

Dispute Settlement on Trade-Restriction of the Horticultural and Animal Products

(Case study of Indonesia, New Zealand, and USA)

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Abstract—This article attempts to discuss the dispute between Indonesia, U.S and New Zealand regarding importation law of horticultural, animals and animal products occur as Indonesia fail to meet the international trading standard and the local government has been trying to protect the local business from international competition as the local product never win against the foreign-made product. The regulation imposed by Indonesian government appeared to be inconsistent; thus, the exporter, U.S and New Zealand protest to WTO because Indonesia is one of the potential markets for their product.

Keywords—*dispute settlement; trade-restriction; horticultural products*

I. INTRODUCTION

Agriculture is one of the crucial and critical sectors in Indonesia, consist of horticultural, fisheries and livestock sub-sector. The negotiations in reshaping agriculture trade policy brings an open question as long as comprehensive information on policy instruments of import tariffs remains sparse [1]. The initiatives to promote green policy in upstream industry relied on generating the business inclusion for forest communities, especially for smallholders who own most of the forest in developing countries [2].

The profit of the processing industry is mostly affected by primary agricultural commodity prices: it either benefits from lower prices in the FTA scenario or is worse off due to increasing prices in the other scenarios [3]. The initiatives to promote green policy in upstream industry relied on generating the business inclusion for forest communities, especially for smallholders who own most of the forest in developing countries [4]. Harmonization of product standards seem to be more elaborated between OECD-countries than between OECD and other countries, which spring from asymmetric rise in import refusals during the crisis and its aftermath [5].

Tariff revenues increase in all scenarios mainly due to increased volumes of trade, taking into account that tariff cuts for sensitive products are only partial [6]. Support for trade is not common, while most countries prefer to promote trade protection. The globalization skeptics argue that net exporters reduce taxes and spending in order to attract capital and

promote exports. At the same time, governments appear to compensate losers of import-competing industries in net importing countries [7].

When increased interconnectedness between economies is indisputable, it is essential to consider the role of supranational agencies in regulation to promote fair competition between international firms in global markets [8]. Country-base explanation of the supply of protection demonstrates the realism and institutionalism. Explanations of the demand for protection can be found in factor-based and sector-based insights from trade theory [9]. According to the Stolper-Samuelson theorem of the Heckscher-Ohlin model, the international trade demonstrates the owning a factor specific to the import sector [10].

This article attempts to discuss the dispute between Indonesia, U.S and New Zealand regarding importation law of horticultural, animals and animal products. Accordingly, this study undertakes a content analysis in order to examine and synthesize the information on international trade and dispute settlement, reveal the gaps in the literature, and identify key future research trends. The result extends the discussion on the role of dispute settlement body in improving the political welfare of the governments by reducing the frequency of trade skirmishes and by improving the self-enforceability of trade agreements.

II. RESEARCH METHOD

The content analysis method is used to analyze international trade phenomenon by interpreting words and images from documents and media. The objective in qualitative content analysis is to systematically transform a large amount of text into a highly organized and concise summary of key results [11]. The use of content analysis method is useful to explore the driving forces behind the phenomenon, especially its mechanisms [12].

The researchers look at how the words are used, and the context in which they are used to draw inferences about the underlying culture. The construction of the key category concerns to summaries and represent the natures and attributes of other categories [13]. In order to explore and refine the

relationship among different categories further, this study analyzed the constitutional dimension of the driving factors behind dispute settlement reports and analyzed the relationship between their behaviors and the driving factors in detail through a systematic sorting of the concepts and categories.

III. THE FINDINGS

On 8 May 2014, U.S and New Zealand requested WTO for consultation to Indonesia regarding importation of horticultural products, animal and animal product imposed by Indonesian government. According to both of the complainant, U.S and New Zealand, Indonesia imposes restriction and prohibitions prohibition on imports of horticultural and animal products. Unfair and trade-restrictive non-automatic requirement for import licensing on the import of the horticultural, animal and animal products are imposed as well by the Indonesian government [14].

