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Legal Approach of Indonesia Horticulture Trade Dispute Compliance of WTO DS478

Jonathan Kaleb Parulian[1]* and Rouli Anita Velentina[1]

[1]*Faculty of Law, Universitas Indonesia, Depok, Jawa Barat, Indonesia*
**Corresponding author. Email: Jonathan.kalebp@outlook.com*

ABSTRACT
World Trade Organization (WTO) was established with the purpose of having a free and fair international trade. To achieve that purpose, any violation towards the covered agreement in the Agreement on the Establishment of World Trade Organization will be brought to the Dispute Settlement Body (DSB) of WTO. Member states of WTO itself consist of developed and developing country which have different capability to comply with all the agreements. This problem lead to the establishment of Special and Differential Treatment (SDT) in WTO, which aim to help developing country in WTO to keep up with the capability of developed country. It gives developing country some advantages in implementing WTO's covered agreements. Lately Indonesia and United States of America and New Zealand just settle to the DSB the dispute regarding the Import of Horticulture and Animal Product regime in Indonesia. The decision was made and it stated that Indonesia has violate the General Agreement on Tariffs and trade 1994 (GATT) Article XI:1 and need to revise some of the measure Indonesia's implementing. Indonesia as developing country and member of WTO should have the right to get SDT in implementing WTO's measures. In this case at hand we can see that SDT does not really come to the surface of the case as any consideration of the Panel to decide on the dispute. SDT as a measure created to support developing country needs to be uphold in order to keep the trust of developing country member of WTO.

1. INTRODUCTION

World Trade Organization was established on the 1st of January 1995 as a successor of the previous GATT. The secretariat of GATT became the secretariat of the WTO and the status of WTO as International organization sure is more adequate than the previous GATT (Korah, 2016). Indonesia became WTO member since the ratification of the Agreement on the Establishment of the World Trade Organization by the Law of the Republic of Indonesia Number 7 of Year 1994. As part of the member of WTO, each member should comply with all of the covered agreement of the WTO itself. If any dispute arise between members, the dispute will be brought to Dispute Settlement Body (DSB) and the ruling will be under the Understanding on Rules and Procedures Governing the Settlement of Dispute (DSU). Measures under the DSU itself is part of interpretation and implementation of Article IV GATT 1947 (Suherman, 2012). If any problem arise, member of the WTO can raise a claim towards other member to the DSB without the consent of the other member (Taniguchi, 2007).

Dispute settlement procedures under the DSU is done by 3 phase, Consultation, Panel Ruling, and Appellate Body. Consultation as the first step of dispute settlement procedure needs to be done by parties of the dispute then if it fails, both party can propose the establishment of a panel to settle the dispute. Panel will analyse the problem and come up with a result of a panel report that will be submitted and adopted by DSB within 60 days after the proposal of the establishment of the panel (Stanton, 2001). If both party still not satisfied with the report, they can still file the settlement to the Appellate Body. The ruling of the Appellate Body is final and decision that has been made should be accepted by both party.

In May 2014, United States of America (USA) request WTO to have a consultation with Indonesia regarding several regulations that considered hampering the import of horticultural product, animal and animal product to Indonesia. By this request, USA accused Indonesia has violated several measure in the WTO:

1. Article III: 4, X:1, XI:1 of GATT
2. Article 4.2 of Agreement on Agriculture
3. Article 1.2, 1.5, 1.6, 2.2, 3.2, 3.3, 5.1 and 5.2 of Import Licensing Agreement
4. Article 2.1 and 2.15 of Agreement on Preshipment Inspection (World Trade Organization, n.d.)

On March 18th 2015, USA request the WTO to form a Panel to settle the dispute and afterwards Indonesia request the Appellate Body to settle on the law matters and law interpretation based on the Panel Report.

On the Request of the Consultation submitted by USA, it is stated that Indonesia has violate WTO's measure by;

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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 preshipment inspection requirements; and
5. has failed to notify and publish sufficient information concerning its import licensing measures (WTO, Indonesia - Importation of Horticultural Products, Animals and Animal Products, 2014).

