

INDONESIA



Importer identification permits: a judicial review

By Christina N. Soela



One of the main issues for distributors of goods and services in Indonesia is importer identification permits, as regulated under Ministry of Trade Regulation 39 of 2010.

Judicial review request

A request for judicial review of this regulation was filed on March 28, 2011 to the Indonesian Supreme Court by an Indonesian entrepreneur to object to the constitutionality/legality of Article 2 paragraph (1) and Article 1 paragraph (3) of the regulation, which provides as follows:

Article 2 paragraph (1): "Producer may import finished goods to encourage the development of its business."

Article 1 paragraph (3): "Finished Goods are goods which are not used in production process and can be imported by producer in accordance with the industry business license or other similar business license issued by the authorized technical agencies."

The Petitioner claimed that the above provisions conflict with the provisions of a number of laws and that they threaten and cause losses to the national industry. In particular, he claimed that the regulation caused his business turnover to decrease during 2010.

Supreme Court decision and its rationale

The Supreme Court granted the request for judicial review and declared in its decision that Article 2 paragraph (1) and Article 1 paragraph (3) are deemed not valid and have no binding legal effect. The Supreme Court then ordered the Ministry of Trade to revoke these Articles.

In the legal consideration section of the Decision, the Supreme Court justified its granting of the Petitioner's request on the grounds that the regulation is contradictory to the spirit and intent of Law 5/1984. In short, the Supreme Court stated that the

general purpose of Law 5/1984 is to foster the promotion of economic development, especially the development of small-scale economic enterprises.

The Supreme Court went on to say that the regulation is contradictory to the spirit of Law 5/1984 because to achieve the Law's stated purpose, it is necessary to improve industry in a balanced and integrated manner by increasing the active role of society and to optimally use all available Indonesian natural, human and financial resources.

According to the Supreme Court, the regulation only considers the business climate and investment acceleration. As a result, according to the Supreme Court, the regulation will lead to a 'clash' between local and imported products. We presume that this 'clash' as caused the regulation, in the Supreme Court's view, to be inconsistent with the spirit of Law 5/1984.

New developments in 2012

Based on information from the Ministry of Trade, the Ministry officially received the Decision on February 8th, 2012. The Ministry has therefore ceased processing applications from producers to be included in the list of producers that can import finished goods.

In addition, the Ministry, through the Directorate General of Foreign Affairs, issued a letter to the Director General of Customs & Excise which, in brief, conveys that (i) the producers that are already on the list may continue importing finished goods until May 1st, 2012, and (ii) the regulation shall not be valid and have no binding legal effect as of May 2nd, 2012. According to the Ministry, they will issue a new regulation that will still allow producers to import finished goods but with certain restrictions.

Soewito Suhardiman Eddymurthy Kardono (SSEK)

14th Floor Mayapada Tower , Jl. Jend. Sudirman Kav.28
Jakarta 12920, Indonesia

Tel: (62) 21 521 2038 / 521 2130

Fax: (62) 21 521 2039

Email: christinasoela@ssek.com

www.ssek.com