A. Indonesia

Agricultural is one of the crucial and critical sectors in Indonesia, consist of horticultural, fisheries and livestock sub-sector with 25% of total land area is around 190 million hectares (ha) are agricultural, while other 129 million ha are forest. The country is a net importer of grains, horticulture and livestock produce. In 2014, agriculture employed around 40.12 million people, equal to 33% of the total Indonesian labor force. It is estimated that a 7% per annum increase in smallholder productivity could result in a \$50 billion increase in agriculture revenues by 2030 [15]. Biological control seems to be a plausible mechanism between forest and agricultural productivity. Rice, fruit, and vegetables are relatively susceptible to insect damage compared to estate crops such as rubber, sugar, wood, and livestock [16].

Based on Bureau of Statistics data processed by Ministry of Agriculture, Indonesia suffer from trade deficit on Semester I of 2014 in horticultural sector, with value of deficit at US\$608.132 million. Thus, Indonesia relies heavily on import to fulfill the demand in the market. The main exporter of horticultural product in Indonesia is China, Thailand, U.S and Australia for fruit with China being the largest exporter while for vegetable the major exporters are China, Myanmar, Australia and India. Since 2007, the government of Indonesia plays an active role in the development of Geo-graphical Indications (GIs) to promote agricultural policy and agricultural modernization [17].

Poultry production and commercial livestock are mostly centered in Java and Sumatera. Due to the high demand of the animal products, Indonesia has been importing some of the animal products (mainly beef and dairy products), from Australia, New Zealand and United States. In 2014, the import of beef from Australia increased around 35%, amounted for 53,139 ton, creating a new record for beef import in Indonesia. The purchased feed was the greatest cost in small-scale semi-intensive chicken production in Indonesia, although farmers earned a net annual income of IDR4,329,038 [18].

B. The United States of America

Over the last decades, United States trade deficit for horticultural product is growing higher. Although the exports value exceeds US\$7 billion in 2011, the import of fruits and vegetables exceeds US\$18 billion, creating net deficit of US\$1.2 billion. The trade deficit has increased over time, because the average growth for import is approximately 6% annually whereas the average growth for export is only about 2% annually. Thus, United States is currently a net importer of horticultural products [19].

The top three importing countries of United States' horticultural product are Mexico, Canada and China. This condition mainly happened because of domestic import regime and lower average import tariffs in United States, tighter competition from governmental-subsidized or low-cost production and continuation of non-trade tariff barriers for U.S export in several countries. Further, United States horticultural sector is currently dominated by the large companies and the number of small rural farm is declining. Those large companies provide jobs for American as some of them work directly with the rural farmers.

As for the livestock sector, which produces animal products, the main livestock industry in U.S consist of dairy cattle, beef, cattle, poultry, sheep and pig. U.S is the second largest beef exporter and the largest beef producer in the world; however, due high imports of lower-valued processing beef, U.S. becomes the world's largest beef importer, too. The beef industry is currently dominated by four companies, namely, Tyson Foods, JBS USA, Smithfield Foods and Cargill Meat Solution. This "Big Four" company control 84% of beef market. Thus, traditional cattlemen struggle against these giants. For the dairy products industry, it is dominated by family- owned and managed farms and the dairy farms are usually members of producer cooperatives [20].

C. New Zealand

Agriculture is the largest industry on New Zealand, contributing around two-thirds of exported goods. The horticulture sector plays key roles in the country's economic growth since total horticultural production value is around \$6.7 billion and horticultural exports value is around 8% of total merchandise export. The main horticultural goods exported by New Zealand are wine and kiwifruit as of 2013. The main export target for New Zealand is the Pacific Rim countries as in 2013, these markets accounted for more than 71% of horticultural export while the Asian market takes 32% of the export [19].

The government of New Zealand realized this potential; thus, the government has been focusing on doing continuous horticultural training for the farmers to improve the production efficiency of the horticultural goods. Apart from training the farmer, horticultural sector in this country is highly competitive due to the fact that the total investment in this industry is estimated to be approximately \$34.6 billion which consist of off-term postharvest facilities for cleaning, sorting, packaging, and processing produce from an estimated 123,500 hectares of cultivated horticultural crops in fruit vegetables and flowers.

