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MOA Revises Requirements on Horticultural Imports

Report Categories:

Fresh Fruit and potatoes

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Report Highlights:

The Ministry of Agriculture (MOA) recently issued a new regulation that eliminates the use of “harvest periods” as a basis to restrict horticultural product imports. However, the regulation also gives the Director General (DG) for Horticulture new and expanded authority to consider “domestic horticultural production” when issuing import licenses. Local importers believe the DG will use this expanded authority to continue to restrict the timing and quantity of horticultural product imports. MOA’s burdensome and restrictive import licensing system is one of the reasons U.S. fresh fruit exports to Indonesia have declined significantly in recent years, including a drop of another 34 percent so far in 2018.

General Information:

In a Ministerial Regulation dated June 6, 2018, the Ministry of Agriculture revises a previous regulation (38/2017) regarding conditions for issuing Import Recommendations for (IR) horticultural products. MOA will discontinue the policy of rejecting IRs for certain months before, during, and after “harvest periods.” In addition, MOA removed the “not to exceed 6 months after harvest” time limit on allowable horticultural product imports. IRs will be valid for one calendar year, and importers can apply at any time, but can only have one open IR at any given time.

Instead of using “harvest periods” as a basis to restrict issuance of IRs and imports, the revised regulation gives the Director General (DG) for Horticulture new and expanded authority to consider “domestic horticultural production” when issuing IRs. Previously, in considering IR requests, MOA used a calendar, which was based on harvest periods, to allow or ban imports during specific months. Reportedly, MOA is still using that same calendar, but now justifying the import bans during certain months based on consideration of “domestic horticultural production,” rather than the previous “harvest periods” criteria. For example, as recently as June 22, 2018, importers reported that MOA was still not approving IRs for apple imports for the months of August-October, which were the same months apple imports were banned under the previous “harvest period” criteria.

Apparently, MOA revised the IR regulations in direct response to the November 2017 WTO Dispute Settlement Body decision, which found that both the “harvest period” and “6 month after harvest” limit did not comply with WTO obligations. By removing the “harvest period” and “6 month” conditions, the revised MOA regulation may comply with the letter of the WTO DSB decision. However, by giving the DG expanded authority to consider domestic production when considering IRs, the revised regulation allows the DG to continue to restrict the timing and quantity of horticultural product imports. So in something of a regulatory sleight of hand, Indonesia has opted to comply with the letter, but not the spirit of the DSB decision.

Using the new criteria, the ban on imports during certain months will remain, and the “six month after harvest” limit was never enforced anyway. So, the overall impact of this revised regulation is likely to be very negative for U.S. fresh fruit export prospects to Indonesia. A complete translation of the regulation is attached and below is the calendar showing which months imports are restricted.

Table 1. Indonesia: 2018 Calendar Showing Local Harvest Periods During Which MOA will not Issue Import Recommendations (issued for second semester 2018)

| HS | Product | Month |
|----|---------|-------|
|----|---------|-------|

| | |
|---|-------------|
| V | Allowed |
| X | Not Allowed |

Note: API-U – General Importer
API-P – Producer Importer

Below is a partial translation of the regulation, with Post’s comments in *red italics*.

BEGIN TRANSLATION

Agriculture Minister Regulation about Revisions to Agriculture Regulation 38/2017 on Horticulture Product Import Recommendations (IR).

The following provisions in 38/2017 on Horticulture Product IRs are revised:

1. Article 6 is deleted.

(This is the “harvest ban” clause, which stipulated that horticultural products could only be imported within a certain time periods outside of harvest periods. The Director General (DG) for Horticulture set the specific time periods, which were based on recommendations from a working group. DG Hort maintained an unpublished non-public calendar showing the months when specific products could/could not be imported.)

2. The provisions of article 9 are amended to read as follows:

Article 9

- (1) Considerations of Horticultural production as referred to in Article 5, letter a, shall be determined by the Director General.
- (2) In considering horticultural production as intended in paragraph (1), the Director General will make the determination based on proposals of a working group established by the Director General.
- (3) Considerations of Horticultural Production as referred to in paragraph (1) shall be submitted to the Minister of Trade.

