

### **CHAPTER III**

## **INDONESIA'S MOTIVES IN FILING LAWSUIT AGAINST EUROPEAN UNION IN ANTI- DUMPING MEASURES ON BIODIESEL FROM INDONESIA THROUGH WTO'S DISPUTE SETTLEMENT BODY**

In this chapter, the author attempts to implement the liberal institutionalism theory by Robert O. Keohane and Lisa L. Martin as determined on the theoretical framework. The author uses this theory to examine Indonesia's motives in defending its interests against the European Union's anti-dumping tariff policy against Indonesia's biodiesel export. This chapter also proves that the World Trade Organization Dispute Settlement Body is working its function to conduct cooperation and as a mean of dispute settlement.

### **A. The Impact of Anti-Dumping Measures on Biodiesel from Indonesia**

Indonesian economy in post-anti-dumping measures imposed by the EU has decreased significantly. Indonesia was accused of dumping its biodiesel export to the European market due to the selling of biodiesel on a big scale with low prices. Indonesia dumped its biodiesel export products to the European Union's market 6.89 times to its initial index in 2009 (European Commission, 2018, p. 49). The European Commission agreed to set the range of year for investigating Indonesian dumping practices to the European market, started from 2009-2012.

**Table 3. 1 The European Union Biodiesel Imports from Indonesia 2009-2012**

		2009	2010	2011	2012
Biodiesel Imports from Indonesia	Total imports (tons)	157,915	495,169	1,087,518	995,663
	Index 2009=100	100	314	689	631

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

In 2009, as the initial index set by the European Commission to be the point of reference where Indonesia dumped its biodiesel export the European market has to reach 157,915 ton, followed by three times in the number of biodiesels importing 2010 and peaked almost seven folds compared to the index 2009.

As part of the counter-response, the EU imposed restriction policy or anti-dumping tariff to Indonesian biodiesel producers that export their product to the European markets. The members of WTO are allowed to take action against dumping to protect its domestic industry from further loss. Based on the Article IV GATT 1994 and *Anti-Dumping Agreement*, WTO's members have the rights to put on the anti-dumping measures if the following requisites are fulfilled: (Bossche, Natakusumah, & Koesnaidi, 2010, p. 39)

- 1) There is dumping practice;
- 2) Local manufacturing that produces comparable products in importing countries experience material injury (or a threat of material injury); and
- 3) There is a causal link between dumping and injury.

#### **1. Indonesia Biodiesel Export Balance**

Since 2013, the EU has levied import duties on biodiesel products originated from Indonesia with a dumping margin ranging from 8.8 and 23.3 percent (World Trade Organization, 2018, p. 10). This action affects around 42.84% degradation of

Indonesia's biodiesel production and export from US\$649 million in 2013 to US\$150 million in 2016 (The Jakarta Post, 2018). Indonesia perceives the European market is a massive potential for exporting biodiesel from Indonesia. However, since the application of anti-dumping measures imposed by the EU, Indonesia faced a considerable decline in the number of palm oil-based biodiesel exports to the European market and its number of exports in a million liters has peaked in 2013 as much as 2000 million liters. As the European Commission started to investigate the Indonesian biodiesel export in 2013, and the restriction policy had been implemented the year after – this, the exports number were declining gradually. Then in 2015, the numbers of export were declining drastically from the previous year.

**Figure 3.1 Indonesian Biodiesel Export 2009-2018**



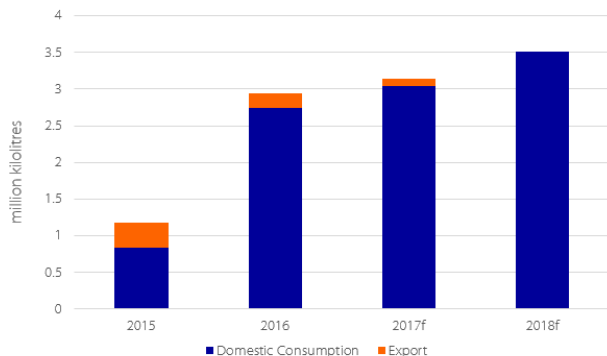
**Source:** *Global Agricultural Information Network, MEMR, GTA (trade data), Post-estimation 2018*

The same data above, where Indonesia faced a great declining point on its export activity in 2015, 2016, and 2017 with the lowest in 2017. The Indonesian exporter companies have been dormant on sending their product overseas. However, it affects the Indonesian macroeconomic interests as Indonesia is one of the largest exporters of biodiesel in the world. The EU market

is also a great potential market, and Indonesia, followed by Malaysia and Thailand are the primary sources of EU biodiesel imports (Malaysian Palm Oil Council, 2018).

Indonesia's biodiesel market price is also dynamic. Indonesia had experienced its lowest price in 2015, US\$580 per ton compared to its peak in 2011 and 2012 where Indonesia also sold the biodiesel products in a colossal scale.

