that after the end of such period for consultations, New Zealand may, at any time, request the establishment of a panel pursuant to Article 21.5 of the DSU.
2. At the first DSB meeting at which New Zealand's request for the establishment of an Article 21.5 panel appears on the agenda, Indonesia will accept the establishment of that panel.
3. The parties will cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members unless either party appeals the report.
5. In the event of an appeal of the Article 21.5 panel report, the parties will cooperate to enable the Appellate Body to circulate its report to Members within 90 days from the date of notification of the appeal to the DSB.
6. In the event of an appeal, either party to the dispute may request the DSB to adopt the reports of the Appellate Body and of the Article 21.5 panel (as modified by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
7. In the event the DSB rules, following a proceeding under Article 21.5 of the DSU, that a measure taken to comply does not exist, or that Indonesia has failed to bring the measure found to be inconsistent with a covered agreement into compliance, New Zealand may request negotiations with Indonesia with a view to developing mutually acceptable compensation, or New Zealand may request authorisation to suspend concessions or other obligations pursuant to Article 22 of the DSU.
8. Indonesia will not assert that New Zealand is precluded from requesting such negotiation for developing mutually acceptable compensation or obtaining such DSB authorization on the grounds that the request was made outside the 20-day time-period specified in Article 22.2 or the 30-day time period specified in Article 22.6 of the DSU. This is without prejudice to the right of Indonesia to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
9. If New Zealand requests authorisation to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, and Indonesia objects under Article 22.6 of the DSU to the level of suspension of concessions or other obligations or claims that the principles and procedures set forth in DSU Article 22.3 have not been followed, the parties agree that the matter will be

referred to arbitration and proceedings will commence pursuant to DSU Article 22.6 upon such objection by Indonesia.

10. The parties will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
11. The parties will cooperate to facilitate the participation of the original panellists in the Article 21.5 compliance panel and the Article 22.6 arbitration.
12. If any of the original panellists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), the parties will promptly consult on a replacement, and either party may request the Director-General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panellist is unavailable to serve in either of the proceedings, the parties will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
13. In the event that the parties reach a mutually agreed solution to this dispute during the course of the Article 21.5 compliance panel or the Article 22.6 arbitration proceedings, and upon notification of such a mutually agreed solution, the Parties will jointly request the panel or the arbitrator to suspend its work (including the circulation of its report or award, as the case may be).
14. The parties will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties consider that a procedural aspect has not been properly addressed in these procedures, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.
15. These agreed procedures in no way prejudice other rights of either party to take any action or procedural step to protect its rights and interests, including recourse to the DSU.

Signed in Geneva, on 10 August 2018

For New Zealand

For Indonesia

(Signed)
Mr. Thomas Haidon
Chargé D'affaires / Deputy Permanent
Representative
Permanent Mission of New Zealand to the World
Trade Organization

(Signed)
H. E. Mr. Hasan Kleib
Ambassador Extraordinary and
Plenipotentiary / Permanent Representative
of the Republic of Indonesia to the United
Nations, World Trade Organization, and
Other International Organizations in
Geneva
