Implementation of the WTO Agreements for Dispute Settlement: Indonesia-Australia A4 Photocopy Paper Case

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ABSTRACT

International trade is trade across countries. Its activities are accommodated by WTO agreements. However, in practice, some countries commit violations, which of course will harm other countries. What causes this to happen and how to resolve disputes among WTO members? To address these problems, the authors use normative legal research methods. Based on the research data, there are various types of violations committed by the members so that they reach to the WTO. There are two ways to resolve international trade disputes, namely non-judicial and tribunal channels. In addition, resolving international trade disputes means discussing the effectiveness of dispute resolution and who is involved in it. Indicators of the effectiveness of the dispute resolution mechanism can be seen based on the timeframe, the involvement of members and the dispute resolution bodies. In resolving international trade disputes, the involvement of developing countries as members of the WTO turns out to be less effective. It would better for a WTO member to comply with WTO agreements so as not to harm other member countries.

Keywords**:** *Dispute Resolution, International Trade, WTO Agreements*

1. INTRODUCTION

The increasingly rapid development of international trade is marked by various trade agreements between countries in the world such as the World Trade Organization (WTO), The North American Free Trade Agreement (NAFTA), ASEAN Free Trade Area (AFTA), Asia Pacific Economic Cooperation (APEC), and the European Union (EU), including developments in ASEAN, namely the formation of the ASEAN Economic Community (ASEAN Economic Community). In the practice of state cooperation in the field of international trade, it often does not work properly. This is a violation committed by one country against another country. So, to overcome this in the WTO there is a framework in the form of a dispute resolution mechanism, systematic dispute resolution based on the WTO framework is contained in article XIII and article XXIII regarding nullification or impairment. The signing of the results of the Uruguay round of negotiations will have juridical consequences for the Indonesian state. Indonesia must synchronize national laws and regulations by WTO agreements such as the enactment of Law No. 7 of 1997 concerning Accession to Ratification of the WTO Agreement. The WTO dispute settlement system has been regulated in the Understanding on Rules and Procedures Governing the settlement of dispute commonly referred to as DSU by the provisions of Article IV GATT 1947 and the implementing body is the Dispute Settlement Body (DSB). WTO therefore all member countries are bound and have the same rights to use the existence of the DSB. The biggest problem in international trade activities is when unfair trade practices occur, this is often done by WTO members against other members so that it can cause losses.

Based on the explanation above, it can be seen that not a few WTO member countries have taken inconsistent actions against or harmed other countries through foreign policies that have been implemented, thus triggering disputes with other countries. Disputes can arise when a particular country implements a particular trade policy that conflicts with its commitments at the WTO. One of the trade disputes that occurred was the dispute over A4 photocopy paper products between Indonesia and Australia. This dispute began with the Anti-Dumping Duties (BMAD) policy imposed by Australia on A4 photocopy paper products from Indonesia on April 20, 2017. The investigation into allegations of dumping was initiated by the Australia Anti-Dumping Commission (AADC) on April 12, 2016, for products A4 Copy, which comes from several countries, namely Brazil, China, Indonesia, and Thailand. The basis for the investigation is a petition filed by an A4 Copy Paper producer in Australia who claims to have suffered losses due to imports of similar goods, namely A4 Copy Paper from the four countries.

The Australian government imposed an anti-dumping import duty of 12-38.6% for paper products originating from Indonesia, this was done after the Australian Anti-dumping Commission found that Indonesian paper products were dumping products. This certainly makes the Indonesian side unable to accept it because it is not supported by an investigation into the paper product. The Australian side said that a Particular Market Situation (PMS) arose as a result of Indonesia's log export ban policy, which caused the supply of logs in Indonesia to become abundant. Australia considers the impact of the abundant supply of logs causing the logs to have no fixed market price and causing the price of paper raw materials to be much cheaper. A diplomatic approach has been taken but has not changed Australia's BMAD policy. Finally, on September 1, 2017, Indonesia sued Australia to the WTO and asked for a consultation with Australia regarding the anti-dumping imposition of A4 photocopy paper from Indonesia. In this case, the Australian side does not use price comparisons to determine whether Indonesian products are dumping products or not, this is a mandatory thing to do to determine the imposition of anti-dumping import duties.

