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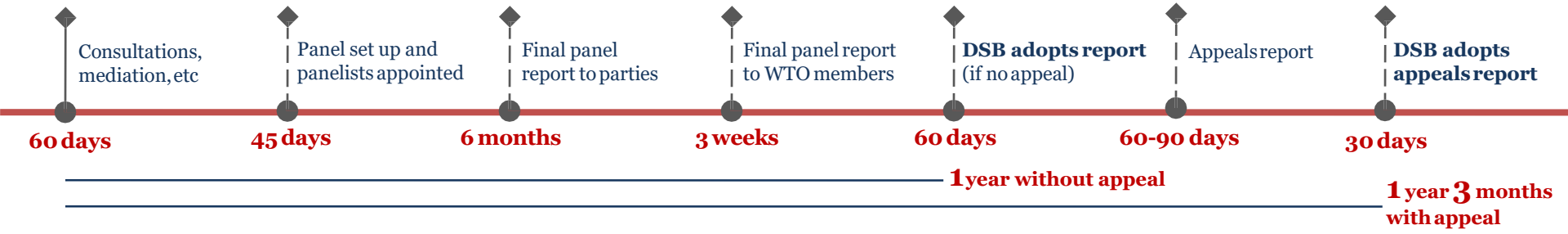
International Trade APINDO

Dispute Settlement Procedure Timeline



On going Disputes Submitted by Indonesia

DS No.	Dispute	Current Status
DS 442 Respondent: EU	Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia	**Request to cross-appeal**
DS480 Respondent: EU	Actual Amounts Constructed Normal Value	**First Substantive Meeting**
DS 491 Respondent: US	imposition of anti-dumping and countervailing measures on certain coated paper products from Indonesia	**Second Substantive Meeting**

On going Disputes Indonesia as Respondent

DS No.	Dispute	Current Status
DS 477 / DS478 Complainant: US and NZ	Certain measures impose on the importation of horticultural products, animals and animal products.	**Request to Appeal**

Since 1995, over **500 disputes** have been brought to the WTO from **104 members** and over **350 rulings** have been issued. Complaint comes from **US (23%), EU (18%), Canada (7%)** and **Brazil (6%)** while respondents are **US (25%), EU (20%), China (7%)** and **India (5%)**

DS 442 EU – Anti Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia

EU imposed anti-dumping duties on imports of fatty alcohols from Indonesia for a period of 5 years (from 11/11/2011 to 12/11/2016), as the result of an anti-dumping investigation carried out between 13 August 2010 and 11 November 2011 where EU determined that certain fatty alcohols exported by an Indonesian producer **(PT Musim Mas)** were sold in the territory of EU at less than their normal value.

Indonesia challenged the fairness of the comparison made by EU between the export price of fatty alcohols when sold in the European market and its normal value when sold in Indonesia. However, Panel considered that EU had a sufficient evidentiary basis to treat the price mark-up as a difference affecting price comparability between the export price and the normal value of fatty alcohols. In addition, Panel found no legal basis in the text of the Anti-Dumping Agreement for Indonesia's claim that costs incurred within a single economic entity could not be deducted in the process of calculating the dumping margin of a product.

DS491 US— Anti-Dumping and Countervailing Measures on Certain Coated Paper from Indonesia

Indonesia considers that the determinations made, and the countervailing measures imposed, by the United States are inconsistent with Articles 2, 12, and 14 of the SCM Agreement.

In connection with the alleged provision of standing timber for less than adequate remuneration: - US did not identify whether the entity allegedly providing the purported subsidy was the national, regional or local government; US did not cite to evidence establishing the existence of a plan or scheme sufficient to constitute a "subsidy programme" ; US improperly found that Indonesia conferred a benefit by allegedly providing standing timber for less than adequate remuneration using a per se determination of price distortion based on purported government intervention. US improperly failed to demonstrate that Indonesia's ban on log exports constituted a subsidy program specific to an enterprise or industry or group of enterprises or industries.

DS480 EU – Anti-dumping Measures on Biodiesel from Indonesia

Indonesia requested consultations with EU on: (a) provisions of Council Regulation (EC) No 1225/2009 on protection against dumped imports from non EU member countries; and (b) anti-dumping measures imposed in 2013 by EU on imports of biodiesel originating in, inter alia, Indonesia. EU failed to conclude a fair comparison between the export price and normal value:

(i)by comparing a constructed normal value that included a cost of production based on reference prices of a raw material
(ii)by deducting alleged commissions or mark-up on export sales to EU that were made by an Indonesian producer via related companies located in a third country;
(iii)by making an allowance for profits accruing to the Indonesian exporters' related importers in EU; by rejecting the actual profits accrued; and by rejecting the positive evidence provided by certain Indonesian producers with regard to the level of the notional profit margins of the EU importers of biodiesel.

