

*Indonesia – Importation of Horticultural Products,
Animals, and Animal Products*
(DS477 / DS478)

Comments of the United States of America
on Additional Responses of Indonesia
to the Panel's First Set of Questions to the Parties

March 10, 2016

1. In this submission, the United States provides comments on the additional responses of Indonesia to the Panel's first set of questions that were submitted on February 25, 2016. The absence of a U.S. comment on a particular response of Indonesia's does not imply that the United States agrees with the statements of Indonesia but rather reflects that the United States has addressed the relevant issues in prior submissions.

QUESTION 8. (To Indonesia) To supplement the statistical information provided in paragraph 63 of Indonesia's first written submission, please provide the following data (preferably in Excel or any other spreadsheet format compatible with that of the Secretariat): (Number of applications received, permits issued, applications rejected, and permits suspended/sanctions imposed for RIPH/Recommendations and Import Approvals for horticultural products and animals and animal products)

2. In response to this question, Indonesia presents a table purporting to show the number of applications for RIPHs, Recommendations, and Import Approvals for horticultural products and animals and animal products since 2013, as well as the number of applications accepted and rejected and the number of sanctions imposed. The United States notes, however, that Indonesia has not presented any evidence substantiating the numbers presented, nor has Indonesia explained the source of this information.¹

3. Further, the information contained in the table Indonesia has presented is not consistent with data previously published by Indonesia's Ministry of Agriculture regarding the number of RIPH applications submitted, accepted, and rejected in 2013-2014. Specifically, the Ministry of Agriculture published on its website a bulletin summarizing the RIPH applications received and accepted for the two semesters of 2013 and the first semester of 2014.² The MOA bulletin shows that, for that time period, 1,180 of 6,239 applications (nearly 20 percent) were rejected.³ Additionally, Exhibit US-40, a report issued by the U.S. Department of Agriculture Foreign Agriculture Service office in Jakarta, states that importers had reported that, for the second semester of 2015, 108 of 140 applications for Import Approvals (22.9 percent) were rejected.⁴

4. Additionally, as described in Section III.A of the U.S. Second Written Submission, even if Indonesia's numbers were accurate, it would not demonstrate that Indonesia's import licensing regimes are automatic. Among other restrictions, under Indonesia's import licensing regimes, importers may not, ever, receive permission to import certain products. Additionally, they may not receive permission to import other products if Indonesia determines that imports would compete with the domestic harvest or if the Indonesian market price falls below a government-

¹ See Indonesia's Response to Panel Question No. 8, paras. 1-2.

² See Ministry of Agriculture, "Summary of Fresh Product RIPHs Applied for and Issued, 2013-2014" (Exh. US-96).

³ Ministry of Agriculture, "Summary of Fresh Product RIPHs Applied for and Issued, 2013-2014" (Exh. US-96).

⁴ See Thomas Wright, U.S. Dep't of Agriculture, Foreign Agricultural Serv., *GAIN Report ID1527: Beef and Horticultural Import License Update*, July 27, 2015 (Exh. US-40).

set level. Further, certain products may not be imported for any retail sale, other products are restricted to certain retail outlets, and others may only be sold to distributors. Importers of certain products must also, as a condition of being permitted to import, comply with the 80 percent realization requirement and, for some products, the requirement to purchase domestic products. In short, even if all import permit applications that met these legal requirements *were* granted, Indonesia’s importation procedures are not “automatic.”⁵

QUESTION 10: The Panel refers to Indonesia's arguments regarding the measures challenged by the co-complainants as contained in sections IV.C.3, IV.C.4, IV.D.2 and IV.D.3 of Indonesia's first written submission. The Panel notes that Indonesia does not appear to provide a description of the measures at issue nor challenges the description provided by the co-complainants in their first written submissions. Should the Panel understand that Indonesia is accepting the description of the relevant measures at issue provided by the co-complainants in their first written submissions? If not, please provide your own description, including where you disagree with the co-complainants' description.

5. Indonesia states, in its answer to this question, that it “generally agrees with the Complainants’ factual descriptions of the measures” and notes that it contests the co-complainants’ description of the positive list for animals and animal products.⁶ The United States also understands that, with the exception of the positive list, Indonesia has not contested the description of the challenged measures set out in Sections IV.C-IV.F of the U.S. First Written Submission. This is consistent with Indonesia’s First Written Submission and its statements at the first substantive Panel meeting.⁷

⁵ U.S. Second Written Submission, paras. 97-98; see “Indonesia Bans Import of 11 Horticultural Products,” *Freshplaza.com*, Jan. 25, 2013, (Exh. US-90); May 6 Letter (Exh. US-25); Ali Abdi, U.S. Dep’t of Agriculture, “Horticultural Products Permitted for Import by MOA,” Feb. 16, 2016 (Exh. US-91).

⁶ Indonesia’s Response to Panel Question No. 10, para. 4.

⁷ Indonesia’s First Written Submission, secs. IV.C.3-4, IV.D.3-4; Indonesia’s Opening Statement, paras. 14-16.

QUESTION 16: The Panel notes that the co-complainants and Indonesia have provided translations of the relevant legal instruments regarding Indonesia's import licensing regimes. The Panel also notes that Indonesia has not provided a translation of Regulation of the Minister of Trade Number 16/M-DAG/PER/4/2013 Concerning Provisions on the Import of Horticultural Products, of April 22 2013 (MOT 16/2013). The Panel observes that the translations are not identical and contain a number of differences. We also refer to paragraph 15 of New Zealand's opening oral statement. The Panel seeks the Parties' view as to which translations should be used in its assessment.

