

CHAPTER I

INTRODUCTION

This undergraduate thesis attempts to investigate Indonesia's interest in winning "DS480: European Union – anti-dumping measures on biodiesel from Indonesia" at the World Trade Organization. This chapter will briefly discuss the original record of the case where Indonesia was investigated by the European Commission, and imposed anti-dumping measures afterward, and will predict the answer of the research questions by constructing hypothesis based on the determined theoretical framework.

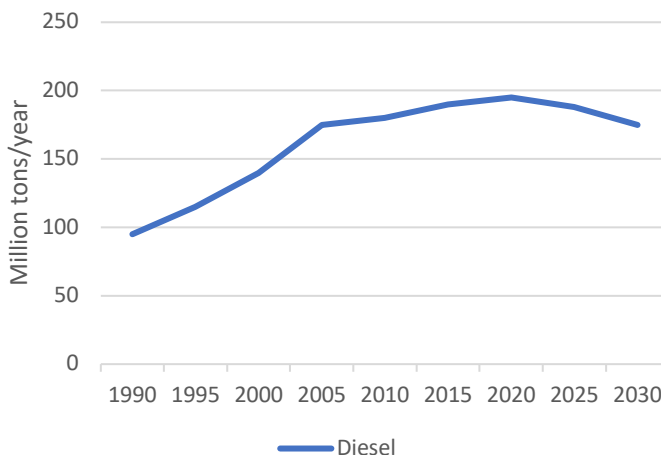
A. Background

Indonesia is a unitary sovereign state resides in southeastern Asia, located strategically between Asian and Australian continents. Indonesia owns a plentiful supply of natural resources including steam coal, refined tin, and nickel ore. Additionally, Indonesia's potential in renewable energy sources is very luxuriant, including the palm oil producer and exporter. (Dutu, 2015, p. 7) The production of palm oil in Indonesia has currently achieved one of the world's largest exporters. Palm oil has many functions and advantages for industrial development and products, one of them is, palm oil can be used as fuel by burning it directly and used as a raw material for biodiesel production and more than 70% of its production preordained for selling to other countries. (Dutu, 2015, p. 22)

Indonesia, as the world's largest palm oil producer, exports its biodiesel products around the world. However, the European market is a very promising target for Indonesia as developing countries to export its main products to be a tool for increasing its economic revenue. Besides, the demand for the European market is very high. Instead, the consumption of diesel is higher than the

extent of European can produce, with more than 10% of its demand is fulfilled by importing the biodiesel from palm oil producers, such as Indonesia (European Renewable Ethanol, 2016).

Figure 1.1 Biodiesel Use in Europe (1990-2030)



Source: *FuelsEurope, 2018*

Indonesia as a developing country which is defined by its economic level which evaluated from the criteria of gross domestic product (GDP), gross national product (GNP), per capita income, degree of industrialization, living standard, human development index (HDI) – has been increasing its biodiesel production and export in accordance to the world's biodiesel demand, particularly to the European market. Nevertheless, the export-import activities of Indonesia's biodiesel to Europe are addressed as international trade.

Indonesia as an independent country realizes the needs of international trade are inevitably essential to achieve national economic development. By conducting cooperation with other countries, Indonesia marks to gain

rapid improvement in the various business field. The results are indeed intended to accomplish immense and rapid growth rather than rely on fully-domestic isolationist approach – hence, the single-handed administration seems unbearable for Indonesia to complete. Therefore, through the continuation of international relations and cooperation, the national objective will be succeeded straightforwardly, as there is, interdependence between countries does tangible.