**Figure 3.2 Indonesia's Biodiesel Production will be Fully Used for Domestic Consumption due to EU and US Port Restrictions, 2015-2018f.**



**Source:** USD, Oil World, PERTAMINA, Rabobank 2017 (Tjakra, 2017)

**Table 3.2 Indonesia's Biodiesel Market Index Price**

<b>Year</b>	<b>Price per ton (USD)</b>	<b>Index 2009 = 100</b>
2009	683	100
2010	829	121
2011	989	145
2012	987	144
2013	880	128
2014	610	89
2015	580	84
2016	600	88
2017	631	92
2018	594	87

***Source:** Official Journal of the European Union,  
Ministry of Energy and Mineral Resources  
(MEMR) 2018*

## **2. Unfortunate Situation for Indonesian Palm Oil Producers**

Indonesia has been developing one of the largest biodiesel producers. Palm oil plantation in Indonesia has immense impacts in terms of national economic growth. Palm oil plantation on a small scale with private and state plantation has successfully brought Indonesia as the CPO exporter on a larger scale. The increasing biodiesel production in Indonesia is considered as the driving force to boost rural economic development. This industry also has a significant impact on absorbing the most Indonesian workforce, increase GDP, and reduce poverty in Indonesia

Before 1980, palm oil plantation growth in Indonesia was relatively slow. The revolutionary

improvement in many sectors in order to support the palm oil industry, Indonesia has become the world greatest palm oil producers. This development has contributed immensely to the development in the rural area since many palm oil plantations are located in the rural area, considering that more than 58% Indonesian workforce is located in the rural area that needs to be guaranteed in regards of their welfare. The majority of Indonesia's poor workforce locates in the rural and agricultural sector. (Indonesian Palm Oil Association, 2018).

The growing production of Indonesia's palm oil and biodiesel production has a strong multiplier effect towards local resources output-based, added value, income, and workforce. However, it affects significantly towards rural sectors. The increasing production of this industry generates 60% income in palm oil plantation and 40% for other supporting sectors, such as financial institution, hotel, restaurant, transportation, infrastructure, agriculture, fishery, livestock, and others (Indonesian Palm Oil Association, 2018).

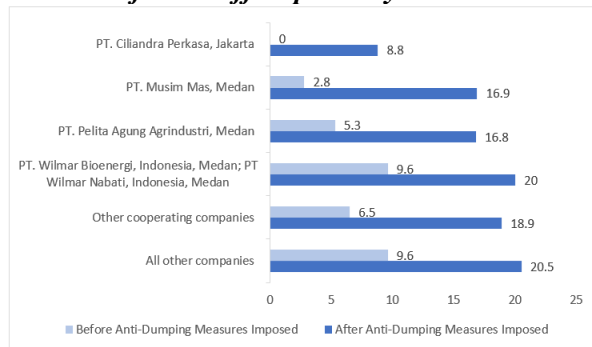
The economic interests are not only beneficial for developing rural area but also part of urban development. The benefit is not only affecting the people who are directly involved in the industry but also people who are indirectly involved in the palm oil plantation for inclusive growth both in the rural and urban sector.

The economic income gained from palm oil and biodiesel industry has enormously affected the Gross Regional Domestic Product (GRDP) in the amount of 2,46. It means that one percent growth is directly or indirectly increasing the GDP. On the other hand, the workforce in the palm oil industry

has absorbed many workers. For example, in 2000 there is 1.36 million workforces and increased significantly to 4.4 million workforces in 2016. In total, the absorption in the palm oil industry has achieved 2.7 million to 7.8 million workforces (Indonesian Palm Oil Association, 2018).

World Growth (2009) expounds that 6 million Indonesian palm oil workforces that involved in this industry have shifted out of the poor, below the average income. Thus, the importance of the palm oil industry has a significant role in decreasing poverty in Indonesia since it has a significant number of foreign exchange resources. As its contribution to export activities, Indonesian biodiesel export peaked USD18-20 billion per year. Indonesian palm oil plantation is not only achieving inclusive national economic growth but also achieving international economic growth through economic optimization to importing countries.

**Figure 3.3 Anti-Dumping Measures on Indonesia's Biodiesel Producer Before and After Tariff Imposed by the EU**



**Source:** *WT/DS480/R/Add.1. Report of the Panel combine, 2018*

Nevertheless, ever since the EU imposed the tariff against Indonesia's biodiesel export, Indonesia had to face a hard time to experience declining numbers of biodiesel's export to Europe. Besides, Indonesia relies heavily on biodiesel and palm oil export to Europe since Europe is a potential market for Indonesia's economic growth considering that its demands are very high. Furthermore, the Indonesian biodiesel producers are highly levied due to the accusation of dumping practices in the European market.

The declining export is directly affecting the palm oil producers' fortune that relies on the biodiesel industry and palm oil plantation as their primary source of income. Hence, the other sectors also faced this impact since the Indonesian biodiesel export to Europe was declined.