By these points, USA claimed that measures that Indonesia has taken regarding import license permission is hampering international trade. This was caused by regime's complexity, USA stated that "Indonesia's import licensing regime is a restriction on imports, is not as simple as possible, is more administratively burdensome than absolutely necessary, unnecessarily requires approaches to more than one administrative body, and is trade-restrictive." (WTO, Indonesia - Importation of Horticultural Products, Animals and Animal Products, 2014)

After all of the procedures of dispute settlement, it comes to a result that stated that Indonesia violate WTO measure under Article XI:1 of GATT 1994 and should revise all the measures claimed. The problem here is that in the Report of the Panel and the Report of the Appellate Body we can see that SDT as the rights for Indonesia as developing country is not taken as any consideration for the decision. This cause the writer intention to analyse the dispute between Indonesia and USA (DS 478) specially the effectivity of SDT itself in the dispute settlement proceeding. SDT as a measure made specifically for developing country need to be uphold and implemented in the dispute settlement procedures to make it fair for the developing country as a party in the dispute.

2. METHODOLOGY

In formulating a writings, method is essential to give direction to the writer to construct specific things to be discussed. Method help writer to do research in order to strengthen and develop the knowledge. Knowledge needs to be organized systematically, trusted, and can be developed (Soekanto, 1986). This paper was written in a normative-judicial form which means the research was done by library material or secondary data (Mamudji, 2005). Research typology in this paper was made by evaluative measure, means that writer intend to assess a program or regulation that is applied in the moment. (Soekanto, 1986) It can be seen in this paper where writer will explain Indonesia's regulation that becomes the object of the dispute and special measures that should be taken by WTO in the dispute settlement procedure.

Data that will be used by writer in this paper is secondary data that gathered by literature study. Secondary data is not gained by field research which includes official document, books, research reports, etc (Mamudji, 2005). Secondary data that writer use in this paper consist of primary, secondary, and tertiary legal material which will be explained;

Primary Legal Material is a legally binding material (Mamudji, 2005), in this case it can be regulation in regards of horticultural products and WTO covered agreements.

Secondary Legal Material gives deeper explanation regarding primary legal material like books and articles (Soekanto, 1986).

Tertiary Legal Material is legal material that could be a reference or explanation of both primary and secondary legal material, for example like dictionary and encyclopaedia (Soekanto, 1986).

Regarding to analysing the data, writer of this paper use qualitative method that will provide descriptive-analytical data or means that aim by the research by written or spoken (Mamudji, 2005).

3. DATA AND ANALYSIS

3.1. Data

Since July 2016, WTO has 164 countries as member of the organization, where all trade between member states are ruled under the umbrella of WTO. Approximately two per three member states of WTO are developing country and least developed country (Siebber-Gasser, 2016). The status of developing and developed country in the WTO described that every member of the WTO itself have different capability in terms of implementing agreements under the WTO. This differences also brought a debate between developed and developing country where the developed country argues that liberalisation of international trade under WTO is the way to achieve better economic condition while the developing country argue that liberalisation of international trade will only cover the interest of developed country (Mallawa, 2012).

To find the common ground between developed and developing country, the way is to make agreements on international trade. Agreements under the WTO covers many areas in international trade in order to have a free and fair trade. Beside regulation towards trade, developing country interest is also covered under the WTO agreements, it is called SDT (Sutrisno, 2009). This measures give specific and special rights that is only given for developing country member. One of some of the advantage of the SDT is that these special provisions give longer time periods for implementing Agreements and commitments or measures to increase trading opportunities for developing countries (World Trade Organization, n.d.). These provisions give the right for developing country in their capability to keep up

and achieve the same chance as developed country in international trade.