For the livestock sector, New Zealand farmers increase efficiency of their operation by making the animal farming pasture based on where cows and sheep is fed during feed shortage. Additionally, New Zealand is the eighth largest milk producer in the world which covers around 2.2% of world production. The meat industry in New Zealand employs approximately 25,000 individuals, making it the largest employer. The New Zealand meat industry exported hundreds of different products (beef, sheep meat, wool and dairy product) to over 120 countries in 2013 with total value of \$6.3 billion. The main markets for New Zealand are United States and China. However, Indonesia entered top 10 largest beef market for New Zealand as of 2014 [21].

IV. THE INTERNATIONAL TRADE ISSUE

On 8 May 2014, U.S and New Zealand requested WTO for consultation with Indonesia regarding importation of horticultural products, animal and animal product imposed by Indonesian government. According to both of the complainant, U.S and New Zealand, Indonesia imposes restriction and prohibitions prohibition on imports of horticultural and animal products. Unfair and trade-restrictive non-automatic requirement for import licensing on the import of the horticultural, animal and animal products are imposed as well by the Indonesian government.

Furthermore, Indonesia also applied less favorable treatment on imported products; has imposed discriminatory and unreasonable pre-shipment inspection requirement; and has unsuccessful to publish and notify sufficient information regarding its import licensing measures. The complainants believed that the measures of import licensing are in contradiction with Indonesia's commitment under the GATT 1994, the Agreement on Agriculture, the Agreement of Import Licensing Procedures and the Agreement on Pre-Shipment Inspection.

In March 2015, WTO has been asked by the U.S and New Zealand to establish a dispute settlement panel to inspect Indonesia's practices. Both complainants have requested that WTO dispute settlement panel to look at the import barriers, kicking off a process that could lead to sanctions. Actually, the complaint had already been in the consultation stages, in which the countries involved in this dispute meet to try and resolve their dispute, since the United States and New Zealand brought their complaint to WTO last years but there was no agreement reached between parties involved.

This dispute actually seems like never ending dispute as both New Zealand and U.S have already requested WTO to have consultation with Indonesia over similar issues. In the case of the previous United States' dispute (DS455) panel was established; nevertheless, no further action taken after that. In the case of New Zealand's dispute (DS466) dispute panel has not been established and no withdrawal mutually agreed solution was notified. The dispute settlements did not continue further than consultation because Indonesia changes to its rules; thus, a new application should be made.

V. DISPUTE SETTLEMENT

The Indonesian government enacted the regulation, namely Ministry of Trade (MOT) Regulation 16/2013 and Ministry of Agriculture Regulation No. 86/2013 to protect the local farmer since the locally-produced horticultural product is often more expensive than imported horticultural products. Thus, the local horticultural product cannot compete with the foreign product competitively in the market.

A set of regulations has been made by Indonesian government to restructure horticultural imports, including imposing special Trade Ministry import permits for horticultural product and restriction import gateway in 2012. Indonesia's largest port, Tanjung Priok, was closed because it suffered from overloading capacity that resulted into poor supervision of imports. Restrictions on animal imports due to the result of health concern, was imposed by the government. The measures tighten up inspection of imported animals and require importers to register; granting them special import licenses and also it.

However, after the U.S and New Zealand brought this case to WTO, Indonesian government revised the rule, expressed in Trade Minister Regulation No. 16 Year 2013, and titled 'Horticultural Products Import Policy'. The revision was done to shorten the process of import licensing and to further ease regulations concerning import administration.

Even though Indonesian Ministry of Trades has revised its licensing procedures for horticultural imports after the U.S bring this dispute to WTO in 2013, U.S apparently still dissatisfied as they feel that the latest revisions still do not comply with WTO standard, limiting the United States business access to Indonesia's market. U.S then renews its complaint to the WTO on May 2014, altogether with New Zealand. New Zealand joined U.S in this dispute because their beef export to Indonesia has collapsed to only 28 ton in January 2013 from 2,669 ton in January 2014 since Indonesia has tightened its restriction again after it made relaxation of the import quotas at the very end of 2013. Back then, after Indonesia made relaxation, New Zealand export of beef increase from 10,206 ton in 2012 to 19,258 ton in 2013.

