INDONESIA'S INTEREST IN WINNING "DS480: EUROPEAN UNION – ANTI-DUMPING MEASURES ON BIODIESEL FROM INDONESIA" AT THE WORLD TRADE ORGANIZATION (2013-2018)

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Abstract

Indonesia as the leading biodiesel producers in the world boosts its biodiesel production and export to the importing countries. Indonesia as a developing country realizes the needs of an institution dealing with international trade such as the World Trade Organization as a fair-trade guarantor, is essential to defend its interest. Indonesia exported its biodiesel on a high scale with lower prices as a strategy to grasp additional profit to the European market. Yet, the European Commission found out that this was a dumping practice so that the European Commission investigated and imposed anti-dumping measures on biodiesel from Indonesia. As a result, Indonesia filed a complaint against the European Union in anti-dumping measures on biodiesel from Indonesia through Dispute Settlement Body. This research aims at investigating Indonesia's motive in filing a complaint against the European Union in "DS480: European Union – anti-dumping measures on biodiesel from Indonesia". The method used in this research is the qualitative method by using secondary data such as books, articles, journals, official documents, reports, and other literary sources. It is found that declining economic balance in export-import, effect on biodiesel producers, and GDP influence Indonesia's decision to file a complaint against the European Union through the Dispute Settlement Body as a mean of cooperation and conflict resolution by employing two principles most-favoured-nation and national treatment embodied in non-discrimination principle which prescribes the developing country's interests.

Keywords: *Indonesia, European Union, Biodiesel, Anti-Dumping Measures, Dispute Settlement Body, Non-discrimination Principles*

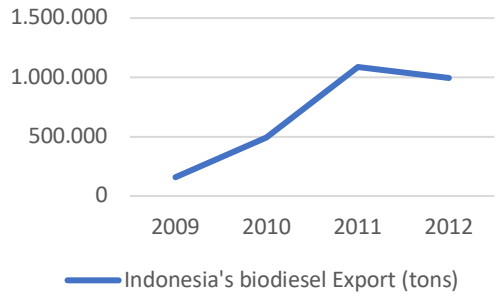
A. Background

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).

Indonesia as a developing and an independent country realizes the needs of World Trade Organization to conduct both cooperation and multilateral trade. 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 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.

Therefore, anti-dumping measures is a 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 a result, within 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 non-discrimination principle and Dispute Settlement Understanding (DSU). Accordingly, Indonesia as a developing country is reserved for special and favourable treatment from WTO's principle.

B. Theoretical Framework

Based on the central issue of dispute settlement in WTO case DS480 anti-dumping measures on biodiesel between Indonesian and EU, the author tries to explain the Indonesia's interests and motives in filing complaint against the European Union in anti-dumping measures on biodiesel from Indonesia through the Dispute Settlement Body of the World Trade Organization by using liberal institutionalism and international regime theories.

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.

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.

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 behaviour 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.

WTO has five principles, one of them is, non-discrimination. Non-discrimination has two significant components of most-favoured-nation (MFN) rule and the national treatment principle. The principle of non-discrimination will be the focus of discussion, considering in 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 behaviour 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-favoured-nation and national treatment as embodied within the non-discrimination principles. Subsequently, in the Article I of the GATT, it is regulated that Most Favoured 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 non-discrimination 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). Hence, the all WTO member states must obey the WTO's regulation including its principles. 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.

C. 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.

D. Results and Discussion

1. 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 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*

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.

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

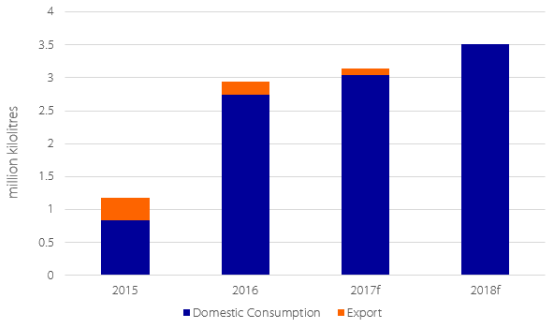
imposed by the EU, Indonesia faced a considerable decline in the number of palm oil-based biodiesel exports to the European market and its number of exports in a million litres has peaked in 2013 as much as 2000 million litres. As the European Commission started to investigate the Indonesian biodiesel 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 2 Indonesian Biodiesel Export 2009-2018

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

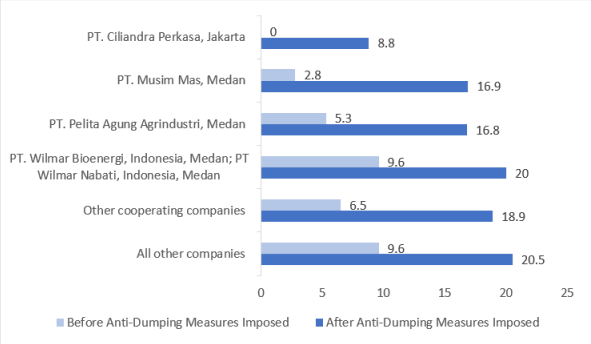
2. Unfortunate Situation for Indonesian Palm Oil Producers

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).