6. In their first written submissions, the co-complainants submitted translations of all the relevant legal instruments that were in effect at the time of the Panel’s establishment and thus are part of the challenged measures at issue in this dispute.⁸ As the co-complainants have explained, these translations were made by accredited translators based on the Bahasa versions of the relevant regulations, as published on the websites of the Indonesian Ministry of Trade and Ministry of Agriculture.⁹

7. Indonesia has not challenged the accuracy of any of the provisions of the translations submitted by the co-complainants but, over the course of several submissions, has submitted its own translations of some of the relevant regulations and asserts that the Panel should refer to them instead of the co-complainants’ translations.¹⁰ There are several reasons that the Panel should reject Indonesia’s request.

8. First, the co-complainants’ translations are complete whereas Indonesia’s are not. Specifically, Indonesia has not submitted translations of three amendments to the import licensing regulations that were in effect at the time of the Panel’s establishment and thus are part of the challenged measures at issue in this dispute.¹¹

9. Second, the co-complainants have established the source of its translations whereas Indonesia has provided no such explanation.¹² In fact, Indonesia’s translations appear to be those that come up, on various websites, in response to general Internet searches.

10. Further, there appear to be no substantive differences between the translations – certainly Indonesia has identified none – but Indonesia’s translations are replete with grammatical errors and strange phrasing whereas the co-complainants’ translations are easier to understand.

⁸ See Joint Exhibits, Nos. 1-28.

⁹ See U.S. Response to Panel Question No. 16, para. 85.

¹⁰ Indonesia’s Response to Panel Question No. 16, para. 5.

¹¹ See U.S. Response to Panel Question No. 16, para. 86.

¹² Indonesia’s Response to Panel Question No. 16, paras. 5-8.

11. For example, article 5(2) of MOA 139/2014, as translated in Exhibit JE-28, states: “The absorption of local beef, as described in paragraph (1), must be verified by the Provincial and/or Regency/Municipal Agency from which the local beef originates.”¹³ The same article, as translated in Exhibit IDN-15, states: “Absorption of local beef t [*sic*] as referred to in paragraph (1) shall be verified by the Provincial and/or District/Municipality Offices of the local beef origin.”¹⁴ The title of Appendix I, as translated in Exhibit JE-28 states: “Bovine meat that can be imported into the territory of the Republic of Indonesia.”¹⁵ As translated in Exhibit IDN-15, it states: “Bovine meat that is allowed for importation into the territory of the Republic of Indonesia.”¹⁶

12. Similarly, article 7 of MOT 16/2013, as translated in Exhibit JE-10, states: “Businesses that have received Recognition as a PI-Horticultural Products can only import Horticultural Products as raw materials or as supplementary materials for the needs of its industrial production process and are prohibited from trading and/or transferring these Horticultural Products.”¹⁷ The same article, as translated in Exhibit IDN-27, states: “Company that has received recognition as Producer Importer of HP can only import Horticultural Products as raw materials or auxiliarry [*sic*] materials for its industrial production process and prohibited from trading and/or transferring the product.”¹⁸

13. With all these examples, as well as other provisions of the co-complainants’ and Indonesia’s translations, the meaning is the same, but the grammar and sentence structure of the co-complainants’ translations is correct and more understandable.

14. The Panel’s working procedures confirm that the Panel should rely on the co-complainants’ translations. The working procedures provide that any objection to the accuracy of translations should “be raised promptly in writing, no later than the next filing or meeting (whichever occurs earlier) following the submission which contains the translation in question.”¹⁹ Indonesia raised no objection to the accuracy of the co-complainants’ translations. In certain previous disputes where the complaining party submitted translations of relevant instruments, the responding party raised, as relevant, objections to the accuracy of particular provisions, which enabled the panel to encourage the parties to agree on a translation or to

¹³ MOA 139/2014, as amended, art. 5(2) (JE-28).

¹⁴ MOA 139/2014, art. 5(2) (Exh. IDN-15).

¹⁵ MOA 139/2014, as amended, Appendix I (JE-28).

¹⁶ MOA 139/2014, Appendix I (Exh. IDN-15).

¹⁷ MOT 16/2013, as amended, art. 7 (JE-10).

¹⁸ MOT 16/2013, art. 7 (IDN-27).

¹⁹ Panel’s Working Procedures, para. 9.

appoint an independent translator.²⁰ Where, as here, a responding party submitted different translations but did not object to the accuracy of the translations submitted previously, one panel determined to use “the translations submitted first in time and not objected [to],” generally the complainant’s translations.²¹

15. In this dispute, Indonesia has raised no objection to the accuracy of the co-complainants’ translations but simply submitted translations that are incomplete, of unknown origin, and filled with grammatical errors and demanded that the Panel use them. The United States respectfully submits that the Panel should decline this request and should rely on the complete, authenticated, and correct translations provided by the co-complainants.

QUESTION 19: In paragraph 55 (last line) of its first written submission, Indonesia affirms that "it simply cannot be that a measure that has no impact on trade flows is a quantitative restriction". Please provide (preferably in Excel or any other spreadsheet format compatible with that of the Secretariat) monthly import statistics in volume terms, at the 10-digit level of the Harmonized System (HS) Nomenclature for the period 2009-2015 and covering horticultural products as follows:

- a. ***All horticultural products subject to import licensing regulations (MOT 16/2013, as amended MOT 47/2013; and MOA 86/2013; JE-10 and JE-15)***
 - i. ***Total import volumes:***
 - ***Of which: imports from New Zealand***
 - ***Of which: imports from the United States***
 - ii. ***Total imports of fresh chili by origin***
 - iii. ***Total imports of fresh shallots by origin***
- b. ***All other horticultural products not subject to the import licensing regulations identified above***
 - i. ***Total import volumes:***
 - ***Of which: imports from New Zealand***
 - ***Of which: imports from the United States***

16. In response to this question, Indonesia has provided: (1) annual imports of horticultural products subject to Indonesia’s import licensing regime from the United States and New Zealand for 2009-2014, and monthly imports for the first four months of 2015; (2) annual imports of certain products not subject to Indonesia’s import licensing regime from all countries and from the United States and New Zealand, for 2009-2014, and monthly imports for the first four months of 2015; and, (3) annual imports of chili and shallots from all countries and from

²⁰ See, e.g., *China – Electronic Payment Services*, paras. 1.9-1.12; *China – Auto Parts (Panel)*, paras. 2.2-2.4; *China – Publications and Audiovisual Products (Panel)*, paras. 2.4-2.9; *China – HP-SST (Panel)*, paras. 6.19-6.20, 6.75-6.76.

