

SUPREME COURT DECISION AFFECTING IMPORTATION OF FINISHED GOODS BY PRODUCERS

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The Supreme Court has struck down the core provisions of the Trade Minister Regulation which allowed producers to import finished goods (No. 39/M-DAG/PER/10/2010). The regulation will cease to have legal effect as of 8 May 2012. The Ministry of Trade is reported to be currently considering an amendment which aims to accommodate the interests of both producers and traders but may have to draw it more narrowly than the original version.

Decision No. 19 P/HUM/2011 of 20 June 2011 ("Supreme Court Decision") declares invalid and of no legal force Articles 1(3) and 2(1) of Regulation of Minister of Trade No. 39/M-DAG/PER/10/2010 on Provisions for Importation of Finished Goods by Producers ("Regulation No. 39/2010"). The contents of the invalidated articles are as follows:

1. Article 2 Paragraph (1): Producers may import finished goods in order to help develop their business.
2. Article 1 item 3: Finished goods are products that are not used in the production process which may be imported by producers in accordance with the industrial business licenses or other equivalent business licenses issued by the relevant technical agencies.

While Article 2 Paragraph (1) and Article 1 item 3 of Regulation No. 39/2010 were the only provisions declared invalid under the Supreme Court Decision, they formed its operative core. In accordance with the Supreme Court Regulation on the Right for Judicial Review, a regulation declared invalid under a Supreme Court decision will cease to have legal effect within 90 (ninety) days as of the decision being forwarded to the relevant issuing administrative agency if the agency does not revoke the regulation within the said period. In the absence of Regulation No. 39/2010, and unless a replacement is issued, the importation regime described in Trade Minister Regulation No. 45/M-DAG/PER/9/2009 on Importer Identity Numbers (API) (as amended) will prevail. This will be disappointing news for manufacturers importing finished goods not used in the production process unless they have alternative arrangements in place.