In 2014, U.S exports of horticultural products to Indonesia with value exceeding US\$ 122 million while on the other hand, it exports of horticultural products with value of US\$128.5 million to Malaysia, US\$ 6 million more than exports to Indonesia, even though the population of Indonesia is eight times larger than Malaysia.

Furthermore, the value of United States exports of animals and animal products to Indonesia is US\$ 63.2 million in 2014, while export to Philippines, another similar market, valued at US\$ 248.3 million in 2014, even though the population of Indonesia is 2.5 times larger than Philippines. The United States Trade Representatives (USTR) stated that United States farmers will be able to compete more effectively in Indonesia market if there is no trade restrictive import licensing regime in Indonesia. The USTR representatives, Michael Froman, stated that Indonesia is an important export market for many U.S agricultural products, especially fruits such as apples and grapes.

Thus, U.S altogether with New Zealand, in this dispute, has been requesting the establishment of a WTO panel to inspect Indonesia's import restrictions. Indonesia's wide-ranging import restrictions on agricultural products such as poultry and beef as well as grapes, apple and potatoes will be inspected further. U.S challenged Indonesian on a ban on poultry and certain meat products and Indonesia's trade-restrictive import licensing regimes for horticultural products and animals and animal products. Similar with its import licensing regimes, Indonesia restricts the sale of imported products and prohibits the importation of certain products at certain times within Indonesia.

Both countries, the United States and New Zealand is actually questioning several import regimes and law in Indonesia, such as Laws No 13 of 2014 on Horticulture, Laws No 18 of 2009 on Husbandry and Animal Health, Law No 18 of 2012 on Food, Law No 19 of 2013 on the Protection and Empowerment of Farmers and Law No 7 of 2014 on Indonesian Trade. For both countries, the import licensing measures and requirement of import licensing in Indonesia has been unfair and contradictory with Indonesia's commitment and duty under GATT 1994, the Agreement on Import Licensing procedures, the Agreement on Agriculture and the Agreement on Pre-shipment Inspection.

VI. KEY PLAYERS

A. *The United States Trade Representative (USTR)*

United States Trade Representatives (USTR) is a U.S government's agency that focuses on negotiating directly with foreign governments in order to establish trade agreements, to solve dispute, and to take part in global trade policy organization. USTR was created in 1962 and has become the annex of U.S government regarding international trades' issues. In the case of importation of horticultural products and animal product dispute with Indonesia, the USTR has worked altogether with United States Department of Agriculture (USDA) over the recent two years to hold Indonesia to its trade commitment.

The USTR believed that in the without Indonesia's trade restrictive import licensing regime, U.S farmers can compete more effectively in selling product to Indonesian consumers. Due to this unfairness, U.S government through the USTR has asked WTO to establish a dispute settlement panel to examine Indonesia's wide-ranging and complicated import restriction on fruits and vegetables, animal products and other agricultural products. Even though Indonesia has revised the import licensing requirement back then in 2013 after USTR firstly brought this case to WTO.

USTR believed that the revised system still restricts U.S Agricultural export and violate WTO rules. USTR did this in order to increase the export of agricultural products and protecting the trade rights as well as the interest of American farmers and ranchers which has been priority of the President Obama Administration. In 2014, U.S export of agricultural product accounted for US\$155.1 billion, supporting and providing over a million American jobs [22].

B. *The United States Department of Agriculture (USDA)*

USDA, known as the Agriculture Department, is the U.S federal executive department that have the objective to fulfill the needs of farmers and rancher, to promote agricultural trade and production, to assure food safety, to shelter natural resource, to end hunger and to encourage rural communities in the United States and internationally. USDA is one of the major key players in this case as they has worked together with USTR over the past two years to fight the unfair import regime in Indonesia since they are responsible to ensure the welfare of farmer and rancher in U.S. When U.S trading partner (in this case Indonesia) do not play by the rule and it cost American jobs on agriculture, USDA believed that it is critical for them to hold them accountable.