²¹ See *China – Broiler Products*, n.8.

individual countries for 2009-2014, and monthly imports for the first four months of 2015.²² Thus, Indonesia has not provided data on total imports of the horticultural products subject to Indonesia’s import licensing regime. The United States has provided this information in Exhibits US-87 and US-88.²³

17. The United States notes that for the products and time periods for which both Indonesia and the United States have provided data, the numbers are the same.²⁴ That is, it appears that Indonesia and the co-complainants agree on the trade data concerning Indonesia’s imports of horticultural products from 2009 to 2015, which confirms the following facts, *inter alia*:

- Imports into Indonesia of all fresh horticultural products covered by Indonesia’s import licensing regime, with the single exception of lemons, dropped dramatically in 2013, when the challenged measures came into effect, and have remained below 2011/2012 levels since then;²⁵
- Imports of bananas, mangoes, other citrus, other melons, papayas, pineapples, and frozen potatoes were all *zero* in 2015, and imports of frozen potatoes, pineapples, papayas, other melons, and other citrus, have all been *zero* or nearly *zero* since 2013, after having been significant in previous years;²⁶ and

²² See Exh. IDN-29. It is not clear from Indonesia’s exhibit what unit the data is in, but comparison with Exh. US-87 and Exh. US-88 suggests that the unit is 1,000 kg.

²³ The United States is submitting a slightly revised version of Exhibit 87, as, in the original version, the graph representations had not been updated to include Indonesia’s latest trade data for December 2015. This error has been correct in Exhibit US-87 Corr.1. As the panel will observe, the overall look of the graphs and the dynamic described in the U.S. Second Written Submission is unchanged. There were, however, figures presented in paragraph 56 of the U.S. submission that reflected that error, and which we take this opportunity to correct. Specifically, imports of all listed fresh horticultural products in 2015 were 427.0 kg – a mere 43.6 percent of the 979.8 million kg of imports of the same products in 2011. See “Total Imports into Indonesia of Listed Fresh Horticultural Products – Revised” (Exh. US-87 Corr.1). Similarly, the figures to imports of apples and mandarins should be 39.5 percent and 45.1 percent of the importers of these products in 2011. See “Total Imports into Indonesia of Listed Fresh Horticultural Products – Revised” (Exh. US-87 Corr.1).

²⁴ For example, Exh. US-87 and Exhibit IDN-29 present the same data on Indonesian imports of listed fresh horticultural products from the United States for the years 2009-2014 (Exhibit IDN-29 does not present 2015 data). See Exh. US-87, p. 9; Exh. US-87 Corr.1, p. 9; Exhibit IDN-29, p. 1. The data for total Indonesian imports of chilies and shallots for 2009-2014 is likewise the same. See Exh. US-87, p. 8; Exh. US-87 Corr.1, p. 8; Exh. US-95; Exhibit IDN-29, p. 3.

²⁵ “Total Imports into Indonesia of Listed Fresh Horticultural Products” (Exh. US-87); “Total Imports into Indonesia of Listed Fresh Horticultural Products – Revised” (Exh. US-87 Corr.1); see Exh. IDN-29, p. 1 (showing the same numbers for U.S. imports of the covered horticultural products).

²⁶ “Total Imports into Indonesia of Listed Fresh Horticultural Products” (Exh. US-87); “Total Imports into Indonesia of Listed Fresh Horticultural Products – Revised” (Exh. US-87 Corr.1); see Exh. IDN-29, p. 1 (showing the same numbers for U.S. imports of the covered horticultural products).

- Imports of chilies fell by 99 percent from 2011 to 2014, and imports of shallots fell by 53.5 percent during the same period and by 89.9 percent from 2011 to 2015.²⁷

18. Thus, as described in Section II.A.2 of the U.S. Second Written Submission, the trade data confirms the restrictive effect of Indonesia’s import licensing regime, and of certain restrictions and prohibitions in particular.²⁸

QUESTION 25: Concerning chili and fresh shallots, and in relation to the statistical information supplied in paragraph 25 of Indonesia's first written submission:

- Please provide similar information for Jul-Dec 2014 and Jan-Jun 2015;***
- Could Indonesia explain what factors account for the difference between reported "actual imports" in Jan-Jun 2013, July-Dec 2013, and Jan-Jun 2014, and the quantities reported under "import approvals"?***

19. In paragraph 25 of its first written submission, Indonesia presented a chart purporting to show that imports of chilies and fresh shallots into Indonesia were below the level of Import Approvals issued in 2013 and 2014.²⁹ The United States has no way to evaluate the accuracy of the data concerning the quantity of products for which Import Approvals were issued, since Indonesia submitted no evidence supporting the information.³⁰ We note, however, that the “actual import” figures presented in the table are inconsistent with the data submitted by Indonesia in Exhibit IDN-29 and by the United States in Exhibits US-95 and US-87 Corr.1.³¹

20. Even if the data in this chart were accurate, however, several of the challenged measures at issue in this dispute could have caused or contributed to this difference. For example, the Reference Price would ban the importation of chilies and shallots, including after Import Approvals have been issued, if the market price of these products fell below the reference price. This could cause actual imports to be below the level authorized on Import Approvals.