Figure 4 Anti-Dumping Measures on Indonesia's Biodiesel Producer Before and After Tariff Imposed by the EU



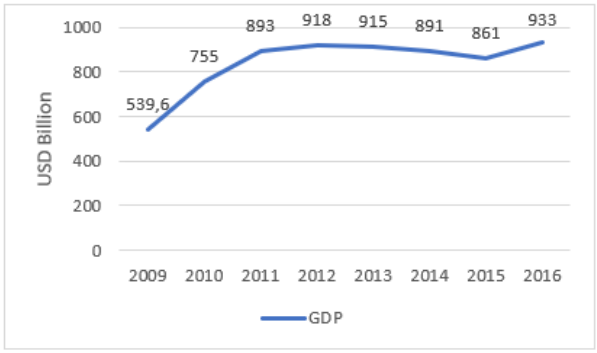
Source: *WT/DS480/R/Add.1. Report of the Panel combine, 2018*

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).

Figure 5 Indonesia's Gross Domestic Product



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

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.

5. Indonesia in Using the Dispute Settlement Mechanism

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 favourite 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.

6. Dispute Settlement Mechanism of WTO

1) 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).

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).

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.

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 fulfil the WTO's regulation that it did not use data that has been submitted by the Indonesian exporters in calculating the production cost.

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).

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)

In order to comprehend the case study coherently, the application of international regime theory is needed to elaborate the WTO's principles which made its decision in favour to developing countries and broad reasons why Indonesia decided to file complaint against the EU at the WTO.

7. Non-Discrimination Treatment

Non-discrimination clause as regulated in the WTO's principle is a fundamental principle of the multilateral trading system in which recognized in the preamble of the WTO as a primary role in ensuring the goals of the WTO as an

institution dealing with international trade. Thus, non-discrimination treatment in the WTO is classified into two principles, within the most-favoured-nation (MFN) treatment obligation and the national treatment obligation (Saggi & Sara, 2008, p. 1365).

As a result of rounds proceeded in the WTO establishment, these agreements are made to be one of its functions, to prevent discrimination against foreign products (McGinnis & Movsesian, 2000, p. 531).

1) Most Favoured Nations

The Most Favoured Nations (MFN) is one of the WTO's principles that regulate non-discrimination treatment against developing countries. The MFN is the main source of WTO's law and frequently subjected as the dispute within the member countries of WTO. The MFN clause has been an essential component of international trade agreements for over 100 years and is broadly accredited as one of the pillars of the GATT/WTO system (Hochman, 2008, p. 789). The MFN is regulating non-discrimination treatment between goods, services, service suppliers based on the origin country or destined country.

The MFN principle is a basis for international law, specifically within the WTO's code of conduct in ensuring the trade flow as smoothly, predictably, and freely as possible, particularly for developing countries. Developing countries are addressed as a country in which it is less advantaged in terms of economic power and capacity. WTO as an organization for liberalizing trade, it conducts the forum for governments' representative to negotiate their trade agreements among member countries. However, it is also a place for those representatives to settle trade disputes that occurred that involves two or more parties. As well as its function to deliberate the core of WTO is to rules trade systems (WTO, 2005).

In utilizing the WTO as a place to talk, and governments try to sort out the problems occurred between states, the MFN principle is a key to open the ideas when a trade dispute took place, it means that a certain party has violated an international trade law which is regulated by the WTO. However, this very principle regulates on the multilateral trading system to reform the frictions and issues of bilateral policies which assurances of a rule-based outline where trading rights are not contingent on the interest of an individual or political influence (WTO, 2019). In result, the best way to have a condition where every member country can benefit

from this agreement, that one country must act under the WTO's regulation in which it extends automatically to other member countries.

2) National Treatment

Lies in the heart of WTO's basic principle in ensuring the trade fairness among its member countries, WTO upholds the national treatment as a principle that entails its member to not discriminate between imported goods and like domestic goods with respect to their internal taxes and domestic regulations. For instance, Article III of the GATT states that the products imported from any contracting party shall be treated no less favourable than the national-origin (domestic) products (Saggi & Sara, 2008, p. 1365).

However, the practical implementation of national treatment as prearranged by GATT/WTO face difficulties, provided that competing products are often differentiated, especially for imported products has less favourable than the domestic products under the pretext to protects the local productions. Even the biodiesel imported from Indonesia, the European Union shall reconsider its proceedings in order to obey the WTO's most basic principle. In fact, the analysis of national treatment is playing field in the bilateral scheme, where the subjects are addressed between domestic and foreign firms.