C. *The New Zealand Ministry of Trades and Foreign Affairs*

New Zealand Ministry of Foreign Affairs and Trade (MFAT) is the principal adviser of the government and negotiator on foreign and trade policy issues. MFAT is responsible for protecting and promoting New Zealand's interest overseas. MFAT believed that Indonesia's trade restriction on horticultural and animal product has made serious decline in the export of animal products especially meat to Indonesia. Since Indonesia is one of the largest markets for beef product from New Zealand, and such restriction will endanger the export of New Zealand's beef that will eventually harm the domestic producer, MFAT decided to join U.S in a challenge at the WTO over Indonesian trade restrictions on plant and animal products on 2014. MFAT believed that Indonesia's unrealistic policy of self-sufficiency is actually limiting the choice for Indonesian consumer to high qualified horticultural and animal product.

D. *The Meat Industry Association of New Zealand*

The meat industry association of New Zealand is the most vocal association regarding Indonesian import restriction on the horticultural and animal products. The association says export volumes dropped due to several restrictions which exclude lots of New Zealand products from the market also delays in the issuance of first-quarter import permit by the Indonesian government. The association stated that demand for New Zealand beef demand is pretty much high in Indonesia and due to the changeable rules, the sales of New Zealand beef in Indonesia has been instable, that increase and decrease significantly over short time. The association has been arguing that it is actually beneficial for both Indonesia and New Zealand to export goods, in which they have competitive advantages to each other, rather than applying unrealistic import restriction that actually harm the Indonesian domestic price of beef.

E. *The Indonesian Ministry of Trade and Ministry of Agriculture*

The Indonesian government, through its Ministry of Trade and Ministry of Agriculture, is categorized as a key player even though Indonesia is only the respondent in this dispute since what triggers the U.S and New Zealand's complaint to WTO was the strict import restrictions on horticultural and animals product which were described as very inconsistent and

discriminative by the complainants (U.S and New Zealand) and the local industry expert.

Indonesian government's aspiration for self-sufficiency to ensure food security, made them creates several rules which is expressed in Ministry of Agriculture Regulation No. 86/2013 Ministry of Trade (MOT) Regulation 16/2013. Both regulations aim at limiting the imported agricultural product which is often cheaper in the market compared to the domestic products. Even when U.S and New Zealand complains in 2013, the Indonesian government insisted on keep applying those rules. Only when the U.S and New Zealand asked for dispute settlement in WTO, Indonesian government softened and decided to revise the current rule.

F. The Indonesian National Horticulture Board

Indonesian National Horticulture Board (INHB) is an independent board that focuses on increasing the awareness of general publics and other parties regarding horticulture. It aims to accommodate the interest of horticultural business player such as farmer and traders though the development of information network, coordination and cooperation. INHB has expressed their disagreement regarding the revision of Horticultural regulation. INHB believed that the government is too soft toward U.S as they quickly change the rule once U.S report Indonesia to WTO. For them, the inconsistency of the rule harm the domestic market so bad as price of certain goods keep skyrocketing and the local farmer was unable to compete in the market.

VII. DISCUSSION

We have argued that there are compelling reasons why net exporters of agricultural products would seek to expand social protection. Most of the farmers work for vulnerable small-scale business with poor risk management practices [23]. Rather, the pressure to protect the workers is generated by an interest in maintaining a steady supply of labor for a key exporting industry, and by fears that, in the absence of pro-poor social protections coupled with extremely low wages, growth and investment in the export-oriented sector may be harmed.

Indonesian Government, in this case, consists of Ministry of Trade and Ministry of Agriculture. Indonesian Ministry of Trade is ministerial agencies responsible for trade issues in Indonesia. It has function to create, maintain and implement law and regulation in trade which addressed the interest of the stakeholder. As for the Indonesian Ministry of Agriculture, it is a ministerial agency responsible to handle agriculture issues in Indonesia. Both ministries, has applies several rules to protect one of its crucial sectors, which is agriculture. As in many other developing countries, the fear regarding food security in Indonesia has resulted in policies which aim to achieve self-sufficiency in food crop. The government of Indonesia through its Ministry of Trade and Ministry of Agriculture has applied various policies to protect the Indonesian agriculture sector. It is known that, even though Indonesia is one of the largest food producers in the world, Indonesia still rely heavily on imported goods for its horticulture and animal product.