DS 477/478 Indonesia — Importation of Horticultural Products, Animals & Animal Products

These two disputes concerned 18 measures imposed by Indonesia on the importation of horticultural products, animals and animal products. 17 of measures concerned Indonesia's import licensing regimes for horticultural products and animals and animal products. In addition, the co-complainants challenged Indonesia's conditioning of importation of these products on the sufficiency of domestic production to fulfill domestic demand.

In conclusion, Indonesia: (1) imposes prohibitions or restrictions on imports of horticultural products, animals, and animal products; (2) imposes unjustified and trade-restrictive non-automatic import licensing requirements on imports of such products; (3) accords less favorable treatment to imported products than to like products of national origin; (4) has imposed unreasonable and discriminatory pre-shipment inspection requirements; and (5) has failed to notify and publish sufficient information concerning its import licensing measures.

DS 467 Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products & Packaging

Indonesia requested consultations with Australia concerning certain Australian laws and regulations that impose restrictions on trademarks, geographical indications, and other plain packaging requirements on tobacco products and packaging. Indonesia challenges the following measures:

- The Tobacco Plain Packaging Act 2011, Act No. 148 of 2011
- The Tobacco Plain Packaging Regulations 2011 (Select Legislative Instrument 2011, No. 263), as amended by the Tobacco Plain Packaging Amendment Regulation 2012 (No. 1) (Select Legislative Instrument 2012, No. 29);
- The Trade Marks Amendment (Tobacco Plain Packaging) Act 2011. Act No. 149 of 2011, and
- Any related measures adopted by Australia, including measures that implement, complement, or add to these laws and regulations, as well as any measures that amend or replace these laws and regulations.

Indonesia claims that Australia's measures appear to be inconsistent with Australia's obligations under:

1. Articles 2.1, 3.1, 15.4, 16.1, 16.3, 20, 22.2(b) and 24.3 of the TRIPS Agreement;
2. Articles 2.1 and 2.2 of the TBT Agreement; and
3. Article III:4 of the GATT 1994.

DS 406 United States — Measures Affecting the Production and Sale of Clove Cigarettes

TBT Art. 2.1 (no less favorable treatment): The Appellate Body upheld, although for different reasons, the Panel's finding that clove cigarettes imported from Indonesia and menthol cigarettes produced in the United States were "like products" within the meaning of Art. 2.1. The Appellate Body disagreed with the Panel that the concept of "like products" in Art. 2.1 should be interpreted based on the regulatory purpose of the technical regulation at issue. Instead, the Appellate Body considered that the determination of whether products are "like" within the meaning of Art. 2.1 is a determination about the competitive relationship between the products, based on an analysis of the traditional "likeness" criteria of physical characteristics, end use, consumer tastes and habits, and tariff classification.

The Appellate Body upheld, although for different reasons, the Panel's finding that, by banning clove cigarettes while exempting menthol cigarettes from the ban, Section 907(a)(1)(A) accorded less favorable treatment to imported clove cigarettes than it accorded to "like" domestic menthol cigarettes. The Appellate Body interpreted "treatment no less favorable" in Art. 2.1 as not prohibiting a detrimental impact on imports when such impact stems exclusively from a legitimate regulatory distinction. The Appellate Body found that the design, architecture, revealing structure, operation and application of Section 907(a)(1)(A) strongly suggested that the detrimental impact on competitive opportunities for clove cigarettes reflected discrimination against the group of like products imported from Indonesia.

Academic Review: *"Dealing with international trade disputes to protect Indonesia's rights in international trade"* by **Dr Intan Soeparna**

The main objective of DSU is a central element to provide security and predictability to the multilateral trading system. There are essentially six phases in the WTO dispute settlement process: consultation, the panel process, the appellate process, the recommendation and rulings, arbitration and surveillance of implementation. The surveillance of implementation basically is the final phase of the WTO dispute settlement process. Unless the loss party fails to implement the recommendations and rulings of DSB within the reasonable period of time, the injury party may recourse under Article 22(2) of DSU. In this chapter, the predominant issue is the implementation of Article 22(2) DSU which unquestionably have correlation with all aspects of the research. Prior to it, six phases of WTO dispute settlement process will be elaborated in a brief enlightenment.

Pursuant to Article 4 (1) DSU, a WTO Member has right to ask for consultation with another member, if it believes that the other member has violated a WTO Agreement or otherwise the member finds that other member nullified and impaired benefits accruing to it. Bearing in mind that the structure of consultation is undefined and there no rules for conducting them, members have to be entered into good faith.