2. BACKGROUND

The rapid economic growth of ASEAN countries, including Indonesia in the trade sector, plays a very important role in the economy, both in domestic and international trade leading to an era of increasingly competitive free trade. Indonesia's participation in the WTO, in carrying out the various commitments contained in it cannot be separated from a series of policies in the trade sector, especially international trade which has been determined by the PEOPLE'S CONSULTATIVE ASSEMBLY, the laws and regulations in the trade sector require harmonization of provisions in the trade sector within the framework of economic unity. to respond to the current and future developments of the trade situation in the globalization era, by establishing a law on trade and by the issuance of Law No. 7 of 1994 as outlined in the outline of the country's direction.

The dispute resolution system through the WTO dispute settlement agency is regulated in the Understanding on Rules and Procedures Governing the settlement of the dispute, commonly referred to as DSU. The substance of the provisions contained in the DSU is an interpretation of the provisions of Article IV of the GATT 1947, and the implementing agency is the Dispute Settlement Body (DSB). The institution is part of the General Council or the WTO General Council so that all member countries are bound and have the same rights to use the existence of the DSB.

In practice, the cooperation carried out between countries in the field of international trade often does not run by the applicable provisions. Where in this case there is a country that takes actions that are not in line with the WTO rules that have been mutually agreed upon. Therefore, in the WTO there is a rule regarding dispute resolution mechanisms. Systematically, the WTO dispute settlement arrangement is regulated in Article XIII and Article XXIII concerning nullification or impairment.

The following studies/journals have been written regarding the Settlement of International Trade Disputes:

1. Title: Harmonization of International Trade Law: History, Background, and Approach Model
Author: Subianta Mandala
Origin of Faculty: Faculty of Law
University: Padjadjaran University

2. Title: Efforts to Implement Retaliation in International Trade Dispute Resolution Through the World Trade Organization (WTO)
Author: Lona Puspita
Origin of Faculty: Faculty of Law
University: Taman Siswa Padang University

3. Title: Effectiveness of The World Trade Organization's Dispute Settlement Mechanism
Author: Yafet Yosafat Wilben Rissy
Origin of Faculty: Faculty of Law
University: Christian Indonesia University

Based on previous research, it can be seen that in its implementation in international trade, fraudulent acts often occur, this is seen on a case-by-case basis where member countries discriminate against in their actions which are then in fact inconsistent with WTO provisions.

The authors raise the case between Indonesia and Australia. Where in this case the Australian authorities impose anti-dumping duties in the absence of an appropriate comparison and only based on the Particular Market Situation. Other than that, the imposition of anti-dumping import duty imposed is not by the anti-dumping agreement. This discrepancy is due to the absence of comparison of imported products with prices on the domestic market.

In this case, the authors see that in practice it is not only dumping that causes losses. However, the imposition of anti-dumping import duties is also unfounded. The imposition of Anti-Dumping Duties without further investigation will cause losses to the accused company.

Article VI of the GATT regulates the issue of dumping and anti-dumping. Article VI of the GATT regulates how the GATT participating countries take anti-dumping actions. Article VI of the GATT is very simple, so a new agreement is held that regulates the implementation of Article VI of the GATT. In Article 1 it is stated that anti-dumping measures will be applied only in the circumstances as stipulated in Article VI of the GATT 1994 and according to the investigation procedure, and carried out by the provisions of the Agreement on Implementation of Article VI of GATT 1994. Based on the Anti-Dumping Agreement/ADA Implementation of article VI of the General Agreement on Tariffs and Trade, anti-dumping measures are only enforced in the circumstances as stipulated in the GATT 1994 and according to investigation procedures and carried out by these provisions. If there is no similar product in the domestic market of the exporting

