

**Trade Policy Review Body
27 and 30 June 2003**

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TRADE POLICY REVIEW

INDONESIA

Minutes of Meeting

Addendum

Chairperson: H.E. Mrs. Mary Whelan (Ireland)

This document contains the advance written questions, and replies provided by Indonesia.¹

**Organe d'examen des politiques commerciales
27 et 30 juin 2003**

EXAMEN DES POLITIQUES COMMERCIALES

INDONESIE

Compte rendu de la réunion

Addendum

Président: S.E. Mme Mary Whelan (Irlande)

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par l'Indonésie.¹

**Órgano de Examen de las Políticas Comerciales
27 y 30 de junio de 2003**

EXAMEN DE LAS POLÍTICAS COMERCIALES

INDONESIA

Acta de la reunión

Addendum

Presidente: Excma. Sra. Mary Whelan (Irlanda)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por Indonesia.¹

¹ In English only./En anglais seulement./En inglés solamente.

**ADVANCE WRITTEN QUESTIONS BY MEMBERS
AND REPLIES PROVIDED BY INDONESIA**

REPLIES TO QUESTIONS RAISED BY ARGENTINA

Trade Policies and Practices by Measure

Question 1:

The Report by the Secretariat states in paragraph 3 of section III that "in 2002 applied tariff rates on 41 nine-digit HS items exceeded their final bound rates by up to 20 percentage points". Could the reasons that led to this situation be explained? Similarly, could Indonesia explain why "bound tariff rates tend to be substantially lower than applied rates"? (section III, paragraph 20).

Answer:

Up to date there is no tariff exceeded Indonesia bound rates. In the case of alcoholic beverages, tariff rate of 170% is intended to prevent the people from potential moral hazard. This level of tariff is still in line with Indonesia bound rates as they are reduced to 150% in 2004. With regard to dispersion of bound and applied tariff rates it can be explain as follows. The statement in para 20 of section III should be read as "Bound Tariff Rates tend to be substantially higher than applied rates and the gap has widened since 1998 as a result of scheduled tariff cuts". The reason for this is the aggressiveness of Indonesia to reduce applied tariff to accelerate tariff liberalization as well as to encourage domestic industries to increase their efficiency. The gap between bound and applied tariff will be bigger as Indonesia continues to implement its tariff reduction program

Measures Directly Affecting Imports

(e) Tariff quotas

Question 2:

The Report by the Secretariat states in paragraph 26 that Indonesia has established tariff quotas for milk and cream and its products, but the tariff rate applied out-of-quota is lower than that applied in-quota. Could Indonesia explain the reason that has led the authorities to make this differentiation?

Answer:

Tariff quotas for milk and cream have been abolished since 1998. The current tariff for these products is 5% with no quota.

Standards and other technical requirements

Question 3:

The Report by the Secretariat states in paragraph 76 that in 1999 new requirements were approved specifying that food products must be labelled exclusively in the Bahasa language, Arabic numbers and

Latin letters. Could Indonesia state whether other requirements were introduced in addition to those indicated? If so, could it indicate which is the corresponding notification?

Answer:

Labelling in Indonesian language, Arabic numbers and Latin letters is stipulated in Government Regulation Number 69 of 1999 on Food Labelling and Advertisement, it was notified to the WTO July 2000. In addition to the above requirement, this regulation requires (1) labels that clearly describe ingredients used, especially food additives, beside other non-SPS requirements; (2) certain treatments applied to products, such as irradiation, shall be informed on the label as irradiated food, including other related technical information; (3) the same requirement is also applied for GMO product labelling.

Question 4:

According to the Report by the Secretariat, Indonesia has maintained State involvement "with a view to assisting domestic production and/or promoting or exclusively controlling/restraining trade in virtually all important sectors". Could Indonesia explain what forms such State involvement takes?

Answer:

No, that is not the case applied out quota tariff is 210%, whereas applied in-quota tariff is 0%. However, Indonesia never implemented the out quota tariff rather our applied tariff is 0-5%.

REPLIES TO THE QUESTIONS RAISED BY AUSTRALIA

Overview

Australia is concerned at the apparent increase in protectionist sentiment in Indonesia since the last Trade Policy Review. Indonesia has increased tariffs on a number of products over the past few years. Indonesia has also developed more sophisticated anti-dumping, quarantine and standards regimes, which have, at times, been used as non-tariff barriers. Australia would welcome a more transparent regime in these areas.

Wheat Flour

Question 1:

On 1 May 2003, Indonesia introduced an applied five per cent tariff on wheat flour for a limited period – until 31 December 2004. What plans does Indonesia have to improve the competitiveness of the domestic industry? On what basis did Indonesia determine the duty rate for this product? Will Indonesia consider eliminating the tariff before the scheduled deadline?

Answer:

To improve the competitiveness of domestic wheat flour industries, Indonesia has urged the industries to improve production process and to increase efficiency. In the mean time, the tariff increase from 0% to 5% will prevail on the temporary basis just to give the industries enough time to compete over imported wheat flour. There is no plan to eliminate the tariff before the schedule deadline although monitoring of the tariff implication to consumers is made regularly.

Rice

Question 2:

The Indonesian government increased applied tariffs on rice to an equivalent ad valorem rate of 35 per cent. The increase was reportedly implemented to protect the domestic industry from competition. Nonetheless, Australia notes that such tariff increases have raised prices for consumers but may not have effectively protected the interests of domestic rice producers. What plans does Indonesia have to improve the efficiency of the domestic industry and distribution system? Would the government consider lowering the applied tariff rate for rice to at least previous levels?

Answer:

The current import rate for rice is RP 430,- /kg; raw sugar Rp 550,-/kg; refine sugar Rp 700,-/kg; corn 0%; soybean 0%. It is considered low compared to the bound rate. This low applied tariff rate could discourage our farmers in increasing their productivity, and hence the production, thereby will threat our food security.

Sugar

Question 3:

On 3 July 2002, the Indonesian government introduced an applied import duty of RP550/kg for raw sugar and RP700/kg for refined sugar. This equates to a 30 per cent ad valorem equivalent rate on raw sugar (from 20 per cent previously) and 35 per cent ad valorem equivalent rate on refined sugar (from 25 per cent previously). Australia considers that the increase in tariffs will do little to improve the efficiency of the domestic sugar producers and will increase prices to consumers. Australia notes that inefficiencies in the Indonesia sugar distribution system have caused as many problems as international competition for domestic producers. What is the Indonesian government's plan to make the domestic sugar industry and its distribution system more internationally competitive? Will Indonesia consider lowering the import tariffs on sugar?

Answer:

The changing of tariff on sugar from ad-valorem to specific rate was not intended to increase tariff rate but was mainly to prevent the importation of low quality and under invoiced imports. The introduction of specific rate might has implications to the effective ad-valorem rate due to the change of Rupiah exchange rate.

In the short run, there is no plan to reduce the import tariff of sugar to give incentive for domestic industry to modernize its factory as well as to maintain the income level of sugar cane farmers. As part of the sugar policy, tariff measure is accompanied by some arrangements in the in the distribution process.

Improvement of sugar production:

To make the domestic sugar industry more internationally competitive, the Indonesian government plans to improve management and rehabilitation of cane sugar plantation owned by farmers with high yielding variety, rehabilitation and development of cane sugar nursery.

Distribution system:

Efficiency of sugar distribution can be achieved through managing importation and at the same time improving sugar productivity.

The consideration for lowering the applied tariff rate for sugar will mainly depend on production cost, exchange rate, and international price.

Steel Tariffs

Question 4:

The Indonesian government introduced a temporary (12 month) applied import tariff on cold rolled coil in November 2002. Will Indonesia remove these temporary tariffs by the scheduled deadline? Would Indonesia consider removing the duties before the scheduled deadline?

Answer:

The temporary increase of cold rolled coil tariff was intended to rescue domestic industry from declined import price. This measure is followed by a monitoring system to evaluate the effectiveness of the safeguard measure especially to avoid unnecessary burden to downstream industries. The removing of the temporary tariffs would be done by the scheduled deadline.

Standards

Question 5:

The registration of foreign food products (the “Makanan Luar Negeri (ML)” legislation) by the Indonesian Department of Health (Food and Drug Control Agency – BPOM) continues to cause delays for Australian companies. According to BPOM, it should take only three months to receive a ML number, the same time as required for domestic producers to receive registration for domestically-produced food. We understand that delays of between three months and one year are more realistic. How will Indonesia streamline measures to ensure the registration of imported food products takes an equivalent time to that for domestically produced food? Will Indonesia consider exempting importers of bulk products from this process?

Answer:

Under the Health Minister Decree No.382/Menkes/Per/Vi/89 on Food Registration, all processed food that is produced domestically as well as imported must be controlled through pre market control and post market control.

At pre-market control, the requirement equal goes into effect of domestic and exported food. Processed food can be approved to be safe if comply with food safety requirements and food labeling. Evaluation is implemented by evaluating all attached document among others food composition, nutritional facts and certificate of analysis (CoA) especially for biological hazard and chemical hazard. CoA can be issued by the accredited laboratory from international or national.

Food labeling and its claim is harmonized with international labeling (codex and others), except it is mentioned in our law that all the information should be in Bahasa Indonesia, Arabic and Latin. Proof of the processed food complies with all requirement, the Government issues registration number MD (domestic product) and ML (imported product). This approval will be valid for 5 years and will be renewed after during this period.

For imported bulk products, the government makes approval through Health Certificate but not follow the regulation of food registration (ML) because this product not directly to consumer.

Question 6:

Some Australian companies have had difficulties in relation to the application of Indonesian standards (SNI) regulations. The application of standards retrospectively to cover already discontinued products has damaged the reputation of some Australian companies. How will Indonesia ensure that the SNI regulations not be used as non-tariff barriers and improve the transparency of such regulations to ensure this does not occur? Will Indonesia consider the use of independent authorities to undertake the testing of these types of products?

Answer:

Regarding to the application of Indonesian Standard (SNI) regulation for Australian companies, on this occasion we would like to inform you mostly Indonesian standards are voluntary, and only several are mandatory. Mandatory has done into effect due to health, security, environment and safety reasons among others iron, helm, passenger car tyre, fertilizers, fortified flours, iodized salt, and sealed water drinking.

Customs Procedures

Question 7:

Australia respects Indonesia's efforts to curb smuggling and is actively engaged in bilateral cooperation to assist Indonesia's customs reform efforts. It would appear, however, that there are unintended consequences as a result of this policy. Since the end of 2002, the Indonesian Customs Service appears to have moved away from the "transaction price" towards a representative "Customs price" in determining value for duty. Prices used in the Indonesian Customs database appear to be considerably higher than what exporters claim to be genuine transaction prices. Will Indonesia consider using "transaction price" for the value for duty unless the state import price is significantly below the known price for the product? On what basis are prices derived in the database used by the Indonesian Customs Service? Can the Indonesian government provide details on appeal provisions in relation to estimating the value for duty?

Answer:

Value for duty is based on the transactions price. The use of customs data base (which is derived from various import price of the same products for a certain period) is mainly for imports that is suspected conduct under invoicing practices.

Domestic taxes on luxury goods

Question 8:

On 8 January 2003, the Indonesian government announced a package of proposed exemptions and reductions in luxury tax on a number of goods-including a significant range of electronic products, as well as packaged tea drinks. Packaged tea drinks compete directly in the beverage market with carbonated soft drinks produced by Australian-owned companies, and the exemption to these products unfairly discriminates these companies.

Will Indonesia consider expanding the luxury goods tax exemption to like products such as carbonated soft drinks ?

Answer:

Since tea drinks have been used as a daily consumption of most Indonesian people, we could not treat these products as luxury good anymore. On the other hand, the Indonesia government still consider that carbonated soft drinks is as luxurious goods. However, we are not thinking that those above treatments could be considered as an unfairly discriminates, since the luxurious tax on carbonated soft drinks is not imposed only to ones produced by Australian-owned companies, but also to any other companies.

Investment

Question 9:

Australia supports Indonesia's aims of protecting its environment. We note, however, that some aspects of Forestry Law 41 of 1999, prohibiting open cut mining in areas designated as "protected forest", contradict mining companies' existing contractual rights. Will Indonesia consider revising Forestry Law 41 to address the inconsistencies between its designation of "protected forest" areas and the pre-existing contracts allowing mining companies to operate in those areas?

Answer:

In the future, to overcome the mining concession in the conservation area, a Presidential Instruction will be issued with the approval of People's Representative (Assembly/DPR) regarding the change of forest utilization in the area where there has been a mining concession in the area which has been operated before the enactment of Forestry Law 41 of 1999.

REPLIES TO QUESTIONS RAISED BY BRAZIL

Anti-dumping and Countervailing Measures

Question 1:

In paragraph 57 (page 49) of Section III of Document W/TPR/S/117, it is mentioned that a new regulation on anti-dumping and countervailing measures was approved in 2001 and that the Indonesian authorities indicated that the regulation would be notified to the WTO. Could Indonesia elaborate further on the amendments that were implemented ?

Answer:

Indonesia has amended its antidumping regulation to simplify the procedure for application and the requirement, to clarify the proceed of investigation and time period for application. Furthermore, Indonesia will notified its amended regulation.

Question 2:

In paragraph 17 of the Summary Observations of Document W/TPR/S/117, it is mentioned that “ of 27 cases initiated since 1998 (until June 2002), 15 resulted in provisional measures and 9 in definitive anti-dumping duties; 7 remained in the operation in February 2003”. On the other hand, in paragraph 41 of the W/TPR/S/117, Indonesia stated that “ as far as Anti-dumping measures are concerned, the Government of Indonesia has investigated on 20 cases. However, the Government of Indonesia has imposed anti-dumping duties only on 7 cases....”. Could the Indonesian authorities elaborate on the information provided in these two paragraphs?

Answer:

Referring to the confusion caused by different number of investigations contained in both report, Indonesian Committee of Anti Dumping (KADI) would like to correct those statements. Since 1998, KADI has been conducting 32 investigations in which only 15 investigations are imposed the definitive measures and 11 investigations terminated.

Safeguard Measures**Question 3:**

As far as paragraph 59 (page 49) of Section III of Document W/TPR/S/117 is concerned, could Indonesia explain if its safeguard mechanism allows for the extension of safeguard measures after the period of four years mentioned in the cited paragraph ?

Answer:

Under Indonesian Safeguard law, it accommodates the extension beyond four years period.

Question 4:

In Table A.III.2 (anti-dumping cases initiated by Indonesia, January 1998 – June 2002, page 8 of Document W/TPR/S/117) it is indicated that information about investigations on fero-silico manganese, welded carbon steel pipe, calcium carbide, and pithalic anhydride (PA) are not available or the decision is pending. Could Indonesia inform the status of each of these investigations?

Answer:

The status on those investigations are as follows, the investigation on fero silicon manganese is terminated imposition of measures where as the other three investigations are know under consideration by the government.

Technical Barrier to Trade

Question 5:

Are there any products subject to total or partial bans under Indonesian technical regulations?

Answer:

Government of Indonesia has already banned the importation of meat and chicken legs from several countries. The decision is taken due to the reason in maintaining Indonesia free from Foot and Mouth Disease (FMD) in addition to Halal case.

Question 6:

How are standardisation bodies organized in Indonesia ? How does the central government participate in the standardisation process?

Answer:

Standardization process is under the authority of central government. Most of standards and guidelines are voluntary and on several cases are mandatory. In Indonesia, national standardization is coordinated by the National Standardization Agency. Indonesia National Standard (SNI) and its guidelines are formulated by ministries and agencies concerned and be implemented by consensus among parties such as government, private sectors, experts, NGOs as well as representative of universities.

Question 7:

How is the accreditation system organised in Indonesia ? How does the central government participate in the certification process?

Answer:

Accreditation system is managed by the National Accreditation Committee which assesses and issues accreditation to product certification body. Furthermore, this body will issue the certificate of SNI identity product based on the result of testing laboratory.

Question 8:

Under Indonesian regulations, which imported products are subject to specific environmental requirement ? Are there any standard concerning the environmental soundness of manufacturing process?

Answer:

Imported products are subject to specific environmental requirement such as CFC material, pesticides, methyl bromide and hazardous waste disposal. There are some standard concerning the environmental soundness of manufacturing process such as pulp industry not allowed to use sulphate process, mercury process as well as chlorine bleaching.

Market Access

Question 9:

In page 34 of the Secretariat Report, it is said that : “ Bound tariff rates tend to be substantially lower than applied tariff rates and the gap has widened since 1998 as a result of scheduled tariff cuts”. Could Indonesia elaborate on this information?

Answer:

We appreciate the quotation of Brazil in the gap of bound and applied tariff rates as stated in the Secretariat Report. The statement should be “Applied Tariff rates tend to be substantially lower than that bound rates and the gap has widened since 1998 as a result of scheduled tariff cuts”.

With regard to the request for elaboration of this matter, we are proudly to mention that the gap shows Indonesia’s seriousness to fulfil its commitment to trade liberalization in line with the WTO spirit. The tariff gap tend to be bigger as Indonesia continuously implement the tariff reduction programme.

Question 10:

In page 37 of the Secretariat Report it is stated that “ specific duties replaced “ad valorem duties for rice and sugar seemingly to avoid under invoicing practices; the authorities seem to favour specific duties because they are based on volume rather than a declared value, which may be false”. In the view of Indonesia, is the Agreement on implementation of Article VII of GATT 1994 not sufficient for dealing with false declaration?

Answer:

It is true that the main consideration of replacing ad-valorem duties to specific duties for rice and sugar is to ease customs administration and to prevent under-invoicing practices. Indonesia views that the agreement on implementation of Article VII of GATT 1994 is sufficient for dealing with false declaration and it is adapted in customs regulation. However, due to a certain condition of importation practices in Indonesia, we come to the conclusion that the application of specific duties on rice and sugar will be more effective to both importer and customs administration.

Question 11:

In the Secretariat Report, it is mentioned that there seems to exist a discrepancy relates to products subject to prohibitions and restrictions. Where can we find official information about restrictions and special licenses to the entrance of goods into Indonesia?

Answer:

Information about restriction and special licenses to the entrance of goods into Indonesia can be found in the Minister of Industry and Trade Number 230/MPP/KEP/7/1997 that has been several times amended and the latest by number 790/MPP/kep/12/2002. The complete information of this matter can also be obtained from Ministry of Industry and Trade Website on <http://www.dprind.go.id>.

Services

Question 12:

The Indonesian Government Report mentions that the “Manpower Law” would anticipate trade in service liberalization. Which would be the specific implication of this law on this aspect?

Answer:

Some improvements are expected relating among other to simplifying the working permit process and to bring the law in line with existing commitment under GATS.

Question 13:

The third round of negotiations for service liberalization within ASEAN countries was launched in September 2001, to end in 2004, covering all specific sectors and modes of supply. What is the current status of these negotiation ?

Answer:

In ASEAN there is a principle so called “GATS Plus” which means the commitment under ASEAN should be more liberal than under the WTO. In general, Indonesian commitments under ASEAN Framework Agreement on Services (AFAS) consisting the widening and deepening of existing commitments under the WTO. Efforts to bring harmonization and comparability within ASEAN members’ countries commitments are also has been an issue for quite sometimes. Some progresses have been made under the current negotiation process. New approaches are being introduced to speed up the liberalization process, but the final result is yet to wait the development of the negotiation process.

Question 14:

According to the secretariat’s report, Indonesia requires joint operation/ venture involving a representative Indonesian office / partner for the provision in Mode 3 – commercial presence of computer and related services, either business services (e.g architecture), professional services (e.g. engineering), construction and related engineering services. What are the specifications of this joint operation/venture ? What is the maximum participation allowed for a foreign company ? Are there any other restrictions besides this one?

Answer:

Joint venture company is in the form of Indonesian legal entity of PT (Limited Liability).The maximum ownership of foreign company is set differently for each individual sub sector of services. Under the horizontal measure of Indonesian commitment under GATS, the max ownership is 49 percent. The existing regulations in many services sub-sectors are allowed for the majority ownership of foreign services providers. Some other restrictions are also applicable for certain sectors such as:

- a. the requirement that domestic partners shall be member of certain sector associations;
- b. Some geographical limitation;
- c. Economic Need Test.

Question 15:

Please indicate the legislation that rules the provision of construction and related engineering services.

Answer:

The Construction Law No. 18/1999.

Question 16:

In Document W/TPR/S/117, page 24, paragraph 29, related ASEAN intra-regional service liberalization, it is said “ Members agreed in 2001 to accelerate service liberalisation and to negotiate mutual recognition arrangements for professional services. It would be interesting to have details on how many recognition arrangements for professional services have been already done and what sub-sectors they encompass and how they operate.

Answer:

There is no recognition arrangement that has been agreed between Indonesia and WTO members. Preparation is being taken to speed up the process of negotiation on the MRA. Informal negotiations are also being taken with certain members of WTO.

Investment**Question 17:**

It was cited, in the Trade Policy Regime (Chapter II para 44; pages 28 and 29), that “ however, the existing arrangements including the likelihood of changes in the respective powers of the central and local governments as well as amendments to the investment rules and procedures, are unclear, and inconsistent investment process across regions may be the result. Enhanced taxation powers may also enable local governments to impose taxes on investors (especially foreign); this is another source of investor uncertainty, especially in sectors like mining, which require long investment horizons, and where predictable investment and taxation regimes are most needed. There are also concerns that decentralization of investment approval may accentuate corrupt practices (World Bank 2003 page 21) – “ How these uncertainties have been treated by Indonesia ?

Answer:

In this investment undertaking issues, the Government is preparing the regulations concerning the division of responsibility between central and local government. This regulation shall be expected to eliminate the uncertainties and inconsistency.

Government Procurement**Question 18:**

Which are the offsets allowed in Indonesia bidding process ?

Answer:

Indonesia bidding process, based on Presidential Decree number 18/2000, have preferences on domestic price. This regulation is part of government policy to push small medium enterprise development and maintaining a healthy balance of payment. It is inline with the WTO Government Procurement Agreement.

Question 19:

Are concessions treated in the government procurement framework? Are foreign companies allowed to participate in bids concerned with concessions?

Answer:

There is no regulation on concessions in Presidential Decree number 18/2000.

Question 20:

Which classification system is employed to goods, services and public works in Indonesia?

Answer:

Indonesia does not have classification system on goods, services, and public works.

Question 21:

Does Indonesia use the Built Operate Transfer (BOT) as a purchasing method? Is the Built Operate Transfer (BOT) included in the coverage of commercial agreements?

Answer:

In Indonesian experience, BOT is a kind of financing scheme offered by government body to the private sector. This partnership is one alternative for government to invest its asset. Based on this terms, BOT could be included in the coverage of commercial agreements.

Question 22:

In Document W/TPR/S/117 page 32, paragraph 7, it is said : “ Counter trade transactions resulting from export performance requirements for foreign firms tendering for certain types of government procurement contracts and construction projects have fallen off considerably”. Could Indonesia elaborate on this information?

Answer:

Indonesian government rarely used counter trade transaction for government procurement contracts and construction project. Government prefer to make loan from multilateral agencies and bilateral donors and export credit for financing the procurement.

Electronic Commerce

Question 23:

What is the approach of Indonesia to the Work Programme on Electronic Commerce, in particular, on issues such as the classification of electronic transmission and the definition of the mode of supply of services delivered by electronic means?

Answer:

So far Indonesia is still learning dealing with business of electronic commerce. Products or goods can be traded through electronic mean. The mode of supply for those transactions can be cross-border supply.

Question 24:

Was Indonesia recently implemented any new legislation affecting electronic commerce, such as for instance, regulations concerning privacy and personal data or consumer protection?"

Answer:

The legislation on electronic commerce will be covered in the draft of Information and Electronic Transaction Law including privacy and personal data. The legislation for consumer protection is the Law of No. 8 of 1999.