The consultation phase is prerequisite before the request of panel establishment. It is the responsibility of the complainant and the respondent members to consult on the matter of dispute, and WTO Secretariat shall provide no support. The only requirement is that the consultation should be notified to DSB. The defendant member should respond to the request of consultation within 10 days after the receipt of request, and consultation should be confidential. If no response is given after 10 days, or does not enter into consultation within 30 days, the complainant member can directly request the DSB for the establishment of Panel. The DSB shall establish the Panel, unless it is rejected by consensus. Since consultation is a necessary step before the commencement of panel proceedings, the parties could request the establishment of panel only if the consultations fail to settle a dispute within 60 days after the date of receipt of request for consultations. However, some members have purposed for shortening the period of time for consultation, so that they can proceed to another stage or to request establishment of Panel. (for complete review please click here for Mrs. Intan)

*__Dr Intan__ is a senior Lecture of International Law, Universitas Airlangga Indonesia.

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International Trade APINDO

International Trade APINDO conducts International Trade Forum

"Dealing with international trade disputes to protect Indonesia's rights in international trade"

Jakarta, 2 March 2017. With the agenda to address information gap among members by assessing the evidence on the reality of Indonesia position in International trade, the forum aims to address the following issues such as: the WTO dispute settlement mechanism in international trade, best practice to deal with trade disputes to strengthen Indonesia position in international trade and strategic plan in addressing trade dispute, including trade initiatives and progress to overcome trade dispute and some critical issues to Indonesia's business sector. Speakers of the forum are Mrs. Intan Soeparna, Airlangga Institute of International Law Study and Mrs. Dra. Pradnyawati, MA, Ministry of Trade.

Trade dispute happens when a country adopts a trade policy measure or takes some actions which are considered to be breaking the WTO agreements or to be a failure to live up to obligations by one or more WTO members. Essentially, trade disputes in the WTO are to question or to clarify whether a country follows its obligations. As the response, WTO members have the ability to use the multilateral system of settling disputes instead of taking action unilaterally to abide the committed country by the agreed procedures, and respecting judgments. Since trade dispute settlement is the core of the multilateral trading system, the WTO's significant contribution in addressing trade dispute becomes tool to stabilize the global economy. The system is based on clearly-defined rules with timetables when the case shall be completed. Members will be able to appeal the case based on points of law. However, even though the panel issued the judgments, it is the prime concern that the dispute is settled through consultations. (To access presentation materials, please click here for Mrs. Intan, Mrs. Dra. Pradnyawati)

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International Trade APINDO conducts International Trade Forum

"Harmonized regulations for fair international trade: Indonesia's transparency of regulatory process and public consultation"

Jakarta, 11 April 2017. International Trade APINDO again hosting monthly international trade forum with agenda to discuss the WTO mechanism in harmonized regulations for fair international trade. The forum aims to address the following issues such as: best practice to deal with transparency of regulatory process and public consultation to strengthen Indonesia position in international trade, strategic plan in addressing lack of harmonized regulations and the Indonesia's transparency of regulatory process and public consultation and progress to overcome trade dispute and some critical issues to Indonesia's business sector. Speakers of the forum are Mr. Iman Prihandono PhD, Airlangga Institute of International Law Study and Mrs. Enny Nurbaningsih, Ministry of Law and Human Rights

Transparency implies transparency of regulatory process and transparency of the outcome of the process (regulation). Transparency is considered for the purpose of achieving certain legitimate public policy objectives that have been explicitly identified in clear and understandable manner. A new regulation should also take into account advises from the affected stakeholders and should made available to them and public in a timely and efficient manner. Public consultation however is not a mere instrument to make regulatory process more transparent, but is important in and of its self. A new regulation must follow the established rule, methodology and procedure to make it predictable and it shall be free from undue interference from politicians and special interest groups. Public consultation will help regulators to identify and eliminate or at least minimize any unnecessary burdens that may inflict on the affected parties. (To access presentation materials, please click here for Mr. Iman, Mrs. Enny Nurbaningsih)

Our Participations

Trade Export activation in Padang on 19 April 2017

Padang, 19 April 2017. International Trade Department and Directorate General for National Export Development, Ministry of Trade conducted forum export activation in Padang. This program is an initial cooperation from MoU between APINDO and Ministry of Trade (MOT). The purpose of the program is to promote trade (export), especially for west Sumatra commodities such as Gambir, Areca Nuts and Cinnamon and. The participants are mainly members of DPP APINDO Padang. The event ran smoothly and participants were getting right information on export market and development of export products, especially to India. The event is a good exposure for MOT to familiarize the government initiative and assistance to develop West Sumatra export commodities.

Our Upcoming Events

International Trade Forum on 17 May 2017 at 2.00 pm
"Trade Disputes in Asia and the Geopolitical Implications for Indonesia Bilateral Relations" at Ruang Serba Guna APINDO, Permata Kuningan Building, 10th Floor.

Export Activation in East Nusa Tenggara on 29 – 30 May 2017 in Kupang
29 May 2017 for local business visit | **30 May 2017** for Forum Export Activation and business consultation.

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