21. The seasonal restrictions also could cause the discrepancy, depending on how they were implemented during a particular period, *i.e.*, before or after Import Approvals were issued. As

²⁷ “Indonesian Imports of Chilies and Shallots, 2009-2015” (Exh. US-95); “Total Imports into Indonesia of Listed Fresh Horticultural Products – Revised” (Exh. US-87 Corr.1); *see also* Exh. IDN-29.

²⁸ *See* U.S. First Written Submission, secs. II.A.3.

²⁹ Indonesia’s First Written Submission, para. 25.

³⁰ *See* Indonesia’s First Written Submission, para. 25.

³¹ The import figures for 2013 presented at paragraph 25 of Indonesia’s First Written Submission – 232 tons (we assume metric tons) for chilies and 63,213 for shallots – would be equivalent to 232,000 kg and 63,213,000 kg, respectively. However, Exhibit US-95 and Exhibit IDN-29 show that annual imports into Indonesia of fresh chilies and shallots for 2013 were 243,926 kg for chilies and 93,717,721 kg for shallots. *See* “Indonesian Imports of Chilies and Shallots, 2009-2015” (Exh. US-95); “Total Imports into Indonesia of Listed Fresh Horticultural Products – Revised,” p. 8 (Exh. US-87 Corr.1); Exh. IDN-29, p. 3.

the United States has established, Indonesia has in fact restricted chili and shallot imports under this measure.³²

22. The application windows and validity periods could also cause the difference if, for example, permits were issued late, leaving insufficient time before the end of the validity period to ship all the products applied for, or if events (*e.g.*, weather or a labor strike) caused a disruption at the end of the period so that goods did not clear customs before the last day.

QUESTION 33: In paragraphs 82-83 of its first written submission, Indonesia refers to the "temporary limitations of imports for specified periods" that have occurred as a result of "Indonesia's domestic harvest period limitations". How many times did such limitations occur in 2013, 2014 and 2015, and for which horticultural products? What was the total duration of these limitations, in 2013, 2014 and 2015 respectively?

23. Indonesia acknowledges, in response to this question, that under article 5(1) of MOA 86/2013, “imports are made during the specified periods which are outside the period of pre-harvest, harvest time and post-harvest,” but also argues that “imports are not banned but only regulated in terms of timing.”³³ As this response suggests, however, in reality, the Ministry of Agriculture may or may not designate *any* time during a semester, or during an entire year, when importation of a particular product is permitted.

24. Indeed, the United States has presented evidence demonstrating that the Ministry of Agriculture has implemented this restriction as follows:

- For the first semester of 2013, importation of pineapples, papayas, melons, bananas, and durian *was not allowed*, and importation of shallots, onions, oranges, apples, and frozen potatoes was restricted;³⁴

³² U.S. First Written Submission, paras. 62-63; Letter from Dr. Yul Sarry Bahar, Secretary to the Director General for Horticulture to the Secretary to the Director General of Processing and Marketing of Agricultural Products, May 6, 2015 (“May 6 Letter”) (Exh. US-25) (recommending no shallot/red onion and no chili imports for the second semester of 2015); Abdi, “Horticultural Products Permitted for Import by MOA” (Exh. US-91) (showing that the Ministry of Agriculture communicated to importers that it would not allow chili or shallot imports in 2016).

³³ Indonesia’s Response to Panel Question No. 33, para. 21.

³⁴ “Indonesia Bans Import of 11 Horticultural Products,” *Freshplaza.com*, Jan. 25, 2013 (Exh. US-90); Ministry of Agriculture, “Summary of Fresh Product RIPHs Applied for and Issued, 2013-2014” (Exh. US-96) (showing no applications or RIPHs issued for potatoes, carrots, chilies, bananas, mangoes, melons, papayas, durian, or pineapples); Ministry of Agriculture, “Horticultural Product Import Recommendation (RIPH),” Apr. 2013, (Exh. US-97) (explaining that “Fresh Horticultural Product RIPH applications for the period of January-June 2013 were accepted January 17-25, 2013. In this period, they commodities accepted was limited to only 8 types: “apples, grapes, citrus [fruits], longans, garlic, shallots, onions, and Atlantic potatoes.”).

- For the second semester of 2015, importation of red onions, chilies, mangoes, bananas, melons, papayas, and pineapples *was not allowed*, and importation of carrots, oranges, and durian was restricted;³⁵ and
- For the first semester of 2016, importation of shallots, chilies, bananas, pineapples, mango, melon, and papayas *is not allowed*, and importation of carrots, durian, oranges, and onions is restricted.³⁶ (Specifically, oranges can be imported only in February and March.³⁷)

25. Thus, contrary to Indonesia’s assertion, the Ministry of Agriculture’s seasonal restrictions on the importation of horticultural products are often absolute bans for an entire semester. Short of that, they may be absolute limits on quantity for all or part of the semester. Indonesia’s assertion that the restriction affects only the timing of imports, not the quantity, is incorrect.

³⁵ See May 6 Letter (Exh. US-25); Natalie Kotsios, “Department of Agriculture Confirms Indonesia Has Shut Its Borders to Australian Citrus,” July 15, 2015 (Exh. US-93); Hey, “Concern over Indonesian Citrus Imports,” *AsiaFruit*, (Exh. US-92).

³⁶ See Ali Abdi, U.S. Dep’t of Agriculture, “Horticultural Products Permitted for Import by MOA,” Feb. 16, 2016 (Exh. US-91).

³⁷ Ali Abdi, U.S. Dep’t of Agriculture, “Horticultural Products Permitted for Import by MOA,” Feb. 16, 2016 (Exh. US-91); MOA December 3 Letter (Exh. US-70); MOA December 21 Letter (Exh. US-71); December 7 Letter” (Exh. US-72).