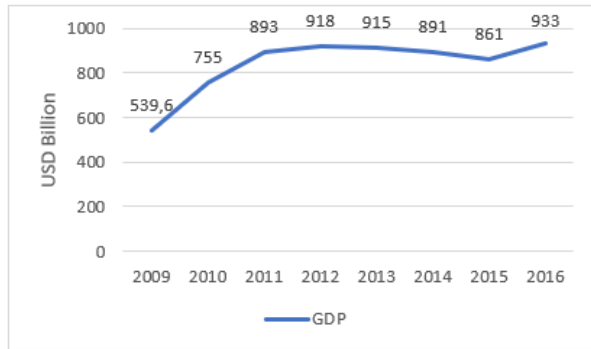
### **3. Biodiesel and Palm Oil as the Major Contributor of National Revenue**

Palm oil is the commodity that contributes the most to the Indonesian revenues. The scale of palm oil export surpasses other Indonesia's oil and gas, in the amount of US\$23 billion in 2017. It exceeds the other five main Indonesian featured commodities such as rubber, cocoa, coffee, tea, and sugar cane. The number of palm oil export in 2017 peaks US\$22,97 billion, or increased 26% from 2016, US\$ 18,1 billion, which was 12,3 from the total export in 2016 (Indonesian Palm Oil Association, 2016).

The export to the European countries is inevitably necessary as Europe still need palm oil in order to support the daily production process in households and big industry that rely heavily on biodiesel because the prices are relatively lower than other vegetable oil sources.

However, the graphic shows that there was a slight declination of Indonesia's GDP in 2012 when the EU imposed an anti-dumping investigation on biodiesel from Indonesia. The year after, Indonesia had experienced a decreasing trend from 2013 when European Commission had imposed anti-dumping measures on biodiesel from Indonesia with the lowest in 2015, USD861 billion, USD57 billion in a total of the declining point from 2012 to 2015 in three years.

**Figure 3.4 Indonesia's Gross Domestic Product**



**Source:** *www.indonesia-investments.com, 2017*

Indonesia felt discriminated due to EU's regulation on imposing tariff against Indonesia's biodiesel product as it is causing a loss to Indonesia's economic interests to grasp significant palm oil industrial development on the global scale. Besides, Indonesia as a developing country and one of the biggest biodiesel producers in the world have been relying on palm oil export to achieve its economic interest.

#### **4. Bilateral Relations between EU-Indonesia**

Not only affecting to the Indonesia's economy, the draft regulation by the European Commission in regard to the use of palm oil in renewable transportation fuel could impair the *status quo*. The established relations between Indonesia-EU within the economic cooperation through CEPA may reach the stake. Indonesian officials, Coordinating Ministry for Economic Affairs argues that the EU's draft regulation on palm oil indicates more about protecting and

promoting the European Union's domestic palm oil rather than the deforestation issues and sustainability (Munthe & Nangoy, 2019).

Nevertheless, Indonesia relies much on the European's market, palm oil has been the major income of 17 million jobs. It will impact greatly on the negotiations of the agreements.

## **B. Indonesia in Using the Dispute Settlement Mechanism**

Indonesia's interests were hampered due to the EU's regulation that accused Indonesia had practiced dumping to the European market. As the EU had implemented the protection against imported Indonesia's biodiesel product stated in Council Regulation (EC) No 1225/2009. However, dumping practice is not prohibited. Companies are free to follow aggressive pricing strategies abroad. Nevertheless, in many cases of developed countries, a domestic corporation which claims to be materially injured by dumped imports, may conduct and call on a response of the authorities to impose anti-dumping duties (Kostecki, 1991, p. 9).

**Table 3.3 Types of Dumping Strategies and Objectives**

Type of dumping	Export marketing objectives
Cyclical dumping	To maintain exports sales during periods of slack demand
Penetration dumping	Rapid gains in market share aiming to reach economy of scale in production and export distribution
Defensive dumping	To deter entry by other competitors
Early arrival dumping	Strategy driving at market leadership in a newly invented product
Head-on dumping	A pricing strategy to design to attack a market leader in an export market
Predatory dumping	Strategy intending to establish a monopoly in a foreign market
Accidental dumping	No deliberate intention to engage in an aggressive export pricing

**Source:** *Kostecki, M. M. (1991). Marketing Strategies between Dumping and Anti-dumping Action. European Journal of Marketing, 25(12), p.8*

Indonesia as a developing country is using penetration dumping to achieve quick improvement in market share in order to reach scale economy in production and export distribution. It is appropriate when demand in export markets is price sensitive and average production costs reduce with the improvement in result. Moreover, this strategy has been a favorite for companies because the unit of production costs of biodiesel is higher than a conventional (fossil) fuels.

The WTO as a regulator in international trade also guarantees the fair treatment of member countries in which all member should obey the WTO's DSB regulations and decisions. All the DSB regulations and decisions are embodied within a set of procedures. The WTO has the power to act as a negotiating forum for its member, as well as the DSB has a role in settling the disputes that occurred between its member countries.