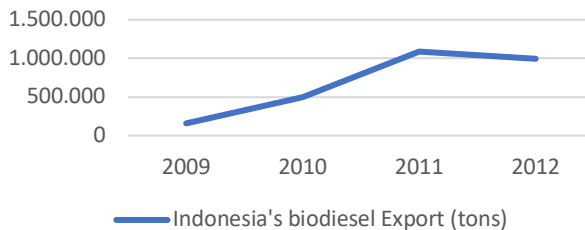
Indonesia and its international trade cooperation and economic relations with other countries are categorized as bilateral and multilateral relations. Bilateral cooperation occurs once two countries have relevance and require conducting collected work. In different circumstances, multilateral cooperation is established once there are more than two countries share similar intrigue and desire to work collectively on a larger scale. For example, Indonesia has joined the World Trade Organization (WTO).

Indonesia has joined the WTO as one of its members since 1 January 1995, which was previously known as of The General Agreement on Tariffs and Trade (GATT) since 24 February 1950. The WTO was first established after the developments of trade agreement among nations. It is designed as the only international institution dealing with international trade, including the rules of trade between nations. The WTO is intended to ensure that trade flows as smoothly, predictably and freely as possible. Under its role, the WTO operates a global system of trade rules. It acts as a forum for negotiating a trade agreement as there is a frequent possible occurring dispute among its member countries.

As the increasing needs of European biodiesel consumption, Indonesia perceived this opportunity to maximize its biodiesel export to the European market in

a large amount of product export with low price. However, the European Commission found out this practice done by the Indonesian biodiesel exporters in 2009 until 2012 as a dumping exercise that may harm the domestic producers.

Figure 1.2 Indonesia's Biodiesel Export to European Union 2009-2012



Source: *Official Journal of the European Union, 2018*

On 29 August 2012, the European Union (EU) initiated an anti-dumping investigation against imports of biodiesel from Indonesia and Argentina with the publication of the notice of initiation of the investigation in the European Union's Official Journal. (World Trade Organization, 2018, p. 2) On the following year, provisional measures were imposed against Indonesia's imports and affected Indonesian exporting producers.

Dumping is an action carried out by the exporters by selling the commodities in the international market with meager prices less than the fair price of the commodities of the origin of exporters' country. (Black H. C., 1998) However, this action is a form of underhanded competition which injures the business field especially for the local producers in importer's countries due to impairment and discrimination of international prices. Dumping also defined as the act of charging a lower price in the foreign market than the normal value

of the product, which intentionally aims to gain the advantages by exporting abundant of products with lower prices. It purposes to drive out the competition, and subsequently, the exporters will gain the monopoly situation where they can omit the local production and industry. In the WTO agreement, it does define the dumping as third-degree price discrimination.

As a result, anti-dumping measures is a counter response action conducted by importer countries to protect the local industries from the exporters which dumped their product fraudulently. Anti-dumping measures levy exporter countries to prevent dumping practices. As regulated by the WTO and GATT Article VI, countries are allowed to do anti-dumping actions which means charging extra import duty on a particular product from the exporter countries to make sure that the prices are similar to the 'normal value.' On the other hand, countries are only permitted to do anti-dumping policies once the dumping causes the injury or possible to cause injury to the domestic industry of importer countries by calculating between the normal value of export price and the exporter's home market price.

As WTO (2018, p. 10) expounded on its report, the European Commission specified that it is has been proper to inspect the anti-dumping measures levied on import of Indonesia's biodiesel, seeing there are two details:

1. The anti-dumping levies forced to Indonesian biodiesel export activities are the subject to WTO dispute settlement mechanism and include the similar prerogatives fundamentally as a complaint by Argentina in the EU-Argentina dispute;
2. The legal understandings covered in the adopted panel and Appellate Body reports in the EU-Argentina appear to be related for inquiry concerning Indonesia.

Referring to the case DS480 in dispute settlement mechanism in WTO, Indonesia has thoroughly complained to WTO in regard to anti-dumping measures on biodiesel from Indonesia. The EU practiced discrimination of price establishment in which the price of biodiesel charged with high rates and harm the Indonesian exporters. Subsequently, the EU countries' import activities on biodiesel from Indonesia regulated higher price compare to the average price on the market and the price from other countries outside of the EU countries. As a result, Indonesia requested provisions of Council Regulation (EC) No 1225/2009 on protection against dumped imports; from countries which are not members of the European Community; and anti-dumping measures imposed in 2013 by the European Union on imports of Indonesian biodiesel.