Furthermore, national treatment is also used as an internal instrument tool of protectionism linked to Council Regulation (EC) No 1225/2009 on protection against dumped imports by the European Commission. Although in fact that the tariff measured against the imported products can take into account which subsequently increase the tax incentives and final purpose to rally welfare; however, the practice has a side effect it can discriminate against the imports (Saggi & Sara, 2008, p. 1366).

Nevertheless, the account for indicating a country performs discriminatory practices can be measured from its commitment to an NT agreement that depends on its given two dimensions: quality and market size. From these two important aspects, it becomes the determinant factor for WTO to decide whether or not a country performs a discrimination treatment. As a supervisor to monitor international trade or bilateral relations in terms of economic cooperation.

8. Indonesia Made Use of the WTO's Principle in Filing Complaint against the European Union

After dealing with the European Union's regulation on protecting the domestic products against imported products, in particular, the Indonesian biodiesel, Indonesia have experienced loss and disadvantaged from this situation. Then Indonesian government filed a complaint to the WTO as the negotiating forum and fair-trade upholder by utilizing the non-discrimination clauses and dispute settlement understanding which prioritizes the needs and interest of developing countries that have rights to be favoured by the DSB's decisions and rulings throughout the panel report.

1) Non-discrimination Principles as the Limiting Regulator for Developed Countries

Using MFN, the benefit is derived from the MFN clause's ability to curb opportunistic behaviour by governments that might otherwise undermine trade agreements. However, to curbing the opportunistic behaviour of governments, since it also affects governments' incentive to cooperate. The MFN clause is prioritizing the needs of developing countries as a developing country has less capacity in economic scale compared to the developed countries.

The lack of understanding of developing countries in implementing of WTO's regulation that favours developing countries may become an obstacle despite the fact that many developing countries are actively using the dispute settlement mechanism in DSB to resolve the disputes.

In its practice, the European Union which accused Indonesia had practicing dumping by exporting its biodiesel products in a massive amount with a price lower than the normal value.

The national treatment is also being utilized as its idea to guarantee there is no discrimination treatment occurred against imported products as it shall not be less favourable than the domestic products.

2) Dispute Settlement Understanding as the Guarantor of Developing Country in the Trade Dispute

A developing country may experience difficulty in utilizing what WTO's system that has been offered in dispute settlement mechanism. For example, DSU recognizes the preferential treatment for developing countries. A developing country, in a certain situation and condition, could be given a longer period of time to give a written argument to panellists; a developing country also reserves the

rights to be trialled by a panel where one of its members has citizenship from developing countries. The WTO Secretariat has also been appointing two advisors to assists developing countries in their dispute until a certain phase (Bossche, Natakusumah, & Koesnaidi, 2010, p. 105).

Basically, the WTO's provisions in regard to dispute settlement mechanism of developing countries are the same with the provisions applied to developed countries. However, there are several differences that significantly make developing countries are more favourable than in developed countries (Fitriyanti & Yulianugroho, 2007, p. 40).

a) Once the consultation fails to solve the dispute within sixty days since the request of the consultation, the disputed parties could have an agreement to extend the period of time when the sixty days period of time has been expired. Whereas the consulting parties have not been reaching the agreement when the consultation ends, the DSB chairperson must decide the extension of the period of time. (Atack, 2016)
b) If a dispute occurs between a developed country and developing country, the panellists must involve minimum one-panel member originated from developing countries if the developing country wishes.
c) If one or more disputed party(s) is a developing country, panel report must explicitly state form of agreement in more favourable treatment and preferential treatment to the developing countries in the dispute settlement procedures. Moreover, the panellists must give a reasonable period of time for developing countries to prepare and file their reasons and evidence.
d) If the dispute occurred between a developed country and developing country, then the developing country requested that one of the panellist members should come from a developing country, this request must be granted.
e) WTO member must give special attention to the developing countries if the causal of the dispute is the developing country's policy.
f) If one of the disputed parties is a developing country and there is a need to provide additional legal advice, WTO secretariat must provide legal experts to that developing country.

The WTO's most prominent purpose is settling disputes among its member under these agreements. Disputes are frequently and bound to arise due to protectionists groups inevitably seek discriminatory legislation. Under the DSU, a panel that consists of experts hears the argument between disputed parties when the defendant claimed that another member of WTO had violated an agreement. The panel then recommends that the violating-party withdraw the offending measures (McGinnis & Movsesian, 2000, p. 531). Indonesia, as the defendant, uses DSU's special and differential treatment which applied within the DSB. This regulation under the DSU must be obeyed all member countries, as well as the decisions and recommendations issued by the DSB with no exception which is regulated specifically in article 3 paragraph 12, article 4 paragraph 10, article 8 paragraph 10, article 12 paragraph 10, and article 12 paragraph 11 of DSU. Other provisions which in favour to developing countries provided by the DSB under the WTO administration are also specifically implemented in article 4 of GATS Agreement and article 21 paragraph 2 of DSU that states developing countries are rightful to be given special treatment from the application of DSB's decisions and recommendations.