Therefore, in order to achieve the result of DSB decision, two disputed parties have to cooperate with the WTO's procedures as clearly stated in the dispute settlement mechanism. Eventually, Indonesia filed a lawsuit to DSB WTO in regard to EU's regulation on anti-dumping tariff imposed to the Indonesian biodiesel exports as a means of enhancing cooperation during the dispute settlement mechanism conducted by the DSB.

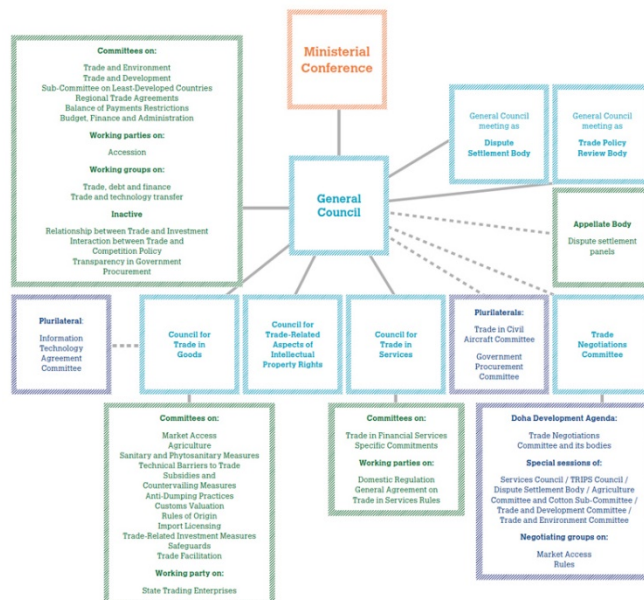
### **C. The WTO Organization Structure and Mechanism**

As Indonesia had received anti-dumping duty imposed by the European Union, Indonesian trade defense of Ministry of Trade immediately requested the WTO to proceed consultation with the European Union. Of course, there are specific procedures to complete before accusing one party act inconsistently against the WTO regulation. The WTO is charged with facilitating the implementation and operation of the multilateral trade agreements, providing a forum for negotiations, administering the dispute settlement mechanism, exercising multilateral surveillance of trade policies, and cooperating with the World Bank and the IMF to achieve greater coherence in global economic policymaking (Hoekman, Mattoo, & English, 2002, p. 47).

The WTO has a complex institutional structure, consists of permanent and temporary bodies to function its purposes. In the highest level, a Ministerial Conference is consisting of cabinet-level representatives from all the WTO member countries or customs unions and convene once every two years for a few days. In the second level, there is General Council which carrying out the Ministerial Conference authorities daily. The General Council consists of representatives at ambassador level or equivalent coming from all the WTO member countries. It usually meets once every two months in Geneva. The chair of the General Council holds the highest-level decision-making authorities. The General

Council also deals with the other bodies such as the Dispute Settlement Body and the Trade Policy Review Body under different rules. The General Council also supervises all the WTO function and purposes that have been carried out by its councils and committees under the authorities of General Council such as the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights, the Dispute Settlement Body, and Trade Policy Review Body.

**Figure 3.5 WTO Institutional Structure**



**Source:** WTO organization chart, 2018  
 ([https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/or\\_g2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/or_g2_e.htm)),

Nevertheless, one of the bodies in the WTO has a very crucial function that keeps peaceful and smooth trade cooperation between the WTO member countries, which is the Dispute Settlement Body (DSB). The DSB has a set of procedures in handling the disputes occurred between the member parties. This body is existing under the ministerial conference that deals with the international trade dispute and hold a trade dispute settlement forum that has been occurred between member countries.

The DSB presents the precise procedures for undertaking subjects associated with trading rules and dealings, and it assigns a distinct status to the custom of the WTO dispute settlement mechanism as a means of resolution. The WTO has a system to resolve the dispute between its member parties in various fields which have been proven unique and successful. Since the WTO established in 1995, it has successfully resolved more than 570 cases brought to WTO dispute settlement forum. However, several disputes were political-nuanced and got attention from various media (Bossche, Natakusumah, & Koesnaidi, 2010, p. 98). Besides, many developing countries frequently use this dispute settlement mechanism against developed countries, and there were many cases where developing countries won a dispute against developed countries.

The WTO dispute settlement mechanism encourages the disputes of member parties should be resolved by consultation that has been guaranteed in the Dispute Settlement Understanding (DSU) to be resolved positively rather than litigation. In accordance with DSU, WTO dispute settlement purposes to nurture the rights and obligation of every member parties based on the covered agreements and rules. If the consultation fails, then the dispute will be brought to the next process which will be explained in detail as follows (WTO, 2019).

## **1. Consultation**

Consultation is conducted between disputed parties, every party involved must respond directly in a certain period for ten days to the request consultation and enter consultation period for thirty days after the request submitted. Every submission of consultation shall be informed to DSB in a written form and stated the rationales of consultation request including the legal basis for complaints. If consultation fail and both parties agreed that the dispute could be submitted to the Director-General of WTO which will be ready to offer alternative resolution such as good offices, conciliation, or mediation in resolving the dispute.

