

Summary

The key change in the amendment is found in the broader scope of “special relationship”, used to exempt API-P holders from the restrictions on importing industrial products with the view to reselling them in Indonesia and API-U holders from the restrictions on importing products under more than one section of the HS Code. No additional time has been granted to current API holders for adjusting their licenses (31 December 2012) and for API-P holders to register as Importer Producers.

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Amendment to Trade Minister Regulation No. 27/2012 re. Goods Imports is Finally Issued

Introduction

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

Following the issuance of Minister of Trade (“**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**”), amending Reg 27. The key changes effected by Reg 59 relate to the widening of the “special relationship” exemptions for both producers (“**API-P holders**”) and traders (“**API-U holders**”).

Under Reg 59, a “special relationship” can be obtained through the following:

- a. a contractual agreement to share control over economic activities,
- b. shareholdings,
- c. articles of association,
- d. a distributor/agency agreement,
- e. a loan agreement, or
- f. a supplier agreement.

This “special relationship” 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.

There is however no additional time granted to companies to adjust their APIs in accordance with Reg 59, i.e. importers must comply by 31 December 2012 at the latest. Given the approaching deadline and the likely high volume of applicants, it would be advisable to adjust APIs as soon as possible, particularly for API-P holders who intend to import industrial goods to be resold for market testing purposes or as complementary goods, as API-P holders will need to register as Importer Producers (previously the “*Registered API-P*” or “*API-P Terdaftar*”).

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

Reg 59 allows API-U holders to import goods that fall under more than one section of the HS Code, as long as (i) they can prove the “special relationship” between them and their overseas supplier, or (ii) they are business entities the shareholders of which or the majority shareholder of which is the State.

In this instance, we note that ‘special relationship’ has been extended to “*contractual agreements to share control over economic activities*”, which might possibly refer to consortium agreements or other forms of cooperation agreements with an overseas supplier. 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). Finally, this new import license regime seems to make life more difficult for ‘one shot’ or ‘on-the-spot’ importers.

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 evidence of the special relationship, consularized by either the relevant Indonesian embassy or Trade Attaché in the domicile of the foreign supplier. This means that any contractual, distributor/agency, loan or supplier agreement, or a copy of the articles of association of the API-U holder or foreign supplier with which the API-U holder has a special relationship, must be consularized by the relevant Indonesian embassy or Trade Attaché. Parties concerned about confidential information in such agreements may wish to consider concluding framework arrangements that satisfy Reg 59 but do not contain sensitive detail.

This requirement obviously makes the process of obtaining an API-U allowing the import of goods that fall under more than one section of the HS Code more time consuming and less efficient than previously.

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

Under Reg 27, producers holding an API-P could import “industrial goods” (the term now used in Reg 27 and Reg 59 as a replacement of “finished goods”, the term used in the previous regulation) (i) for market testing purposes, or (ii) as complementary goods.

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

Previously, complementary goods had to satisfy the following requirements:

- (a) they cannot be produced by the API-P holder;
- (b) they are in accordance with the industrial business license or other similar type of business license of the API-P holder; and
- (c) they are produced by a company overseas which has a special relationship with the API-P holder.

Reg 59 has removed the first requirement, which should certainly provide further flexibility to local manufacturers, but it has retained (b) and has modified (c) to read “*imported from a foreign company which has a special relationship with the API-P holder*”. This change might imply that local manufacturers can now also import complementary goods from overseas resellers rather than being bound to import directly from overseas manufacturers only. We note however that the text of Reg 59 is uncertain in that regard since the definition of complementary goods still refers to goods being manufactured by the overseas company, which would seem to exclude overseas resellers.

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. It is worth noting also that Reg 59 provides that the registration as an Importer Producer, remains valid for the term specified in the recommendation issued by the relevant technical government institution/agency. API-P and API-U are valid as long as the holder continues its business activities but must be re-registered every 5 years.

The time limit for adjusting API licenses issued prior to the issuance of Reg 27 remains unchanged. API holders need to adjust their APIs as soon as possible to be able to continue their import activities after 31 December 2012, particularly for those who intend to register as Importer Producers.

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