REPLIES TO QUESTIONS RAISED BY CHINA

Trade Policies and Practices by Measure

P. 34-39 para.19-32

Question 1:

As noted in the Secretariat's report that the average applied MFN tariff of Indonesia was 7.2% in 2002, down from 9.5% in 1998 and the dispersion in applied MFN tariff rates has fallen since 1998 with tariff "spikes" and the standard deviation in tariff rates all declining. However, in 2002, imports of 23 nine-digit HS96 items carried the highest ad valorem tariff of 170% and three items were subject to the second highest rate of 90%, both of which affect alcoholic drinks/preparations. And during 2002, the authorities considered raising applied rates on strategic commodities such as rice, wheat, soy beans, and fruit, as well as electronics, but it is unclear whether they did so.

a. *Could Indonesia confirm whether these tariff rates have been raised?*

Answer:

Alcoholic beverage tariff (28 nine digit HS 2002), considered as tariff spikes, will be maintained for the purpose of preventing the people from moral hazard. Tariff rates on rice is Rp. 430/kg effective in January 2000, wheat is 0%, soy bean is 0% and most fruit is 5%. There is no increase of tariff on these commodities in the past three years.

b. *Is Indonesia considering further reduction of the existing tariff “spikes”?*

Answer:

Indonesia continuously reduces its tariff rates following the reduction program including some commodities that are considered as tariff spikes, except on alcoholic beverages and automotives.

Question 2:

The tariff also embodies a degree of escalation, which has become more pronounced for semi-processed food, beverages and tobacco products as well as for paper, printing, and publishing. As far as it is known to China, Indonesia imposes the similar tariff escalation on motor bicycles: a rate of 5-10% for SKD, 25% for CKD 35% for motor bicycle with a cylinder capacity under 250cc and 60% for that with a cylinder capacity ranging from 250cc to 500cc. China is concerned over the practice.

Answer:

The so called “tariff escalation” for food, beverage, tobacco and paper is not the main strategy of tariff policy even though to some extent it shows in tariff structure. With regard to motor bicycle, tariff rate of 5-10% for SKD, 25% for CKD and 35% for motor bicycle with a cylinder capacity under 250 cc. The tariff harmonization is intended to encourage full manufacturing of motor bicycle in Indonesia, by providing enough incentives to manufacture in term of higher tariff. A high tariff rates on motor bicycle with cylinder capacity ranging from 250 cc to 500 cc is intended to discourage the used of this motor bicycle domestically as it is considered as a luxury goods.

P. 43-44 (para.39-43)

Import Restriction

Question 3:

The Secretariat’s reports states that the product coverage of restrictive licensing requirements has been gradually reduced since the previous Review, to 141 tariff lines in 2002 from 160 in 1998. Import restrictions and special licensing requirements seem to have been imposed or maintained, inter alia, on meat and poultry products, alcoholic beverages, artificial sweeteners, lube oil, engines and tractors. Since March 2002, special import licenses have affected sensitive items such as rice, corn, soy beans, sugar, textiles, textile products, footwear, electronics, and toys. China would like to have Indonesia’s idea for those practices.

Answer:

The imposition of a special import licensing requirements on meat is taken in order to provide protection for animal, human and plant life or health particularly from mouth and foot disease whilst on poultry, a special import impose is also to avoid the birds disease that might have adverse impact on domestic poultry producers. As most Indonesian people are moslem, restriction on alcoholic beverages is considered as related to moral according to Article XX of the GATT 1994. Food additives could be imported and used by food industry based on the existing regulation. As to the lube oil, Indonesia considers that this product shall be regulated in order to protect consumers from counterfeit oil.

P. 33-34 (i) Registration and Documentation**Question 4:**

Indonesia has fully transferred the responsibility for Customs administration from pre-shipment inspection firms back to the Directorate General of Customs and Excise in 1997. Are there any other changes in the process and requirements of inspection accompanying the transfer of administrative responsibility?

Answer:

Indonesia (Directorate General of Customs) was fully control the customs administration when the inspection of imported goods was assigned to a pre shipment inspection firm in 1985. When the pre-shipment inspection practices was abolished in 1997, custom administration took over the inspection duty by implementing on-arrival sampling inspection. The process and requirement of inspection has not changed significantly after the transfer of inspection duty.

P. 42 (para.36-37)**Customs Valuation****Question 5:**

In September 2001, the authorities notified the WTO of the Government Regulation on Customs Valuation for the Calculation of Import Duties. However, we have not seen the full text of the said regulation; China would like to ask Indonesia to explain how it implements the Customs valuation for imported food and motor bicycles?

Answer:

Principally, Customs Valuation for the calculation of import duties is based on “transaction price”. The use of customs database is solely a counter-check for indicated low price of import declaration.

Trade Policies and Practices by Sectors**P. 85 (para.67)****Question 6:**

According to the report by the Secretariat, trade barriers remain in many service sectors. However, it is a positive sign that IMF-sponsored policy reforms help relax certain trade restrictions. It is noted that Indonesia's other GATS commitments, including computer and related services, other business services (e.g. architecture), professional services (e.g. engineering), construction and related engineering services, do not in general cover cross-border supply, consumption abroad, and presence of natural persons. Supply of these services by commercial presence is limited to joint operations/ventures involving a representative Indonesian office/Indonesian partner.

Is there a plan in Indonesia to liberalize its market of business service and professional service?

Answer:

Indonesia is still conducting the assessment process for the business services and professional services.

Indonesia implements the Economic Needs Test. However, China is concerned that this would constitute restrictions for employment of foreign labor. Would Indonesia consider abolishing this requirement?

Answer:

The increasing of unemployment rate experience by Indonesia due to unfavorable economic conditions has alarmed Indonesian government of political and social consequences of such high unemployment rate. Indonesia will keep Economic Need Test as a requirement of foreign workers. Indonesia believe that ENT is a rational and objectives tools to ensure the availability of job opportunity for domestic worker, without arbitrary refusing any foreign workers for entering Indonesian job market.

REPLIES TO QUESTIONS RAISED BY CANADA

Secretariat Report (WT/TPR/S/117)

II. Trade Policy Regime: Framework and Objectives; (8) Foreign Investment Regime; (i) Recent Performance and Developments; paragraph 41:

Question 1:

What is the status of the new investment law, which was to be introduced to Parliament in February 2003?

Answer:

The new investment law draft is currently being reviewed within interdepartmental agencies. The draft was submitted to the State Secretariat waiting for President's initiative permit to further be discussed in the Parliament. The Investment Coordinating Board expects that the draft will be accomplished immediately

II. Trade Policy Regime: Framework and Objectives; (8) Foreign Investment Regime; (i) Recent Performance and Developments; paragraph 45:

Question 2:

Paragraph 45 includes reference to the procedure for the approval of foreign workers. It states that positions in foreign-owned companies are declared open to foreign workers by the Government only. How exactly does this process work? Is there a mechanism to appeal the Government's decision?

Answer:

As Indonesia acknowledges negative list of investment (NLI) which is steadily reviewed to be updated due to recent developments, thus Indonesia also stipulates the use of foreign workers to some job positions. However, generally, a company can hire foreigners only for positions deemed open to non-Indonesians by Ministry of Manpower's policy.

II. Trade Policy Regime: Framework and Objectives; (8) Foreign Investment Regime; (i) Recent Performance and Developments; paragraph 46:

Question 3:

Paragraph 46 mentions the existence of an Indonesian Investment Arbitration Board to help resolve disputes. How does this Board operate? What guidelines and rules does it follow? Does it include an appeals mechanism? What is the nature of its relationship with the judicial system and other government agencies?

Answer:

It is important to clarify that Indonesia does not have the specific Investment Arbitration Board. The BANI (Badan Arbitrase Nasional Indonesia) may operate on wider business cases not only investment cases but also other business-typed cases, to help resolve disputes. However, the investors may choose the forum to settle their disputes. Meanwhile the number of bilateral investment treaties which are concluded by Indonesia and its counterparts, are increasing to become 56 countries.

III. Trade Policies by Measure; (2) Measures Affecting Imports; (xi) Standards and other technical requirements; (b) Sanitary and phytosanitary regulations:

Question 4:

Canada understands that Indonesia is considering a draft regulation regarding the "Safety of Living Organisms and Foods of Biotechnological Products (PBHRG) Produced Through Genetic Engineering". Canada requests information on the legislative status of this regulation, including information on when this regulation is expected to be implemented.

Answer:

Draft Law on matters related with Safety of Living Organisms and Foods of Biotechnological Products (PBHRG) Produced Through Genetic Engineering is being worked out within the Government.

III. Trade Policies by Measure; (2) Measures Affecting Imports; (xi) Standards and other technical requirements; (c) Marking, labelling, and packaging; paragraph 77:

Question 5:

Canada notes that, "As from January 2001, any food containing genetically engineered or irradiated products must be labelled in compliance with BPOM requirements." Canada requests an explanation of the BPOM requirements and the rationale for the labelling requirement as it relates to food containing genetically engineered or irradiated products.

Answer:

Labelling on food containing genetically engineered or irradiated products. Under Government Regulation number 69 of 1999 on Food Labelling and Advertisement stated that food which is treated through irradiation technique should be labelled by writing irradiated food on irradiated food ingredient and put logo on the package. This regulation also regulate on food containing genetically engineered.

Food product should be labelled GMO by the threshold more than 5 percent. The rationale objective of this labelling is education to the consumer.

III. Trade Policies and Practices by Measure; (4) Measures Affecting Production and Trade; (iv) Intellectual Property Rights; Institutional issues and enforcement action; paragraph 117; and Government Report; III. Progress on Economic Policy Reforms; p. Intellectual property rights; paras 77-78:

Question 6:

Canada appreciates the legislative measures Indonesia has taken to become TRIPS compliant but we are concerned about the enforcement of IP rights and note the rise of piracy in recent years. We note from the Government Report that with respect to its future program in the field of intellectual property rights, Indonesia refers to the "improvement of the quality and quantity of law enforcement as well as the improvement of public services." Please elaborate on how Indonesia intends to improve the enforcement of intellectual property rights.

Answer:

Well implementation of IP Law depends on at least 2 (two) points i.e well structured and well organized law and enforcement of the law. The IP law of Indonesia is considered good enough since the law has clear definition and procedural legal. However, it is acknowledged that the law inforcement of IP does not satisfy with the target due to the lack of human resources as well as technological resources such as computerized system on IP. To improve the enforcement of IP, Indonesia has done some action ; some of which are :

- Doing some trainings, seminars and workshop for judges, police, civil servants, business players and prosecutors.
- Doing regular raids on industry and trader who produce and offer infringing, pirating and counterfailing goods.

IV. Trade Policies by Sector; (2) Agriculture and Forestry, (ii) Main policy developments; (a) Border protection; Non-tariff border protection; paragraph 19:

Question 7:

In paragraph 19, we note that imports of soybean are subject to special import licensing. Please clarify the reasons why soybean are subject to special import licensing and the conditions an importer must meet to access the license. We would also appreciate Indonesia providing more information on special import licences by submitting a notification to the Committee on Import Licensing.

Answer:

Although soybean is one of the sensitive products of Indonesia in terms of food security, rural development, and poverty alleviation, there is no special import licensing imposed on this product.

IV. Trade Policies by Sector; (5) Services; paragraph 67:

Question 8:

According to paragraph 67, Indonesia has undertaken policy reforms in a number of areas, which go beyond its current GATS commitments. In the same paragraph, Indonesia notes that its GATS commitments do not cover cross-border supply, consumption abroad, and presence of natural persons in sectors including computer and related services, other business services (e.g., architecture), professional services (e.g., engineering), and construction and related engineering services. Please provide clarification regarding the extent to which recent policy reform touches on these areas.

Answer:

The policy reforms covered many areas of services, the reforms went beyond the existing commitments, especially in commercial presence, which we considered as the most important mode supply and has a wider implications toward international trade in services and Indonesia economy in general. In other mode of supplies Indonesia is still carefully considered the merits of liberalization toward its economy. Indonesia is also carefully follow the discussion on the aspect of liberalization in these mode of supplies.

IV. Trade Policies by Sector; (5) Services; (i) Financial Services (a) Banking; Regulatory framework; paragraphs 74 and 79:

Question 9:

Paragraph 74 describes the statutory criteria, including an economic needs test, which Bank Indonesia considers when granting a bank license, and also notes that opening a representative office of a foreign bank, and bank branch and sub-branch closures must be approved by Bank Indonesia. Please elaborate on the rationale for employing an economic needs test in granting bank licenses. In the case of branch or sub-branch closures or establishment of a representative office, does Indonesia consider that a notification procedure, rather than an approvals procedure, may be sufficient?

Answer:

Economic Need Test as a criteria for granting a bank license

In order to obtain an operating license as a commercial bank or a rural bank in Indonesia, an applicant is required to fulfil basic requirements concerning: (i) organization and management structure; (ii) capital; (iii) ownership; (iv) expertise in banking; and (v) feasibility of the business plan. As additional consideration, Bank Indonesia will also assess whether the applicant meets the criteria of the feasibility of the business plan. In order to assess the feasibility of business plan, Bank Indonesia will take into account several additional aspects such as existing competition in the banking industry so as to ensure healthy competition among Banks, the degree of Bank density within a certain area, and the distribution of national economic development. The rationale for requiring a review on the feasibility of the business plan is to protect both bank customers and the banking system from unsound competition.

Notification or approval for the establishment or closing of a branch or sub-branch or representative office.

Based on the Banking Act of 1998, either the opening or closing of a foreign bank office needs a prior approval by the central bank. In practice there are two different kinds of approvals required depending on the kinds of operation of the office to be opened or closed. Basically the process of obtaining an approval for the opening or closing of a non-deposit taking office, such as a representative office, is more relaxed than a deposit taking branch or sub-branch office. This policy is aimed to protect the customers as well as integrity of the financial system.

Question 10:

Paragraph 79 notes that "An independent Financial Supervisory Authority (FSA) is to be established, initially by end 2002..." Please explain the delay in this legislation, and please provide Members with a revised timeline for the presentation and implementation of this important legislation.

Answer:

An FSA is a new concept for Indonesia and represented a dramatic change in the way supervision will be conducted by the authority in the field of financial services. Therefore, its establishment needs a careful consideration so as to ensure the smooth implementations. Since the FSA will alter the current financial authorities structure in Indonesia, its establishment also require amendments of several existing laws namely Bank Indonesia (central bank) Law, Banking Law, Insurance Law, Pension Fund Law, and Capital Market Law. The improvement of the draft is also required because according to the IMF the FSA system need also to be complement by the safety net system for Indonesia financial sector, including deposit insurance scheme and lender of last resort. In May 2003, the draft has been submitted to Parliament by the President.

It should be noted that the process of issuing a new law in Indonesia is somewhat complicated inter alia because of the requirement to meet the transparency standard as one of the best practices. When issuing a new law, the government should at minimum meet the following requirements:

- a. Prepare an academic paper and draft of law
- b. Conduct a seminar and submit the draft to the public and any other related authority to have a comment.
- c. Revise the draft based on the comment
- d. Submit the draft to minister of justice to have a legal opinion
- e. Revise the draft based on the legal opinion
- f. Submit the draft to cabinet meeting
- g. Revise the draft based on the comment in the cabinet meeting
- h. Submit the draft to the president and the president will submit the draft to the parliament.

The parliament will also conduct hearings with various relevant parties in order to have final public comment and discuss the draft with the government.

IV. Trade Policies by Sector; (5) Services; (i) Financial Services ; (b) Insurance; paragraphs 81 and 82:

Question 11:

Paragraph 81 highlights the legal harassment that Manulife Indonesia (AJMI) has faced since 2000. Please provide an update regarding the status of reforms to its bankruptcy laws. In particular, can Indonesia confirm that it plans to require Ministry of Finance approval prior to bringing a bankruptcy petition against an insurance firm before the court? What is the expected date for the new bankruptcy legislation to come into force?

Paragraph 82 describes certain prudential requirements with respect to insurance companies. Please clarify the evaluation criteria for its requirement that insurance companies must support the industry's growth?

Answer:

The Government of Indonesia has already proposed the drafts of amendment of the Bankruptcy Law and Insurance Law. Both reformed laws plan to regulate that a bankruptcy petition against an insurance firm should be requested by the Minister of Finance. Both draft are currently in the Parliament.

The phrase "support the industry's growth" is intended to ensure that any insurance company establish in Indonesia shall have a strong capital, expertise, and products that improve the growth of the insurance industry and provide additional security toward industry as a whole so as to support other industries growth indirectly.

IV. Trade Policies by Sector; (5) Services; (i) Financial Services ; (c) Capital markets; paragraph 85:

Question 12:

Paragraph 85 notes that "Minimum capital requirements for local securities companies are lower than for joint ventures." In addition, Indonesia's GATS Schedule of Specific Commitments, Supplement (GATS/SC/43/Suppl.3) states for the banking sub-sector, "limitation on national treatment in terms of difference in paid up capital requirement will be eliminated in the year 1998." Please clarify the extent of the different treatment, and explain why national treatment is not provided in this sub-sector and others.

Answer:

The different in minimum capital requirement has been abolished by the Minister of Finance Decree Number 179/KMK.010/2003 dated May 5, 2003.

Shares of joint venture securities companies can be owned by foreign financial legal entity up to a maximum of 85% of the paid-in capital (Minister of Finance Decree Number 179/KMK.010/2003, article 2 item 1). In case of foreign legal entity that operates in securities activity that have license from or under supervision of capital market regulator in their own country, the foreign share ownership can reach a maximum of 99% of the paid-in capital. In the event that a national or join-venture Securities Company makes a Public Offering of its shares, the share of that Securities Company can be owned by foreign investor or domestic investor up to 100% of paid-in capital (article 3 item 1).

IV. Trade Policies by Sector, (5) Services; (ii) Communications; (a) Telecommunications; Regulatory framework; paragraphs 93 and 95:

Question 13:

In paragraph 93, Indonesia notes that telecommunications is regulated by the Directorate General of Posts and Telecommunications (Postel), and that there are plans to convert Postel into an independent regulator. Please provide a timetable for this conversion.

Answer:

Indonesia is seriously considered to establish independent regulatory agency. In principle Indonesia agree with the idea of separating market player and market regulator. It is expected that the independent regulatory body will be established at the end of this year.

Question 14:

In paragraph 95, Indonesia notes that A exclusivity for local services is to terminate by August 2002, and by August 2003 for national long-distance and international calls. Indosat was awarded a local telephony licence in August 2002 and is to be granted a long-distance licence in 2003. Telecom is to be given an international licence in 2003". Please provide an update on these plans.

Answer:

Indonesia's program of an early termination of exclusivity rights has been implemented according to above mentioned plan. There is no additional plan.

Government Report (WT/TPR/G/117)

IV. Trade Policy and Trade Related Policy Developments; k. Non-bank financing sector; paragraphs 63 and 64:

Question 15:

Paragraph 63 of the Government Report states that "In the financing service, market access and national treatment for leasing company, credit card, and consumer financing have been too open." However, the report of the Secretariat (Trade Policies by Sector, Financial Services, paragraph 85) states that "Minimum capital requirements for local finance companies are lower than for joint ventures, which must deposit 100% more paid-in capital." Please clarify whether or not national treatment is provided in this sub-sector regarding paid-in capital requirements.

Answer:

There is no discriminatory treatment in the requirement on paid up capital for local finance companies and joint venture companies (Minister of Finance Decree Number 172/KMK.06/2003 dated April 23, 2003.

Question 16:

Paragraph 64 of the Government Report highlights the absence of commitments in certain sub-sectors. Does Indonesia intend to make commitments in the pension fund sub-sector in the current round of negotiations

Answer:

In the current round of negotiations, Indonesia have no intention to make commitments in the pension fund sub-sector due to the fact that pension fund industry is in the early stage of development.

REPLIES TO QUESTIONS RAISED BY CHINESE TAIPEI**Secretariat Report (WT/TPR/S/117)****I. Economic Environment: introduction and recent economic developments (p. 1, para. 1 & 2; p. 8, para. 17)****Question 1:**

At present, the mainstream of public opinion in Indonesia seems to be against the government's dependence on the IMF rescue programs and is in favor of terminating the Letter of Intent (LoI) with the IMF at the end of 2003. Although macroeconomic conditions appear to have stabilized for the time being, the growth rate of the Indonesian economy is still low compared with other Southeast Asian countries, which have recovered from the Asian financial crisis. We would like to know how the Indonesian Government plans to maintain its domestic growth and international credibility if IMF support is withdrawn at the end of 2003.

Answer:

The government agrees that sustained economic growth calls for conducive investment climate and progress in economic reforms. Therefore, the authorities have embarked on the stabilization program and structural reforms since the economic crisis in 1997.

- Macroeconomic policy has been directed toward maintaining stability. Once stability maintained, monetary policy has been eased as reflected in the decline of interest rate on monetary instrument.
- On the fiscal front, the government sought fiscal consolidation by increasing domestic revenue so as to keep deficit within manageable level while providing economic stimulus for domestic economy. The government has also introduced tax reform, restructured public debt, and continued privatization and sales of assets of IBRA.
- On the structural issues efforts have been made to adhere remaining problems which have hampered economic growth such as restoring security, especially in conflict area, strengthen good governance, continued structural reform including financial sector.

To improve investment climate, the government has sought to strengthen good corporate governance, restore security, introduce judicial reform, strengthen law enforcement, and improve labor relation. In

order for the economy to grow faster, it also calls for favorable international environment as reflected in world economic growth and international trade.

In 2002 Indonesia's economy grew by 3.8% despite the unfavorable world economic growth of 2.8% and this year the growth is expected to be slightly higher i.e. around 4.0%. The successful outcome of a more ambitious round will also help expand world and Indonesia will also derive its benefit provided that Indonesia's trading partners will also open its market for Indonesia's products.

Regarding the plan to maintain credibility after termination of the IMF program, the government has commissioned a Team to prepare the necessary steps to successfully exit from the IMF program. Those steps are mainly directed toward formulating Economic Recovery Program of 2004-2006. The program rests mainly on three pillars namely : (i) macroeconomic stabilization program ; (ii) restructuring and reforming the financial sector ; and (iii) promoting investment and exports and creating jobs.

To maintain international credibility, Indonesia will likely opt to adopt a post program monitoring (PPM). Under this PPM program, Indonesia will continued its restructuring program which will be reviewed by the IMF twice a year.

II. Trade Policy Regime: framework and objectives; regional decentralization (p. 8, para. 19; p. 16, para. 2; p. 17, para. 8 & 9; p. 18; p. 28, para. 44)

Question 2:

As indicated in the Secretariat Report, new taxes and levies can only be applied in the public interest and, under the decentralization policy, can not cover areas already taxed by the central government of Indonesia, but the private sector has finally become a target for taxation. Decentralization has created business uncertainty and this has adversely affected willingness to invest in Indonesia. It is recognized that foreign direct investment is one of the driving forces of Indonesia's economic development, and that a stable and predictable investment climate is essential for further economic development. We would like to know whether there are laws to regulate such taxation by provinces and districts, and to have information on the kind of taxes that may be collected, and their ceilings. Furthermore, as there are different economic conditions in different regions, does the central government apply a different taxation approach to each region?

Answer:

Indonesian law no 34/2000 provides guidance to provinces and districts to impose regional taxation and levies. Those areas that has been taxed by the central government (such as income tax, value added tax, luxury sales tax, import duties, export taxes) can not be taxed by regional government.

In the transaction period of decentralization era, some provinces and districts collect extra taxes to meet their expenditure budget. These unlawful taxes and levies are being reviewed by the central government law compliance.

(p.19, para.13)

Question 3:

Two aims of industrial and trade policy are to implement the structural reforms agreed with the IMF and to meet WTO commitments. As part of the IMF programs, Indonesia has adopted unilateral reforms, for example, in the financial and other services sector, that in some cases have substantially exceeded its WTO commitments. Could Indonesia please provide us with details of these reforms in financial and other services, and of the likely effects of exceeding its WTO commitments. Furthermore, if Indonesia terminates its agreements with the IMF at the end of 2003, will these reforms be changed?

Answer:

Unilateral/autonomous liberalization has been introduced to strengthen economic efficiency. Autonomous liberalization in Indonesia is conducted under the auspicious of IMF program. Since it is undertaken unilaterally, there is no obligation that it is binding under the WTO rules.