Any country that becomes the member of WTO have the right to declare whether or not they want to be categorized as developing country. Member that declare themselves as developing country shall give justification and this will give another consequence to other international organization such as OECD (Siebber-Gasser, 2016). Afterwards, if the country granted the status as developing country then they can use the right of SDT. Even though SDT sounds like a good thing that will give benefit for developing country, the implementation of the benefit itself is still questionable. WTO secretariat even made an paper that stated that it is proven substantially that developing country gain a lot less benefit than what they are demanding in WTO discussions (Mitchell, 2014). The problem regarding the SDT itself is that SDT measures is contradictive with the principal of WTO which is Non-Discriminatory.

The implementation of SDT allows developing country to set aside some obligation which should be complied by all member states. Andrew D. Mitchell in his paper stated that

> *...Developed country Members 'do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed Members'. This means that developing country Members are not expected, 'in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs' (Mitchell, 2014).*

By this means that developing country could somehow dodge the obligation made by WTO and developed country feels that this measure is unfair to be implemented. SDT as a measures under the WTO is still recognized, but the implementation of this measure is questionable. Even though SDT exist, access to developed country market from developing country is still hampered, developing country interest is still not protected, transition period that is inadequate, and there is no flexibility for developing country to implement certain measures in WTO agreements as promised by SDT (Sutrisno, 2009).

SDT can be considered as vague measures, where it consist of benefits that member have knowledge about but not clearly to be implemented. Even if it is vague, it is stated in many agreements under WTO and the implementation of SDT should be uphold. Regarding SDT measures in this paper will be specified in 4 agreements that is connected to the dispute, General Agreement on Tariff and Trade 1994 (GATT 1994), Agreement on Agriculture, Agreement on Import License Procedures, and Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

GATT 1994 contains 25 provisions regarding SDT which can be seen in Articles XVIII, XXXVI, XXXVII and XXXVIII of the GATT 1994. These provisions can be divided into 3 categories, first is provisions aimed at increasing the trade opportunities of developing country Members; second is flexibility of commitments, of action, and use of policy instruments; and third is provisions under which WTO Members should safeguard the interests of developing country Members (WTO, 2018). Agreement on Agriculture contains 13 provisions regarding SDT, which can be divided into 4 categories. The first one, provisions aimed at increasing trade opportunities of developing country Members; second is transitional time-periods; third is flexibility of commitments, of action, and use of policy instruments; and forth is provisions relating to LDC Members (WTO, 2018).

Regarding Agreement on Import Licensing Procedures, it contains 4 provisions that can be classified into provisions under which WTO Members should safeguard the interests of developing country Members and Transitional time-periods (WTO, 2018). The last one, understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) contains 11 provisions that can be divided into 4 classification (WTO, 2018). It can be seen that there are a lot of SDT provisions under WTO Agreements, but here for developing country such as Indonesia, the right to have SDT is not really protected. Developed country that feels developing country measure could hamper their export to developing country could file a report to the Dispute Settlement Body of WTO whether or not that action is supposed to be protected by SDT.

Dispute settlement under WTO is regulated under the Understanding on Rules and Procedures Governing the Settlement of Disputes and the body that handle the dispute will be the Dispute Settlement Body (DSB) under WTO. Dispute Settlement under DSU contains of 3 procedures that can done by parties of the dispute. Those 3 procedures are Consultation, Panel, and Appellate Body.

Consultation is the first step where parties of the dispute could negotiate in a diplomatic way to reach an agreement. Parties of the dispute is recommended to have a consultation as a way to settle the dispute before proceeding to another procedure of dispute settlement in order to have a mutually satisfying agreement between both party. Consultation is regulated under Article XXII and Article XXIII of GATT 1994 that further emphasized under the DSU (Hidayati, 2009). If the consultation did not come to an agreement then one of both party can propose to the DSB for the establishment of a panel (Hidayati, 2009). Panel will come up with a decision that called Panel Report and regarding to the dispute, if one party is not satisfied with the decision, the last chance to settle the dispute is to file it to Appellate Body. Appellate body is regulated under Article 17 of the DSU, and Appellate body only take part in judicial aspect and interpretation that is described in the previous Panel Report (Hidayati, 2009). As the procedures come to an end, the report of the panel or the Appellate Body will be submitted to DSB to be adopted. Once the report is adopted, the decision under the report must be complied by disputed parties.