For the last decade, Indonesian Ministry of Trade has been mostly focusing on expensive subsidies and protection from

agricultural import in order to protect the local market. However, the policies remain ineffective as at the end of the day, it is the farmer who suffered due to the inconsistency of the import measure set by the Ministry of Trade since the rules keep changing over short period. This inconsistency is taken seriously by some of the horticulture and animals product's exporter in Indonesia, namely U.S and New Zealand. Both countries, report the Indonesian government through the WTO. The Government of Indonesia finally loose its import restrictions after tightening them previously in order to comply with these countries request. This actually shows that the Indonesian government is not all out in protecting the local domestic horticulture and livestock (animal products) industry.

Based on the problem presented previously, it is clear that there are several prominent problems faced by the proponent, which is the Indonesian government-Ministry of Agriculture and Ministry of Trade). The first problem is the failure to meet the international trade agreement standard imposed by WTO. The second problem is about the under-performing sector due to the lack of productivity. This section will discuss about several strategies that can be used by Indonesian government to tackle these problem

Indonesia failed to meet several international trade standards imposed by WTO as the Indonesian government, in this case the Ministry of Trade and Ministry of Agriculture has been inconsistent in applying importation law. To make it worst, there is also lack of effective coordination between these two ministries as stated by the member of Indonesian House of Representatives Commission VI. Even worse, there is also miscommunication between the central and local government due to the lack of coordination regarding policies imposed by the central government. At the end, due to this inconsistency and lack of coordination, there are many parties impaired: (1) the local consumer- as the price of the products skyrocketing; (2) the local business player; (3) the farmer- as they are unable to compete in the market competitively; and (4) the importers itself- as their import value might decrease significantly or become unstable due to this importation law.

Therefore, the author believed that there should be effective inter-ministerial coordination between Ministry of Trade and Agriculture. Both ministries should keep each other involved and informed on new policies development on each ministry. There should be a regular meeting in which both of the ministries sit in together discussing about regulation, which is going to be imposed regarding horticultural and animal products. Both of ministries should also aware that the concern of the stakeholder (business player, consumer) should be addressed when determining policies. As for the central and regional government, it is important that they also have good coordination as well regarding new policies imposed, the central government, for example, can socialize and explain new policies in detail to the local government through the use of periodic meeting.

Another reason why government cannot fulfill the WTO international trade standard is because the government is trying to protect the local producer to ensure the local horticulture business as they are hardly win competition against foreign

product sold by importer. The government should give subsidies and educate local farmer.

Thus, Indonesian government should improve local farmer productivity by giving consultation and socialization regarding modern method of cultivation, providing farmer with fertilizer and superior seeds, providing fund needed by local farmer to do investment, educating them how to build efficient management. Additionally, farmer as well as stockbreeder productivity can be improved as well if the government invests more on sophisticated technologies to boost the production of qualified products. Next, to build better distribution of horticultural and animal product, government should build an efficient supply chain.

However, in Indonesia, such supply chain is hard to find due to the presence of food mafia who hold control over market supply. To improve the distribution system and eradicate the presence of food mafia, government should fully control the supply chain of the commodity products and use cooperatives as strategic member of the chain. All members of the chain should obey all rules imposed by government. When the local product can competitively compete with foreign product, government will less likely impose protectionist import rule that is not in accordance with the international trade standard which trigger protest to the WTO by importers.

VIII. CONCLUSION

The dispute between Indonesia, U.S and New Zealand regarding importation law of horticultural, animals and animal products occur as Indonesia fail to meet the international trading standard and the local government has been trying to protect the local business from international competition as the local product never win against the foreign-made product. The regulation imposed by Indonesian government appeared to be inconsistent; thus, the exporter, U.S and New Zealand protest to WTO because Indonesia is one of the potential markets for their product.

Thus, it is important that Indonesian government should develop better coordination among governmental agencies in order to create better regulation that meet international standard. Additionally, instead of imposing protectionism rules, Indonesian government should reform and transform the horticultural and livestock sector of agriculture so that local business player can stand on their feet against the imported products. By doing so, there is no need for government to impose protectionism rules; thus, there won't be any similar dispute occurs in the future.

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