(p. 27 & 28, para. 40-43)

Question 4:

In recent years, Indonesia has adopted a more liberal strategy in attracting foreign investments, with the purpose of enhancing economic development. A new draft investment law, which was released in October 2000 and submitted to Parliament in February 2003, seems to have further relaxed the investment regime. Our investors are enthusiastic about investing in the agriculture, forestry and fisheries sectors in Indonesia, and we firmly believe that potential exists in financial services, land and sea transport, and other services. We would appreciate knowing, therefore, whether the Indonesian government has plans to open up more areas for foreign investment, and to lower the investment threshold and simplify investment approval procedures in the future.

Answer:

Since the Government of Indonesia has been seriously creating the more conducive investment climate, and to cope with current situation the Government has been preparing to open more business fields (updated negative list for investment) to the foreign investors, and simplify the investment approval procedures.

III. Trade Policy and Practices by Measure: Measures directly affecting imports; tariffs (p. 38, para. 28)

Question 5:

As indicated in the report, many of Indonesia's bound rates are considerably higher than the applied rates, thus imparting a degree of uncertainty to its tariff regime. The gap between these two rates widened when Indonesia reduced applied rates in 1998, but we note that the Indonesian government plans to lower its bound rates through negotiations. We would like to know whether Indonesia will commit itself to bind all its tariffs at the current applied rates, or lower, in this round of negotiations.

Answer:

As shown in the applied tariff in the past few years, Indonesia is consistently implement the tariff reduction schedule as stipulated in the Ministry of Finance Decree No. 378/KMK.01/1996 and maintain the low level of tariff. The tariff reduction schedule is mainly intended to provide certainties for investor (local and foreign) to plan their investment. Based on this basic principle, there is no intention to fill up the gap between Indonesian bound tariff and the applied tariff, except of course the food staples such as rice, sugar, wheat flour. Therefore, the level of Indonesia current bound tariff will not be a dominant factor from uncertainties to its tariff regime.

Measures directly affecting imports; import prohibitions, restrictions, and licensing (p. 45, para. 43)

Question 6:

As indicated in the Secretariat report, Indonesia has notified the WTO only once about its laws, regulations, and administrative procedures, as well as replies to the Questionnaire on Import Licensing Procedures (annual) in October, 1998. Could Indonesia please provide the updated information according to its WTO obligations.

Answer:

Indonesia highly appreciate the the questions pose by Taiwan, Penghu, Kinmen and Matsu with regards to the updated data and information of Indonesian notification on Import Regulation. As the notification concerned has just been submitted to the WTO Secretariat, Indonesia is of the view that the updated notification should be submitted later in 2004.

Question 7:

Measures directly affecting imports; state trading (p. 45, para. 44)

Table III.2 identifies the activities of Indonesian state enterprises in various fields of goods. Among these, BULOG was the only state trading enterprise that was included in Indonesia's notification in 2002. Exclusive import rights have been maintained for certain firms or certain categories of goods (alcoholic beverages, sugar, cloves, textile cloth, hot- and cold-rolled coil iron and steel products). Therefore, would Indonesia please include in its WTO notification those enterprises that have exclusive import rights, together with their activities, in accordance with the requirements of Article XVII of GATT 1994?

Answer:

Indonesia recognizes that BULOG is the only state trading enterprises that has been notified to the WTO based on Article XVII. With respect to other state trading enterprises as stated in Table III.2, Indonesia is of the view that although those state trading enterprises have a special rights, nevertheless, the special rights given to them are not within the meaning of Article XVII. Since the regulation establishing Bulog has a higher level of statutory regulation than other state trading enterprises, Indonesia consider that only Bulog could be defined as state trading enterprise as meant in Article 17 of the GATT 1994.

Measures directly affecting imports; government procurement (p. 47, para. 46; P. 48; P. 49, paras. 52 & 53)

Question 8:

Indonesia is not a signatory to the WTO Agreement on Government Procurement (GPA), but it is an active participant in the Working Group on Transparency in Government Procurement. Moreover, government procurement is used as a significant instrument of its industrial policy. We are vigorously pursuing membership of the GPA ourselves. If Indonesia were also to become a signatory to the GPA Agreement, there could be further useful cooperation between us in this area.

Indonesia stipulates that procurement contracts not exceeding Rp 10 billion shall be handled by the respective government agencies and state-owned enterprises. Above this amount, contracts shall be submitted for final approval to the inter-ministerial Central Procurement Team (TEP). Some complaints about irregularities in the administration of tenders relating to procurement contracts have been reported. We would like to know if there is a mechanism to handle such complaints.

Answer:

There is mechanism on delivering complaints about irregularities in the administration of tenders. Complaints should be delivered firstly to the procurement evaluation committee within the government institution. If the person who complaint did not get satisfaction answer, he can report to Commission for Supervision of Business Competition. This Commission is an independent body consists of representative from business community and society. The commission will have investigation procedure before the case is decided irregular or comply with the administration procedure. If the Commission found irregularities which is violent the law than the case will be submitted to the court.

Measures directly affecting imports; counter trade (p. 49, para. 54 & 55)

Question 9:

It has been noted that in May 2003, President Megawati led a delegation to Russia. During the visit, Indonesia purchased 4 Russian Sukhoi jetfighters amounting to \$200 million (exclusive of weaponry system). The purchase was secured with counter-trade to be paid by Indonesian palm-oil and spices. Since Indonesia's counter-trade operations are expected to pick up as the awarding of tenders gradually increases, we think there might be opportunities for us to develop counter-trade with Indonesia, especially in view of its abundant natural resources. Any ideas or information from Indonesia in this respect would therefore be greatly appreciated.

Answer:

Indonesia is of the view that the counter trade is one of our efforts to increase export revenue and counter economic slowdown which is non discriminatory, since counter trade could be offered to any other trading nations in need of Indonesian export products. Besides Russia, Indonesia has counter trade agreement with a number of countries such as India, Thailand, Myanmar, Vietnam, Poland, etc. offering Crude Palm Oil (CPO), coal, crumb rubber, aeroplane, passenger train wagon.

IV. Trade Policies by Sector: Mining and energy; energy (p. 81 & 82, para. 41-51)

Question 10:

At present, a large number of foreign companies are allowed to participate in the exploration and exploitation of oil- and gas-fields under production-sharing contracts with the state-owned Pertamina. Are there any standard rules or guidelines by which foreign companies are judged to qualify to take part in oil and gas exploration or exploitation activities in Indonesia? As indicated in the report, BALAK, a new oil and gas authority, was established and took over many functions from Pertamina in 2002. Could Indonesia please describe for us the role of BALAK and its status in the government hierarchy? Also, how do foreign companies benefit from the replacement of Pertamina with BALAK?

Answer:

- Standards rules or guidelines for participating in the exploration or exploitation of oil and gas field under production sharing contract are issued by the Directorate General of Oil and Gas. The tender procedures include among others the announcement of new offered working acreage, invitation disseminated to all companies, bid information containing tender process and instructions and bid evaluation. The signing of the contract will done by BALAK and the successful bidder.
- The status of BALAK is State Owned Legal Entity. It holds the function of control over the oil and gas upstream business operations. In order to implement such functions the BALAK provides recommendations to the Minister of Energy and Mineral Resources regarding its policy in preparing and offering work areas and cooperation contracts, monitoring of the implementation of the cooperation contracts, appointing sellers of the state's share of oil and gas and so forth.
- The replacement of Pertamina's role to BALAK in upstream business operation particularly concerning separation of its function as a player and supervisory will create fair market competition between foreign companies competition with Pertamina.

Manufacturing; textiles, clothing, and leather (p. 83,para. 56, 57)

Question 11:

Indonesia's main export markets for textiles and clothing are the European Union, the United States, Canada and Turkey. Export quotas are allocated by the Ministry of Industry and Trade to exporters, on the basis of past performance, and to economically weak firms. Quota utilization varies depending on the product category and market, and can be traded between holders and big new exporters. As we have many investors in the Indonesian textile and clothing sector, we would like to know the principles underlying this quota allocation and to be informed of any relevant regulations.

Answer:

The principles underlying the quota allocation in the Ministry of Industry and Trade are:

- Transparency. All quota allocations are distributed to all companies in a transparent manner fully based on past performance.

- Non discrimination. Quota allocation is distributed equally to domestic and foreign companies as long as they have already met the requirements.

Services; financial services (p. 88, para. 75)

Question 12:

As indicated in the report, commercial banks may be established only by Indonesian interests or as joint ventures, and foreign banks operate in Indonesia as licensed branches, provided they are among the 200 largest world banks, having at least an “A” credit-rating and an operating fund of over Rp 3 trillion. We are of the opinion that these capital requirements are higher than international standards and would consequently discourage foreign financial service providers from offering their expertise and know-how to the Indonesian market. We would like to know if Indonesia plans to relax these requirements and/or lower the threshold.

Answer:

The rationale for requiring a high paid-up capital for bank operating in Indonesia is first Indonesia, as most other developing countries, has been experiencing a saving investment gap. Therefore, the presence of a bank in Indonesia is expected to make contribution to the economy by bringing adequate capital to Indonesia. Second, the idea of requiring a sufficient amount of capital is to show the seriousness of conducting business in Indonesia.

Since the banking crisis, the priority in the development of the banking sector is to improve the soundness and strengthen the resilience of the banking system through re-capitalization and restructuring program. Following the economic crisis in 1997, the number of commercial banks in Indonesia dropped to 141 in 2002 from more than 200 before the crisis due to closing and merger. While the number of banks dropped significantly, the number of offices has increased from 6,765 to 7,000 at end of 2002. These developments reflect an improvement in the consolidation of the banking sector in Indonesia.

It is worth noting that under the re-capitalization program, in order to comply with the Basle Capital Accord, the government has issued a substantial amount of government bonds that increased government ownership in the re-capitalized banks significantly. However, such ownership is intended only temporarily and plans have been made for divestiture. This provides an opportunity for foreign investors to invest in the re-capitalized banks in Indonesia.

Services; financial services (p. 91, para. 83)

Question 13:

Foreign insurers are not allowed to open branches in Indonesia and can only operate as a joint venture with a local firm or as a shareholder of a listed company. The maximum level of foreign ownership allowed in a joint venture is 80%. Does Indonesia have any plans to further relax its regulations applied to foreign insurers operating in Indonesia?

Answer:

Commercial presence could be done in the form of joint venture company. Foreign ownership in a joint venture at the time of incorporation shall not exceed 80% of the total capital of the company and might be raised up to more than 80% by keeping the amount of share owned by Indonesia.

Services; communications (p. 93, para. 92 & 93; P. 94, para. 95)

Question 14:

Concerning the current negotiations on trade in services, we have submitted Initial Requests to Indonesia, including one to further open up its telecommunications market. However, Indonesia has yet to respond to our requests. We welcome Indonesia's strong commitment to liberalizing its telecommunications market through competition in order to end monopolies, increase regulatory transparency and form enhanced strategic alliances with foreign investors. We sincerely hope that Indonesia can provide us with its Initial Offers in the near future so that we can start our discussions with them on services negotiations (including telecommunications) under the current round, thereby paving the way for our future closer cooperation with Indonesia in the telecommunications services sector.

Answer:

Indonesia fully appreciate for the sincere invitation to discuss Indonesia's program on the liberalization of telecommunications.

Question 15:

The Indonesian government imposes many restrictions on broadcast, film and videotape-related activities by foreigners, such as the prohibition of foreign ownership of private broadcasting, and foreign investment in film production, distribution and screening. As we know, a new law regulating radio and television broadcasting was enacted in 2002. It allows foreigners to hold 20 percent of the shares of Indonesian wireless, cable, satellite and other private telecommunication institutions. We would appreciate knowing if the law has been promulgated and put into practice. Furthermore, with regard to film and videotape production, and distribution, does Indonesia plan to open up this area to foreign investment? And, as for the distribution of non-American films in Indonesia, do these have to be handled through the European and American Film Importers' Association (AIFEA)? If not, what is the marketing channel for these films?

Answer:

Regarding the film production, technical filming services, export of import movies, film distribution, and screening could be explained as follows:

- Film distribution can only be conducted by film distribution company.
- Every film production company is permitted to distribute its own film production.
- Before film are distributed, all films must pass the censorship procedures assigned by film censorship institution. This rule applies to both film and film advertising, both import and export.

- Every film production company must optimize the available domestic national resources.
- Film export can only be conducted by film production company, film engineering services company and film distribution company, film export must pass the censorship procedures.

Services; tourism (P. 97, para. 110, 111)

Question 16:

In recent years, Indonesia's tourism industry has suffered severely from unfortunate developments, including the political upheavals of 1998, the East Timor crisis in 1999, 11 September 2001 events in the US, the Bali bombing in October 2002 and the SARS outbreaks in March 2003. We are delighted to see the Indonesian Government taking active measures to revive its tourism industry. However, in its Presidential Decree No. 18/2003, the visa-free facility that had previously been extended to 48 countries since 1983, has been reduced to only 11 countries and territories that provide reciprocal treatment to its citizens. This measure will surely be counter-productive to its goal of boosting tourism. Our citizens represent, for example, the third largest source of tourists to the island of Bali but they will now have to apply for visas under this measure. This new policy is scheduled to be put into practice in October 2003. In order to avoid discouraging significant numbers of Taiwanese tourists from sightseeing in Indonesia and thus adversely affecting the efforts to revive the tourism industry, we strongly urge the Indonesian Government to reassess this matter carefully and to postpone or cancel the implementation of its policy in this respect.

Answer:

The new policy on Free Short Visit Visa (Bebas Visa Kunjungan Singkat/BVKS) has been launched since March 31, 2003 by a Presidential Decree No.18/2003. After 20 years of its implementation, The Government of Indonesia has concluded that the policy of granting Free Short Visit Visa needed revision. The data of immigration compliance in Directorate of Immigration Surveillance and Measure revealed that the policy of visa free entries are often being misused/abused by foreigners. FSVV are misused in violation of immigration law , criminal offenses, and any other illegal activities. The new policy is intended also to protect domestic security interest.

However, under the Presidential Decree No. 18/2003 (Article 2), Indonesia is open for bilateral discussion to arrange new visa free arrangements based on reciprocal basis and mutual benefits.

REPLIES TO QUESTIONS RAISED BY COLOMBIA

Trade Policies and Practices by Measure

Question 1:

Since the last trade policy review, Indonesia has made considerable efforts to rationalize tariff protection, both industrial and agricultural. In the manufacturing sector, we note the reduction of the average tariff from 9.5 per cent to 7.2 per cent. However, we would like to know how this fact can be reconciled with the maintenance of tariffs ranging from 60 per cent to 170 per cent in certain sectors such as chemicals, fabricated metal products and transport equipment.

What are the sectors that benefit from temporary tax exemptions and other incentives. What types of measures are applied and what results have been achieved?

Has Indonesia considered the possibility of updating the notification of its import licensing system in order to contribute to transparency in the WTO? Would it be possible to have a list of the tariff headings subject to import restrictions and prohibitions as well as the criteria for allocation on the basis of an assessment of domestic need?

According to the Report of the Secretariat, since the previous review, the system regulating exports through licensing and quotas has remained unchanged. There is reference to a lack of transparency and adverse economic effects of the system at that time. This was aggravated by administrative discretion and uncertainty regarding the level of export taxes and the minimum "check" prices on which they were levied. Has Indonesia considered revising its export regulation system in the short term?

Answer:

We fully agree the view of Colombia that average tariff for manufacturing sector has been reduced from 9.5% to 7.2%. Based on Indonesian Custom tariff book, the average tariff for chemical is 5% to 10% , the average tariff level for fabricated metal products is 25% and for transport equipment is 80%.

Sector that has benefited from temporary tax exemption is steel pipe product and no other incentives provided for this sector by the government. Actually, no results have been achieved, rather than just to maintain thousand employments (labor) which are absorbed in this sector.

Yes, Indonesia is fully aware of updating the import licensing notification according to rules and disciplines as contained in the agreement on Import Licensing. And it would be very possible for every member of WTO to have all documents related to import regulations through the Committee of Import Licensing.

No plan has been made to revise Indonesian export regulation in the short term.

Trademarks

Question 2:

The Report of the Secretariat (paragraph 121) states that Indonesia had not yet fully developed its registration procedures for trademarks, inter alia owing to institutional constraints that had impeded effective implementation of its commitments under the TRIPS Agreement. In view of these circumstances, we would like to know how products imported into Indonesia with "well known" marks have been and will be protected.

Paragraph 122 (mark registration process) states that after registration is granted, the Trademark Office may take up to 12 months to issue the certificate of registration of the mark which is needed to commence enforcement procedures. Why is a certificate of registration required once the registration had been granted by the competent authorities?

Paragraph 125 states that the new law on trade secrets does not set any time limitation, and protection remains in force as long as the trade secret is maintained and not disclosed to the public. What are the criteria applied to the protection of trade secrets?

Answer:

Indonesia protects “well-known” trade mark by placing regulation saying that an application for registration of a mark shall be refused if the mark has a similarity in its essential part or in its entirety with a well-known mark owned by another party for the same kind of goods and or services. The refusal can be applied for goods and or services which are different with the well-known goods or services.

Certificate of registration is required to be used as a proof that the person whose name and identity are printed on the certificate is the owner of registered mark.

Based on the Indonesia Trade Secret Act, trade secret is information in the field of technology and or business. To be protected, trade secrets shall be categorized as confidential information which should be maintained with necessary efforts and shall have economic values.

REPLIES TO THE QUESTIONS RAISED BY EUROPEAN UNION**Progress on Economic Policies Reforms****Integrated Economic Development Zone (KAPET)****Question 1:**

(Para 26 and 27) The report mentions the creation of an Integrated Economic Development Zone, KAPET, and describes the fiscal and other advantages for companies. What are the conditions for companies to be able to locate in these zones? Are there any export requirements for companies locating in these zones?

Answer:

In general there are no conditions for any company to be able to locate in these zones. The export requirement is that the product of the company can be sold domestically for not more than 50% of export realisation. This export requirement is a condition for manufacturer to be eligible for VAT facilities, and derived from export requirement for Bonded Zones. There is no export requirement for income tax facilities purpose.

Trade Policy and Trade Related Policy Developments**Trade Policy****Question 2:**

The Ministry of Industry and Trade recently announced its plans to seek more counter-trade deals, in a bid to increase export revenue and counter the economic slowdown in developed nations. How is this policy consistent with the WTO obligations of non-discriminatory treatment for all the members?

Answer:

Indonesia is of the view that the counter-trade is one of our efforts to increase export revenue and counter economic slowdown which is non discriminatory, since counter-trade could be offered to any other

trading nations in need of Indonesian export products. Besides Russia, Indonesia has counter-trade agreement with a number of countries such as India, Thailand, Myanmar, Vietnam, Poland, etc. offering Crude Palm Oil (CPO), coal, crumb rubber, aeroplane, passenger train wagon.

Question 3:

To what extent are Sustainability Impact Assessments (SIA), which assess the economic, environmental and social impacts of regulatory changes, used by Indonesian policy makers when formulating trade policy?

Answer:

As far as Indonesia is concerned the formulation of trade policy involve various ministries, private sectors and other stake holders in order to analyse, to maximise economic outcome, as well as to minimise the social and environmental impacts.

Government Procurement

Question 4:

(Para 49) In the new regulation on government procurement, what are the references made to the GPA, UNCITRAL Model Law and the APEC Principles of Government Procurement? In particular, does the regulation refer to any transparency principles?

Answer:

Indonesia's government procurement laws are very much in line with international standards such as UNCITRAL, WTO Government Procurement Agreement, and APEC Principles of Government Procurement. This is reflected on the basic principles of Presidential Decree number 18/2000, i.e. efficiency, effectiveness, competitiveness, transparency, non-discriminative, responsibility.

Investment

Question 5:

(Para 74) A new Foreign Investment Law has been announced for some time but it is awaiting approval in the Parliament. What plans does the Government have to expedite its approval? Are there any other specific measures in the pipeline to support the investment climate?

Answer:

The interdepartmental agencies have been discussing the substantial differences since the differences require to be carefully negotiated. This is to aimed at similar perception among the agencies concerned.

Meanwhile, simultaneously, the government has been preparing several substantial measures to support the more conducive investment climate, namely, among others, the accomplishment of investment legal framework such as investment deregulation including investment incentives, decentralisation of investment licensing, the arrangement of "one roof service" policy for investment, the simplification of investment procedures, updating negative list for investment, while the other policies measures are the

establishment of BKPM team task force” to resolve investors’ problems, the preparation of establishment of the National Team for Investment, institutional-capacity building on the regional (BKPM) and BKPM, and improving promotional activities.

Regional Trade Arrangement

Question 6:

There are indications in Indonesia’s trade policy according to which the Government intends to pursue a proactive policy in its regional approach to trade and towards bilateral agreements. In this respect we would like to learn more about Indonesia’s priorities in terms of the next steps of intra-ASEAN integration, in particular the perceived main challenges in that integration process. What are the expected consequences for the Indonesian economy?

Answer:

The expected consequences for the Indonesian economy are to increase intra trade and investment among ASEAN, to promote regional growth, and to increase economic stability in the region. However, regarding the idea of establishing the ASEAN Economic Community (AEC), Indonesia is of the view that the above idea should be considered carefully, particularly on the issue of supranational body which is contrary to the main ASEAN Principle i.e. to respect the national sovereignty of its members.

Future Economic and Trade Policy Directions

Question 7:

As far as the overall direction of Indonesia’s trade policy is concerned, we are surprised that no reference is made to the Government’s approach to and its objectives in multilateral trade, in particular the ongoing DDA negotiations. The report clearly show, however, that the progress in the macro-economic climate and the reforms undertaken are not enough to guarantee sustained economic growth. The economy is still too much dependent from domestic consumption while the investment climate is deteriorating. Attracting foreign investment is vital for increasing the growth rate that is so well needed to tackle problems of unemployment and poverty. Would not the Government agree that a successful outcome of this multilateral trade round with ambitious results on the market access and the rules side of the agenda will help Indonesia on its way to macro-economic recovery, in particular to meet the challenges set out in the National Development Program, and with consolidating internal reforms in order to improve micro-economic policies to restore investors’ confidence?

More generally, there is the impression that decisions related to trade are taken rather on a ad-hoc basis. Are there any particular reasons, for instance structural problems within the Government as regards the management of international trade? Could the Government please elaborate on a possible long-term strategy for trade issues?

Answer:

Sustained economic growth calls for conducive climate and progress in economic reforms and successful outcome of multilateral trade round with ambitious result

The government agrees that sustained economic growth calls for conducive investment climate and progress in economic reforms. Therefore, the authorities have embarked on the stabilization program and structural reforms since the economic crisis in 1997.

- Macroeconomic policy has been directed toward maintaining stability. Once stability maintained, monetary policy has been eased as reflected in the decline of interest rate on monetary instrument.
- On the fiscal front, the government sought fiscal consolidation by increasing domestic revenue so as to keep deficit within manageable level while providing economic stimulus for domestic economy. The government has also introduced tax reform, restructured public debt, and continued privatization and sales of assets of IBRA.
- On the structural issues efforts have been made to adhere remaining problems which have hampered economic growth such as restoring security, especially in conflict area, strengthen good governance, continued structural reform including financial sector.

To improve investment climate, the government has sought to strengthen good corporate governance, restore security, introduce judicial reform, strengthen law enforcement, and improve labor relation. In order for the economy to grow faster, it also calls for favorable international environment as reflected in world economic growth and international trade.

In 2002 Indonesia's economy grew by 3.8% despite the unfavorable world economic growth of 2.8% and this year the growth is expected to be slightly higher i.e. around 4.0%. The successful outcome of a more ambitious round will also help expand world and Indonesia will also derive its benefit provided that Indonesia's trading partners will also open its market for Indonesia's products.

Regarding the plan to maintain credibility after termination of the IMF program, the government has commissioned a Team to prepare the necessary steps to successfully exit from the IMF program. Those steps are mainly directed toward formulating Economic Recovery Program of 2004-2006. The program rests mainly on three pillars namely : (i) macroeconomic stabilization program ; (ii) restructuring and reforming the financial sector ; and (iii) promoting investment and exports and creating jobs.

To maintain international credibility, Indonesia will likely opt to adopt a post program monitoring (PPM). Under this PPM program, Indonesia will continue its restructuring program which will be reviewed by the IMF twice a year.