The losing party will be given a Reasonable Period of Time as stated in Article 21.3 of DSU to implement the decision that has been made. If the losing party do not comply with the decision from DSB, there will be consequences that could be given. The consequences usually be given in the form of compensation for the winning party. The most common compensation that WTO grant to the winning party is in the form of retaliation (World Trade Organization, n.d.). In economic terms, compensation supposed to be determined as freedom of trade to achieve economic sufficiency for every party, but in terms of dispute, it usually connected to retaliation (Anderson, 2002). Retaliation in dispute settlement for most can be valued as some kind of paying the damage that caused by the losing party measures.

Dispute settlement that attract writer to make this paper is the settlement of WTO dispute DS478 between Indonesia and USA. As we know, agriculture is crucial aspect for most of developing country including Indonesia where it is an important commodity for Indonesia international trade. Back in 2014, USA and New Zealand file a separate report complaining Indonesia regulations that indicate violations towards several WTO agreements. Dispute that will be discussed in this paper is specified in dispute between Indonesia and USA under WTO dispute DS478. In this dispute, USA request to have a consultation with Indonesia and raise a complain regarding 10 of Indonesia's regulation which include;

1. Law of the Republic of Indonesia Number 7 of Year 2014 Concerning Trade ("Trade Law");
2. Law of the Republic of Indonesia Number 13 of Year 2010 Concerning Horticulture ("Horticulture Law");
3. Regulation of the Ministry of Agriculture Number 86/Permentan/OT.140/8/2013 Concerning Import Recommendation of Horticulture Products ("MOA Regulation 86/2013"), which repeals and replaces Regulation of the Minister of Agriculture Number 47/Permentan/OT.140/4/2013 Concerning Recommendation on the Importation of Horticulture Products ("MOA Regulation 47/2013"), which repealed and replaced Regulation of the Minister of Agriculture Number 60/Permentan/OT.140/9/2012 ("MOA Regulation 60/2012");
4. Regulation of the Minister of Trade Number 16/M-DAG/PER/4/2013 Concerning Provisions on Horticulture Product Import ("MOT Regulation 16/2013"), which repeals and replaces Regulation of the Minister of Trade Number 30/M-DAG/PER/5/2012 Concerning the Provisions on Import of Horticultural Products ("MOT Regulation 30/2012") and Regulation of the Minister of Trade Number 60/M-DAG/PER/9/2012 Regarding Second Amendment of Regulation of the Minister of Trade Number 30/M- DAG/PER/5/2012 Regarding Provisions on Import of Horticultural Products ("MOT Regulation 60/2012");
5. Regulation of the Ministry of Trade Number 47/M-DAG/PER/8/2013 Concerning Amendment of Regulation of the Minister of Trade Number 16/M-DAG/PER/4/2013 Concerning Import Provision of Horticulture Product ("MOT Regulation 47/2013");
6. Law of the Republic of Indonesia Number 18/2009 on Animal Husbandry and Animal Health ("Animal Law");
7. Regulation of the Ministry of Agriculture Number 84/Permentan/PD.410/8/2013 Concerning Importation of Carcass, Meat, Offal and/or Their Derivatives into the Territory of the Republic of Indonesia ("MOA Regulation 84/2013"), which repeals and replaces Regulation of the Minister of Agriculture Number 50/Permentan/OT.140/9/2011 Concerning Recommendation for Approval on Import of Carcasses, Meats, Edible Offals and/or Processed Products Thereof to Indonesian Territory ("MOA Regulation 50/2011") as amended by Regulation of the Minister of Agriculture Number 63/Permentan/OT.140/5/2013 Concerning Amendment of Regulation of the Minister of Agriculture Number 50/Permentan/OT.140/9/2011 Concerning Import Approval Recommendation of Carcass, Meat, Offal, and/or their Derivatives into the Territory of the Republic of Indonesia ("MOA Regulation 63/2013");
8. Regulation of the Minister of Trade Number 46/M-DAG/PER/8/2013 Concerning Animal and Animal Product Import and Export Provision ("MOT Regulation 46/2013"), which repeals and replaces Regulation of the Minister of Trade Number 22/M-DAG/PER/5/2013 Concerning Import and Export of Animals and Animal Products ("MOT Regulation 22/2013"), which repealed and replaced Regulation of the Minister of Trade Number 24/M-DAG/PER/9/2011 Concerning Provisions on the Import and Export of Animal and Animal Product ("MOT Regulation 24/2011");
9. Law of the Republic of Indonesia Number 18/2012 Concerning Food ("Food Law"); and
10. Law of the Republic of Indonesia Number 19/2013 Concerning Protection and Empowerment of Farmers ("Farmers' Law"). (WTO, 2014)