Dispute settlement mechanism in WTO is a crucial system in the international trade field. International trade frequently meets the setback between one to another. Thus, under one of the functions of WTO, it is demanded as the forum to negotiate the disagreement in the field of international trade through the dispute settlement mechanism. WTO (2018) settles trade disputes between its member, and it supports the needs of developing countries as the priority which clarified in the principle of WTO known as nondiscrimination principle and Dispute Settlement Understanding (DSU). Accordingly, Indonesia as a developing country is reserved for special and favorable treatment from WTO's principle.

According to the data collected by the Central Statistics Agency (Badan Pusat Statistik or BPS), Indonesia's biodiesel export shows the peak in 2011, two years prior before the EU imposed the anti-dumping measures on Indonesian biodiesel export in 2013, which reached the US \$1.4 billion. Subsequently, Indonesian biodiesel export had to decline continuously since the EU

imposed an anti-dumping tariff, which grasped the lowest level at the US \$68 million in 2015.

In regards of the Ministry of Energy and Mineral Resources (MEMR) No. 6034K/12/MEM/2016, the price of Indonesian biodiesel is reaching IDR 7,277 per liter in November 2018 which slightly decreasing from IDR 8,356 per liter in April 2018 right after Indonesian won the case in the Dispute Settlement Body of WTO (Chandra, 2018). Nonetheless, it affected the overall of Indonesian economy and number of exports, particularly post-condition after the EC imposed the anti-dumping tariff.

After a thorough process and complex negotiation in which using Indonesia's situation against the EU, WTO accepted six of Indonesia's protest regarding anti-dumping measures imposed by the EU in the dispute settlement mechanism. Thus, Indonesia has finally won the biodiesel dispute against the EU as the recommendation from the WTO Dispute Settlement Body in February 2018 that will ease the way for Indonesia to resuscitate its biodiesel exports to the European market. Hence, this decision will afterward revive Indonesia's export activities and recover Indonesian biodiesel exports to the EU, which was previously deteriorating harshly due to anti-dumping measures inflicted by the EU.

B. Research Question

Why did Indonesia file complaint against the European Union in anti-dumping measures on biodiesel from Indonesia through the Dispute Settlement Body of the World Trade Organization?

C. Theoretical Framework

Based on the central issue of dispute settlement in WTO case DS480 anti-dumping measures on biodiesel between Indonesian and EU. Thus, the author tries to

analyze this problem with using liberal institutionalism and international regime theories to answer the question raised “Why did Indonesia file complaint against the European Union in anti-dumping measures on biodiesel from Indonesia through the Dispute Settlement Body of the World Trade Organization?” The theories help this research to reveal the reasons why the Indonesian government filed a complaint against the EU at WTO.

1. Liberal Institutionalism Theory

Liberal institutionalism theory emphasizes on the international institutions and organizations in increasing and aid cooperation between states. As Keohane and Martin (1995, p. 39) assert liberal institutionalists treat states as rational egoists operating in a world in which agreements cannot be hierarchically enforced, and that institutionalists only assume that interstate participation will happen if states have noteworthy shared intrigue. As the absence of hierarchy in contemporary non-traditional issues, military security does not dominate the agenda anymore (Jackson & Sorensen, 2007, p. 44).

However, liberal institutionalists argue that institutions work to facilitate cooperation by increasing transparency and mutual responsiveness, and thereby reducing the uncertainty about the motives and intentions of others that realism argues limits cooperation (Wheler, 2014). In other words, it is emphasizing the need for institutional arrangements to initiate and sustain cooperation among states by providing information and by reducing costs (Jackson & Sorensen, 2007, p. 44).