Question 8:

In this respect, we would appreciate if Indonesia could give some indication on the work of the existing MOIT for DDA issues, which was set up in early 2002?

Answer:

The advisory committee set up under the National Team for Multilateral Trade Negotiation contribute analyses and recommendation to negotiation process of trade in goods, services, rules making as well as Singapore's issues.

Question 9:

We consider the dialogue between the Government and the country's business community and civil society as an important element to base and consolidate multilateral trade policy decision. Could Indonesia please explain:

- *If and how such kind of dialogue takes place in Indonesia;*
- *Who the main interlocutors are and what kind of key message they provide on multilateral trade issues.*
- *How business advice and civil society concerns on market access and on multilateral rule-making are taken into consideration in the government's policy formulation.*

Answer:

The national team of multilateral trade negotiation consists of high ranking government officials as well as Indonesian Chambers of Commerce which represent private sectors. The team meets regularly in order to discuss and make recommendation on issues relating Indonesian position in multilateral trade negotiation.

The main interlocutors are officials from Ministry of Industry and Trade, Ministry of Finance, Ministry of Agriculture, Ministry of Foreign Affairs, Ministry of Justice and Human Rights, Ministry of Health, Bank Indonesia, and Coordinating Investment Board. The key messages they convey are supporting multilateral trade liberalisation and at the same time balancing out the national commitments taking into account specific sectors' development.

The National Team organised on continuous basis dialog forum with business and civil society in order to discuss issues and concerns relating to market access and multilateral rule making.

REPORT BY THE SECRETARIAT (WT/TPR/S/117)**TRADE POLICIES AND PRACTICES BY MEASURE****Measures Directly Affecting Imports****Tariffs****General features****Question 10:**

We recently observed an increased use of tariff and non-tariff measures as an instrument to protect specific sectors. In particular, recent announcements of measures with regard to of rice and sugar have created confusion in the markets and triggered sharp price increases. To what extent are these measures coherent with the overall trade policy of Indonesia that has been to date quite liberal and open to foreign trade?

Answer:

Since 1998 up to lately, Indonesia has been aggressive in liberalising their domestic market especially for sensitive products (rice tariff Rp 430,-/kg; sugar Rp 550,-/kg (raw); Rp 700,-/kg (refine sugar); corn 0%; and soybean 0%). The consequence of the policy becomes disincentive to the farmers, and even worse due to the distorted world market, which in turn will threaten our food security.

Government Procurement

Question 11:

(Para 46) What are the ethics guidelines for procurement officials in the new procurement legislation? Are these guidelines enforced, and if so, how?

Answer:

The ethics guidelines for procurement officials, including consumer (planner, executor, and supervisor), supplier and others, has been formulated in article number 5 of Presidential Decree number 18/2000, i.e.

- a. Do the task in a good and responsible manner
- b. Professionally, honest, and keep the restricted the procurement document for preventive reasons.
- c. Do not influence each other direct or indirectly to avoiding unfair competition
- d. Have responsibility on any agreed decision
- e. Prevent any conflict of interest group direct and indirectly
- f. Prevent any leakage on government budget
- g. Prevent any power abused or joint activities for personal, group, and others benefit which is directly or indirectly make government loss
- h. Do not receive or offering or promising to give or to get any gift to anybody which has related to the procurement process.

Question 12:

(Para 48) Is there any data on the extent of foreign procurement in Indonesia?

Answer:

There is no comprehensive data on foreign procurement in Indonesia.

Question 13:

(Para 50) Are any of the tendering procedures open and competitive, under which all interested suppliers may submit a tender?

Answer:

Based on Presidential Decree number 18/2000, any procurement process should do transparent and competitive. Transparent means any regulation and information on procurement should be opened for suppliers to participate whether on general selection, direct selection, or direct appointment. Competitive

means any procurement have to do with selection and healthy competition within equal suppliers and comply to any transparent regulation.

Question 14:

(Para 50) What transparency rules apply to the four procurement methods? Are calls for tenders and contract awards published, and if so, where?

Answer:

There is check and balance mechanism in each procurement method during and after the process. Based on Presidential Decree 18/2000, article number 25, it is possible for tender participants to deliver protest or complaint to the government officials which responsible to the procurement process if they find mismanagement and corruption, collusion, nepotism practice.

Question 15:

(Para 52) On what basis does the Central Procurement Team approve or reject a contract award?

Answer:

The Central Procurement Team is liquidated after Presidential Decree number 6/1999 published.

Question 16:

(Para 53) How can complaints about irregularities in the administration of tenders be lodged? What has been the outcome of the complaints made about the procurement practices of the Bank of Indonesia and of the telecommunications companies PT Telkom and Indosat?

Answer:

There is mechanism on delivering complaints about irregularities in the administration of tenders. Complaints should be delivered firstly to the procurement evaluation committee within the government institution. If the person who complaint did not get satisfaction answer, he can report to Commission for Supervision of Business Competition. The commission will have investigation procedure before the case is decided irregular or comply with the administration procedure. If the Commission found irregularities which is violent the law than the case will be submitted to the court.

In case of the Telekom and Indosat, the complaints were already solved within government institution and the Commission for Supervision of Business Competition.

Procurement process of security thread for Indonesian banknote paper (EU)

- The complaints made by two paper makers (A and B) about the procurement practice of Bank Indonesia (BI) is for the procurement of security thread that will be used in the new series of Indonesian Rupiah banknote paper, not for the procurement of banknote paper.

- In the past, BI also used such a thread (in two denominations) the patent of which is held by one company (A). This company, however, is not licensing its patent to all paper makers willing to participate in BI banknote paper procurement process.
- At first, for the new Rupiah series, BI is also willing to use the security thread the patents of which are known to be held partially by three paper mills (A, B, and C), on condition that they are willing to give license to all paper makers (with the same license fee) so as to qualify them to participate in BI tender process.
- This requirement is meant to broaden the supplier base to increase the competition among paper suppliers in order to get the best price for BI. But since they are not willing to give a license to all suppliers, BI then cancel to use this product and received an offer from one company (D) which proposed different product/specification for each denomination and willing to grant a license to all suppliers for the same price.
- Therefore, the accusation that the thread procurement process is lack of transparency and openness and the technical description of the thread is only revealed to one company is unfounded. The fact is that BI is not allowed to disclose the thread specification which belongs to this company, not belongs to BI, otherwise BI will infringe the patent of this company. Most importantly, two other paper mills (A and B) fail to meet BI's basic requirements to supply the product.
- The above mentioned reason has also prevented BI to conduct a tender. Therefore, BI has appointed one company directly to supply the product. This policy is allowed by both BI internal procurement procedure and by GATS article XVI bis (security exception) due to the reason that such product is very specific and is a security product.

Contingency Measures

Anti-dumping and countervailing measures

Question 17:

Although still limited, the use of Anti-Dumping measures has recently been under increase. In particular, an investigation has been opened against European exporters of wheat flour in 2000 (officially not yet terminated) and recently, writing paper. The mere fact of opening these investigations is damaging EU exporters as they cannot provide their clients with a guarantee on the price they will have to pay for their imports. Therefore, we would appreciate it if Indonesian authorities perform the investigations in a timely manner according to the WTO regulations on Anti-dumping procedures.

Answer:

The Indonesian Government appreciates the concern of EU exporters regarding the trade uncertainty that prevails resulting from anti-dumping proceeding. Indonesian exporters face similar problems, most recently the protected expiry review initiated by the EU on PSF that was, after several months and years of investigation, finally terminated.

In the case of Wheat Flour, an affirmative determination was reached by the investigating authority, the Komite Anti Dumping Indonesia (KADI), and the investigation was concluded within the time limit

prescribed under article 5.10 of the WTO anti dumping agreement. However, the decision whether to impose anti-dumping measures is still pending though due account is taken of the concern of the EU.

In the case of uncoated and coated writing and printing paper, the proceeding has been going on for 4 months and the KADI is aware of the time limits laid down in the Agreement. The investigation is on going.

Since its establishment in 1996, KADI has rejected 3 applications and proceed 44 cases and the government has only imposed 15 cases of anti dumping duties

Measures Affecting Production and Trade

Competition and consumer policy

Question 18:

(para 108) Please note that the correct name of the Bundeskartellamt would be "Federal Cartel Office".

Answer:

Thank you for the correction, we will note that in the report.

Intellectual Property

Enforcement action

Question 19:

Indonesia's domestic market is dominated by pirated optical media products, the increase of production over the last years is such that it now far exceeds Indonesia domestic consumption capacity and, hence, the pirated goods are clearly meant for export. This escalation is of a main concern for the EU and its industry. What policy will Indonesia undertake to curb down this tendency? May Indonesia, for instance, introduce custom enforcement on exports (as foreseen by Article 51 last paragraph of the TRIPs Agreement)?

Answer:

Concerning the possibility of expanding pirated goods to the EU, Indonesia is of the view that this activity will not be tolerated by issuing the Government regulation regarding the optical disk.

Question 20:

(para 114) Indonesia is currently contemplating to set-up a more integrated administrative organisation for the coordination of activities between the different enforcement bodies (Ministry of Justice, police, customs). The EU looks forward to the launching of such project which will expectantly lead to a more effective IPR regime in Indonesia. Can Indonesia give more details on the progress of this initiative?

Answer:

To provide strong law enforcement, Indonesia is preparing the establishment of the national committee for intellectual counter fitting that has a responsibility in formulating technical and strategy for the IPR enforcement.

Question 21:

The EU considers that the coordination among law enforcement agencies will have to be supplemented by additional efforts to strengthen the IP legislation especially on enforcement. Would Indonesia, for instance, agree to lower the criminal prosecution standards for IP infringements and to enhance the civil remedies and the criminal penalties against IP offences?

Answer:

It could be taken into account and the decision depends on the decision of judges.

Legislative reform

Question 22:

Geographical Indications are supposed to be protected in Indonesia through Articles 79A and 79B of the Marks Law. These provisions appear not to provide a protection to geographical indications as it is mandated by the TRIPs Agreement. Indonesia should specify how the provisions of Article 22 and 23 of the TRIPs Agreement have been implemented in its national legislation. What level of protection is provided to geographical indications, i.e. what are the legal means for interested parties to prevent the use of geographical indications on non-genuinely originating products?

Answer:

The trade mark act no. 19/1992 as amended by the Mark Act No. 14/1997 was replaced by the Mark Act No. 15/2001. The issuance of new trade mark act no. 15/2001 is to meet the international norms. The trade mark act no. 15/2001 protect geographical indications after its registration based on an application filed by:

- An institution representing the society,
- An institution that is given the authority to do so,
- Group of consumers of the goods concerned.

An application for the registration of geographical indications should be refused if the sign concerned is against morality, public order, mislead people etc., and it does not qualify to be registered as geographical indication. However, a sign having been used in good faith by another party who has no right to register geographical indication, the party who has been acting in good faith may continue to use the sign concerned for a period of two years as from the date of the registration as a geographical indication.

Question 23:

Furthermore, it appears that the higher level of protection applicable to geographical indications for wines and spirits by virtue of Article 23 of the TRIPs Agreement is not provided for under the Indonesian legislation. Article 23 of the TRIPs Agreement requires that geographical indications for wines and spirits are protected regardless of whether the consumer might be misled or not. Does Indonesia intend to take the respective measures to comply with its obligations to protect geographical indications?

Answer:

It has been regulated in the Law Number 30 of the year 2000

Question 24

Undisclosed test data that are required as a condition of approving the marketing of pharmaceutical or of agricultural chemical products should be protected, according to Article 39.3 of the TRIPs Agreement against disclosure and against "unfair commercial use". Could Indonesia please specify how it complies with this provision of the TRIPs Agreement. Does the new law No. 30/2000 on Trade Secrets provide in an adequate and sufficient protection for clinical test data that are submitted to marketing authorisation authorities? Is there a specific provision which would prevent the reliance by the marketing authorisation authority, on clinical test data priory submitted to grant authorisation for a subsequent applicant?

Answer:

Trade Secret Act No. 30 of 2000 is silent on test data submitted by first applicant in order to approve a product of another applicant.

Question 25:

(para 121) The report mentions that the registration for trademarks as "well-known" have not been fully developed yet, which is to the detriment of several foreign marks mainly. Apparently, a new regulation on this matter is being prepared. The EU is keen to know what the precise provisions of such a regulation will be and when it will come into force.

Answer:

The protection of well known marks is provided in paragraph (1) letter b and paragraph (2) of articles 6 and paragraph (2) of article 37 of the Mark Law. Article 6 paragraph (1) letter b of the Mark Law provides that the Marks Office may refused an application for registration of trade mark, which is similar in its essential part or in its entirety to a trademark that has already been well-known and belong to another person for the same kind of goods or services. Furthermore, paragraph (2) of article 6 provides that the provision as referred to in paragraph (1) letter b is also applicable to goods and/or services which are not of the same kind, provided that it fulfils certain condition that will be regulated further by Government Regulation. The Government Regulation as mentioned in the Article 6 paragraph (2) is still being prepared.

TRADE POLICIES BY SELECTED SECTOR

Agriculture and Forestry

Question 26:

The EC has been developing several TRTA projects with Indonesia. Some of them relate to Trade and Environment, in particular to forest management and trade. Are there other needs for TRTA in the specific field of Trade and Environment?

Answer:

The Ministry of Forestry of Indonesia (MoF) has signed Memorandum of Understanding on Forest Law Enforcement and Governance and Trade (FLEGT) with the European Community. It is expected that the MoU could be an umbrella to work together with EC to combat illegal logging and trade. This is because MoF and other Institutions both national and international have concerned on illegal logging and trade. This activity has been covered in the MoU. Therefore, it is in need an assistance under TRTA in the field of illegal logging and trade since this illegal activity has been recorded at an alarming rate affecting forest destruction in conservation area in Indonesia.

Selected items

Question 27:

Please explain whether, and if so, how Fair Trade (which takes account of sustainability) is being promoted by the national trade policy, in particular with regard to the export of coffee.

Answer:

In order to promote the Fair Trade (which takes account the sustainability) in particular with regard to the export coffee, the GOI had taken a measure in the farm regulations concerning the exportation of coffee, i.e. The Decree of Minister of Industry and Trade of Indonesia No. 558/MPP/Kp/I/1998 jo. No. 118/MPP/Kep/2/2003 concerning the General Rule of Export, No. 29/MPP/Kep/1/1999 and No. 164/MPP/Kep/16/1996 concerning the Supervision of quality that has to be taken for exporting certain products.

These regulations stipulated that exports of coffee have been allowed only through registered and approved exporters, and that the coffee that want to be exported had meet the standard requirements.

Forestry

Question 28:

Please explain whether, and if so, the national forestry policy plans to introduce international benchmarks for sustainable forestry, with particular focus on the combat against illegal logging and reforestation.

Answer:

At present, combating illegal logging and promoting reforestation have been decided as two priorities among five priority policies in Indonesian forestry sector. In particular to illegal logging, international community has also put a concern on this issue. There are several international co-operation that have been developed, among others are Forest Law Enforcement and Governance in East Asia and Pacific region producing Bali Ministerial Declaration, Asian Forest Partnership and a number of bilateral agreements, such as with United Kingdom on Illegal Timber Trade, with European Union on Forest Law Enforcement and Governance and Trade, and co-operation between Indonesia and Norway on the improvement of Forest Law Making and Law Enforcement to Combat Illegal Logging.

In regard to reforestation, Indonesia has developed a program on this peculiar important policy to improve forest cover that has lost dramatically since the last decade. The reforestation policy has resulted in 50,000 to 70,000 hectares annually and afforestation (reforestation outside of forest area) shows reforestation covers the area of 400,000 to 500,000 hectares per year. In cooperation with JICA, Indonesia has developed a plan for reforestation program in particular on mangrove areas.

Question 29:

Please explain which measures are envisaged in order to assure the simplification and enforcement of current forestry laws in Indonesia.

Answer:

There is a specific measure under Forestry Law 41 of 1999 (Chapter XIV) regulating criminal sanction including penalty and fine that someone or a company breaks this Law. This chapter clarifies article 50 of the Law, identifying activities that are considered against the Law. These include:

- Any body is prohibited to destroy infrastructure and means of forest protection.
- Any body is granted a concession permit to manage a forest area, to manage environmental services, to manage wood and non-wood forest products and to collect wood and non-wood forest products, is prohibited to conduct activity affecting forest degradation.
- Any body is prohibited to:
 - act and/or use and/or occupy forest area illegally
 - encroach forest area
 - cut trees in forest area within a radius or distance not more than:
 - 100 meters from the right and left sides of river
 - 50 meters from the right and left sides of creek
 - 2 times of the depth of ravine
 - 130 times the difference of the maximum and minimum water levels of beach

- burn forest
- cut trees or harvest or collect forest products in forest area without having concession or permission from the authorised officers.
- receive, buy or sell, accept exchange, accept entrusted goods, store or possess forest products identified or assumed coming from forest area which are harvested illegally.
- conduct activities of general investigation or exploration or exploitation of mineral in forest area without permission from the Minister of Forestry.
- transport, occupy or possess forest products that are not supported with a letter of legal forest products.
- bring livestock to forest area which is not decided specifically for that purpose
- bring heavy equipment and/or other equipment which is common or assumed to be used for transporting forest products in forest area without permission from authorised officers.
- bring equipment which is commonly used for cutting trees in forest area without permission from authorised officers.
- throw away things causing forest fire and forest destruction and jeopardise the continuity of existing forest function in forest area.
- to bring out, carry out and transport wild flora and fauna which are not regulated from forest area without permission from authorised officers.

This particular article shows the simplification of Indonesian forestry legislation allowing people to understand which activities are prohibited under the existing Forestry Law.

Manufacturing

Textiles, clothing and leather

Question 30:

(para 56) The reports repeatedly refer to the import restrictions on textiles, system which basically provides that imports of certain textiles are allowed only for local transformation and on basis of non-automatic licensing. These restrictions have been addressed bilaterally with Indonesia, unfortunately without obtaining formal insurance that the respective Decree will not affect our exports to Indonesia. We would be grateful for a clarification from the side of Indonesia.

(para 56) Furthermore, we would consider it useful if Indonesia could explain the reasons for this Decree, its implementation and its life span, as well as ensure that it will not affect de facto the EU exports to Indonesia.

Answer:

Firstly, Indonesia confirms that the decree is not inconsistent with Article III of the GATT 1994, article XI of the GATT 1994 and article 7 of the ATC, based on the following reason:

- No discriminative treatment between local and foreign producers as long as they fulfilled all requirements as provided in the decree.
- The decree can not be constituted as non tariff barriers since the issuance of the decree (2002 up to now), the import volume from EU of the those products listed in the Annex has not decreased, instead increased substantially. Therefore, we believe that EU will not be damaged by the issuance of the decree. (see table). As to the question of the life span of the decree, the license will be in force for one year and be automatically renewed if the company concerned so requested by completing all conditions as required by the decree.
- With respect to the elimination of quota restriction starting 31 December 2004, Indonesia, like other developing countries will take appropriate policy to boost export especially for small and medium enterprises (SMEs). On the other hand, structural adjustment perhaps would be one of the policy options to prepare them to compete in global market.

Question 31:

Moreover, we would be interested to learn more about Indonesia's approach to the post 2004 elimination of textile quotas between WTO Members. What are the Government's main concerns and how does it intend to cope with the impact of the opening of the world textile trade which will no doubt modify production in this sector?

Answer:

Firstly, Indonesia confirms that the decree is not inconsistent with Article III of the GATT 1994, article XI of the GATT 1994 and article 7 of the ATC, based on the following reason:

- No discriminative treatment between local and foreign producers as long as they fulfilled all requirements as provided in the decree.
- The decree can not be constituted as non tariff barriers since the issuance of the decree (2002 up to now), the import volume from EU of the those products listed in the Annex has not decreased, instead increased substantially. Therefore, we believe that EU will not be damaged by the issuance of the decree. (see table). As to the question of the life span of the decree, the license will be in force for one year and be automatically renewed if the company concerned so requested by completing all conditions as required by the decree.
- With respect to the elimination of quota restriction starting 31 December 2004, Indonesia, like other developing countries will take appropriate policy to boost export especially for small and medium enterprises (SMEs). On the other hand, structural adjustment perhaps would be one of the policy options to prepare them to compete in global market.

Services

Financial services

Question 32:

(para 74) The report states that granting of banking licenses is subject to an economic needs test. However, Indonesia's GATS commitments do not seem to allow such a test. Could Indonesia please clarify the situation?

Answer:

In order to obtain an operating license as a commercial bank or a rural bank in Indonesia, an applicant is required to fulfil requirements concerning: (i) organization and management structure; (ii) capital; (iii) ownership; (iv) expertise in banking; and (v) feasibility of the business plan.

In order to assess as to whether the applicant meets the criteria of the feasibility of the business plan, Bank Indonesia will take into account several aspects such as existing competition in the banking industry so as to ensure healthy competition among Banks, the degree of Bank density within a certain area, and the distribution of national economic development. The rationale for requiring a review on the feasibility of the business plan is to protect both bank customers and the banking system from unsound competition.

Question 33:

(para 75) The report says that foreign banks need to be among the 200 largest world banks to obtain a license in Indonesia. However, Indonesia's GATS commitments do not seem to include such a condition. Could Indonesia please clarify the situation?

Answer:

Banking industry is basically a business of trust. The trust shall be a main consideration in banking business. Once the trust is lost, there will be a bank run which may result in a crisis as Indonesia experienced. Therefore, the requirement of 200 largest banks to operate in Indonesia is to ensure that the bank is well capitalised and internationally recognized. This requirements will help to strengthen confidence in those banks and therefore prevent from crisis. Furthermore, the presence of an international bank is expected to contribute to the transfer of international best practices, such as knowledge, skills and higher prudential standard to the country.

From the outset, the Indonesian commitment, is intended to include any criteria that the Government think appropriate, including 200 largest banks requirement for the granting of new license as it is stated in General Conditions on Banking Sub-sector under the heading of "unbound for new license".

Question 34:

(para 83) This paragraph refers to wholly foreign-owned companies and then says that foreign insurers must operate through joint-ventures. Please explain in detail current limits on foreign ownership (if any).

Answer:

Commercial presence could be done in the form of joint venture company. Foreign ownership in a joint venture at the time of incorporation shall not exceed 80% of the total capital of the company and might be raised up to more than 80% through addition of foreign capital without effecting the total amount of shares owned by Indonesian partners.

Question 35:

(para 85) The report indicates that minimum capital requirements for local companies are lower than for joint-ventures in securities services and various other financial services (factoring, credit cards, and consumer finance). However, Indonesia's GATS commitments do not seem to include such a discrimination. Could Indonesia please clarify the situation?

Answer:

Based on the Minister of Finance Decree Number 179/KMK.010/2003 and Number 172/KMK.06/2003, there were no the discriminatory treatment in the requirement on paid up capital for local finance companies and joint venture companies (foreign participation) in securities company and various other financial services.

- The minimum capital requirement for Securities Company operating as a joint-venture can be owned by foreign legal entity that operates in financial sector other than securities activity up to a maximum of 85% of the paid-in capital (Minister of Finance Decree No 179/KMK.010/2003, article 2 item 1).
- Meanwhile, foreign legal entity that operates in securities activity that had have license or under supervising of capital market regulator in their own country could have participation up to a maximum of 99% of the paid-in capital (article 2 item 2).
- Then, in the event that a national or join-venture Securities Company makes a Public Offering of its shares, the share of that Securities Company can be owned by foreign investor or domestic investor up to 100% of paid-in capital (article 3 item 1). There is no a different of minimum requirement of paid-in capital between national and joint venture securities company.
- There is no the discriminatory treatment in the requirement on paid up capital for local finance companies and joint venture companies (Decree of Minister of Finance Number 172/KMK.06/2003 dated April 23, 2003).

Communications

Telecommunications

Question 36:

(para 94) Could Indonesia please explain if Telekom was required to own part of any operator (including data services for instance)? How is the transition managed to allow operators to become independent from Telekom and create effective competition?