QUESTION 35: In relation to the operation of Reference Price system, please describe:

- a. The factors that are taken into account by Ministry of Trade in determining the reference prices, and the calculation methodology used;*
- b. How often is the reference price calculated and/or what elements trigger the re-calculation?*
- c. Are these procedures, data elements and calculation methodology published or directly accessible to importers and exporters?*
- d. Once the reference price is fixed by the Ministry of Trade, what are the steps taken, and by whom, to inform the relevant agencies and to monitor and enforce compliance? In particular, as regards:*
 - i. RIPH application and delivery process;*
 - ii. Import Approval application and delivery process;*
 - iii. Customs operations; and,*
 - iv. Any other concerned agency.*

26. The United States has generally addressed the substance of Indonesia’s response to this question in previous submissions.³⁸ Further, the United States does not disagree with Indonesia that the factors based on which the Ministry of Trade calculates the reference price are: (1) the cost structure of Indonesian farmers; (2) Indonesian farmers’ profit margins; and, (3) what the Indonesian government considers is a “reasonable price” for the covered products.³⁹

27. We would, however, make one factual correction to Indonesia’s response to this question. Specifically, Indonesia states that the Reference Price for chilies and shallots “is fixed only one time pursuant to Decree of Director General of Domestic Trade No. 118/PDN/KEP/10/2013.”⁴⁰ However, it is clear from the text of MOT 16/2013, as amended by MOT 47/2013, that the Reference Prices for chilies and shallots could be revised at any time by the Horticultural Product Price Monitoring team.⁴¹ Therefore, to the extent Indonesia’s response suggests that the Reference Price is set once and cannot be re-calculated, Indonesia’s measure would not seem to support that proposition.

³⁸ See U.S. Response to Panel Question No. 11, para. 53; U.S. Response to Panel Question No. 29, paras. 103-104; U.S. First Written Submission, paras. 199-203; U.S. Second Written Submission, sec. II.A.2.f.

³⁹ See Indonesia’s Response to Panel Question No. 35, para. 22.

⁴⁰ Indonesia’s Response to Panel Question No. 35, para. 23.

⁴¹ MOT 16/2013, as amended by MOT 47/2013, art. 14B(3) (JE-10).

QUESTION 43: In paragraph 55 (last line) of Indonesia's first written submission, Indonesia affirms that "it simply cannot be that a measure that has no impact on trade flows is a quantitative restrictions". Please provide monthly import statistics in volume terms at the 10-digit level of the HS nomenclature for the period 2009-2015, covering animal and animal products (preferably in Excel or any other spreadsheet format compatible with that of the Secretariat) as follows:

- a. **All Appendix I products subject to import licensing regulations (MOT 46/2013, as amended)**
 - i. **Total import volumes:**
 - **Of which: imports from New Zealand**
 - **Of which: imports from United States**
 - ii. **Total imports of secondary beef cuts:**
 - **Of which: imports from New Zealand**
 - **Of which: imports from United States**
- b. **All Appendix II products products subject to import licensing regulations (MOT 46/2013, as amended)**
 - i. **Total import volumes:**
 - **Of which: imports from New Zealand**
 - **Of which: imports from United States**
- c. **All other animal and animal products not listed in Appendix I or Appendix II (MOT 46/2013, as amended):**
 - i. **Total import volumes:**
 - **Of which: imports from New Zealand**
 - **Of which: imports from United States**

28. In response to this question, Indonesia has provided data on: (1) annual imports of certain listed animals and animal products from the United States and New Zealand for 2009-2014, and monthly data for January-April 2015; and (2) annual imports of certain unlisted animals and animal products from the United States and New Zealand for 2009-2014, and monthly data for January-April 2015.⁴² Thus, Indonesia has not provided any data on total imports of animals and animal products.

29. The United States has submitted, in Exhibit US-89, data showing Indonesia’s importation of certain listed and unlisted animals and animal products for the period of 2009-2015.⁴³ To the extent that the products and time periods covered by Exhibit IDN-32 overlap with those reflected in Exhibit US-89, the data is the same. For example, both exhibits show:

⁴² See Exh. IDN-32.

⁴³ See “Total Imports into Indonesia of Certain Animal Products” (Exh. US-89).

- Indonesian imports of fresh and frozen chicken cuts and edible offal (unlisted products) were 0 kg in 2015, and have been zero or nearly zero since the import licensing regimes became effective;⁴⁴
- Imports of fresh and frozen turkey cuts and edible offals (unlisted products) were 0 kg in 2015, and have been since the import licensing regimes became effective;⁴⁵
- Imports of fresh and frozen bovine carcasses and half-carcasses (unlisted products) were 0 kg in 2015, and have been zero or nearly zero since the import licensing regimes became effective;⁴⁶
- Importation of livers of bovine animals, which were dropped from the list of permitted products in 2015, dropped to nearly 0 kg in that year, after having been 2.9 million in 2014;⁴⁷ and
- In 2012, imports from the United States of all listed bovine products fell 89.4 percent from the previous year and, in 2014, were still less than half of what they were in 2011.⁴⁸

30. Thus, as described in Section II.A.2 of the U.S. Second Written Submission, the trade data confirm the restrictive effect of Indonesia’s import licensing regime, and of certain restrictions and prohibitions in particular.⁴⁹

QUESTION 46: Please identify the import regulations applying since 2011 to the HS positions enumerated in paragraphs 108 to 110 of the United States’ first written submission.

31. Indonesia asserts, in response to the Panel’s question, that the only regulation applying to these products is the regulation relating to animal quarantine (Government Regulation No. 82 of 2000).⁵⁰ In response to an earlier question, however, Indonesia acknowledged that the laws and regulations applicable to “all animals and animal products,” including those not listed in the appendices of MOT 46/2013 and MOA 139/2014, “include” the Animal Law, MOA 139/2014, as amended, and amendments to MOT 46/2013.⁵¹ Indeed, it is clear from the definition and

⁴⁴ “Total Imports into Indonesia of Certain Animal Products” (Exh. US-89); Exh. IDN-32, p. 2.