At this capacity, the WTO acts as the international institution that can increase and aid cooperation between states particularly in terms of

international trade among its member countries. However, the WTO as the international trade institution, as a third party, is expected to facilitate cooperation through the Dispute Settlement Body by resolving occurred disputes among its member countries. The WTO performs as the conflict manager by maximizing the function of the Dispute Settlement Body.

While cooperation and conflict management may seem to be a synonym, whereas they shared a similar parallel concept with considerable but not total overlap (Zartman & Touval, 2010, p. 161), in this circumstance, conflict management as regulated in the dispute settlement mechanism in WTO Dispute Settlement Body, it reduces the means of pursuing a conflict from violence as a third party managing someone else's conflict. Thus, it is a matter of combination between negotiation and mediation.

An institution is needed to go beyond individual choices if the ultimate goal is to achieve the best aftermaths collectively. As the European Union's regulation on restricting the number of imports on Biodiesel from Indonesia is addressed on the anti-dumping measures on several Indonesian companies. At this case, WTO is much expected to be utilized in its maximum capacity and potential to function as an international institution that regulates international trade, notably WTO acts as a forum to negotiate to build the case in dispute settlement mechanism.

The Dispute Settlement Body (DSB) as part of *General Council* of WTO, it is administered under ministerial conference which organizes a forum of international trade dispute settlement from contracting party of WTO (Fitriyanti &

Yulianugroho, 2007, p. 36). Accordingly, dispute settlement mechanism in through DSB is regulated on *Understanding on Rules and Procedures Governing the Settlement of Dispute* (DSU). DSU is one of the interpretations and implementations of Article II GATT 1947 (Suherman, 2012). As a result, the DSB is a collaborative effort of countries to cooperate and simultaneously manage the conflict.

2. **International Regime Theory**

One of the ways that individuals might be able to manage their feature to achieve entreated goals is having a platform of international institution or regimes. International regimes have been circumscribed largely by Krasner (1982, p. 185) as

“...a set of explicit or implicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given issue-area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms and standards of behavior defined in terms of rights and obligations. Rules are specific proscriptions of action. Decision-making procedures are the prevailing practice for making and implementing common choice.”

In order to expound this theory, we can distinguish between the principles and norms, so-called as ‘meta-regime’ (Aggarwal, 2005, p. 41), while the regime *per se* described as the rules and procedures.

In comprehend basis for understanding the regimes, an institution needs to function at least three essential roles (Ravenhill, 2005, pp. 41-42).

First, institutions might be able to assist in a shared most favorable result. Besides, institutions must be firm and give the impression of a binding contract rather than a convention. Second, once actors face many optimal outcomes, the institution is capable of helping actors to resolve distributional complications. Third, an institution needs to be able to guarantee that actors do not oversight the chance to achieve the collectively optimal and stable outcomes.

There are five fundamental WTO's principles that define a framework for the trade policies, although it does not specify the outcomes itself. However, these principles are concerned with setting the rules of the trade policy games, not the results of the game. Five principles are standing within both the pre-1994 GATT and the WTO: nondiscrimination, reciprocity, enforceable commitments, transparency, and safety valves (Moore, 2010, p. 171).

Nondiscrimination has two significant components of most-favored-nation (MFN) rule and the national treatment principle. Reciprocity is a critical element of the negotiating process. The process reflects both a desire to limit the scope for free riding that may arise because of the MFN rule and a desire to obtain "payment" for trade liberalization. Binding and Enforceable Commitments can be defined as liberalization commitments and agreements to stand by particular rules of the game have slight value if they cannot be enforced. However, it is regulated and important that the market access commitments are implemented and maintained. Transparency is also WTO's principle that requires the enforcement of commitments to access the information on the

trade regimes that are maintained by members. Safety valves as the final principle embodied in the WTO specifies that the government should be able to restrict trade as there three types of provisions: (a) articles allowing for the use of trade measures to attain noneconomic objectives; (b) articles aimed at ensuring "fair competition"; and (c) provisions permitting intervention in trade for economic reasons.