Answer:

According to current telecommunication law, there is no more obligation for operators to cooperate with Telkom in term of having part of the shares. However if Telkom intends to hold stake in those operators, it is purely based on business and market considerations. There is no specific transition determined for operators to become independent from Telkom.

Question 37:

(para 94) Does the government regulate interconnection of all network operators? If yes, why is it necessary to do so (and not only for dominant operators for example)?

Answer:

Government regulates only a general principles to be followed by the operators to ensure fair competition in telecommunications sector, such as obligation not to refuse any interconnection request from any others operators, and all interconnections must be treated equally.

Question 38:

(para 95) Please explain why the number of operators is limited in each segment?

Answer:

Value added services such as ISP, multimedia and other non basic services, such as calling card, premium call, stored and forward messages are fully privatized.

Mobile cellular is principally open, however, since its dependency to the spectrum, the new entrance shall be selected.

Basic telecommunications is opened in stages from monopoly and now duopoly, while now preparing interconnection cost based and the USO.

Question 39:

(para 96) What are the concrete obligations imposed on the networks of operators? Which administration can address anti-competitive practices prohibited by the law? How is the universal service defined?

Answer:

Telecommunication networks operators must follow the basic rules of interconnections.

Broadcasting and audio-visual

Question 40:

(para 99) Apparently, only domestic news agency or agencies have the right to deal directly with domestic media. Can Indonesian confirm this, and are there any legislative reforms planned in this field?

Answer:

Based on the Law Number 32 year 2002 Concerning Broadcasting, foreign broadcasting institutions or foreign news agencies are prohibited to be established in Indonesia. Due to the fact that Law Number 32 year 2002 has just recently enacted, some of the implementing regulations are still yet to issue, therefore Indonesia for the time being does not have any plan to make legislative reforms in this fields.

Question 41:

(para 99) How does Indonesia guarantee the access of foreign press to government press conferences?'

Answer:

Foreign broadcasting institutions or foreign news agencies who will conduct journalistic activities in Indonesia, whether a live broadcast or recorded, shall follow the procedures stipulated in the prevailing regulations. A guidelines for foreign journalistic activities in Indonesia is currently being discussed by the Indonesian Broadcasting Commission and the Government. For the meantime, the access of foreign press to government press conferences and other foreign journalistic activities can be obtain through and under coordination of the Department of Foreign Affairs. This policy has also guarantee foreign media to cover the news in Indonesia.

Transportation

Air Transportation

Question 42:

(para 106) The report mentions that the main Indonesian airport is prepared for privatization. What degree of foreign ownership is considered? Can Indonesia please clarify the extent and conditions under which international providers of ground-handling services can offer their services in airports opened to international traffic and inform if such international providers are currently established in Indonesia's airports?

Answer:

The privatisation of Indonesian main airports, which are operated and managed by PT. Angkasa Pura I and II (stated owned Enterprises) are still being discussed by Parliament and The Ministry of state-owned Enterprise, and there is no specific time frame. The discussion has not yet come up with any specific recommendation relating to a degree of foreign ownership that should be considered.

We are still in the position not to open ground handling services for foreign investment until the issuance of national regulations on services directly related to air transport, including ground handling. The draft of the regulations on the subjects are currently under the discussion.

Maritime transport

Question 43:

(para 109) Foreign shipping companies operating international services to and from Indonesian ports must appoint an Indonesian shipping company as an agent (Government Regulation No. 82/1999). Can the Indonesian government confirm that all government owned cargo has to be shipped by domestic flag vessels, or chartered foreign flag vessels if provided by an Indonesian shipping company? And that in the latter cases pay a compensation of 2% administration import duties and a deposit/bank guarantee approx. 10% of vessel value?

Answer:

In principle all government owned cargo shall be shipped by domestic flag vessels, or chartered foreign flag vessel provided by Indonesian shipping company.

There is a provision under custom import duties 2% for administration and as a deposit or guarantee approx. 10% of vessel value for deferred value added tax (VAT).

Question 44:

Can it be confirmed that foreign operators pay a discriminatory cargo tax on foreign flags (2,64%) more than double of Indonesian operators?

Answer:

Principally there is no discriminatory treatment on cargo tax for the foreign operators. Cargo tax of 2,4 % is required for foreign operators, meanwhile Indonesian operators have the obligation to pay a corporate tax of approx. 1,2% of freight. In addition, many foreign operators which are come from the countries that have tax treaty with the government of Indonesia do not pay a cargo tax.

Tourism

Question 45:

(para 110 and 111) We are happy to know that tourism in Bali is beginning to pick up again. We would like Indonesia to give its view on the economic growth and employment driven by the tourism sector. How many people work in the tourism sector, and what has been the evolution in the last years? The share of GDP that arrives from tourism? We would also be interested in an assessment of the impact of tourism in growth and employment in other economic sectors, like construction, computer services, education and professional training, and possibly other sectors? What plans exist for improving professional education and training related to the tourism sector?

Answer:

- Tourism creates around 7.7 million jobs comprising of total 8.11% of the national employment.

- Tourism contributed 9.27% of its income to the national production of goods and services, and 17.44% of the GDP.
- The study regarding the assessment is currently under taken on Tourism Satellite Account Study.
- Indonesia, collaborating with Australia under the “Indonesia-Australia Partnership for Skill Development”, carries out Hotel & Restaurant Project, and Tour & Travel Project. The output of these two projects is adopted to the Indonesia National Competency Standard. This standard has been applied in the industry and educational curriculum.

Indonesia initiated the APEC TOSS – Tourism Occupational Skill Standards Project with the objective to find the common competency standards within APEC which will encourage the mobility of people (human resources) in the region.

There are many higher education in Indonesia which are specialising in tourism services that have high reputation and have a close cooperation with other countries higher education in tourism such as from Switzerland. The Government will encourage further such cooperation and expecting the similar attitude from foreign governments.

Question 46:

What measures has the Indonesian government taken to ensure non-discrimination of foreign service suppliers on rescue, rehabilitation and normalisation programmes? Are there any plans for consulting with the industry operating in Indonesia?

Answer:

The rescue, rehabilitation and normalisation programs is aimed to regain the international image of the Indonesian tourism, especially Bali tourism. The program itself has involved domestic and foreign service related suppliers, such as Public Relation company in Australia and USA Broadcasting company.

This program does not in anyway effects any existing treatments toward foreign service suppliers in tourism services sector.

On November 2000 the Ministry of Culture and Tourism launched the “Masyarakat Pariwisata Indonesia” or Indonesia Tourism Society whose members are representative of the tourism industry, press, academicians, tourism associations and legislative members. The MPI acts more in advisory capacity or as a think tank with regard to government policies and development strategies. It would absorb community aspirations and consolidate the stakeholders of tourism and culture, bringing together representatives of the government and the industry.

Question 47:

How is Indonesia approaching the regulation of tourism-related aspects of general interest: environment, wildlife, urban planning, etc.? Have any lessons been drawn in terms of links between tourism and promotion of local cultures, development of water supply and sanitation services, public security etc?

Answer:

Tourism in Indonesia is developed based on **the “balance of life”** concept and the desire to uphold the local wisdom insights, one of which is through eco-tourism that emphasises on the development of community-based tourism.

Where product development is concerned, it has to be related to **community based tourism** using a business approach. The community-based tourism involves the participation of the local community which will eventually motivate them to be also responsible for the preservation of the natural & cultural environment. This concept is one of the priorities of the government to bring social welfare to the people, empowering them with the means to benefit from development in their own environment. In other words, community based tourism keeps greater share of the income generated by visitors in the community which is not based on gender but it is based on competency of the people.

Water supply and sanitation services:

Indonesia is conducting a preliminary study on food waste management in hotels and restaurants under the Green Productivity Program.

Public security:

For the last 4 years of political and economic difficulties in Indonesia, tourism has suffered much. Security disturbances and social unrests that actually happened in some isolated areas in Indonesia have tarnished Indonesian image as a whole causing such a negative image toward Indonesian tourism. Tourism is multidimensional, it is related to politics, social, culture, economics and security. The Government, the industry, and the community are hand in hand to do their up most efforts to improve political, cultural, economic and security environments in Indonesia. The main priority for the Indonesian Government is to speed up economic recovery, tourism is expected to play an important role in that process.

Question 48:

Finally, we would be interested in knowing what measures are taken or planned to further liberalise the tourism sector. What is Indonesia's assessment of the benefits resulting from limitations on foreign capital in hotel and tourism-related facilities? And which benefit is expected from de-centralising regulation and administration of tourism activities to district level? What is the timing of this administrative change?

Answer:

According to the National Policy Guidelines in balancing the development level, Indonesia promotes the development of eastern part of Indonesia. Foreign investment in tourism is allowed up to 100% capital share. Eastern Part of Indonesia has a huge potential in tourism that required capital and skill to develop. Foreign investors are expected to play an increasing role in the efforts to develop that potential.

Further measures to be taken including the removing of regulatory impediment to tourism business & investment in line with principle of progressive liberalisation in services sectors.

The limitation of the foreign participation in certain areas is aimed to balance the level of the development in the whole country, by boosting the development in the eastern part.

The foreign capital participation is limited only in 3, 4, 5 star hotels in the form of joint venture company. The hotel classification of 1 and 2 star hotels are mainly owned and managed by local community in small scale which generally does not require huge investment. This policy is believed to have benefited the small scale businesses in hotels, so as to keep Indonesian local businesses in tourism sector.

REPLIES TO QUESTIONS RAISED BY HONG KONG, CHINA

Import Licensing

(WT/TPR/S/117, P. ix, Para. 15; and P. 44-45, Para. 42-43)

Question 1:

It is noted that since March 2002, special licensing requirements have been imposed on sensitive items such as agricultural products, textiles, footwear, electronics and toys, and the special import licences granted are based on a domestic-needs assessment. One of the claimed objectives for these special licensing requirements is to balance supply and demand in a transparent manner. Could Indonesia elaborate on how these requirements work to attain this objective, with particular reference to how they operate to minimize the deprivation of market access opportunities of overseas suppliers.

Answer:

The idea to regulate sensitive items by imposing special licensing requirements such as agricultural products, textiles, footwear, electronics and toys is not intending to totally restrict market opportunities of overseas suppliers. And we cannot consider that licensing requirement to constitute as special. For agricultural products such as rice, sugar, soy bean, corn, registration of import measures are only made as administrative procedure in the form of Special Importer Identification Number (NPIK) that generally available for all companies. No negative impact caused by this administrative procedures especially in relation to deprivation of market opportunity. This has been evidenced by import data of which import of those commodities are remained high. With respect to the policy on sugar, Indonesia considers that while Indonesia is one of the big importer of sugar for domestic consumption, domestic producers which have absorbed million labors and farmer have to be fully taken into account. Accordingly, Indonesia will provide such as assistance so that the local producer and sugar farmer could compete with the imported sugar.

Financial Services

(WT/TPR/S/117, P. xii, Para. 37; and P. 91-92, Para. 85)

Question 2:

The Secretariat Report states that minimum capital requirements for local securities companies and local finance companies are lower than those for joint ventures. It is however noted from Indonesia's GATS schedule of commitments that limitation on national treatment in terms of difference in paid-up capital

requirement will be eliminated in the year 1998. It would be helpful if Indonesia could explain whether the difference still exists or has been eliminated as scheduled.

Answer:

Based on the Minister of Finance Decree Number 179/KMK.010/2003 and Number 172/KMK.06/2003, there were no the discriminatory treatment in the requirement on paid up capital for local finance companies and joint venture companies (foreign participation) in securities companies and various other financial services.

Telecommunications

(WT/TPR/S/117, P. xiii, Para. 41; and P. 94, Para. 95)

Question 3:

It is noted that Telekom's exclusive rights for local services is supposed to terminate by August 2002, while those for national long-distance and international calls will end by August 2003. It is also noted that the divestment of a 42% stake in Indosat has exceeded the foreign equity cap of 35% as inscribed in Indonesia's schedule. We are glad to see these improvements and would like to know if Indonesia would reflect them in its initial offers. Could Indonesia also inform us if there is any plan to relax the prohibition on bypass and call back services and to eliminate the scheduled discriminatory minimum paid-up capital requirement for various value-added services?

Answer:

So far there is no final decision for foreign equity cap and there is no plan or decision to relax the prohibition on bypass and call back services.

REPLIES TO QUESTIONS RAISED BY INDIA

Question 1:

The Indonesian government has stipulated a policy of import tariff restructuring which, inter alia, envisages reduction of import tariffs above 20% to a maximum level of 10% in the year 2003. We would request the government of Indonesia to indicate the current percentage contribution of revenue earned through the levy of import tariffs in the national revenue and also the steps contemplated to replenish the decreased government revenue once import tariffs are brought down to the target level.

Answer:

Contribution of revenue earned through the levy of import tariff is around 3% in the national revenue. There is no special effort to be done to replenish the decreased revenue on import tariffs, because with the low level of tariff rates will increase the import volume which bring about the increase of value added tax and income tax on imports.

Question 2:

Indonesia does not permit the import of meat and meat products from India on the ground that India is not free from the foot and mouth disease (FMD). India has been exporting to other countries including in South East Asia frozen, deboned and deglanded meat in accordance with guidelines by the OIE. We would request the government to indicate whether there is any regular review mechanism in Indonesia to review and re-consider such decisions? If so, when the above decision with regard to the ban on Indian meat and meat products is likely to be considered?

Answer:

As Indonesia is free from FMD and in other diseases in List A of OIE, and according to OIE regulation we can only trade meat and meat products with countries free from those diseases (100% free). Moreover, as Indonesia has the experiences in overcoming the FMD problems, Indonesia welcomes the country, which is going to learn from Indonesia

REPLIES TO QUESTIONS RAISED BY JAPAN**General Issues (Rule of Law)****Question 1:**

It is reported that the number of business problems that foreign companies are facing is on the increase due to the inappropriate implementation of laws (especially regarding taxation, customs and judiciary matters). It is also pointed out that corruption and patronage (the so-called 'KKN') have been rather aggravated because public order is still unstable after the collapse of the previous Suharto regime. The increasing smuggling of consumer goods, such as electronics and clothes, deprives foreign companies of their share in sales, which in turn could create a negative effect on foreign investment. It is reported that the laws and regulations are so frequently changed or amended that foreign investors suffer from a lack of predictability in the investment sector. Under these circumstances, it is hoped that the Indonesian Government will take further measures to maintain public order, improve the morale of officials in charge of the implementation of laws, and disclose information relating to the Judiciary.

Concerning the above, exactly which measures will the Indonesian government take?

Answer:

Since the old regime was over, the Government of Indonesia looks forward by changing its paradigm. And this effort takes time, not only be completed by just "one single night". Thus the changing or amendments of the laws and regulations are arranged so, to aim more benefits to the economic stakeholders, in which, this could be differently interpreted. Nevertheless, concerning the good will of the government to create better investment performance, the policy taken is to create positive measures to avoid negative implications.

Regional Decentralization

(From pp.17 to 18, paragraph 9 of the Secretariat Report)

Question 2:

It is reported that the Regional Autonomy Law (No.22/99) and the Law on Fiscal Balance (No.25/99) entered into force in January 2001 enabling regional decentralization to be implemented step-by-step. However regional decentralization has given rise to a new form of confusion, for example, each local government can establish its own regulations and impose its own tax, thereby obstructing investment, whether it be by foreigners or not.

Concerning this point, what measures for promoting investment will the Indonesian government take?

Answer:

This crucial issue is being comprehensively reviewed by preparing the policy concerning investment approval procedure and one roof system. These two policies will distinct the division of responsibilities amongst the central, provincial, regency and cities government levels on undertaking the investment administrations.

Problems Linked to Labour

Question 3:

It is reported that after the collapse of the 'Suharto regime', through the enhancement of a movement of democratization, the problem of labour often caused anxiety to factories for their stable operation. Due to this worry a new labour law entered into force in March 2003. While the new law has already been enacted, for the purpose of implementation, it is, however, necessary to enact more for detailed regulations in the form of a presidential decree, government ordinance or ministerial notification, which have yet to be finalized.

In this regard, please indicate the present status of clarifying the implementation regulations for the new labour law.

Answer:

For the purpose of implementation of the new Labour Law issued in March 2003, the Government of Indonesia had already drafted 4 Decrees of Minister of Labour and Transmigration, and 1 Presidential Decree currently the four draft of Ministry of Labour & Transmigration are under discussion at the LKS Tripartit, to further be decided by the Minister of Labour of Transmigration, while the draft of Presidential Decree will be submitted to the State Secretariat for further be discussed in the Parliament. The GoI expects that all drafts will be accomplished immediately.

Construction of Infrastructure

Question 4:

It is pointed out that the uncompleted access routes between airports or ports and production bases, such as industrial complexes obstructs the distribution of products in industrial activities. Regarding electricity, there is scarce capacity for new supply, even though demand is increasing by about 10% a year. This is a serious problem for the manufacturing industries and investors alike, especially that the forecast for a stable supply of electricity is quite unclear for the future. Under these circumstances, Japan is providing assistance for the construction of adequate infrastructure, for example, through yen loan scheme.

Concerning construction of infrastructure, what will the Indonesian government take measures ?

Answer:

Will be submitted later.

Promotion of Supporting Industries

Question 5:

Supporting industries, which provide electronic and machinery parts, and require human resources, have not been well-developed, which creates a negative effect on Indonesia's industrial competitiveness and environment for recruiting local staff of top quality. In 2000, Japan submitted the "Urada Report" in which it is proposed to promote small and medium-sized enterprises, to the Indonesian Government, and Japan dispatched technical experts to implement projects, such as technical assistance. The Indonesian Government also published a 'Mid-Term Action Plan for SME Development (MTAP)' in April, 2002.

Please indicate for which policies the Indonesian Government is making and what is the present status of the specific implementation of the MTAP under these circumstances?

Answer:

With respect to the policies of the Government of Indonesia to promote supporting industries for small and medium enterprises the GOI will strengthen the coordination of the agencies concerned (vertical and horizontal); applying the same criteria of SME's nationally and internationally; optimizing the utilization of the credit scheme for SME's ; providing government budget particularly for revolving fund; increasing the role of company appointed to provide capital for the SME's; setting up a proposed training centre; optimizing the role of Metal Industry Development Centre in developing small scale industry and trade in cooperation with PT Krakatau Steel, PT Sucofindo, PT Rekayasa Industry, and Bandung Institute of Technology; optimizing the existing promotion and information agencies; establishing a Special Agency that are dealing with the coordination and development of the SME's; revising the Law No 5 / 1984 regarding Industry and Law No 9 of 1997 regarding small industry that will be coordinated with Ministry of Industry and Trade; reviewing Presidential Decree no 51/ 2000 regarding Agency for Business Resource Development and PKM.

Financial Services

(p.24, paragraph 29 of the Secretariat Report)

Question 6:

6-1. *The Secretariat Report states that intra-regional services liberalization in the area of financial services has been agreed after two rounds of negotiations by ASEAN countries. In this regard, Japan would like to ask if the level of the liberalization commitments by Indonesia in financial services under this negotiation is higher than that committed under the 1997 WTO Financial Services Agreement. If so, please provide details of the additional liberalization commitments.*

Answer:

In ASEAN there is a principle so called “GATS Plus” which means the commitment under ASEAN should be more liberal than under the WTO. In general, Indonesian commitments under ASEAN Framework Agreement on Services (AFAS) consisting the widening and deepening of existing commitments under the WTO. Efforts to bring harmonization and comparability within ASEAN members’ countries commitments are also has been an issue for quite sometimes.

With respect to the WTO commitment, Indonesia has remained committed to liberalization under the Doha Development Agenda. Further liberalization will be pursued base on the principle of progressive liberalization and national policy objectives. In order to liberalize further and to meet some trading partners’ requests, the Government has been caring out domestic consultation and conducting an assessment of the impact of liberalization in financial services sector.

Question 7:

(From pp.27 to 30, from paragraphs 40 to 45 of the Secretariat Report)

6-2. *With regard to paragraphs 40-45 of the Secretariat Report, Japan would like to clarify whether the new draft investment law, currently being submitted to Parliament, covers financial services (i.e. banking, insurance, securities companies). If not, please provide the legal source of regulations on foreign direct investment in financial services, as well as the status of liberalization in these sectors.*

Answer:

The new draft law of investment does not cover regulation pertaining foreign direct investment in financial services. The financial services investment regimes can be found in the individual act of each industry such as Banking Act, Insurance Act, Pensiun Fund Act, and Capital Market Act and their implementing regulations.

Question 8:

(From pp.86 to 87, paragraph 71 of the Secretariat Report)

6-3. *Japan would like to clarify whether foreign financial institutions can qualify as potential partners in the divestiture of state-owned banks under the current government program.*

Answer:

Indonesia is still in the progress of divesting some of government-owned bank, which are not only state-owned bank but also other commercial bank as the result of recapitalization program. Recently divestment have taken places for PT. Bank BCA, PT.Bank Danamon and PT.Bank Mandiri. The three banks are represented the largest segment of banks in the Country.

Question 9:

(p.88, paragraph 74 of the Secretariat Report)

6-4. *Japan would like to clarify whether the "economic needs test" described in paragraph 74 is reserved in Indonesia's current Schedule of Commitments or is justified under the GATS provisions. Please also indicate where such description can be found in Indonesia's Schedule.*

Answer:**Economic Need Test as a criteria for granting a bank license**

In order to obtain an operating license as a commercial bank or a rural bank in Indonesia, an applicant is required to fulfill basic requirements concerning: (i) organization and management structure; (ii) capital; (iii) ownership; (iv) expertise in banking; and (v) feasibility of the business plan. As additional consideration, Bank Indonesia will also assess whether the applicant meets the criteria of the feasibility of the business plan. In order to assess the feasibility of business plan, Bank Indonesia will take into account several additional aspects such as existing competition in the banking industry so as to ensure healthy competition among Banks, the degree of Bank density within a certain area, and the distribution of national economic development. The rationale for requiring a review on the feasibility of the business plan is to protect both bank customers and the banking system from unsound competition.

From the outset, the Indonesian commitment, is intended to include economic need test elements for the granting of new license as it is stated in General Conditions on Banking Sub-sector under the heading of "unbound for new license".

Question 10:

(p.88, paragraph 75 of the Secretariat Report)

6-5. *Japan would like to clarify whether: (i) foreign banks may newly enter the Indonesian market in the form of a branch; (ii) foreign banks are allowed to establish 100% foreign-owned bank subsidiaries; and (iii) foreign banks are allowed to acquire 100% shares of existing domestic banks.*

Answer:

Market access of foreign services providers can be done through: (i) Opening of representative office; (ii). Opening the branch office; (iii). Acquired the existing domestic bank; (iv).Establishment of new bank subsidiary;

New Draft Investment Law

(From pp.27 to 28, paragraph 41 of the Secretariat Report)

Question 11:

The BKPM has drafted the new investment law, to include providing equal opportunities between foreign enterprises and domestic enterprises, and tax incentive in February 2003. We recognize that the new draft investment law is under consideration after having been submitted to the parliament.

Please indicate the present status of the Parliament's consideration concerning the draft law.

Answer:

The new investment law draft is currently being reviewed within the interdepartmental agencies. The draft has been submitted to the State Secretariat waiting for President's initiative permit to further be discussed in the Parliament. The government of Indonesia expects that the draft will be accomplished immediately.

Maritime Transport Service

(From pp.96 to 97, paragraph 109 of the Secretariat Report)

Question 12:

We welcome that foreigners can hold up to 95% equity in ocean freight services in a joint venture with Indonesian partners, as pointed out in the Secretariat Report.

8-1 *Please indicate whether the Indonesian Government can admit that foreigners could hold up to 100% equity, abolishing the existing 5% limitation.*

8-2 *Does the Indonesian ship implicated in the joint venture have to be above 5000G/T? If so, please indicate the reason.*

Answer:

According to Government Regulation Number 82/1999, foreign establishment shall be in the form of joint venture. Therefore, foreign ownership of up to 100% will not be possible. The joint venture has to be above 5000G/T. This policy is intended to stimulate the active participations from national fleet and in order to increase competition capacity.