However, a party that nullifies or impairs directly or indirectly the article under GATT as a result of:

- i) A fiasco of the other contracting parties to perform its responsibilities underneath GATT;
- ii) The request by the other contracting parties of any amount, whether or not it conflicts with the provisions of GATT;
- iii) The presence of any other condition.

## **2. Good Offices, Mediation, and Conciliation**

Good offices, conciliation, and meditation are measures that are commenced willingly if the disputed parties decide. Proceedings including goods office, conciliation and mediation, and in specific situation occupied by the disputed parties throughout these proceedings, shall be private and deprived of preconception to privileges of any side in additional proceedings in the measures. They might be required by a party whenever it desires to a dispute. They might start at any time and be ended at any time. As soon as the procedures of



good offices, conciliation or mediation are finished, the defendant can continue with a request for the establishment of a panel.

After good offices end, conciliation or mediation are conducted in sixty (60) days after the consultations requested and proven by its date of receipt. The defendant must permit a period, sixty days beforehand of demanding the formation of a panel. The defendant may request the establishment of the panel within sixty days if the good office, conciliation, or mediation fail to resolve the dispute. If the disputed party agrees, the process of good office, conciliation, and mediation can be continued, while the panel establishment proceeds at the same time. The WTO Director-General may, acting in an *ex officio* capacity<sup>1</sup>, suggests good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

### **3. Establishment of Panel**

If one of the parties failed to respond to request a consultation in ten days or during the consultation process failed to meet the resolution in sixty days, plaintiff could appeal to DSB to establish a panel to resolve the dispute. This procedure demands the DSB to immediately establish a panel, no later than the second session of the panel request. Otherwise, it will be decided by consensus. The panel is an *ad hoc* board established to consider and decide on a particular dispute and will be annulled once the duty is done.

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<sup>1</sup> "Defined as under the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an officer which are not explicitly conferred upon him but are necessarily implied in his office. (Black H. C., 1968)

It supposes that the defendant country is not allowed to dissuade the panel establishment. In his procedure, the determination of the Term of Reference and panel composition is also submitted. The panel should be directly arranged in thirty days of establishment. The WTO Secretariat will be suggesting three potential panelists to the disputed parties. If the disputed parties do not agree to the panelists within twenty days of panel establishment, the Director-General will consult to the Chairperson of DSB and Chief Officer to appoint the panelists. These panelists will serve accordingly with their capacities and do not comply with instructions from concerned countries.

#### **4. Procedures of panel**

Panel examines the problem, then Term of Reference and panel composition approved, then the panel presents its final report to the disputed parties no later than six months. In a specific occurrence and precarious situation, including the fragile goods, the period is shortened to three months. If no occurrence took place, the process cycle starting from the panel established to final report distribution to the members might not exceed nine months.

#### **5. Adoption of the panel report**

DSB must accept panel report within sixty days of its issuance. If it fails, one party announce its decision to draw or consent towards the signature verification of the report. The DSB could not take into consideration the report shorter than twenty days after the report has been circulated to the members. The members who objected the reports required to express the rationales in written

to be distributed before the DSB meeting is held where the panel report will be reconsidered.

## **6. Appellate review**

A new conception of dispute settlement mechanism in WTO enable withdrawal one of the parties during the panel. The Appellate Body formed by DSB will hear all pleas. This body consists of seven representatives from the WTO member who serve four years. Three Appellate Body members hear the pleas. They could defend, change, or cancel the conclusion of the panel according to the rules. However, the submission of the application may not exceed 60-90 days. Thirty days after the issuance, a report from Appellate Body must be accepted unconditionally by DSB and disputed parties. Otherwise, consensus will be applied in this legalization.

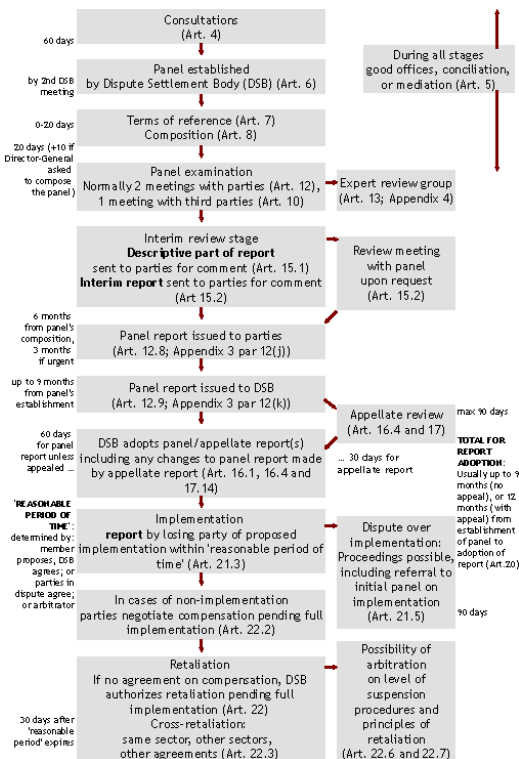
## **7. Implementation**

The DSB meeting held within thirty days since the panel adoption, the concerned parties must state the intention to respect the implementation of recommendations. If it fails to be approved, the member will be given a reasonable period of time by the DSB.