The consultation between both party was held in June 19th 2014 in Jakarta, but in the end, this consultation considered fails. Afterwards, USA request the DSB for the establishment of a panel to settle the dispute. Under the Panel ruling, USA argue that measures that Indonesia has taken regarding horticultural products, animal and animal products in 10 of Indonesia regulation has hampered the export from USA and New Zealand to Indonesia. These

regulations that is brought to the dispute contains measures that;

1. Limited application windows and validity periods (horticultural products);
2. Periodic and fixed import terms;
3. 80% realization requirement;
4. Harvest period requirement;
5. Storage ownership and capacity requirement;
6. Use, sale and distribution requirement for horticultural products;
7. Reference price for chillies and fresh shallots for consumption;
8. Six-month harvest requirement;
9. Import licensing regime for horticultural products as a whole;
10. Prohibition in importation of certain animal and animal products, except in emergency circumstances;
11. Limited application windows and validity periods (animal and animal products);
12. Periodic and fixed import terms (animal and animal products);
13. 80% realization requirement (animal and animal products);
14. Use, sale and distribution of imported bovine meat and offal requirements;
15. Domestic purchase requirements;
16. Beef reference price;
17. Import licensing regime for animal and animal products as a whole;
18. Sufficiency of domestic production to fulfil domestic demand. (WTO, 2016)

Under all this measures that USA brought to the panel, the panel decided in the report of the panel that Indonesia has violate Article XI:1 of GATT 1994. Regarding to claimed based on Agreement on Agriculture and Import Licensing Agreement, the Panel decided not to rule under those agreements under the reason that Article XI:1 of GATT 1994 could prove the violation of Indonesia (WTO, 2016).

Indonesia raise an objection regarding to the panel ruling and request to Appellate Body of WTO to settle on this dispute. Indonesia raise a claim regarding the interpretation of the panel regarding to the dispute and Indonesia's regulation regarding import of horticultural products, animal and animal products. Indonesia argue that all the regulation that are brought to the dispute have already comply with GATT 1994 and Agreement on Agriculture and that the dispute settlement should be based on the Agreement on Agriculture first as the Lex Specialis of GATT 1994 (World Trade Organization, n.d.). Appellate Body of WTO in their report stated that there is no mistake in report of the panel and that Indonesia has violate WTO agreement. This dispute was closed by the decision of the Appellate Body of WTO and the adoption of the panel report by DSB.

4. ANALYSIS

SDT as mentioned above is measure that established as a chance for developing country to have opportunity to develop and increase their capacity in international trade. The intention of making the measure itself is to attract developing country to be part of WTO. When developing country joined WTO, they hope that these measures inside SDT could be implemented towards them and give benefit to improve themselves while competing with developed country in international trade. The problem that we can find here is that these measures under SDT were not really implemented as we can see developing country still face problems and report from developed country in applying measures of SDT.