Intellectual Property Rights

(From pp.65 to 66, paragraph 111 of the Secretariat Report)

Question 13:

We appreciate that Indonesia has become a party to the WIPO Copyrights Treaty especially since intellectual property rights have become increasingly important especially in the sectors related to the

Internet. We also note that Indonesia is considering ratifying the WIPO Performance and Phonograms Treaty.

9-1. *Please indicate the probability of the schedule to ratify WIPO Performance and Phonograms Treaty.*

Answer:

Indonesia is improving the IP Law by amending the existing IP regime and ratifying the international treaties so that the Indonesian IP law will meet the international standards. However, before ratifying an international treaty such as WIPO Performance and Phonograms Treaty, Indonesia has to analyse the substance involving various related institutions. Activities to study the substance of WIPO performance and Phonograms Treaty is still on the process.

Question 14:

(From pp. 69 to 70, from paragraphs 128 to 129 of the Secretariat Report)

According to the report by the Secretariat, Indonesia's piracy rate was the 3rd highest in the world, and police forces conduct regular raids on shops offering pirated material.

9-2. *Please indicate what measures Indonesia has taken and will take regarding the pirated material in addition to the above.*

Answer:

The pirated materials which were found during the raids have been destroyed.

Question 15:

(p. 22, paragraph 78 of the Report by the Government)

9-3. *Please provide in detail information of regarding "Improvement quality and quantity of law enforcement as well as the Improvement of Public Services", as stated in the Report by the Government.*

Answer:

Besides the effort to improve quality and quantity of law enforcement of IP, Indonesia places the improvement of public services as another important element. Public services in the field of IP such as the examination of request, application and registration can not be done manually. The above services need to be supported with appropriate equipments.

REPLIES TO QUESTIONS RAISED BY SOUTH KOREA

II. Trade and Investment Policy Framework

p.31 (para 48)

Question 1:

The Government of Indonesia provides duty and VAT concessions in the form of reimbursement on imported inputs if they are exported after manufacturing. However, the reimbursement procedures takes a considerable amount of time (from 4 - 5 months to 1 year for VAT and from 3 to 6 months for duties reimbursement), resulting in the undermining of incentives for foreign investors.

What is the views of the Government of Indonesia on the opinion that such a problem can undermine the incentives for foreign investors and needs to be repaired?

Answer:

The administration process of tax and duty reimbursment is acknowledged to take some time, of which might hamper the investment activities. However, the Government of Indonesia is trying to speed up the process.

III. Trade Policies and Practices By Measures

p.34 (para 16-17)

Question 2:

The Government of Indonesia is reportedly striving to simplify the customs procedures by introducing new systems like a post-entry audit system and Electronic Data Interchange System.

Please explain the procedure of the post-entry audit system in detail including the standard for selecting the items (or importers) to be audited)

Answer:

The post-entry audit system in customs procedure is as the consequences of the implementation of “self-assessment” principles in customs clearance. Some importers make use of this facility negatively by un-appropriate declaring of imports, either in value or volume. To overcome this problem, custom administration conducts a post-audit using some criteria in the selection of items (or importers), such as information from customs intelligent, periodical audit for industries, indicated fictitious importers, and dispute of import values.

p.34 (para 18)

Question 3:

The Government of Indonesia is reportedly implementing pre-shipment inspection on some steel and textile products. The inspection is conducted at the expense of the importers concerned.

- *Please explain the legal grounds for this system, the effect that the system has, and the plan to extend the system to other items*
- *Please also explain whether or not the system is a pre-shipment inspection in line with the WTO Agreement on Pre-shipment Inspection*
- *The expense of the inspection is borne by the concerned importers, but, in reality, the cost can rise the price of the items inspected, thereby weakening their price competitiveness. What is the opinion of the government of Indonesia on the view that pre-shipment inspection should be conducted on limited occasions and in a careful, cost-effective manner?*

Answer:

Indonesia considers the importance of pre-shipment inspection in order to avoid under invoice done by importers which ultimately resulting in the lost of government revenue. As under invoicing is mostly done in textile and steel products, Indonesia has now been conducting pre-shipment inspection in order to avoid importers manipulate price in the form of under invoicing and manipulation of HS Code number for the maximum benefit of the importers.

Indonesia confirms that the policy of pre-shipment inspection is consistent with the Agreement on Pre-shipment Inspection-WTO especially Article 2 para 12 where Surveillance Indonesia as pre-shipment inspection entity does not request exporters to provide information as contained in Article 2.12 particularly in relation to internal pricing, including manufacturing costs; profit levels etc. Up to now, no plan has been set as to the extension this policy to other products. We are fully aware that the implementation of this policy is done in a very careful and cost effective manner.

p.38 (para. 27-30)

Question 4:

In November 2002, the Government of Indonesia reportedly decided to raise the tariff rates applied to some steel products for one year for the purpose of protecting the domestic industry. We are concerned that a series of actions taken by major countries to raise the tariff rates applied to steel products will eventually undermine the spirit of free trade across the world.

We think that the raised tariff rate should be applied for only one year as originally planned. Please explain the position of Indonesia in this matter.

Answer:

Indonesia acknowledges that Indonesia has raised applied tariffs on steel products. However, as the Korean is aware that policy is taken on the temporarily manner as it will be in force one year in order to provide those industries to make adjustment.

p.50 (para 58)

Question 5:

The Secretariat reports that Indonesia is the eleventh most frequent country to use anti-dumping measures, with 43 AD measures taken during the period between 1996 and 2002

What is the position of Indonesia on the view that it needs to be more cautious about initiating AD investigation considering the fact that the initiation alone of an AD investigation can do severe damage to the concerned industry of the exporting countries.

Answer:

Indonesia Antidumping Committee (KADI) has conducted its investigation in accordance with Article VI-GATT 1994. Even though since 1996, KADI has initiated 44 cases but KADI has rejected 3 cases because of the application had not met the application requirements. Further only, 15 cases are imposed definite measure and 11 cases terminated.

REPLIES TO QUESTIONS RAISED BY NEW ZEALAND

Tariff Policy

Question 1:

The Secretariat comments that tariffs have increasingly become Indonesia's main trade policy instrument (p32, para 2) but despite the structure of the tariff system has remained complex, involving 18 ad valorem rates and three specific rates. Further, the Secretariat note that due to tariff escalation, ad valorem and specific rates of duty, and some applied rates exceeding bound rates, tariffs continue to be a potential obstacle to a more efficient allocation of domestic resources (p32, para 3).

In light of this, as well as Indonesia's committed to further trade liberalisation to promote economic development (p19, para 14), what policy changes is Indonesia considering with respect to its tariff regime in an effort to streamline the efficient allocation of Indonesia's resources for future economic growth?

Answer:

Indonesia is committed to further trade liberalization to promote economic development as well as to increase the allocation of economic resources. Some measures have been taken in this area, such as reducing and converting non tariff barriers into tariff. The tariff reduction program that has been implemented consistently has reduced the average import tariff as well as the so called "tariff escalation". Commodities that exceed several bound rates are mainly on alcoholic beverages (26 tariff lines of HS-2002). The reason for this is to prevent the people from potential moral hazard. The use of specific rates is mainly intended to ease the customs administration especially to cope with the potential under-invoicing imports. Indonesia will continue to reduce its tariff level in accordance with the tariff reduction schedule. By implementing this program, the tariff escalation will be reduced due to the low level tariff on most commodities.

Question 2:

The Secretariat reports notes that almost all applied rates are ad valorem but the Indonesian government has on occasion, as in the cases of rice and sugar, replaced ad valorem with specific duties (p37, para 25).

What measures has Indonesia put in place to ensure that the level of protection provided by specific duties does not exceed the bound ad valorem rate in Indonesia's WTO Schedule of Commitments?

Answer:

The specific duties of rice and sugar do not exceed the bound AV rate in Indonesia's WTO Schedule of commitment. Based on the calculation made for sugar, the average specific duties from July to December 2002 ranging from 32 to 38% (bound rate 95%), while for rice from January to December 2002, it was equal to 25% (bound rate 160%).

Question 3:

New Zealand notes that although the level of tariff dispersion has fallen, for which New Zealand commends Indonesia, tariff escalation remains a feature of Indonesia's tariff policy. According to the Secretariat report, p32, para 3, tariff escalation has become more pronounced for semi-processed food, beverages, and tobacco and wood and furniture (px, para 12). New Zealand also notes that there is also a high level of separation between bound and applied rates for agricultural products (as well as industrial products) (p34, para 20).

What consideration has Indonesia given to the impact of tariff escalation on end-users, both processors and consumers, especially their ability to purchase quality processed agricultural and forestry products at internationally competitive prices?

Answer:

In fact, Indonesia does not apply tariff escalation as it is implemented by developed countries, although for some products, it happens in our tariff structure. The consideration is to give incentive to the development of value added agriculture industries.

In view of Indonesia's commitment to further trade liberalisation what moves is Indonesia taking to reduce tariff escalation and the degree of separation between bound and applied tariff rates for agricultural and forestry products?

Answer:

In general to reduce the so called "tariff escalation" is done through the implementation of import tariff reduction program. The low level of the most import products will reduce the potential tariff escalation. The impact of this is that the larger degree of separation between bound and applied tariffs on agricultural and forestry products including manufacturing products. Indonesia views that the bigger gap between bound and applied tariff is not an obstacles to further trade liberalization as it shows the seriousness of Indonesia to fulfill its commitment to WTO agreement on tariff.

Question 4:

The Secretariat report (p74, para 13) notes that Indonesia's long-standing policy objective has been to foster food production in order to meet the demand of a growing population, and achieve self-sufficiency in the main staple foods but that labour productivity levels in agriculture are less than half the national average (p73, para 11). New Zealand does not demur that food security isn't important, but we believe that true food security can only be obtained through an open international market, rather than striving for self-sufficiency and that isolating markets leads to greater climatic and input risks, and an inefficient global market.

How does Indonesia view the international market as contributing to its food security needs and how does this influence Indonesia's overall trade policy?

Answer:

We believe that in term of food security, Indonesia is now moving from self sufficiency at all cost to self reliance by maintaining the balances between domestic production capacity and the ability to import food, meaning that international trade contributes to the achievement of food security of the country.

Import Licensing

Question 5:

The Secretariat reports (WT/TPR/S/117, page ix) that the scope of import restrictions and licensing has increased, with the scope of import restrictions unclear and the licensing regime opaque. What steps is Indonesia intending to take to improve transparency in this area?

What steps is Indonesia taken to reduce the incidence of corruption in import practices, including that by government employees?

Answer:

Indonesia highly appreciates the concerns of New Zealand with respect to the scope of import restrictions and licensing which are deemed to be increased and with the scope are also unclear and the licensing regime opaque. Indonesia is fully aware of the scope of import restrictions and licensing and Indonesia has taken steps in order to improve the import licensing system through, inter alia:

- Improving the importer registration system in cooperation with Custom and Excise Office.
- Improving the verification system for certain import products, such as steel and iron, textiles etc.
- Issuing publication of all trade regulations and procedures (not only import regulations) in the Gazette and Website
- improving transparency system by cross-checking all import documents provided by importers both in Custom Office and Ministry of Industry and Trade.

As steps taken in order to reduce the incidence of corruption in import practices, Indonesia has taken many efforts to increase transparency so that companies and/or government employ could be easily controlled. Further, Indonesia has now had an administrative court (PTUN) where all companies have the opportunity to lodge administrative cases including corruption.

Intellectual Property

Question 6:

Indonesia is making steady progress in expanding its range of commitments on intellectual property through participation in the World Intellectual Property Organization and in implementing its WTO TRIPS obligations. However, as the Secretariat's report notes (WT/TPR/S/117, page 65-66) enforcement of Indonesian law in this area is ineffective. What steps is Indonesia intending to take to provide an environment that allows for more effective enforcement of intellectual property law?

Answer:

Well implementation of IP Law depends on at least 2 (two) points which are well structured and well organized and enforcement of the law. The IP Law of Indonesia is considered good enough since the law has clear definition and procedural legal. However, it is acknowledge that the law inforcement of IP does not satisfy with the target due to the lack of human resource and lack of national coordination in law enforcement. To improve the enforcement of IP, Indonesia has done some action ; some of which are :

- Doing some training, seminar and workshop for judges, policies, civil servants, business players and prosecutors.
- Establishing national committee for enforcement
- Doing regular raids on industry and trader who produce and offer infringing, pirating and counterfailing goods.

We have enforced our IP Law through reguler raid. However, the more important element to enforce the IP Law is increasing the awareness of IP to every Indonesia citizen, and develope IP culture in Indonesia society.

Trade Remedies

Question 7:

When are the institutional frameworks required to allow implementation of Presidential Decree Number 84 of 2002, concerning the Safeguard of the Domestic Industry Against a Surge in the Import of Goods expected to be established?

Answer:

Presidential Decree number 84 dated 6 December 2003 regarding the Safeguard of the Domestic Industry Against the impact of Increased Imports is supported by the Decree of Minister of Industry and Trade of the Republic of Indonesia No. 84/MPP/Kep/2/2003 dated 17 February 2003 establishing the Committee of Trade Remedy of Indonesia or Komite Pengamanan Perdagangan Indonesia (KPPI), and Decree of

Minister of Industry and Trade of Indonesia No. 85/MPP/Kep/2/2003 dated 17 February 2003 laying down Procedures and Requirements of Application for Investigation with respect to Safeguarding Domestic Industry from an Increase Import. This supporting legislation lays down the institutional frameworks required.

Export Restrictions

Question 8:

As identified in page 58 of the Secretariat's report (WT/TPR/S/117), Indonesia maintains a system of export restrictions for "supervised" exports and export licensing and quotas for "regulated" exports. What economic benefits does Indonesia derive from these measures?

Answer:

Certain live bovine animal, live fish are categorized as supervised exports are due to the protection of germ plasm. While for palm nuts/kernel, the supervised export has been imposed in order to meeting the sufficient supply as raw material for domestic industries. At the same token, no supervised export are imposed on lead and bauxite ores/concentrate and petroleum oil/products. In order to have a sufficient supply for farmer especially in the rural area, Indonesia has strictly supervised the distribution of urea fertilizer. As to crocodile leather products, supervised export imposed as Indonesia is fully committed to CITES. Indonesia is of the view that supervised export imposed to those products has not considered only in the context of the economic benefit but also to fully committed to the international obligations and to protect the germ plasm.

Government Procurement

Question 9:

What steps, if any, is the Indonesian Government intending to take to reduce the discrimination faced by foreign suppliers in tendering for Indonesian Government contracts?

Answer:

Government of Indonesia currently running policy reform in various sectors including government procurement. We begin with the adoption of action plan to reform the legal framework and organization structure for procurement. Indonesia's procurement system is to be brought up to international standards to meet AFTA and WTO requirement.

In-line with that purpose, Government of Indonesia concerned on reducing the discrimination faced by foreign suppliers. On the other hand, Indonesian economy is still on the early phase of recovery. As part of our effort to have sustainable economy growth, we committed to push the SME as the main economy actor in the future. We don't want to make same mistakes as before the crisis in 1997 when the economy relies on performance of a few conglomerates company. Based on that strategy, Indonesia will give more room for foreign suppliers gradually in-line with the SME development.

REPLIES TO QUESTIONS RAISED BY NORWAY

Question 1:

As stated in the reports, Indonesia has experienced a decline in FDI since the financial crisis in 1997. We would be pleased to know what steps Indonesia intends to make in order to improve the climate for foreign investment.

Answer:

The government has been preparing several substantial measures to support the more conducive investment climate, namely, among others, the accomplishment of investment legal framework such as investment deregulation including investment incentives, decentralization of investment licensing, the arrangement of “one roof service” policy for investment, the simplification of investment procedures, updating negative list for investment, while the other policies measures are the establishment of BKPM team task force” to resolve investors’ problems, the preparation of the National Team for Investment, institutional-capacity building on the regional and central government, and improving promotional activities.

REPLIES TO QUESTIONS RAISED BY SWITZERLAND

Report Secretariat (WT/TPR/S/117):

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(6) TRADE AGREEMENTS AND ARRANGEMENTS, (ii) Bilateral agreements

Question 1:

Indonesia intends to establish comprehensive bilateral trading arrangements (§35, page 26). Could Indonesia elaborate on the strategy followed with regard to the selection of potential bilateral trade cooperation partners aiming at improving mutual opportunities for trade in goods, services and investment?

Answer:

Indonesia is willing to established bilateral trading arrangements with any country based on mutual benefit through each comparative advantage.

(8) FOREIGN INVESTMENT REGIME, (i) Recent performance

Question 2:

According to the secretariat’s report greater responsibility seems to have been devolved to regions for investment approval, largely through the more autonomous provincial BKPM boards. This devolution of responsibility, and including the likelihood of changes in the respective powers of the central and local governments as well as the amendments to the investment rules and procedures may have created negative effects accentuating corrupt practices, resulting in uncertainty and unpredictability for both domestic and foreign investors. Switzerland would appreciate if Indonesia could provide additional

information on its experiences made under the various BKPM authorities with regard to competition among the different BKPMs in attracting foreign investment.

Switzerland would find it helpful if the Indonesian authorities could provide some complementary information on experiences made under its investment incentives scheme before and after it was changed through the IMF package in January 2000 (cf. §48, page 31).

Answer:

Considering experiences by various regional BKPM authorities, the Government of Indonesia believes that competition among the regional agencies in attracting foreign investment could be created as long as the interest of the investor's satisfaction is to be put and or positive results (the investment stake holders) come into effect. They are given flexibility for promoting investment based on its resource endowments. This is due to the different or specific characteristics of their economic resources.

Regarding the investment incentive scheme, the incentives apply to all foreign investors. They include duty and VAT concessions on imported inputs and capital goods, and additional incentives for export-oriented investment as well as investment in certain regions (e.g. eastern Indonesia). Special incentives such as income tax, value-added tax and luxury tax exemptions may also be approved on the case-by case basis. The criteria for granting tax holidays, of up to eight years, for new investors in designated "pioneer" industries, such as capital goods, sea and air transport and agribusiness were stipulated in 1999. Nonetheless, this policy was eliminated under the IMF package in January 2000.

In addition, the latest progress of providing tax incentives could be seen in "the Government Report" Chapter III Progress on Economic Policies Reforms c. Taxation and e. Integrated Economic Development Zone (KAPET) page No. 8-11.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(2) MEASURES DIRECTLY AFFECTING IMPORTS, (vii) Government procurement

Question 3:

The secretariat report cites a few cases of irregularities in the administration of tenders (§53, page 48). What are the administrative or judicial review possibilities' for potential bidders –domestic and foreign- to challenge procurement decisions? How does the new legislation passed in 2000 ensure the independence of the review bodies?

Answer:

There is mechanism on delivering complaints about irregularities in the administration of tenders. Complaints should be delivered firstly to the procurement evaluation committee within the government institution. If the person who complaint did not get satisfaction answer, he can report to Commission for Supervision of Business Competition. This Commission is an independent body consists of representative from business community and society. The commission will have investigation procedure before the case is decided irregular or comply with the administration procedure. If the Commission found irregularities which is violent the law than the case will be submitted to the court.

(xi) Standards and other technical requirements**Question 4:**

According to § 66 on page 54 Indonesia participates, through its National Accreditation Body KAN, in the work of the International Accreditation Forum IAF and of the International Laboratory Accreditation Cooperation ILAC. KAN is signatory of both, the ILAC MRA and the IAF MRA. Does Indonesia, therefore, accept results of conformity assessment conducted by conformity assessment bodies that are accredited by other ILAC and/or IAF members?

Answer:

Since Indonesia has MRA with several countries as a member of ILAC and /or IAF, we will conform the assessment conducted by conformity assessment body as long as they have already had MRA with Indonesia. i.e NATA (Australia), SCC (Canada), NABL (India), NULAP (USA), JAB-JCSS-JNLA (Japan), IANZ (New Zealand), SAC-SINGLAB (Singapore), TLAS (Thailand), VILAS (Vietnam).

(4) MEASURES AFFECTING PRODUCTION AND TRADE, (iii) Competition and consumer policy**Question 5:**

Switzerland would be interested in receiving more information regarding the tasks and the mandate of the Commission for the Supervision of Business Competition (KPPU) mentioned in § 108 on page 64/65. Is this commission an independent body with regulatory and/or supervisory functions in the area of competition policy?

Answer:

The Commission for the Supervision of Business Competition (KPPU) was established based on Law on Business Competition. Members of this Commission are proposed by society and appointed by the Parliament.

(iv) Intellectual property rights**Question 6:**

According to Article 18 and 21 of the revised Patent Law No. 13 of 1997, products deriving from a patented process which are produced outside Indonesia but imported into Indonesia are protected in Indonesia only if:

- a) there is evidence that the manufacturing of such products locally is not possible due to economic reasons, so that it is only appropriate to be carried out on a regional scale, and,*
- b) there is evidence that it is manufactured in an acknowledged region such as ASEAN.*

Please explain how these provisions comply with Article 27 of the TRIPS Agreement which states that patents shall be protected, and patent rights enjoyable, without discrimination as to whether the products are imported or locally produced.

Concerning enforcement action it is mentioned on page 66 of the secretariat's report that although efforts have been made by the Indonesian Government to lower the rate of counterfeiting and piracy, the phenomenon in Indonesia is still increasing. Are there new measures planned to combat counterfeiting and piracy more efficiently?

Answer:

The patent law no. 13/1997 is no longer valid so that it was changed by the New Law No. 14/2001. Based on the Article 16, a patent holder shall have the exclusive right to exploit his patent and prohibit any other party who without his consent uses the patent to make product and commits other activities (makes, uses, sells, imports, rent out, delivers – in the case of process patents). Such prohibition shall only apply to imported products solely produces from the use of the pertinent process patent.

The exemption from the above provisions only if the use of said patent is for the sake of education, research, experiment or analyses, as long as it does not harm the normal interest of patent holder.

One reason to revise Patent Law no. 17/1997 to the New Patent Law 14/2001 is to meet with the TRIPS Agreement.

We have enforced our IP Law through regular raid. However, the more important element to enforce the IP law is increasing the awareness of IP to every Indonesia citizen, and develop IP culture in Indonesia society.

Report by the Government (WT/TPR/G/117):

IV. Trade Policy and Trade Related Policy Developments, a) Trade Policy

Question 7:

Switzerland would be interested in receiving more information on the role and functioning of the Indonesia Recovery Fund mentioned in §33. How is it going to be included within the official economic policy?

Answer:

The idea of Indonesia Recovery Fund was launched by Minister of Industry and Trade by the end of 2001. The idea was agreed at Cabinet Minister Meeting and would be launched 2002. However, since 2002 the idea is still pending.

i) Standardization

Question 8:

Government Regulation No.102/2000 concerning National Standard: It is mentioned that Indonesia is working on improving the role of standardization on the national level. How far has Indonesia introduced and implemented the national standard in cooperation with other stakeholders?

Answer:

Will be submitted later.

k) Non-Bank Financing Sector**Question 9:**

According to § 64 there is no government commitment in three sub-sectors (sub-sector accounting, auditing and bookkeeping, sub-sector appraisal service and sub-sector pension fund). How does Indonesia ensure “good corporate”- governance in the sub-sectors?

Answer:

Indonesia ensure of the GCG in the subsector accounting, bookkeeping and auditing will be implemented by reviewing or supervising the professions in compliance with professional standards, code of ethical conduct issued by Associations of Indonesian Accountants (AIA) and regulations issued by the government. The professional standards of accounting subsector issued by the AIA has already adopted the International Accounting Standards and International Auditing Standards. Recently, proposal to regulate the accounting professions and other related parties through drafting a draft law of public accountant is being discussed. In the appraisal services the associations of Indonesian appraisals and the government also performs the same activities with the accounting profession. Meanwhile, in the pension fund subsector the principles of good corporate governance, such as, transparency and independency has been adopted and implemented.

p) Intellectual Property Right**Question 10:**

In § 77 Indonesia mentions that the Trade Secret Act No. 30 of 2000 has been amended in order to comply with the TRIPS obligations. In relation to the issue of undisclosed information and Article 39.3 of the TRIPS Agreement in the context of market approval procedure for pharmaceutical and agrochemical products, does the Trade Secret Act address the question whether the state authority in charge of the market authorization procedure is allowed to rely on test data submitted by a first applicant in order to approve a product of another applicant? If so, what mechanism does the Act provide to prevent these test data from being used in unfair commercial manner?