If the reasonable period of time fails, the DSB demands both parties negotiate with the plaintiff to determine compensation that can be accepted by both disputed parties. If within twenty days there is no approved satisfying compensation, the plaintiff can request the DSB's authorization to suspend the concessions or obligations towards the defendant. The DSB guarantees the authorization within thirty days from a reasonable period of a time limit. Otherwise, the consensus will be applied. If the disputed parties object/reject towards the suspension level, then it will be

continued to arbitration. The original panelists will do the arbitration. The arbitration must be done within sixty days from the reasonable period of a time limit, and the final decision must be accepted by both parties as a final result and will not be continued to another arbitration.

**Figure 3.6 Flow Chart of the Dispute Settlement Process**



**Source:** *The process — Stages in a typical WTO dispute settlement case, 2018*

([https://www.wto.org/english/tratop\\_e/dispu\\_e/disp\\_settlement\\_cbt\\_e/c6s1p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s1p1_e.htm))

**Table 3.4 Summary of Time Periods**

<b>Time scale</b>	<b>Actions</b>
60 days	Consultations, mediation, et cetera.
45 days	Establishment of panel and appointment of members
Six months	The panel presents its final report to parties
Three weeks	The panel presents its final report to WTO Members
60 days	Dispute Settlement Body (DSB) adopts report (in the absence of an appeal)
total = 1 year	If no appeal
60 to 90 days	Appellate review report
30 days	DSB adopts the Appellate review
total = 1 year and 3 months	If a party appeal

**Source:** *Understanding the WTO: settling disputes, 2019*

([http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/displ\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/displ_e.htm)).

#### **D. The Timeline of the Dispute: European Union – Anti-Dumping Measures on Biodiesel from Indonesia**

Based on the WTO dispute settlement mechanism aforementioned, the timeline of the dispute between the European Union and anti-dumping measures on biodiesel from Indonesia is explained in detail as the WTO Report presents as follow:

##### **1. Request of Consultation**

As Indonesia has requested a consultation with the European Union under the article *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), and

the *Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Anti-dumping agreement). The European Union considered being inconsistent with its obligation under the provisions of the WTO Agreement on protection against dumped import from countries not a member of the European Community as well as any subsequent amendments, replacement, implementing measures and related instrument or practices. Particularly on the underlying investigation of anti-dumping measures imposed by the European Union on imports of biodiesel originating from Indonesia (WTO, 2014).

## **2. Request of Panel Establishment**

After a consultation that has been requested on 10 June 2014, the Government of the Republic of Indonesia requested consultation with the European Union in DSU. It measures concerning specific provisions on protection against dumped imports from countries not members of the European Community and linked practices and measures, and the anti-dumping procedures levied on biodiesel imports from Indonesia including provisional measures imposed as regards one Indonesian exporting producer (WTO, 2015).

However, the consultations were held between Indonesia and the European Union on 23 July 2014, with a view to reaching a mutually reasonable solution. These consultations were failed nonetheless to resolve the dispute occurred on both parties due to the cost associated with the production and sale of the product under investigation are not reasonably reflected in the records of the party concerned. They shall be adjusted or established from the costs of other producers or exporters in the same country or,

where such information is not available or cannot be used, on any other reasonable basis, including information from other representative markets.

### **3. Panel Established**

On 4 November 2015, the Panel had been established as Indonesia requested to the WTO regarding the dispute of European Union – anti-dumping measures on biodiesel from Indonesia. Following the agreement of the parties, the Panel was composed as the chairperson led by Deborah Milsten and its member Gilles Le Blanc and Mathias Francke.

As the third party in the panel proceedings, the panel was attended by Argentina, Australia, Brazil, Canada, China, India, Japan, Norway, the Russian Federation, Singapore, Turkey, Ukraine, and the United States have reserved their rights to participate (WTO, 2015).

### **4. Communication on Panel**

The following communication, dated 15 April 2016, was received from the Chairperson of the Panel with the request that it be circulated to the Dispute Settlement Body. As the DSU provides that the period in which a panel shall conduct its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute, shall, as a general rule, not exceed six months. (WTO, 2016)

When a panel considers that it cannot issue its report within six months, it shall inform the DSB in writing accordingly and indicate the reasons, together with an estimate of the period within which it will issue its report. Nevertheless,

the beginning of the Panel's work was delayed as a result of the lack of available experienced lawyers in the Secretariat. The Panel expects to issue its final report to the parties by mid-2017.