For developing country to be able to compete on the same level with developed country, SDT should be uphold and the implementation of it should be guaranteed. If WTO require each member state to comply with all the agreements that has been made, then SDT in each and every agreement should be fulfilled for developing country also. One case that will be explained in this paper is WTO dispute DS478 between Indonesia and USA. In this case the panel and Appellate Body of WTO have decided under their report that Indonesia has violated Article XI:1 of GATT, however SDT in this dispute settlement seems somehow distorted even though Indonesia is a developing country.

In this case at hand, the writer believe that Indonesia has violated Article XI:1 of GATT, however we should not set aside any measures regarding SDT specially in Agreement on Agriculture and DSU. Agreement on Agriculture contains several measures regarding SDT, one thing that is important in this case is SDT under Annex 2, Paragraph 3, footnote 5 of Agreement on Agriculture. This clause stated,

> *For the purposes of paragraph 3 of this Annex, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS* (World Trade Organization, n.d.).

Here explained that as long as the government program to stockpile food aimed for food security it is permitted by the agreement. In this case, Indonesia does not stockpile food for security purposes, instead, Indonesia distribute food

need that could be fulfilled by domestic production in specific time and increase the importation of similar products in specific time where domestic need cannot be fulfilled by domestic production to prevent waste of piling unnecessary products. It is not banning importation of such products, it is just reducing the importation when it is not needed. Report of the panel stated this intention of Indonesia by stating,

> *Indonesia's Farmers Law applies to agricultural commodities and echoes the fundamental principles of sufficiency and prioritization of domestic agricultural production (and consumption), while citing price stabilization objectives. To enforce adherence to the sufficiency principle, the Farmers Law prohibits the importation of agricultural commodities when domestic supply or government food reserves are deemed sufficient* (WTO, 2016).

Under Article 21.2 of DSU, it is stated that "Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement." This means that the intention of Indonesia as developing country for implementing measure that is disputed should be considered particularly, specially the background of why it is implemented.

Related to this dispute at hand, which is WTO dispute DS478, then Article 21.7 of DSU should apply also. Article 21.7 of DSU stated that *"If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances."* This means that to settle the matters that developing country such as Indonesia has taken, action that must be taken should have consideration towards circumstances that developing country might face. By this the writer argue that even if the panel and the Appellate Body decided that Indonesia has violate WTO agreement under GATT, Indonesia should not be sentenced to erased all related measures and change it to a new measure to comply fully to the agreement as stated in the report of the panel,

> *Pursuant to Article 19.1 of the DSU, having found that Indonesia acted inconsistently with its obligations under Article XI:1 of the GATT 1994 with respect to Measures 1 through 18, we recommend that the DSB request Indonesia to bring its measures into conformity with its obligations under the GATT 1994* (WTO, 2016).

Instead, the Panel should recommend to decrease some of the restriction to help Indonesia as developing country to develop. Besides that, the writer argues that retaliation that USA proposed and granted by the DSB should not be granted in regards of the condition of Indonesia as developing country where it would only benefit the USA will not help Indonesia to improve and the reasonable period of time that should be given to Indonesia as developing country should be extended.

In consultation procedure, Indonesia should be given an extended time to do the consultation and to be given more time to prepare their argument under Article 12.10 of DSU. Based on the writer's interview with Joseph Koesnadi as the lawyer team from Indonesia in this dispute, he stated that in this dispute settlement, Indonesia has requested a timetable to be applied in order to get a longer period in dispute settlement to prepare arguments, but USA and New Zealand rejected the request (Koesnadi, 2019). With no agreement between both party, the Panel should be the one who decided on the timetable, but it turns out that the Panel do not grant the timetable that Indonesia proposed to have a longer time to prepare for their arguments. The panel should recognize and implement Article 12.10 to decide on the timetable looking at Indonesia's position as developing country in this dispute.

