

AMENDMENT TO MINISTER OF TRADE REGULATION NO. 27/2012 RE. GOODS IMPORTS FINALLY ISSUED DETERMINATION OF TAX CRIME INVESTIGATION

Oct 31, 2012

Importers are likely to welcome the Minister of Trade's (MOT) latest move in the import license saga which commenced with a Supreme Court decision of June 2011 striking down MOT Regulation No. 39 of 2010 regarding the import of finished goods by producers.

Following the issuance of MOT Regulation 27/2012 ("**Reg 27**"), and in response to the several concerns which ensued, the MOT recently issued MOT Regulation No. 59/2012 ("**Reg 59**"). The key changes effected by Reg 59 relate to the widening of "special relationship" exemptions for both producers ("**API-P holders**") and traders ("**API-U holders**").

Under Reg 59, a "special relationship" can be obtained through a contractual agreement to share control over economic activities, shareholdings, articles of association, a distributor/agency agreement, a loan agreement, or a supplier agreement. This exemption applies to API-P holders importing industrial products with the view to reselling them in Indonesia and to API-U holders wishing to import products under several sections of the HS Code.

API-U Holders Ability to Import Goods Falling Under More Than One Section of HS Code

Reg 59 allows API-U holders to import goods falling under more than one section of the HS Code if they can prove a "special relationship" between them and their overseas supplier, or they are businesses the shareholders of which or the majority shareholder of which is the State.

'Special relationship' has now been extended to "*contractual agreements to share control over economic activities*". API-U holders may also import goods that fall under more than one section of the HS Code from their overseas parent companies or principal companies, which can be proven through their shareholdings or the articles of association (if they import from their foreign parent companies) or distributor/agency/supplier agreements (if they import from their principal).

To prove the special relationship between an API-U holder and a foreign supplier, the API-U holder must submit written statements to the effect that they have a special relationship with the foreign supplier, along with formal (i.e. consularized) evidence of the special relationship.

Limitations on API-P holders which import industrial goods (Importer Producers)

Under Reg 27, producers holding an API-P could import "industrial goods" (the new, replacement term for "finished goods") for market testing purposes, or as complementary goods.

The provisions on importing industrial goods for market testing purposes remain the same, i.e. the imported industrial goods cannot yet be produced by API-P holders, the goods must be in line with API-P holders' industrial licenses or other similar type of business licenses, and the importation must be conducted only for a certain time.

Previously, complementary goods had to satisfy the following requirements, i.e. they (a) cannot be produced by the API-P holder; (b) are in accordance with the industrial business license or other similar type of business license of the API-P holder; and (c) are produced by a company overseas which has a special relationship with the API-P holder.

Reg 59 has removed the first requirement but it has retained (b) and has modified (c), although the change may not be significant. The issue is that one of the definitions contradicts this change, so it may not have been intended.

The definition of a special relationship for an API-P holder to import industrial goods is the same as the definition of a special relationship which now applies to API-U holders. API-P holders importing complementary or market-test goods must register as Importer Producers. API-P and API-U must be re-registered every 5 years. API licenses issued prior to the issuance of Reg 27 must be adjusted by 31 December 2012. Please contact Newsletter@makarim.com if you wish a lengthier and more detailed Advisory on this topic.