⁴⁵ “Total Imports into Indonesia of Certain Animal Products” (Exh. US-89); Exh. IDN-32, p. 2.

⁴⁶ “Total Imports into Indonesia of Certain Animal Products” (Exh. US-89); Exh. IDN-32, p. 2.

⁴⁷ “Total Imports into Indonesia of Certain Animal Products” (Exh. US-89); Exh. IDN-32, p. 2.

⁴⁸ Exh. IDN-32, p. 1 (showing that the total import volume of Appendix I products from the United States, in 1,000 kg, was 12,198.071 in 2011, 1,290.433 in 2012, 3,488.372 in 2013, and 6,015.6 in 2014).

⁴⁹ See U.S. Second Written Submission, sec. II.A.3.

⁵⁰ Indonesia’s Response to Panel Question No. 46, para. 30.

⁵¹ Indonesia Response to Advance Panel Question No. 25, para. 25.

scope articles of these regulations that the products referred to in paragraphs 108-110 of the U.S. First Written Submission are covered by these laws and regulations.⁵²

32. These instruments make it clear that animals and animal products *cannot be imported* without a Recommendation from the Ministry of Agriculture and an Import Approval from the Ministry of Trade.⁵³ It is uncontested that, for the products enumerated in paragraphs 108-110 of the U.S. First Written Submission, these permits cannot be obtained under MOT 46/2013 and MOA 139/2014. And, in response to this question from the Panel, Indonesia has pointed to no other regulation providing for such permits to be issued. Thus, Indonesia has not identified any legal instrument that would allow animals and animal products not listed in the appendices of MOT 46/2013 and (for meat, carcasses, and offal) MOA 139/2014, to be legally imported into Indonesia.

QUESTION 48: In paragraph 147 of New Zealand's first written submission, New Zealand states that: "In practice, the period during which MOA Recommendations can be applied for is less than one month". In its footnote 250 of its first written submission, New Zealand refers to letters from the Director General of Livestock announcing the opening and closure of application windows. Please provide a list of all application windows that were set out by DGLAHS for each quarter of the period 2013-2015, respectively for (i) MOA Recommendations, and (ii) Import Approvals.

33. In response to this question, Indonesia summarizes the application periods for Ministry of Agriculture Recommendations and Ministry of Trade Import Approvals that are set out in MOA 139/2014, as amended, and MOT 46/2013, as amended⁵⁴, which indicate that application windows open for about a month before each import period. Indonesia asserts that a “special circumstance” caused the application window for Recommendations covering the first period of 2015 to be open for only one day in December of 2014.⁵⁵ In reality, however, unpredictable application windows are not a rare occurrence.

34. It is our understanding that the Ministries of Trade and Agriculture do not regularly publish, either in advance or after the fact, the precise dates when the application windows for RIPHs/Recommendations were open. Where the United States has been able to obtain information as to application windows, however, the record shows the following:

⁵² See U.S. Response to Panel Question No. 45, paras. 111-114.

⁵³ Animal Law Amendment, art. 59(1) (JE-5) (providing that every person that imports animal products into Indonesia “must obtain import permit from the minister that organizes government affairs in trade sector after obtaining recommendation” from the Ministry of Agriculture); MOT 46/2013, as amended, arts. 4(1), 8, 9, 11 (JE-21); MOA 139/2014, as amended, art. 4 (JE-21).

⁵⁴ Indonesia’s Response to Panel Question No. 48, para. 31.

⁵⁵ Indonesia’s Response to Panel Question No. 48, para. 31.

- For the first semester of 2013, RIPH applications were accepted from January 17-25;⁵⁶
- For the first quarter of 2015, Recommendation applications were accepted only from December 29-31 of 2014;⁵⁷ and
- For the last quarter of 2015, Recommendation applications were accepted only from September 1-10.⁵⁸

35. Thus, in practice, delayed and shortened application windows are not uncommon.

QUESTION 50: In paragraph 142 of its first written submission, Indonesia refers to its "legitimate objective of administrative efficiency through import licensing" and states that the "realization requirement serves as a safeguard against importers grossly overstating their anticipated imports. Indonesia is a developing country with limited resources to devote to import administration."

- a. Please indicate whether overstatement of imports occurs only with respect to animal and animal products (leaving aside horticultural products)?***
- b. If not, does this requirement apply across-the-board to all other agricultural and/or non-agricultural products (leaving aside horticultural products)? Are penalties similar to those foreseen in relevant regulations (for example, Article 26(a) and Article 27(a) in MOT 46/2013, as amended; and Article 39(c) in MOA 139/2014, as amended) also apply in those cases?***

36. The United States has provided extensive comments regarding Indonesia’s arguments in this respect in its Second Written Submission.⁵⁹ Therefore, in these comments, the United States will make only a brief comment on Indonesia’s assertion that its “concerns regarding overstatement of imports apply equally to imports of animals, and animal products.”⁶⁰ Specifically, we note that the realization requirement for animals and animal products applies only to the products listed in Appendix I of MOT 46/2013, as amended, and not to those

⁵⁶ Ministry of Agriculture, “Horticultural Product Import Recommendation (RIPH) Developments,” Feb. 2013 (Exh. US-98); Fahwani Y. Rangkuti & John Slette, U.S. Dep’t of Agriculture, Foreign Ag. Serv., *GAIN Report ID: 1312, Import Recommendations of Hort Products for First Half of 2013*, Feb. 2, 2013 (Exh. US-106).