The Panel's work was subsequently delayed due to the request of the complaining party to suspend the proceedings while awaiting the issuance of the Appellate Body Report in EU – Biodiesel (Argentina), which was circulated on 6 October 2016. In light of this, the Panel now expects to issue its final report to the parties by the end of 2017 (WTO, 2017).

#### **5. Action by the Dispute Settlement Body**

At its meeting on 28 February 2018, the DSB adopted the Panel report on European Union - Anti-Dumping Measures on Biodiesel from Indonesia in which stated that accordingly to the DSU Article 21.3(b), the Republic of Indonesia and the European Union have agreed that the reasonable period of time for the European Union to implement the recommendations and rulings of the DSB in the dispute European Union – anti-dumping measures on biodiesel from Indonesia (DS480) will expire on 28 October 2018, which is eight months from the day of adoption of the DSB recommendations and rulings on 28 February 2019. The DSB recommendation on ratification 28 February 2018 Expiry date 28 October 2018 (WTO, 2018).

This final report that had been released on 1 March 2018 which was stating Indonesia's winning over six lawsuits (Chandra, 2018). First, the EU was incompetent to fulfill the WTO's regulation that it did not use data that has been submitted by the Indonesian exporters in calculating the production cost.



Second, the EU failed to construct the normal value for the Indonesian procedures from the cost of production and dumping margin. Third, the EU set a too high-profit limit for Indonesia's biodiesel industry. Fourth, the European Union failed to make due allowances for differences affecting price comparability including differences in taxation thereby precluding a fair comparison between the export price and normal value. Fifth, the EU applied high tax more than the dumping margin. Sixth, the EU could not prove that biodiesel import from Indonesia harms the price of the EU domestic biodiesel industry (WTO, 2018).

**6. Status Report Regarding Implementation of the DSB Recommendation.**

On 17 August 2018, the DSB reported regarding the implementation of the DSB recommendations and rulings by the EU according to Article 21.6 of the DSU. Since the panel adoption on 28 February 2018, the EU informed the DSB that it intended to implement the recommendations and rulings of the DSB in this dispute in a manner that respected its WTO obligations and that it needed a reasonable period of time to do so. The EU referred to the reasonable period of time agreed with Indonesia and communicated to the DSB on 1 March 2018. Following this agreement, the reasonable period of time for the EU to implement recommendations and rulings of the DSB in this dispute is set to expire on 28 October 2018 (WTO, 2018).

In order to implement the recommendations and rulings of the DSB in this dispute, the EU reopened the anti-dumping investigation concerning imports of biodiesel originating in Indonesia by the publication of a Notice in the

Official Journal of the European Union on 28 May 2018. All exporting producers and the European Union industry were invited by the Notice to make their views known, submit information and provide supporting evidence. Interested parties were also informed by the Notice of the possibility to be heard by the European Commission investigation services and to request the intervention of the Hearing Officer in trade proceedings. The Notice also informed interested parties that they would be subsequently informed of the findings of the investigation and would be given an opportunity to comment.

Furthermore, on 19 October 2018, the European Commission closes anti-dumping investigation into Indonesian biodiesel. The European Commission considers this decision concerns an old case that was re-opened in order to bring the applied methodology into line with EU and WTO rules (Trade Defence, 2018). In the end, the EU General Court ruled that the measures imposed in 2013 were not lawful, which also incompatible with WTO law. The Commission has decided to stop the investigation because of insufficient proof that the injury suffered by the EU biodiesel industry in the period initially investigated.

The European Union informs the Dispute Settlement Body that it had adopted the measure necessary to comply with those recommendations and rulings before the expiry of the RPT agreed with Indonesia. In particular, on 18 October 2018, the European Union adopted an Implementing Regulation terminating the proceeding concerning imports of biodiesel originating in Argentina and

### Indonesia and repealing Implementing Regulation (EU) No 1194/2013 (WTO, 2018)

The Implementing Regulation is expected to be published in the Official Journal of the European Union in the coming days. It will enter into force the day following its publication. After its entry into force, no imports of biodiesel in the European Union from Indonesia will be subject to anti-dumping duties. In particular, on 18 October 2018, the European Union adopted Commission Implementing Regulation (EU) 2018/1570 terminating the proceedings concerning imports of biodiesel originating in Argentina and Indonesia and repealing Implementing Regulation (EU) No 1194/2013. The Regulation was published in the Official Journal of the European Union on 19 October 2018 (WTO, 2018)

In sum, the WTO acted as Indonesia's expectation in running the dispute settlement mechanism as a negotiating forum to settle dispute occurred between Indonesia and European Union on anti-dumping measures on biodiesel from Indonesia despite the delayed time of the case

## WORKS CITED

### Book

Bossche, P., Natakusumah, D., & Koesnaldi, J. (2010). *Pengantar Hukum WTO (World Trade Organization)*. Jakarta: Yayasan Obor Indonesia.

### Journal Article

European Commission. (2018). Commission Implementin Regulation (EU) 2018/1570. *Official Journal of the European Union*, 40-53.