In the dispute settlement procedures, Indonesia does not really get the special and differential treatment as it is should be guaranteed under SDT. This can be seen under the report of the panel where in responding the claim of USA and New Zealand, the DSB acknowledge Article 4 of DSU (Koesnadi, 2019) and Article 8 of DSU in establishing the panel (Koesnadi, 2019). Nevertheless SDT that is contained in these two article which are Article 4.10 and Article 8.10 were not mentioned in the report of the panel. Under Article 4.10 of DSU in consultation phase of dispute settlement, any interest of developing country should be given a special consideration, but in consultation between Indonesia and USA, it could not be seen that Indonesia's interest in the case was considered by USA. Article 8.10 of DSU explain that if one of the party in the dispute is a developing country, then at least the panel should include at least one member from developing country. Based on the writer's interview with Joseph Koesnadi, he stated that it is true that one of the member of the panel include member from developing country, which is the Chairman, Mr. Cristian Espinosa Cañizares from Ecuador (Koesnadi, 2019). Even though it is implemented in the case, the implementation itself is not affirmed by the report of the panel.

By stating the acknowledgement of Article 4 and Article 8 of DSU it actually also recognize Article 4.10 and Article 8.10 of DSU. However, as Indonesia as developing country is a party in this dispute, there should be affirmation of the protection of the right for Indonesia as developing country in the dispute settlement. If it is not affirmed in the report, then developing country in any dispute could feel threaten and not protected by the rights they should have by SDT. This affirmation is important in any case with developing country as one of the party because it is stated under Article 12.11 of DSU. This article stated that,

> *Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised*

by the developing country Member in the course of the dispute settlement procedures.

This article encourage an explicit affirmation of any SDT measures that has already been implemented in the report to ensure the right of developing country is protected.

By all this argument we can see that the panel and Appellate Body of WTO has made a decision that is not pursuant to rights that should be given to Indonesia as developing country and that SDT is not taken as part of consideration by the Panel and Appellate Body of WTO in settling the dispute.

5. CONCLUSION

Regarding to measures that Indonesia has taken that was brought to the dispute in WTO dispute DS478, if we take a look directly to several measures in WTO agreements those measures violate WTO agreements specifically Article XI:1 of GATT. However if we get a closer look into WTO agreements and compare it to the dispute settlement of this case, we might find that what decided for Indonesia could be better. SDT itself do not cover the violation of Indonesia in this case, but several background that cause Indonesia's action to implement those measures to protect the economic condition by protecting domestic products in a certain level and only import when it is needed should be considered by the panel and Appellate Body of WTO. Measures that Indonesia has taken was only to protect domestic products from being wasted and this thing is transparently implemented in the regulation. several measure SDT regarding to dispute settlement also not implemented in DS478 case, we can see from the timetable that Indonesia proposed, is rejected by USA and New Zealand, and the panel also do not grant this proposal even though it is stated in Article 12.10 of DSU.

The writer argues that SDT specially in this case at hand was not implemented and cause Indonesia to not be able to gain the right as all developing country should be able to have when they joint WTO. The existence of SDT in WTO was supposed to give benefit for the developing country and to help them improve their capacity to be able to compete with other developed country. Turns out these measures was only made to attract developing country to join WTO, and the implementation of it is not maintained. Developing countries as member have rights that need to be protected, and it is SDT, where it could help developing country to maintain their own economic condition while making it in international trade under the WTO. For that to happened, the implementation of SDT need to be protected and developing country should be guaranteed to be able to implement measures of SDT in their country without the fear of being reported to the DSB for violation of WTO agreements even to get retaliated by developed country who reported the developing country. In this case at hand (WTO dispute DS478), we can see that this is happening where DSB has granted the right for USA to retaliate Indonesia for taking a lot of time to revise all of their regulation. The right was granted without even considering the status of Indonesia as developing country and the condition where Indonesia held their election in the time where they have to revise the regulation which make it difficult to do that. The number of the retaliation has not been granted, but if what USA demanded is granted by WTO, then it will cause a huge damages to Indonesia's economy. If this happened, then it will also prove that the protection of the right of developing country in WTO and their effort to improve themselves is not supported.

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