⁵⁷ See Wright, *GAIN Report No. ID1457: Indonesia Issues New Beef Import Regulations for 2015*, Dec. 30, 2014 (Exh. US-36); Letter from Directorate General of Livestock and Animal Health Services (DGLAHS) to Cattle and Meat Importers, Dec. 9, 2014 (Exh. US-37); Letter from Directorate General of Livestock and Animal Health Services (DGLAHS) to Cattle and Meat Importers, Dec. 29, 2014 (Exh. US-38).

⁵⁸ See Sistem Informasi Rekomendasi Perizinan (SIMREK) Login Page (accessed Sept. 17, 2015) (Exh. US-56).

⁵⁹ See U.S. Second Written Submission, sec. IV.B.3.c.

⁶⁰ Indonesia’s Response to Panel Question 50, para. 32.

products listed in Appendix II.⁶¹ Indonesia has not explained why the realization requirement is necessary only with respect to Appendix I (beef) products.

37. A more plausible explanation of the realization requirement may be gleaned from the record evidence. Contrary to Indonesia’s assertions, statements by Indonesian ministers make clear that the Indonesian government is pursuing its goal of self-sufficiency in food production with particular fervor with respect to beef products. In 2010, for example, the Ministry of Agriculture announced a policy of promoting food self-sufficiency, and, in particular, of achieving self-sufficiency in five agricultural commodities – rice, beef, soya beans, corn, and sugar – by 2014.⁶² In 2013, Minister Suswono expressed renewed commitment to self-sufficiency in beef, explaining that “imports are only for meeting domestic shortfalls” and that, leading up to the self-sufficiency deadline in 2014, “beef imports will gradually be decreased and import restrictions will be tightened.”⁶³ Other officials, including the current President, Joko Widodo, subsequently have affirmed this policy.⁶⁴

38. Thus, one likely explanation for the different treatment of beef products and other animal products is that the government is unusually intent on restricting imports of beef products, compared to the other listed animal products. In its response to this question, Indonesia did not articulate any other justification for its different treatment of beef.

⁶¹ See U.S. First Written Submission, para. 284.

⁶² Lubis, “Failure of Self-Sufficiency Program in Sight,” *Jakarta Post* (Exh. US-7).

⁶³ Ministry of Industry, “Minister of Agriculture: Agricultural Imports Will Be Tightened,” (Exh. US-10).

⁶⁴ See, e.g., Taylor, “Indonesia Self-Sufficiency Push Will Drive up Beef Prices – Industry,” *Reuters* (explaining that Joko Widodo’s administration “has set numerous food self-sustainability targets, including beef within one year”) (Exh. US-8); Ministry of Industry, “Minister of Agriculture: Agricultural Imports Will Be Tightened,” (Exh. US-10); Maxensius Sambodo, Institute of Southeast Asian Studies, “Post-Election Indonesia: Jokowi Set to Pursue the Goal of Self-Sufficiency,” *Food Industry Asia*, June 11, 2014 (Exh. US-35) (stating that, acting on his campaign promises, “Jokowi has outlined plans to push through with self-sufficiency in key commodities including rice and other crops such as shallots by 2018”).

QUESTION 52: In paragraph 111 of its first written submission, Indonesia states that the domestic purchase requirement "has not been enforced by Indonesia as a requirement for obtaining an import licence" and that "[t]his provision was only included in the relevant regulations in March 2015."

- a. ***Please provide details on the application of Article 5(1) of MOA 139/2013 and Article 24(1) of MOA 139/2013, as amended by MOA 2/2015, during the period January 2013-March 2015.***
- b. ***Please describe the circumstances that compelled Indonesia not to enforce, and/or waive, this requirement during specified periods for the delivery of import licences. When and by which means of communication was Indonesia's decision conveyed to importers?***

39. Indonesia asserts, in response to this question and elsewhere, that the domestic purchase requirement for beef has not been enforced, in that no Recommendation application “during that time has ever been rejected because the applicant has not met the domestic purchase requirement.”⁶⁵ Indonesia acknowledges, however, that the domestic purchase measure “is a new requirement” that entered into force in March 2015.⁶⁶

40. It is uncontested, therefore, that on May 20, 2015, when the Panel was established in this dispute, the domestic purchase requirement was “in force.” Indonesia also has not contested the evidence introduced by the co-complainants demonstrating that, after MOA 139/2014 became effective, the Ministry of Agriculture explained that importers would be allowed to import beef only on the condition that they “absorb” (*i.e.*, purchase) local beef in an amount equivalent to three percent of the quantity they import.⁶⁷ Record evidence further suggests that only purchases from certain designated abattoirs and only purchases of male cattle count towards this requirement.⁶⁸

41. With respect to enforcement of this measure, Indonesia submits no evidence supporting its assertion that no Recommendation application has been rejected because the domestic purchase requirement was not met.⁶⁹ Even if this were the case, however, it would have no bearing on whether the requirement exists or is in fact enforced. To the contrary, the co-complainants have demonstrated that the Ministry of Agriculture communicated to importers that Recommendation applications would not be accepted if the domestic purchase requirement had

⁶⁵ Indonesia’s Response to Panel Question No. 52, para. 35.

⁶⁶ Indonesia’s Response to Panel Question No. 52, para. 36.

⁶⁷ See Ministry of Agriculture, “Absorption Presentation Powerpoint,” Aug. 25, 2015 (Exh. US-57); Wright, *GAIN Report ID1527: Beef and Horticultural Import License Update*, at 2 (Exh. US-40).

⁶⁸ Wright, *GAIN Report ID1527: Beef and Horticultural Import License Update*, at 2 (Exh. US-40).

⁶⁹ See Indonesia’s Response to Panel Question No. 52, para. 35.

not been met.⁷⁰ It would not be surprising, therefore, if importers were applying for Recommendations only when they met the requirement.