Answer:

Trade Secret Act No. 30 of 2000 is silent on test data submitted by first applicant in order to approve a product of another applicant.

Additional questions from Switzerland**Report Secretariat (WTR/TPR/S/117)****IV. TRADE POLICIES BY SECTOR****(5) SERVICES, (i) Financial Services, (a) Banking**

70.The new arrangements will be needed to complete outstanding matters following IBRA's envisaged closure in February 2004, such as disposal of its remaining stock of assets and transferring responsibility for troubled banks, have yet to be announced. This has created uncertainty, especially following delays in establishing the Financial Supervisory Authority.

Question 11:

The experience of the costly bank recapitalization exercise has shown that the banking sector will remain a heavy burden for economic recovery. Is the Indonesian government set to maintain the large number of banks by further recapitalization? How could reducing the number be achieved, by means of liquidation, divestment or merger exercises?

Answer:

There is no intention of the government of Indonesia to conduct another recapitalization program. Since the banking crisis, the priority in the development of the banking sector is to improve the soundness and strengthen the resilience of the banking system through recapitalization and restructuring program. Following the economic crisis in 1997, the number of commercial banks in Indonesia dropped to 141 in 2002 from more than 200 before the crisis due to closing and merger. While the number of banks dropped significantly, the number of offices has increased from 6,765 to 7,000 at end of 2002. These developments reflect an improvement in the consolidation of the banking sector in Indonesia.

The government also has no intention to reduce the number of banks. However, an exit strategy has already been in place since 1999. Under the exit strategy a bank is subject to closing if it fails to meet the solvency and liquidity criteria.

Regarding the future direction of the banking sector development, Bank Indonesia is currently envisaging the blueprint of the Indonesian Architecture of the Banking System which is expected to be completed by end of 2003.

Question 12:

IBRA's execution of the blanket guarantee scheme function will cease by February 2004. Which institution will replace IBRA in this particular role? How can continuation of letter of credits acceptance be granted?

Answer:

According to the Banking Law and the new concept regarding Indonesian Financial Safety Net (which include deposit insurance scheme and the lender of the last resort), the government of Indonesia plans to set-up the Deposit Insurance Institution in order to replace the current blanket guarantee scheme.

The deposit insurance scheme initially will cover the current blanket guarantee, and would gradually reduce of its coverage.

For the purpose of transparency, reducing coverage in the deposit insurance scheme would be announced six month before implementation.

Question 13:

Establishing independent Financial Supervisory Authority. Which efforts are being taken to accelerate FSA's schedule of establishment and its coming into effective operation?

Answer:

An FSA is a new concept for Indonesia and represented a dramatic change in the way supervision will be conducted by the authority in the field of financial services. Therefore, its establishment needs a careful consideration so as to ensure the smooth implementations. Since the FSA will alter the current financial authorities structure in Indonesia, its establishment also require amendments of several existing laws namely Bank Indonesia (central bank) Law, Banking Law, Insurance Law, Pension Fund Law, and Capital Market Law. The improvement of the draft is also required because according to the IMF the FSA system need also to be complement by the safety net system for Indonesia financial sector, including deposit insurance scheme and lender of last resort. In May 2003, the draft has been submitted to Parliament by the President.

It should be noted that the process of issuing a new law in Indonesia is somewhat complicated inter alia because of the requirement to meet the transparency standard as one of the best practices. When issuing a new law, the government should at minimum meet the following requirements:

- a. Prepare an academic paper and draft of law
- b. Conduct a seminar and submit the draft to the public and any other related authority to have a comment.
- c. Revise the draft based on the comment
- d. Submit the draft to minister of justice to have a legal opinion
- e. Revise the draft based on the legal opinion
- f. Submit the draft to cabinet meeting
- g. Revise the draft based on the comment in the cabinet meeting
- h. Submit the draft to the president and the president will submit the draft to the parliament.

The parliament will also conduct hearings with various relevant parties in order to have final public comment and discuss the draft with the government.

REPLIES TO QUESTIONS RAISED BY THE UNITED STATES**II. FRAMEWORK AND OBJECTIVES****(6) Trade Agreements and Arrangements****(ii) Regional Agreements****Question 1:**

The United States understands that Indonesia has expressed an interest in using emergency exit clauses for aspects of its AFTA commitments.

We respectfully request that the Government of Indonesia indicate whether it now intends to use these clauses, and, if so, in which areas.

Answer:

Indonesia maintains its commitment on AFTA.

III TRADE POLICIES AND PRACTICES BY MEASURE

(1) Introduction

(page 32, para. 2)

Question 2:

In the past few years, Indonesia has reduced applied tariffs on a number of items.

Does Indonesia intend to continue to reduce the high tariffs on such items as agricultural products, alcoholic beverages and automobiles?

Answer:

The tariff rate of most of agriculture products have already been very low (ranging between 0-5%). Therefore, further reductions of these tariffs has not been considered. Indonesia plans not to reduce tariff rates on alcoholic beverages as they have impacts on public moral. To increase the industry efficiency, the tariff rates on automobiles will be reviewed to balance the interest of consumers and producers.

(page 33, para. 11)

Question 3:

The report prepared by the Secretariat makes reference to “institutional constraints” that continue to impede effective implementation of TRIPs.

We would appreciate if Indonesia would comment on the nature of the “institutional constraints” that impede effective implementation of TRIPs.

Answer:

With respect to “institutional constraints” Indonesia does not have any national constraint.

(2) Measures Directly Affecting Imports

(ii) Tariffs

(f) Applied MFN Tariffs

(page 38, para. 28)

Question 4:

The Secretariat report notes a widening gap between bound rates and applied rates created by unilateral reductions in applied rates.

We ask that Indonesia provide us information on their plans to enhance the predictability of market access through lowering bindings as well.

Answer:

Indonesia has no plan to reduce bound tariff rates as a strategy to enhance the predictability of market access. The Schedule of tariff reductions that is made public and implemented consistently is considered as a stronger strategy in giving more certainties to economic players in planning their activities.

Question 5:

The United States appreciates that Indonesia applies a very low import tariff for most agricultural products. We are concerned, however, that the proposed tariff increases for rice (30 to 36 percent), corn (from 0 to 30 percent), soybeans (from 0 to 27 percent), and sugar (from 20 to 85 percent) indicate a shift away from policies that support an open trading system.

Could Indonesia further elaborate on whether they will be implementing these tariff increases and when?

Answer:

Import tariffs for most of agricultural products have already been very low. Therefore, the proposal for increasing of tariff rates made by groups of society on rice, soybeans, corn, sugar will be analyzed carefully.

(iii) Customs Valuation

Question 6:

Para 36 of part III of the Secretariat's report indicates that "Indonesia did not request a reservation to maintain a system of minimum values for a limited time under paragraph 2 of Annex III of the Agreement on Customs Valuation." The United States has learned, however, that Indonesia appears to maintain a list of "check prices," which it uses in lieu of transaction values for food imports.

We would appreciate Indonesia confirming the lack of reservation and use of a list of "check prices," and if that is the case, we also request that Indonesia provide information on how it intends to change its practices in order to comply with the Agreement on Customs Valuation.

Answer:

Indonesia has not been using "check prices" in calculating the value of duty. The basis for custom value in the "transaction price" that is provided by importers. The use of custom database on price is only used for counter price checking on the indicated low price of imports in their custom declaration.

(v) Import Prohibitions, Restrictions and Licensing

Textiles

Question 7:

On October 29, 2002, Indonesia implemented an import licensing regulation, Decree No. 732/2000 of the Ministry of Industry and Trade on Procedures for Importing Textiles. We are seriously concerned that the import licensing requirement established by the Decree is restricting and distorting trade contrary to the Agreement on Import Licensing Procedures, and possibly in conflict with the provisions of Articles III and XI of the GATT as well as Article 7 of the Agreement on Textiles and Clothing, which requires all Members to abide by GATT 1994.

The United States raised concerns and questions about these requirements at the Committee on Import Licensing on May 8, 2003. Indonesia has responded to the questionnaire on import licensing procedures on May 20, 2003. We do not believe, however, that Indonesia has adequately responded to the questions posed by the United States.

The United States would like to reiterate our concerns. Our review of the Decree presented in the import licensing committee indicated various provisions go far beyond a registration requirement or licensing procedure, in the following matter:

- *Textile fabrics can only be imported by local textile producers.*
- *Imports can only be used as raw material or supplements for the production process of the importers-producers and may not be sold or transferred to others.*
- *All authorized importers must seek approval from the Ministry of Industry and Trade for the amount and the time schedule of their imports.*
- *Importers must also submit a monthly report on their imports to the Ministry of Industry and Trade. Failure to submit monthly reports will result in the revocation of import licenses, according to the Decree.*
- *These limits on the use of imported textiles restrict the amount and type of imports of these products. The ban on sale of imported textiles in Indonesia and the requirement that imports only can be used as raw materials or auxiliary materials for production processes appears to us to provide imported textile products less favorable treatment than textiles produced in Indonesia. Such restrictions would appear to conflict with the provisions of Articles III and XI of the GATT as well as Article 7 of the Agreement on Textiles and Clothing, which requires all Members to abide by GATT 1994.*

We have serious additional concerns regarding whether the provisions of the Agreement on Import Licensing Procedures were followed in issuing the Decree.

- *There was neither advance notice to the Committee, nor notification in a timely manner after implementation, which occurred on October 22, 2002.*

- *The notification itself, which was circulated on April 14, 2003, does not appear accurate and we believe is missing attachments.*
- *It is not clear whether the required licenses are automatically granted or not, assuming a firm meets the conditions of the Decree.*
- *Nor is it clear whether the licenses are valid indefinitely if a firm files the required monthly reports, or whether firms need to renew the licenses.*
- *Furthermore, the required monthly reports appear to require firms to provide excessive amounts of information, and possibly to require firms to provide business confidential information.*

The United States requests additional information and explanation from Indonesia on the operation of its licensing system:

- *If firms need to renew licenses, what is the procedure for doing so?*
- *Please provide more detail concerning how the Government of Indonesia administers these import licenses*
- *Please indicate how many licenses have been granted under the regulation, and how many were provided for each supplying country.*
- *Please provide import statistics for the previous year, where practicable (in terms of value and volume) for products subject to import licensing.*

Answer:

Concerning the issue of textiles, Indonesia is of the view that the decree is not restricting and distorting and even Indonesia firmly believes that the decree is not in contrary to the Agreement on Import Licensing Procedures. The decree aims only at providing administrative import procedures. As indicated in the decree, no prohibition or limitation on the import for those products as listed in the Annex to the decree as long as the company concerned are fully in compliance with all requirements. As the US is of the view that the decree is in conflict to Article III of the GATT 1994, Article XI of the GATT 1994 and article 7 of the ATC, Indonesia strongly emphasizes that:

- No discriminative treatment between local and foreign producers as long as they fulfilled all requirements as provided in the decree.
- The decree can not be constituted as non tariff barriers since the issuance of the decree, the import volume of the those products listed in the annex has not decreased but instead increased substantially. (see table).
- It is therefore, Indonesia believes that the decree is fully consistent with Article 7 of the ATC as the decree has no negative impact on market access for textiles and clothing as inherently stated in the ATC.

As stated in the decree, Imports can only be used as raw material or supplements for the production process of the importers-producers and may not be sold or transferred to others. The idea behind the decree is that since the late of 2001, the bulk of textiles entering Indonesian market are from smuggling activities which ultimately distort market. In fact that it creates an unfair trade practices (sell the products under value/price). In this context, we cannot ignore that smuggling activities will very adversely affect fair trade as well as significantly reduce the government revenue. According to the research and survey done by Indonesia University Research Institution, the smuggled textiles entering Indonesian market has resulted in loss of Rp. 50 trillions in terms of Government revenue. In fact, the smuggling activities has not only adversely affected the performance of many producers, but directly has great impacts on employment in 7000 factories which absorb more than 3,5 millions labors with the investment value of Rp. 132 trillion. Among the instruments taken, we believe that licensing procedure is one of the keen policies to combat smuggling. Since Indonesia is an archipelago with almost 17.000 islands, smuggling activities could be very easy be done by smugglers if the government are not fully aware.

According to Article 3 of the Decree all authorized importers must seek approval from the Ministry of Industry and Trade for the amount and the time schedule of their imports within one year. In order to effectively enforce the decree, (Article 7 of the Decree) Importers must also submit a monthly report on their imports to the Ministry of Industry and Trade. Failure to submit monthly reports will result in the revocation of import licenses, according to the Decree. This requirements are not intended to restrict or control trade in textiles, but rather to monitor imported textiles sold under value (monitoring system). With respect to the question on whether the provisions of the Agreement on Import Licensing Procedures were followed in issuing the Decree, the US is of the view that notification has not been made in a timely manner; the notification does not appear accurate and missing attachments, whether the required licenses are automatically granted or not, assuming a firm meets the conditions of the Decree, nor is it clear whether the licenses are valid indefinitely if a firm files the required monthly reports, or whether firms need to renew the licenses, the procedures to have a new license etc. As to the late notification, Indonesia has request apology in the cover letter submitting the notification and we feel that notification is accurate and no missing attachment. License is automatically granted as long as the company concerned has met all the conditions as contained in the Decree.

If firms or companies need to renew license, they have to fulfill all the previous conditions as contained in the decree. In fact, there is no firm or company that has experienced any difficulty to do so. The administrative procedures to get license are very simple. Firstly, the firm files application and send it to Directorate General for Foreign Trade, MOIT. The application should be attached with required documents, namely industrial license, Special Importer Identification Number for Textiles and Clothing (NPIK), Producer/Limited Identification Number, Corporate Registry Certificate, Taxpayer Code Number (NPWP), the Statement on the Plan for the Need of the Raw Material or Auxiliary Material and the Marketing of the Products in one year which is Legalized by the responsible person of the Company, in the form as mentioned in Attachment II of the Decree. Up to now there have been 386 licenses granted. No data provided as to how many were provided for each supplying country since this decree is implemented in a non discriminatory manner.

Used goods

Question 8:

The United States notes that Decree No. 278 (on the import of used machines, machine tools, and capital goods) was not among the import licensing measures notified to the Committee on Import Licensing by Indonesia on 12 May 2003 (G/LIC/N/3/IDN/2, circulated 20 May 2003).

- *Is Decree No. 278 (on the import of used machines, machine tools and capital goods) currently in force?*
- *Does Indonesia maintain, in any form, other restrictions on importation of used machines? If so, please provide information on the nature and scope of the measures.*

Answer:

The decree No.278 is not in force anymore and has been renewed with the decree No. 756/MPP/Kep/11/2002. This regulation has not yet been notified and will be done so later. Indonesia does not maintain - in any form - other restrictions on import on used machines.

(vi) State Trading

(page 44, para. 44)

Question 9:

The Secretariat report notes that Indonesia maintains a State Trading Enterprise in virtually all important sectors.

- *What plans does Indonesia have for either privatization or for removing exclusive import or export rights on State Trading Enterprises?*
- *What is the rationale for the restrictions on importation of wine and distilled spirits (which are limited for importation to three registered importers)?*
- *Because there is domestic production, it would be helpful for Indonesia to provide information to show how these restrictions are WTO-consistent.*

Answer :

With respect to the question as to what plans does Indonesia have plans for either privatization or for removing exclusive import or export rights on state trading enterprises, we would confirm that in order to have efficient state enterprises, steps have been taken to release their exclusive rights and there are some have been merged such as PT Panca Niaga, PT Cipta Niaga and Dharma Niaga becoming one enterprise named PT. Perusahaan Perdagangan Indonesia.

The rationale for the restrictions importation of wine and distilled spirits is in accordance with Article XX of the GATT 1994, as those products are tightly related to moral and religion consideration (most Indonesian people are Moslem). However, in order to accommodate the need for certain communities such as hotels, international restaurants, diplomatic members and international organizations, the government of Indonesia still allow certain state trading companies to import such products and to distribute to consumers. Indonesia acknowledge that there is domestic production, however to achieve the objective of the regulation, domestic production are also tightly monitored

(xi) Standards and other technical requirements

(a) Standards General framework

(page 51, para. 60)

Question 10:

Are foreign interests/entities allowed to participate in the standards development process coordinated within the National Standardization System?

Answer:

Foreign interest/entities are allowed to participate in preparing the standards of certain products as long as the entities concerns are located in Indonesia.

(page 51, para. 61)

Question 11:

Are American National Standards, such as those developed by ASTM International or ASME International Standards, ever considered when adopting Indonesian National Standards?

Answer:

In preparing the Indonesian National Standards (SNI) or international standards are fully considered.

(4) Measures Directly Affecting Production

(i) Taxation

(a) Indirect Taxation

(page 62, para. 95)

Question 12:

Please discuss whether Indonesia plans to reduce the luxury sales tax on motor vehicles, and on motorcycles with an engine capacity of less than 250 cc?

Answer:

After announcing a fiscal stimulus package through reducing luxury sale tax on a number of goods, until now there is no plan to reduce rate of the luxury sale tax on motor vehicles and motorcycles with an engine capacity less than 250 cc. It is because motor vehicles and motorcycles in Indonesia still be categorized as luxury goods. Only few people have motor vehicles and motorcycles, especially in rural area.

(ii) **Production assistance**

(page 33)

Question 13:

Would Indonesia please explain how it provides “financial support” to research and development activities in high technology industries? Which industries within the high-tech field have benefited from this support? Is such support provided to other industries?

Answer:

We realize that promoting research and development activities, including in high technology industries have an important role in accelerating economic growth and sustainable development. Therefore, before financial and economic crises in 1997, there were some financial support to promote research and development in high technology industry. To accelerate high-technology industry, the government of Indonesia, not only established Agency for Strategic Industry Management, (BPIS) but also provided financial support for research and development including high technology and technologically sophisticated industries. The sources of financial support could come from state budget and credit from banking system, either domestic loans or foreign loans such as export credit facility.

Due to the lack of financial sources, financial support for promoting research and development activities, especially in high technology industry has become very limited in the past several years. However, the government of Indonesia still provides fund to support research and development program through development budget for science and technology sector. In 2003, priority of the budget allocation for these activities would be more focused on increasing of research and development, improving institutional and infrastructures of science and technology, and increasing quality of human resources in science and technology.

Question 14:

We are also interested in obtaining information about Indonesia’s Petroleum Fuels Subsidy (BBM). In particular, which industries are provided with the fuel price subsidies mentioned in this section? Would Indonesia also please explain the eligibility requirements for companies to receive these benefits?

Answer:

The fuel subsidy was put in place to provide affordable access to energy sources for all income groups. Since this subsidy is a price subsidy and not targeted subsidy, therefore no requirement for companies to get the subsidy. On the other hand, its burden in the government budget raised sharply due to increase in international crude oil prices. Because it is not well-suited to helping the poor, since 2001 the government took the decision to gradually reduce and shift to more targeted schemes, through increasing domestic fuel prices. In 2003, all kinds of domestic fuel price, except kerosene for household, have been raised to be 100 % of market price (Mid Oil Platt’s Singapore, MOPS plus 5%) from 75 % in the previous year. To reduce the negative impact of fuel price adjustment, the government has supplemented the fuel price adjustment by several compensation programs, including providing rice subsidy for poor household and continuing the scholarship program.

(v) **Export assistance**

(d) **Export finance, guarantees, and insurance**

(page 29)

Question 15:

Does Indonesia provide financing on preferential terms through export pre- and post-shipment finance facilities, or through “guaranteed” facilities operated by BEI, or as part of export insurance programs provided through ASEI?

Answer:

No, Indonesia doesn't provide financing on preferential term.

The “guaranteed” facilities operated by BEI is given to all Indonesian international trade player whilst they are complied with the regulation. BEI never provide a SUBSIDIZED program in its current operations nor for its future transactions. Moreover, BEI never has any preference to certain market segment either by commodities or industrial sector or business segment, and the terms & conditions of the facility are based on commercial calculation and normal banking practice.

The BEI activities in export financing and guarantees can be described as follows :

1. In line with its mission and vision to help Indonesia in achieving its prosperity through promoting and strengthening competitiveness, growth & development, BEI is providing the financing, guarantee and consultation services which provides competitiveness for the Indonesian international trade player whilst it is complied with the regulation.

2. Financing:

- a) In extending its financing, BEI provide competitive interest rate to the Indonesian exporters through and or together with the Indonesian Commercial Bank.
- b) The ability of BEI in providing such competitive financing mainly is resulted from the relatively low Cost of Fund (CoF) and Cost of Loanable Fund (COLF). due to the following factors :

1) Strong equity base:

- BEI equity came from the Government of the Republic of Indonesia Capital Participation amounting to IDR 3 Trillions.
- Using such equity, BEI is able to generate profit during its 3 years business activity and resulted in the internal growth with positive trend.
- In relation to the cost of capital as part of cost of fund calculation, BEI applied dividend pay out ration approach. The rationale behind using such approach is based upon the dividend policy that has been applied since 1999.

2) Low Overhead:

BEI is able to maintain its overhead cost at relatively low level (around 0.70%) since its operation is so efficient due to its slim organization (BEI currently employed 79 staffs). Moreover, BEI only has 2 Marketing representatives offices since it uses the Indonesian commercial banks network in channelling the services.

3) Sound Asset Quality :

- BEI always providing its facilities based on common business practice consideration. This includes **no preferential treatment to the certain target market either by commodities or industrial sectors and business segment**. Further more, it is always complied with the regulation for sound banking from related authorities i.e. CAMEL (Capital, Asset quality, Management, Earning and Liquidity), and all the risk involved including credit risk, market risk (liquidity risk, interest rate risk, and foreign exchange risk); operational risk and legal risk. Such risks are mitigated, amongst others through :
 - i. Implementation of several manual, policy and procedures through some committees.
 - ii. Implementation of “Four Eyes Principle” as part of the implementation of prudential banking norm in the credit approval process.
 - iii. Implementation of “matching concept” for foreign exchange risk.
 - iv. Built in control mechanism consist of maker, checker, authorizer, internal control (compliance-ex ante) and internal audit (Ex post)
 - As a result of such prudential earning asset management, BEI could achieve zero Non Performing Loan (NPL) ratio, which in turn lead to a low provision for loan losses need to be allocated by BEI for its earning asset.
- c) The cost of Fund (Cof) and Cost of Loanable Fund (CoLF) are calculated based on commercial calculation and normal banking practice i.e. for IDR based on Jakarta Inter Bank Offer Rate/JIBOR-6month and for USD based on London Inter Bank Offer Rate/LIBOR – 6 month). BEI’s prime lending rate is derived from 1) blended cost of fund using weighted average interest rate (using dividend payout ratio for calculation of the cost of equity), 2) overhead cost, 3) risk premium and 4) expected margin. Based on this calculation, BEI is still able to offer a competitive pricing to its customers.

3. Guarantee:

- a) BEI also provides guarantee for L/C of Indonesian importers and performance of the Indonesian exporters in order to enhance their activities.
- b) This guarantee facility is also benefiting the Indonesian commercial bank since it affects the Commercial Bank’s calculation of Weighted Risk Asset from 100% or 50% to 20%, as stipulated on Bank Indonesia Circular Letter, ref. No.: 2/12/DPNP, dated June 12,

2000 regarding Estimation of earning asset in the calculation of weighted risk asset. Thus it improves the commercial bank's Capital Adequacy Ratio (CAR).

- c) However, such guarantee will not function as a replacement for the collateral required or change the un-feasible loan proposal to become the feasible one. BEI still has to assess the Indonesian exporter and importers performance using the normal prudential banking norms.

As well as BEI, ASEI does not provide any preferential terms neither receive regulatory support or financial subsidy from the government to market its products. ASEI products are marketed through market mechanism to commercial banks and exporters. As a typical export credit agency, ASEI provides protection on banks for debtor defaults and on exporters for buyer and political risks.

Question 16:

Could Indonesia please explain whether these programs have been notified to the SCM Committee as provided for under Article 25 of the SCM Agreement and, if not, why they would not qualify as notifiable under this provision?

