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Committee on Trade Facilitation

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**QUESTIONS FROM THE UNITED STATES TO INDONESIA
REGARDING INDONESIA REGULATION 190/PMK.04/2022**

QUESTIONS FROM THE UNITED STATES REGARDING DOCUMENT G/TFA/Q/IND/2

The following communication, dated 27 March 2024, is being circulated at the request of the delegation of the United States.

1. The United States thanks Indonesia for its responses in [G/TFA/Q/IND/2](#) to U.S. questions regarding Indonesian regulation 190/PMK.04/2022 of 14 December 2022 (the Regulation), entitled "The Transfer of Self-Consumed Goods" which requires intangible goods be subject to a customs operation.
2. In paragraph 2 of its response, Indonesia states that the Regulation applies only to legal entities. Please specify where in the Regulation Indonesia makes it explicit that the regulation applies only to legal entities and not the general public.
3. In paragraph 3 of its response, Indonesia explains its definition of tangible and intangible objects. Please provide Indonesia's laws or regulations spelling out this distinction.
4. In paragraph 5 of its response, Indonesia states that it established the Chapter 99 classification for intangible goods. Please provide Indonesia's law or regulation that stipulates national Chapter 99 classification for intangible goods.
5. The United States reminds Indonesia that it still needs to provide complete responses to the following questions:
 - a. We have researched the publicly available material on Indonesia's notified single window and government websites and cannot locate any definition of what "self-consumed" means. We request that Indonesia provide the definition of self-consumed and how a person, and for purposes of customs, an importer, would determine it is required to comply with this regulation.
 - b. Further to these fundamental questions is how any importer or potential importer, would know it is an importer? The language of the Regulation would include any user of a smart phone or computer. How does any person know where this type of data, software and apps, updates, etc., is created, how it gets to them, and whether it originates outside or inside the territory where they reside? Additionally, downloads, apps, updates, bug-fixes are created globally with origins and input and collaboration of global supply chains. How would a person determine its origin if many developers, in different jurisdictions, including from LDCs, contribute to the app, update, download, software, or fix?
 - c. The simple fact is that this type of data, software, whether as an operating system or an app, is everywhere and a daily part of almost every citizen's life. Every single person that has a smart phone, has updates, enhancements, and bug fixes transmitted to their devices on a daily basis. How could a person know it is required to maintain records for each bug fix, update to an app, phone or laptop? How could a person know what is the origin of that bug fix, update, to any smart device or app?

- d. Relying on a simple internet search, we found that "the number of smartphone users in Indonesia was estimated to reach 210.77 million users in 2021. Currently, Indonesia is the fourth-largest smartphone market worldwide after China, India, and the United States. In 2018, the subscriber count for telecommunications provider Telkomsel amounted to 163 million. See, <https://www.statista.com/statistics/266729/smartphone-users-in-indonesia/#:~:text=The%20number%20of%20smartphone%20users,India%20and%20the%20United%20States.&text=In%202018%2C%20the%20subscriber%20count,Telkomsel%20amounted%20to%20163%20million>.
 - e. Can Indonesia tell us how it has notified its over 210 million smart phone users that they are potential importers and are required to keep records for all updates, bug fixes, and downloads, so they may be audited by the customs authority?
 - f. We note that Indonesia notified TFA Article 7.5, customs audit, as a Category A. We would be interested in how Indonesia will use customs audit to enforce the regulation at issue. Could Indonesia provide us the legislation, regulations, procedures, and any public guidance document for customs audits in Indonesia? We would like to delve deeper into the document retention policy for customs audit purposes of this regulation to understand how Indonesia plans to subject every person potentially liable for compliance with regulation 190/PMK.04/2022 to a customs audit.
 - g. Additionally, we note that TFA Article 3.2 on Penalty Disciplines requires that each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on persons responsible for the breach under its laws. We consider this discipline, especially relevant and instructive when examining regulation 190/PMK.04/2022. Our previous questions are all relevant to understanding who and how a person will be held responsible for complying with the Regulation at issue, and that no one else, whether in Indonesia, or located outside of Indonesia, will be held responsible for compliance by the use of penalties. As of now, based on the language of the Regulation, we see all smart phone users and those that use computers will be responsible to comply with this regulation, and potentially content creators, including app developers, but they cannot all be responsible at the same time, only one can be the "self-consumer" for each transaction as per the Regulation. However, to understand who in each transaction is the responsible party subject to the customs audit and ultimately a potential penalty for failure to comply, further clarity is necessary to understand what constitutes a transaction, and what the document retention requirements consist of for purposes of the customs audit.
 - h. We would also like to understand this Regulation in light of the commitment in TFA Article 10.1.1 with respect to formalities and documentation requirements. We would request that Indonesia, as the only WTO Member that requires a customs procedure for intangible goods, share with us how this regulation comports with the objective of minimizing the incidence and complexity of import formalities. We would welcome Indonesia sharing with us the results of such review.
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