Kostecki, M. M. (1991). Marketing Strategies between Dumping and Anti-dumping Action. *European Journal of Marketing*, 25(12), 7-19.

### Report

Hoekman, B., Mattoo, A., & English, P. (2002). *Development, Trade, and the WTO*. Washington: The International Bank for Reconstruction and Development / World Bank.

Malaysian Palm Oil Council. (2018). *EU Imports of Palm Oil From Indonesia, Malaysia, and Thailand*. Kuala Lumpur: Copenhagen Economics.

WTO. (2014). *WT/DS480/1 European Union – Anti-Dumping Measures on Biodiesel from Indonesia Request for Consultations by Indonesia*. Geneva: World Trade Organization

WTO. (2015). *WT/DS480/2 & WT/DS480/2/Corr.1 European Union – Anti-Dumping Measures on Biodiesel from Indonesia - Request for The Establishment of a Panel by Indonesia*. Geneva: World Trade Organization

WTO. (2015). *WT/DS480/3 European Union – Anti-Dumping Measures on Biodiesel from Indonesia - Constitution of*

*The Panel Established at The Request of Indonesia.*  
Geneva: World Trade Organization

- WTO. (2016). *WT/DS480/4 European Union – Anti-Dumping Measures on Biodiesel from Indonesia - Communication from The Panel.* Geneva: World Trade Organization
- WTO. (2017). *WT/DS480/5 European Union – Anti-Dumping Measures on Biodiesel from Indonesia - Communication from The Panel.* Geneva: World Trade Organization
- WTO. (2018). *WT/DS480/6 European Union – Anti-Dumping Measures on Biodiesel from Indonesia - Panel Report.* Geneva: World Trade Organization
- WTO. (2018). *WT/DS480/7 European Union – Anti-Dumping Measures on Biodiesel from Indonesia - Panel Report.* Geneva: World Trade Organization
- WTO. (2018). *WT/DS480/7 European Union – Anti-Dumping Measures on Biodiesel from Indonesia - Agreement Under Article 21.3(B) of the DSU.* Geneva: World Trade Organization
- WTO. (2018). *WT/DS480/8 European Union – Anti-Dumping Measures on Biodiesel from Indonesia - Status Report Regarding Implementation of the DSB Recommendations and Rulings by The European Union.* Geneva: World Trade Organization
- WTO. (2018). *WT/DS480/8/Add.1 - European Union – Anti-Dumping Measures on Biodiesel from Indonesia Status report regarding implementation of the DSB recommendations and rulings by the European Union.* Geneva: World Trade Organization
- WTO. (2018). *WT/DS480/8/Add.2 - European Union – Anti-Dumping Measures on Biodiesel from Indonesia Status report regarding implementation of the DSB*

*recommendations and rulings by the European Union.*  
Geneva: World Trade Organization

WTO. (2018). *WT/DS480/8/Add.3 - European Union – Anti-Dumping Measures on Biodiesel from Indonesia Status report regarding implementation of the DSB recommendations and rulings by the European Union.* Geneva: World Trade Organization

## Website

Indonesian Palm Oil Association. (2016, may 4). *Introduction.* Retrieved from Gabungan Pengusaha Kelapa Sawit Indonesia: <https://gapki.id/introduction>

Indonesian Palm Oil Association. (2018, January 8). *Peran Strategis Sawit Rakyat Indonesia.* Retrieved from GAPKI: <https://gapki.id/news/3875/peran-strategis-sawit-rakyat-indonesia>

Munthe, B., & Nangoy, F. (2019, March 19). Indonesia warns EU on palm oil draft, says 'examining' relations. Retrieved from Reuters: <https://www.reuters.com/article/us-indonesia-eu-palmoil/indonesia-warns-eu-on-palm-oil-draft-says-examining-relations-idUSKCN1QZ1BN>

The Jakarta Post. (2018, January 26). *Indonesia wins dispute against EU biodiesel import duties.* Retrieved from The Jakarta Post: <http://www.thejakartapost.com/news/2018/01/26/indonesia-wins-dispute-against-eu-biodiesel-import-duties.html>

WTO. (2014, June 10). *DS480: European Union — Anti-Dumping Measures on Biodiesel from Indonesia.* Retrieved from World Trade Organization: Dispute Settlement: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds480\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds480_e.htm)

WTO. (2019, May) *Understanding on rules and procedures governing the settlement of disputes*. Retrieved from *World Trade Organization*  
[https://www.wto.org/english/tratop\\_e/dispu\\_e/dsu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm)

### **Laws and Regulation**

The GATT 1986. (1986). *The Text of The General Agreement on Tariffs and Trade.*, (pp. 1-89). Geneva: World Trade Organization

The WTO. (2018). *Dispute Settlement Understanding*. Geneva: World Trade Organization.

The WTO. (2018). *Legal texts: the WTO agreements*. Geneva: World Trade Organization