Nevertheless, the author tries to use the nondiscrimination principle as the main subject of discussion to analyze the case of anti-dumping measures on biodiesel from Indonesia against the EU through the application of international regime theory as it will benefit Indonesia in winning the case by using Indonesia's situation against the EU through WTO's dispute settlement mechanism.

However, the regimes and institutions evolved as the outcome of human design efforts intended to provide an authoritative basis for regulating or at least influencing the behavior of both state and non-state actors (Viotti & Kauppi, 2013, p. 263). Of course, in WTO which was previously known as The General Agreement on Tariffs and Trade (GATT) and its dispute settlement procedure in the DSB's Dispute Settlement Understanding (DSU) have their collectively shared of procedures, principles, and norms among its member. The means of the regime in WTO, it regulates the principle of most-favored-nation and national treatment as embodied within the non-discrimination principles. Subsequently, in the Article I of the GATT, it is regulated that Most Favored Nations (MFN) on goods is a priority for the contracting party in all

WTO members (The Text of The General Agreement on Tariffs and Trade, 1986, p. 2).

The MFN is a clause that presupposes nondiscrimination treatment from one country to another. A country that gives a particular treatment or preferential toward a country, therefore – the preferential should be given to other countries incorporated in the agreement (Fitriyanti & Yulianugroho, 2007, p. 10).

In Article I Schedules of Concessions 1(a) stated that:

“Each contracting party shall accord to the commerce of the other contracting parties’ treatment no less favorable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.”

National treatment is a principle of treating foreign and local products equally. National treatment requires that once foreign goods entered a country with whatever border measures, be treated no less favorably, in regard to internal taxation or directly competitive domestic goods.

There are also articles that regulate the preferential, interest, and needs of developing countries in dispute settlement mechanism ruled by DSB and stated clearly in the DSU.

Both Indonesia and the EU are the member of WTO which supposedly to obey the WTO's non-discrimination principle and DSU as stated in under the WTO agreements. Countries cannot act arbitrarily single out between their trading partners (WTO, 2018). For instance, when a country wants to concede a special favor including a lower tariff

duty rate for one of its products, and a country has to do an equivalent treatment for all other WTO members. Thus, there is no discrimination occurred.

Therefore, Indonesia as a requester for consultation in WTO dispute settlement mechanism felt discriminated by the EU as it intruded upon the agreement of WTO and GATT aforementioned and undertook the action of report towards Dispute Settlement Body as a response.

D. Hypothesis

Based on the background and theoretical framework above, the author concluded that Indonesia's motives in filing the lawsuit on the "European Union - Anti-Dumping Measures on Biodiesel from Indonesia" as follows:

1. Indonesia's interests were hampered due to the EU's restriction policy against biodiesel from Indonesia that violates the WTO's international trade regulation.
2. Indonesia is employing two WTO basic principles of the most favored nation and national treatment to resolve the dispute against the EU.

E. Research Methodology

The type of research used in this study is descriptive, where the author tries to explain the reason behind the decision of Indonesia filed a complaint against the EU in the WTO. In using the methods, the author uses data collection techniques such as document study done by collecting secondary data, in this case, the information is derived from several relevant published materials such as books, journal articles, reports, news, official sites, and laws and regulation that are related to the subject of the research.

The kind of research utilized in this investigation is clear, where the author attempts to clarify the purpose for the choice of Indonesia recorded protest the EU in the WTO. In utilizing the strategies, the author utilizes information accumulation procedures, for example, record think about done by gathering auxiliary information, for this circumstance, the author gets the data from a few critical distributed materials, for example, books, journal articles, reports, news, official sites, and laws and regulation that that are identified with the subject of the exploration.

F. Research Period

This research will emphasize the event of Indonesia's request to consult in the WTO dispute settlement mechanism against the EU in regards of anti-dumping measures on biodiesel from Indonesia started from 2013-2018 when the sanction imposed by the European Commission until the end of the case where Indonesia win the dispute.

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