The DSU carries out a valuable transformation for developing countries. Less developed countries have a better opportunity to preserve their interests in the orientation of rule-based rather than a power-oriented scheme. Consequently, although the DSU is an advantage, developing countries must struggle to attain international financing for training and capacity building and for the formation of a shared instrument among developing countries to refine industrial country trade policies of interest to them—not only to decrease the charges of the refining but also to organize the proposal of cooperative cases. Furthermore, developing countries could practice cases in which they are embroiled to identify distance in WTO contracts that required to be addressed over negotiations.

Transformation of the dispute settlement system is not appearing to be important on the compromising schema of developing countries. Their means are mostly focused on the way to protecting their interests, spanning the distance with industrial countries in regards of legal expertise, and creating operative enforcement and reciprocal devices (Hoekman, Mattoo, & English, 2002, p. 79).

9. Final Report of the Dispute between Indonesia-European Union in Anti-Dumping Measures on Biodiesel from Indonesia

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 fulfil 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).

Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment. The panel concludes that, to the extent that the measures at issue are inconsistent with the Anti-Dumping Agreement and the GATT 1994, they have nullified or impaired benefits accruing to Indonesia under these agreements.

Pursuant to Article 19.1 of the DSU, the panel recommends that the European Union bring its measures into conformity with its obligations under the Anti-Dumping Agreement and the GATT 1994. Indonesia requests that the panel uses our discretion under the second sentence of the same article to suggest ways in which the European Union should bring its measures into conformity with the Anti-Dumping Agreement and the GATT 1994. Indonesia considers that the measures at issue in this dispute should be withdrawn. The panel declines to exercise its discretion under the second sentence of Article 19.1 of the DSU in the manner requested by Indonesia.

E. Conclusion

In conclusion, Indonesia as a developing country that relies heavily on palm oil production and biodiesel industry has made to one of the leading producers and exporters in the world. Indonesia's palm oil plantation has made revolutionary achievement as it is the biggest contributor Indonesia's GDP, in particular, oil and gas export revenue over other sectors, such as mining, agriculture, and industrial.

Furthermore, biodiesel production increased rapidly supported by the Indonesian government's regulation in implementing the CPO Supporting Fund (CSF) and subsidize the biodiesel producers. The increasing Indonesian biodiesel production was enforced by Indonesia to boost its biodiesel export to many countries, especially to the European Union. However, the EU issued Council Regulation (EC) No 1225/2009 on protection against imported products, in particular, the biodiesel from Indonesia. Thus, Indonesia's interests were hampered due to the EU's restriction policy with high taxing on Indonesian biodiesel export companies.

The anti-dumping measures imposed from 8.8 percent to 23.3 percent (€76.94 - €178.85 per ton). Subsequently, this caused Indonesian biodiesel exports to the EU decreased severely. The Indonesian biodiesel export performance to the European Union declined drastically from 1.8 billion US$635 million in 2013 litres to 47 million litres US$9 million in 2016.

This reflects on the unfairness and inconsistency of the EU in obeying the WTO's regulation as the fair-trade upholder so that the Indonesian government filed a complaint against EU through WTO by considering the WTO's principle and dispute settlement procedures that in favour to developing countries, such as Indonesia. Through the dispute settlement mechanism, it acts as a negotiating forum on the global scale for government representatives to sort out the problems occurred between member countries as the means of increasing cooperation through WTO.

Furthermore, Indonesia is also utilizing the WTO's most-favoured-nation and national treatment as embodied in the non-discrimination principles which has been clearly stated the WTO basic principles that are prescribing developing countries' interests. There is also found special and differential rights within the Dispute Settlement Understanding that visibly counselling developing countries, such as Indonesia, is given special and differential rights.

Therefore, the WTO is successful to run its DSB function as the fair-trade guarantor. Accordingly, Indonesia has been using its situation against the European Union in winning the case of anti-dumping measures on biodiesel from Indonesia to utilize DSB as a negotiating forum to conduct comprehensive and enhanced cooperation between member countries, and dispute settlement mechanism that prioritize the interests of developing countries which has been stated in the WTO's principle and DSU.

Eventually, the WTO guarantees Indonesia's interests as a developing country by accepting six of Indonesia's protests regarding anti-dumping measures imposed by the EU and recommending to the EU to lease its applied measures to Indonesian biodiesel which have been assured to be consistent to the Anti-Dumping Agreement and the GATT 1994. The Panel recommendation by the DSB also recommends the EU to bring its measures into conformity under the Anti-Dumping Agreement and the GATT 1994 accordingly to Indonesia's request.

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