(The above language will now be used as the basis for import restrictions {to replace that which was deleted in Article 6}. Rather than harvest period restrictions, this Article now gives the DG the authority and discretion to limit horticultural product imports based on “domestic horticultural production.” Article 5, letter a, stipulates that “issuance of RIs must take into account domestic horticultural production.” DG Hort will still maintain the calendar of months during which certain products cannot be imported; heretofore the restrictions were based on harvest periods, now restrictions will be based on the ambiguous language of “considerations of domestic production.” This new broad language would seemingly give the DG even more authority and discretion to determine timing and quantity of imports).

3. The provisions of article 10 are amended to read as follows:

Article 10

- (1) Importers can present IR request at any time.
- (2) IR requests as referred to in (1) should be done on workdays.
- (3) IR requests for the current year can be filed during the previous year's November.

(Previously article 10 said that importers could only make two IR requests per calendar year and had to complete and report on imports under the first IR before requesting another.)

4. Article 11 is deleted.

This article exempted IR requests from the previous restrictions of article 10 if they were for government programs.

5. The provisions of article 12 are amended to read as follows:

Article 12

If an importer modifies an IR, the previous IR is invalid.

6. The provision of article 18, point (1), letter g is deleted, and letter h is amended, so that article 18 reads as follows.

Article 18

- (1) Administrative requirements for private importers and State-owned companies as referred to in article 12 include:

- a. Company establishment document and latest amendment
- b. Tax ID number
- c. Identity card of company owner
- d. Company domicile document
- e. General Importer Identification number
- f. Producer Importer Identification number.
- g. g deleted (this was the requirement that importers include an affidavit stating that they would not import products more than six months after they had been harvested).
- h. Producer importers must sign affidavit stating imported horticultural products will be used according to its business owner license as in format 2.
- i. Summary report on previous horticultural product imports for those who have imported before in with format 3 and;
- j. Notarized document stating that the documents submitted are true and valid in accordance with format 4.

(The rest of article 18 is unchanged and pertains to the administrative requirements associated with garlic imports, i.e. importers must plant and produce domestically 5 percent of what they request to import.)

7. The provision of article 22, point (3), is amended to read as follows:

Article 22

(The only change in article 22 is correction of a typographical error. Point 3 now reads: "Further provisions concerning the characteristics as referred to in paragraph (1), letter f, will be set by the Director General on behalf of the Minister in the form of a Ministerial Decree." Previously it incorrectly referred to letter g).

8. The provision of article 26, point (3), is amended to read as follows:

(1) (no change)

(2) (no change)

(3) The IR issued as referred to in paragraph 2 letter a shall be issued to the importer and to the Indonesia National Single Window portal through the Head of PVTTP. *(Previously a copy would go to Quarantine).*

9. A new article, 26A, is inserted between Articles 26 and 27 to read as follows:

Article 26A

RI, as referred to in Article 26 sentence (2), shall be valid for 1 calendar year.

10. One point is added to article 32, to read as follows:

Article 32

(1) No change (Garlic importers must plant and produce garlic domestically).

(2) No change. (They can do this individually or with local farmers)

(3) The provisions for developing domestic garlic production referred to in paragraph 1 will be further clarified in a Director General official notice.

11. The first point of article 37 is deleted to read as follows:

*(1) Deleted. (Previously this said “Importers violating the provisions of Article 18, paragraph (1), point g, will be sanctioned by not being given IRs for 3 consecutive years.” This relates to the penalty for importing product that had been harvested more than six months prior. In practice, this was never enforced).
The rest of Article 37 is unchanged.*

12. Article 39 is amended to read as follows:

Article 39

Importers that violate the provisions of Article 22 paragraph (1) point f shall be penalized according to the Customs rules and legislation. *(This just corrects a typographical error, changing g to f).*

Attachment III of Agriculture Minister Regulation 38/2017 on Horticultural Product Import Recommendations, Number 2, Format-2; and Number 11, Format 11; is changed as listed in the attachment to this Ministerial Regulation.

This Ministerial Regulation goes in force when signed.

June 6, 2018