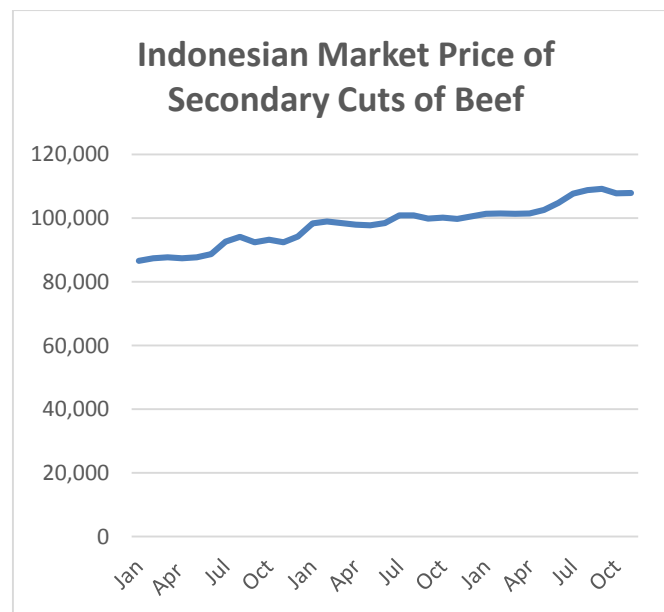
QUESTION 55: How many times has the reference price system been triggered on bovine animal products in the course of 2013-2015, and for which periods specifically (day/month/year)?

42. Please see the U.S. comments on Question 56 below.

QUESTION 56: Please provide a table indicating, on a monthly-basis for the period 2013-2015, the following information

- a. Domestic market price of secondary cuts of beef;
- b. Reference price established by MOT for the month/year concerned;
- c. Monthly imports of bovine animal and animal products covered by App. I (JE-21).

43. Responding to this question, Indonesia presented data showing the domestic market price of secondary cuts of beef from 2013-2015.⁷¹ The United States has depicted this data below in graph form.



⁷⁰ Wright, *GAIN Report ID1527: Beef and Horticultural Import License Update*, at 2 (Exh. US-40); see also, Ministry of Agriculture, “Absorption Presentation Powerpoint,” Aug. 25, 2015 (Exh. US-57).

⁷¹ Exhibit IDN-33.

44. Two things are clear from this data: (1) the market price of secondary cuts of beef has never been below the reference price of 76,000 Rp per kilogram; and, (2) the price of beef has been steadily rising since the import licensing regime went into effect.

45. The data thus confirms the evidence presented by the co-complainants regarding the reference price requirement imposed by Indonesia.

QUESTION 68: Are distributors required to comply with Halal regulations with respect to locally produced horticultural and animal products?

46. In response to this question, Indonesia asserts that the definition of halal foods in MoRA Decree 518/2001 does not differentiate between imported and domestic products, and, therefore, applies equally to local products and imports.⁷² However, Indonesia has presented no evidence that MoRA Decree 518/2001 imposes any relevant requirements on distributors with respect to imported or domestically produced products. Indeed, Indonesia has not even submitted the text of the Decree into evidence.

47. Further, with respect to horticultural products, there is no evidence that MoRA Decree 518/2001 has any application at all to fresh horticultural products, either imported or domestic. Indeed, the regulation is explicit that its auditing procedures apply only to producers or importers who are required to have a halal certificate from MUI or a recognized foreign certification body attesting to the “slaughtering of animals carried out in accordance with Islamic laws for food products using materials coming from animals.”⁷³ As described in the U.S. First Oral Statement and responses to Panel questions, this system applies only to animal products.⁷⁴

48. And with respect to animal products, MoRA Decree 518/2001 simply establishes an auditing process to verify compliance with Indonesia’s halal requirements. There is no suggestion in the regulation of any *additional* obligations imposed on distributors with respect to either imported or domestic animals and animal products.

QUESTION 69: Once imports of horticultural and animal products are transferred to distributors, how does Indonesia ensure that the Halal standards applied to imported goods are respected throughout the distribution chain, to retailers and consumers?

49. Indonesia responds that to this question by asserting that, under MoRA Decree 518/2001, the auditor agency “has the right to conduct incidental inspections on halal food throughout the distributor chain, retailers and consumers.”⁷⁵ Indonesia does not cite any particular provision of MoRA Decree 518/2001 to support this statement, however, and, on close inspection, it seems

⁷² Indonesia’s Response to Panel Question No. 68, para. 42.

⁷³ MoRA No. 518/2001, arts. 3(1)(b), 6 (Exh. US-105).

⁷⁴ U.S. First Oral Statement, paras. 36-38; U.S. Response to Panel Question No. 73, para. 169.

⁷⁵ Indonesia’s Response to Panel Question No. 69, para. 43.

clear that MoRA Decree 518/2001 does not address monitoring of Halal standards in the distribution chain.

50. First, as discussed in response to the previous question, there is no evidence that MoRA Decree 518/2001 has any application at all to fresh horticultural products, given that these products are not required to bear a halal label. Consequently, the issue of ensuring that Halal standards applied to imports are respected throughout the distribution chain would not seem to be addressed by this law.

51. Second, nothing in MoRA Decree 518/2001 suggests that auditors have the authority to conduct *sua sponte* inspections of food throughout the distribution chain. To the contrary, audits are initiated in response to applications by producers or importers to have their halal labels verified.⁷⁶

52. Further, MoRA 518/2001 does not impose *any* obligations on distributors. Thus, contrary to Indonesia’s assertions, MoRA Decree 518/2001 does not show any measures taken by Indonesia to ensure Halal standards are respected throughout the distribution chain. Consequently, it does not suggest any reason why requiring horticultural products to be sold through distributors or prohibiting retail sale of animal products would make any contribution to protecting Indonesia’s Halal standards.

⁷⁶ MoRA Decree 518/2001, arts. 3-5 (Exh. US-105).