Answer:

Due to the fact that those programs are subsidies, there is no need to notify the SCM Committee.

(iv) Intellectual Property Rights

(page 65, para. 111)

Question 17:

The report notes that Indonesia is considering ratifying the WIPO Performance and Phonograms Treaty.

Could Indonesia please share its plans for ratification of the WIPO Performance and Phonograms Treaty?

Answer:

Proposal of ratifying WPPT is still under the process

Data Exclusivity

Question 18:

The Trade Policy Review does not make reference to provisions for protection of undisclosed information as required by TRIPs Article 39.3.

We would ask Indonesia to provide us with citations to its law that provide for this protection, with an explanation of how the law complies with the TRIPs agreement.

Answer:

Based on the Law No. 30/2000, trade secret is protected from data disclosure as stated under Article 29(3) of TRIPs Agreement.

Geographical Indications**Question 19:**

Article 56(8) includes a two-year phase out period for a pre-existing unregistered trademark that conflicts with a later-in-time geographical indication.

Could Indonesia please explain what occurs when a party attempts to register a geographical indication that may conflict with a pre-existing registered trademark?

Answer:

According to the Indonesian Trademark Law No. 15 of 2001, there is no reason to refuse an application for registration of Geographical Indications, however it may conflict with a pre-existing registered trademark. It is important to remind that the Geographical Indications are radically different from Trademarks.

Question 20:

Related to Article 56(8), what happens if the pre-existing trademark was not registered but was well-known?

Answer:

The owner of the well-known mark has a right to use his mark for the period of two years since the registration of Geographical Indication.

Institutional and enforcement action**Question 21:**

Regarding paragraph 78 of the Government's report, in connection with the section presenting the future program in the field of IPR.

Could Indonesia please explain what is meant by, and provide any specific plans or measurement criteria for, Item C, "Improvement [of] quality and quantity of law enforcement as well as the Improvement of Public Services."

Answer:

In order to improve the quality and the quantity of law enforcement, the GOI in cooperation with the professional association have conducted training, seminars, workshop in the fields of IPR, so that they are able to distinguish original products & pirate products that can be used as an evidence before the Court.

Question 22:

Regarding Paragraph 115 of the Secretariat's report, in connection with the factual observation that "seizures dropped considerably in 2002,"

Could Indonesia please explain the cause(s) or reason(s) for this, as well as any actions that are being taken by the government to remedy, improve or reverse this downward trend?

Answer:

Although the GOI is very active in improving additional knowledge in handling the seizures, there is still lack of enforcement officials. To overcome this problem the GOI improves technical and strategy in combating piracy.

Question 23:

Paragraph 116 of the Secretariat's report noted that "law enforcement was the most crucial problem" faced in connection with stronger IPR protection. It also observed that "limited resources do not allow for staff training and proper administration and enforcement of IPR legislation," and that "difficulties in enforcing IPR protection are the result of, inter alia: lack of knowledge; different views and perceptions of IPRs (including a hostile social environment and the economic crisis); lack of coordination among law enforcement agencies; weak civil remedies and criminal penalties; and deficiencies in the judicial mechanism."

Could Indonesia please explain what actions are being taken, planned, or implemented to address this serious contributing factors to the current law enforcement status of intellectual property rights?

Answer:

At present Government of Indonesia has taken actions among others:

- More actively conducted socialisation on IPR (seminar, workshop, training),
- Establishment National Coordinating for Anti Piracy,
- Minister of Justice and Human Right has signed MoU with Police Department.

Question 24:

Paragraph 117 of the Secretariat's report notes that as "a result of poor investigative techniques, poor handling of evidence and lack of expertise, the judicial system is considered to be ineffective in enforcing IPRs." The Secretariat's report also highlights statistics on the number of IPR cases handled by the commercial courts.

It would be helpful for Indonesia to provide on information on whether it has considered or would consider the establishment of a special IPR court to handle both civil and criminal IPR matters as a structural solution to address the problems faced by the commercial courts in handling and managing IPR cases?

Answer:

The idea of establishing a special IPR Court that handle civil and criminal IPR matters had been under the consideration. However, due to the different system Indonesia has, it is impossible to put the civil and criminal IPR matter in one court. Based on the IPR Law, the Commercial Court has the jurisdiction to handle civil cases.

Question 25:

Regarding Document paragraph 122 of the Secretariat's report and in connection with the observation that "the Trade Mark Office may take up to 12 months to issue the certificate of registration, which is needed to commence enforcement proceedings,"

Has Indonesia considered instituting a procedural mechanism to expedite issuance of a trademark certificate of registration for those applicants who may need it to commence enforcement proceedings?

Answer:

The provision concerning of the limit time for issuance of trademark certificate in the Laws on Mark is a maximum period time for Trademark office. So it is possible to the office to reduce the period time in issuing of the certificate registration of Trademark.

Question 26:

Regarding paragraph 127 of the Secretariat's report and in connection with the observation that the recently amended copyright legislation "does not include provisions for remedies against end-user piracy,"

Would Indonesia please confirm if there are current efforts or legislative proposals to correct this deficiency?

Answer:

Yes, there is the current efforts to correct this deficiency by giving the Law no. 19/2002 regarding end user piracy

Question 27:

Regarding paragraph 129 of the Secretariat's report, and in connection with the observation that to address the problem of pirate retail sales, the "police forces conduct regular raids on shops offering pirated material,"

Is Indonesia considering measures to address this problem, such as making the sale of pirated materials on a commercial or retail premises licensed by a governmental unit grounds for the suspension or revocation of a business license?

Answer:

Based on the new Copy Right law 19/2002, the pirated material shall be destroyed and the business licence of those who violate will be revoked as stipulated by the Minister of Industry and Trade Decree.

Question 28:

Industry and rights holders have concerns that the lack of a statutory deadline for the second level of appeal to the Supreme Court in trademark cancellation and deletion cases (called the “reconsideration” appeal) will negate the benefits of the speed achieved in setting statutory deadlines for the Commercial Court and the Supreme Court (on cassation appeal) to hand down their decisions. However, most cases routinely are appealed to the highest level of appeal and will continue to be delayed at the Supreme Court reconsideration level.

Could Indonesia please provide information on whether it is considering placing a statutory deadline at the reconsideration level?

Answer:

Base on the trademark law, there is no article regulating for reconsideration appeal.

Question 29:

We note that new statutory timetables have not been extended to cases existing at the time of commencement of the new Trademark Law. We also note that previously existing trademark cases before the Supreme Court are still pending with little or no movement on these cases, and that the failure by the Supreme Court to deal with these existing cases continues to hinder rights holders in their ability to conduct their business in Indonesia. This has resulted in commercial uncertainty and a denial of “effective” IPR protection as required by TRIPs,

What steps does Indonesia plan to take to resolve this issue expeditiously and clear the backlog of those cases that pre-date the new Trademark Law?

Answer:

To overcome the backlog of those cases, not only does we concentrate on Trademark cases but also we concentrate on other IPR cases. The Minister of Justice and Human Right has made MOU with the Head of Indonesian Police Forces. One of the Indonesia weakness on enforcing the IPR law is the limited amount of judges. However, the pending IPR cases will be processed progressively.

Industrial property

Patents and Utility models

The list of exceptions to patent-ability in Article 7(c) of the 2001 patent law of Indonesia includes methods in mathematics. Please explain how this complies with the requirement to make patents available for any inventions in all fields of technology of TRIPs article 27(1).

Question 30:

Does the patent law of Indonesia allow for the patent-ability of business method patents? If so, besides the usual patent-ability requirements, is there an additional technical requirement?

Answer:

The general explanatory Indonesian Patent Law states that the scope of invention does not include business method for doing business .

According to Article 7(a) of the 2001 patent law, processes or products whose implementation is in violation with laws concerning “religious morality” are excluded from patent-ability.

Question 31:

Could Indonesia please provide examples of inventions that could not be patented based on this exception?

Answer:

One of the examples of product which violates with religious morality is toys sex.

Question 32:

According to Article 16 (a) and (b) of the 2001 patent law, patent holders will have the exclusive right, among other things, to “leasing” and “delivering” the patented product and the product that results from the patented process.

Could Indonesia please provide examples and explain this exclusive right?

Answer

The regulation is made for just an anticipation for the future.

Question 33:

Article 71 states that a license agreement cannot contain provisions that either directly or indirectly “encumber” the Indonesian economy, or contain provisions that would encumber the ability of the Indonesia people to master and develop technology in general.

Could Indonesia please provide examples of a license agreement provision that falls under this category?

Answer:

The government is still preparing the government regulation concerning the registration on patent licensing.

Layout Designs (Topographies) of Integrated Circuits(IC)

Question 34:

Does Indonesia protect IC discrete under its integrated circuit topography law?

Answer:

The Indonesian IPR law is silent on IC discrete

Question 35:

Does Indonesia permit applicants to mask certain trade secret portions of their applications for IC topography registrations?

Answer:

No, Indonesia does not permit to mask certain trade secret portions of their applications for IC topography registrations.

Trademarks

Question 36:

Article 68 of the trademark law allows a “concerned party” to make a complaint regarding a trademark registration and request cancellation of the registration. A concerned party is defined as the “public prosecutor, consumer foundation, or religious board.”

We would respectfully request Indonesia to elaborate on who, under domestic law, can petition to cancel a trademark registration?

Answer:

According to the Article 68 of the Trademark Law, A Lawsuit for the cancellation of registered marks may be filed by any interested party based on the grounds as referred to in Article 4, 5 or Article 6. The interested party as mentioned above are the owner of a registered mark, the first user of a mark but not registered, the owner of a registered well-known mark, the owner of a well-known mark but not registered, the public prosecutor, consumer foundation, religious board and any other party that may have interest to the registered mark.

Question 37:

Why is the trademark cancellation procedure limited to use by only a public prosecutor, consumer foundation, or religious board rather than by any interested party? As with Indonesia’s opposition procedure, its cancellation procedure should be available to any party that would be damaged by the continued protection of an existing trademark registration.

Answer:

Based on the Indonesian system, public prosecutor has an authority to make a decision whether the action violates the public order or not, but there is a procedure in the trade mark law and the availability for opposition procedure.

Question 38:

Regarding the requirement to apply for the mark in order to file the petition, under section 2 of Article 68, the owner of an unregistered trademark can petition for cancellation only if the owner first applied for a trademark registration. The TRIPs Agreement requires Members to protect unregistered well-known marks. It appears problematic for the national law to require the holder of an unregistered well-known mark to apply for registration in order to prevent another from registering a mark that would be confused with the well-known mark.

Please explain how Indonesia's law to require well known mark holders to apply for registration of their mark, in order to be eligible to petition to cancel an unauthorized registration of the mark by another, is consistent with the TRIPs Agreement's provisions for protecting unregistered well-known marks.

Answer:

The protection of well known marks is provided in paragraph (1) letter b of articles 6 of the Mark Law. With respect to a well known marks is not registered in Indonesia but widely recognized among consumers, at the time of its filing, an application for the registration of an identical or similar mark filed by a person other than the owner of the well-known marks with respect to goods or services identical with or similar to those of the well-known marks is due to be refused.

Moreover paragraph (2) of article 6 of the Mark Law provides that the provision as referred to in paragraph (1) letter b is also applicable to goods and/or services, which are not of the same kind, provided that it fulfils certain conditions that will be regulated further by Government Regulation. The protection of well-known marks is also provided in paragraph (2) of article 37 of the mark law, where a request for the renewal of a registration of mark shall be refused by the office, if the relevant mark has similarities in its essential part or its entirety with a well known mark of another person, taking in to account the provision as referred to in article 6 paragraph (1) letter b and paragraph (2)

Application for registration is only required in case of the unregistered well-known mark holder want to file a lawsuit for cancellation of a registered mark.

Question 39:

Mandating that a license agreement remain in force as a contract between a (former) licensee and a new trademark owner--who never agreed to the license—is a species of compulsory licensing. Article 48 of Indonesia's Trademark law requires a compulsory license of the trademark by the registered trademark owner.

Please explain how Article 48 is consistent with Article 21 of the TRIPs Agreement which expressly forbids compulsory licensing of trademarks.

Answer:

Article 48 of the Indonesian Trademark Law is not

Copyright and Related Rights

Question 40:

Does the Copyright Law provide retroactive protection for works, sound recordings, and performances as required under the TRIPs Agreement?

Answer:

Yes, Indonesia provides retroactive protection for works, sound recordings, and performances as required under the TRIPs Agreement

Question 41:

Could Indonesia please explain how Article 57 of the Copyright Law comports with the Berne three-part test in Article 13 of the TRIPs Agreement?

Answer :

Article 57 of the Copyright law complies with the article 13 of TRIPS Agreement.

Question 42:

Could Indonesia please explain how the compulsory licensing provisions in Article 16 of the Copyright Law comport with the TRIPs Agreement?

Answer:

Article 13 of the Copyright law complies with the TRIPS agreement.

IV. TRADE POLICIES BY SECTOR

(2) Agriculture and Forestry

(ii) Main Policy Developments

(a) Border Measures

Agriculture tariffs

Question 43:

The United States government is concerned by the negative impact that Indonesia's proposed high tariffs would have on market access for rice, sugar, corn, and soybeans. We encourage Indonesia to maintain the current tariff rates for these commodities, which benefit Indonesian consumers with lower prices for staple commodities.

Answer:

Firstly, for those commodities, the applied tariff rate has been much lower than the bound rate and very low by industrial standard. Secondly, those commodities are very sensitive with regard to food security, rural development, and poverty alleviation. Therefore, we need the flexibility in determining the tariff rate of those commodities as long as it does not exceed the bound tariff rate.

Ban on chicken parts**Question 44:**

The United States government has consulted with the Government of Indonesia concerning the ban on imports of chicken parts mentioned in para. 19 of Part IV of the Secretariat's report, which we estimate costs U.S. exporters \$10 to 25 million per year. We were assured in 2001 that the ban on poultry imports would be removed. Although presented as an issue of compliance with Halal standards, the Government's statement (para 44 of the Government's report), as well as footnote 33 in the Secretariat's report, suggest that Indonesia's principal concern is to protect domestic industry from competitively-priced imports. The ban also violates Article I of the GATT.

We would appreciate Indonesia providing the reasons for the ban remaining in force and the government's plans for the ban's removal.

Answer:

Principally Indonesia does not impose banning of chickens in the whole forms, however, the importation of chicken parts will be allowed only if the Halal process is fulfilled.

Question 45:

The U.S. system of Halal certification was thoroughly reviewed by an Indonesian team in 2000 and found to be fully compliant because we have established the appropriate mechanisms for export of Halal certified poultry with the Government of Indonesia and U.S. Islamic Centers.

Could Indonesia please provide us the rationale behind its indicating the need for another review?

Answer:

Indonesia understands that the US system of Halal certification has been once reviewed in 2000, but since then, Indonesia frequently experienced that the non-halal chicken parts have entered the local markets. Therefore, further independent re-inspection to all facilities and institutions involved in the process of Halal certification in the USA is needed.

(page 4)

Question 46:

Could Indonesia please comment on the extent that support provided through Indonesia's Protekan 2003 program contributes to the creation or maintenance of capacity in the fisheries sector?

Answer:

Protekan 2003 has been determined as an action plan to navigate the fisheries sector development. This advisory document outlines the policy framework to conserve and manage Indonesia's fisheries resources. The protekan 2003 is reviewed annually in accordance through various measures of responsible fisheries management approach among others stock assessment and statistics sampling.

Question 47:

How are factors such as oversupply and over capacity taken into account when determining the amount of support given to the fishing industry?

Answer:

Indonesia is aware of the fact that existing over-supply and over capacity issues could bring into resources management problems. To prevent this occurrence in 9 Indonesia's fishing management areas, various steps are made to prevent at the early stage by implementing stock assessment and continues improvement of licensing policy

Question 48:

Would the Government of Indonesia please provide the total amount of subsidies going to the fishing sector during the reporting period?

Answer:

Indonesia recognizes that fishery subsidies offer significant opportunities for fishery economic diversification and the generation of wealth of all fishermen, and in particular for artisanal fishermen. In this way, it is a need to look significantly at different categories of subsidies, their nature and impact as well as their situation under existing discipline.

(4) Manufacturing

(page 83, para. 53)

The Secretariat report notes that import restrictions and special licensing requirements remain in force for certain goods (textiles, textile products, footwear, electronics, toys, engines and pumps, hand tools, and tractors), and exclusive import rights are accorded to local producers of certain goods (alcoholic beverages, textile cloth, hot- and cold-rolled coil iron, and steel).

Question 49:

Could Indonesia please clarify why import restrictions and special licensing requirements remain in force for these goods? What plans does Indonesia have for their removal?

Answer:

As explained above, the idea to regulate textiles is to combat smuggling. However, the imposition of Special Import Identification Number (NPIK) for textiles products, footwear, electronics, hand tool, toys

and hot-and cold rolled coil iron and steel are also to prevent smugglers sell their products under value which could adversely affect domestic market and also prevent unfair competition among domestic traders.

(ii) Automotive

(page 83, para. 59)

Question 50:

Since 1999, Indonesia has lowered its tariffs on autos.

Does Indonesia plan on further lowering the 80% tariff on autos and the 25-50% tariff on CKD kits?

Answer:

Since Indonesia has significantly reduced the tariff peak of 200% to 80%, no plan for the time being to further reduction of the tariffs itself. With respect to the rationale to rising luxury tax on sedan and SUV are to increase the government revenue from this sector.

Question 51:

It would be helpful for Indonesia to provide its rationale for raising the luxury tax on sedans and SUVs from 50% to 75% ?

Answer:

The 75 % luxurious tax only applies to sedans and SUVs with the engine capacity more than 4000 cc. These type of motor vehicles are quite luxury for Indonesia people and can only be consumed by certain people with high income.

(5) Services

(page 85, para. 67)

Question 52:

Could Indonesia please explain why it retains foreign investment limits in certain sectors, including in computer and related services, other business services (e.g. architecture), professional services (e.g. engineering), and construction and related engineering services.

Could Indonesia also please provide its rationale to require foreign firms to partner with a local company?

Answer:

There are several reasons of why Indonesia still retain foreign investment limits in certain sectors namely:

- a) The level of development of each sector needs careful considerations, in certain sectors limitation of foreign ownership is expected to improve domestic capacity as well as giving an opportunity for domestic parties to adjust to the changing market conditions;
- b) The myriad numbers of domestic construction and professional service providers have caused some concerns for the Government of their well-being giving the fact that domestic service providers absorbed many Indonesian labours and consisting of SMEs.

(ii) Communications

(a) Telecommunications

(page 92, para. 88)

Question 53:

The Secretariat report notes that Indonesia has agreed to reform its telecommunications market including privatization. Could Indonesia please share with us its plans to privatize the state-owned monopolies of Telkom and Indosat?

Answer:

Indonesia has privatize Telkom and Indosat through their IPO respectively in 1995 and 1996. The recent policy on those two telecom companies that Indosat would be fully privatized in which GoI will not be the major share holder. Then, Telkom would be privatized while GoI will remain the major share holder in it.

(page 92, para. 89)

Question 54:

The Secretariat report states that Indonesia intends to establish an independent telecommunications regulatory agency to provide for interconnection and universal service obligations. When does Indonesia anticipate establishing this independent regulatory agency? Will the new Ministry of Communications and Information take on these regulatory responsibilities?

Answer:

Indonesia is seriously considered to establish independent regulatory agency. In principle Indonesia agree with the idea of separating market player and market regulator. It is expected that the independent regulatory body will be established at the end of this year. Currently, there is no discussion or any indication that The Ministry of Communication and Information will become a regulatory body.

(b) Broadcasting and audio-visual

Foreign ownership of private or special broadcast institutions is prohibited. Foreign investors are also prohibited from investing in film production, technical filming services, export and import of movies, film distribution, and screening. Indonesia prohibits foreign film and videotape distributors from

establishing branches or subsidies. The provision of importation and distribution services is reserved for 100% Indonesian-owned companies.

Question 55:

Does Indonesia have plans to lower or eliminate these restrictions and when will they be implemented?

Answer:

Based on Law Number 32 the year of 2002 about Broadcasting, foreign ownership of private or special broadcast institutions is limited, not more than 20% of the total share (capital) and should be a minimum owned by two shareholders. The mechanism of foreign participation in private or special broadcast institutions still under discussion and will be regulated further in form of Government Regulation.

Given the fact that Law Number 32 the year of 2002 has just enacted, and some of the implementation regulations are yet still to come, Indonesia is currently have no plan to lower or eliminate restrictions in foreign participation.

In regard to the film production, technical filming services, export of import movies, film distribution, and screening the policy could be explained as follows:

- Film distribution can only be conducted by film distribution company.
- Every film production company is permitted to distribute its own film production.
- Before film are distributed, all films must pass the censorship procedures assigned by film censorship institution. This rule applies to both film and film advertising, both import and export.
- Every film production company must optimize the available domestic national resources.

REPLIES TO QUESTIONS RAISED BY VENEZUELA

II. Trade Policy Regime: Framework and Objectives

(8) Foreign Investment Regime

Recent performance and developments (paragraph 41)

Venezuela welcomes the modification and modernization of Indonesia's Investment Regime. In this context Venezuela would appreciate if Indonesia could provide further clarification on the following issues:

Question 1:

What is the current status of the new draft Law on Investment that will replace the one of 1967? What are the new main features which will be introduced?

Answer:

We have delivered the reply to other country member regarding this similar question. The new investment law draft is currently being reviewed within the departmental agencies. The draft was submitted to the State Secretariat waiting for President's initiative permit to further be discussed in the Parliament. The government of Indonesia expects that the draft will be accomplished immediately.

Question 2:

Venezuela's understands that the Law on Domestic Investment of 1968 contains relevant provisions relating to treatment of foreign investment. Does the scope of the reform of Indonesia's Investment Regimen include the revision this Law?

Answer:

This new law draft will cover the foreign and domestic investment legislation, of which is aimed at facilitating and easing the investment activities.

Scope of the Reform of the Central Bank of Indonesia (Bank Indonesia)

The Report of Secretariat states (Chapter IV, par. 73) the following:

"(...) The independence and prudential responsibilities of Bank Indonesia were also enhanced; it was made an "independent state institution free from any interference of the Government and or other parties" tasked specifically with bank regulation and supervision, including both "direct and indirect supervision" (Act Concerning Bank Indonesia, No. 23, 1999)*

** As an independent state institution, Bank Indonesia has full autonomy to formulate and implement its tasks and authority as stipulated in the Act, and external parties are strictly prohibited from interfering. It must refuse or disregard any such attempts in any form from any party.*

The **Report of the Government** states (**Par. 20**) the following:

"To enhance the central bank's credibility, the new central banking Law No. 23, 1999 was enacted that gives Bank Indonesia a full autonomy to formulate and implementing monetary policy in order to achieve the stability of the Rupiah value. The new law provides considerable scope for independence in achieving the price stability objective. Under this new legislation, Bank Indonesia is no longer allowed to extend credit to the government. There are three Bank Indonesia's major functions given by this new legislation, i.e. to formulate and implement monetary policy; to regulate and safeguard the payment and financial system, and to regulate and supervise the banking system."

Question 3:

In this context, Venezuela would appreciate if Indonesia could provide further clarification on the scope of the participation of Bank Indonesia on policies relating to price stability and currency stability

Answer:

Under the new central bank law No.23 of 1999, Bank Indonesia (BI) sets the inflation target that should be announced at the beginning of the year, and BI is to be accountable for the target. To achieve the target BI sets the monetary policy consistent with the target. BI also has the discretion to use monetary instrument, including conducting open market operation, fixing the discount rate, and setting reserve requirement. With respect to operating target, BI has used based money or reserve money. Currently, BI has set disinflation program intended to lower the inflation rate gradually so as not to impede economic growth. Under this program, over the medium term inflation is set between 5%-6% by 2006. For the year 2003, the target was set at 9% with a 1% band. Over the past few years inflation has been on the declining trend. After rising to 12,5% in 2001 which was higher the target of 10% due mainly to upward adjustment administered prices and the depreciation of the Rupiah. In 2002, inflation started to decline to 10% and for 2003 the inflation rate is expected to be lower than the target initially set at 9%.