country, such sales should not be used as an appropriate comparison. Therefore, the difference in dumping is then determined by comparison with the comparison price for the type of production when it is exported to third countries. Similar products by article II agreement on inarticulation of article VI of the GATT 1994 are identical products in all aspects or if there is no such product, even other products are not identical with all aspects, which have characteristics that are close to the same as the product received. consideration. The imposition of Anti-Dumping Duties is regulated in Article 9 Anti-Dumping Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Article 9 Imposition and Collection of Anti-Dumping Duties). In that article, it is regulated about the imposition of BMAD and the agency that has the right to determine the amount of Anti-Dumping Duties Temporary measures and anti-dumping import duties are only applied to the type of product used after the decision is made in the following manner, paragraph 1 article 7 and paragraph 1, respectively. article 9 comes into force subject to the exceptions set out in article 10. Based on Article 18 of Law Number 1995, Anti-Dumping Duties are only imposed on imported products if the export price of the goods is lower than its normal value and the import of these goods causes losses to the domestic industry that produces similar goods with the said goods. losses to domestic industries that produce goods similar to those goods; or hinder the development of the domestic similar goods industry.

2.1. Terminology of Dumping in International Trade

Dumping is a strategy undertaken by producer/exporter exporters to compete to achieve or increase market share in a country, namely the export destination country by selling its goods to other countries at a lower price than the selling price in its domestic market. The practice of dumping can indirectly hurt domestic producers who have not been able to face the super tight competition from imported products. The practice of dumping is an unfair trade practice, because, for the importing country, the practice of dumping will cause harm to the business world or industry of domestic similar goods, with a flood of goods from exporters whose prices are much cheaper than domestic goods will result in similar goods. unable to compete, so that in the end it will kill the domestic similar goods market, which is followed by the emergence of its side effects such as mass layoffs, unemployment, and the bankruptcy of similar domestic industries.

2.2. WTO Dispute Settlement Bodies

In resolving international trade disputes with the WTO forum, there are dispute resolution bodies in it, namely:
1. DSB/Dispute Settlement Body
2. Panel
3. Appellate Body

The number of foreign business actors with local business actors who cooperate in the trade sector so that if an international dispute occurs, a dispute resolution model is needed to accommodate business actors' interests. Arbitration is the voluntary submission of a dispute to a neutral third party. This third party can be individual, institutionalized arbitration, or ad hoc arbitration, arbitration bodies are now increasingly popular. Nowadays, arbitration is increasingly being used in resolving national and international trade disputes. The United Nations Commission on International Trade Law (UNCITRAL), is an international commission under the United Nations (UN), has a goal to harmonize and unify a law that focuses on international trade. Agreements in UNCITRAL are implemented by countries, but this commission cooperates with relevant organizations or institutions such as ICCA for some arbitration issues.

2.3. The Application of Anti-Dumping Duties for Dumping Products

According to Robert Willig Dumping is divided into five, among others: market expansion dumping, state trading dumping, cyclical dumping, strategic dumping, and predatory dumping.
In general, dumping pricing occurs when the exporting country's market is monopoly and oligopolistic while foreign markets are competitive. This practice can threaten the domestic industry. Anti-dumping duty is a state levy imposed on dumping goods that cause losses while dumping goods are goods sold at a price lower than the cost of production in the exporting country. In addition to Anti-Dumping Duties, there are also Temporary Anti-Dumping Duties. Temporary Anti-Dumping Duties are state levies imposed during the investigation of dumping goods that cause losses based on sufficient preliminary evidence.
The definition of BMAD in national regulations refers to Article 1 paragraph 1 of Government Regulation Number 11 of 2011 which reads: anti-dumping measures are actions taken by the government in the form of imposing BMAD on dumping goods. Meanwhile, BMAD is a state levy imposed on dumping goods that cause losses. However, taking into account the level of dumping alone is not sufficient because anti-dumping measures can only apply if the marketing of dumping products is deemed to be harmful to the domestic market. Therefore, a detailed investigation needs to be carried out by applicable regulations. The investigation must also take into account the economic conditions in the exporting country. If in the investigation it is proven that dumping has taken place and is detrimental to the domestic industry, the exporting company can increase the export price at a mutually agreed level to avoid anti-dumping measures in the importing country in the form of increased import duties for dumping products. Referring to Government Regulation Number 34 of 2011, to prove the existence of dumping in a product, it is necessary to know that the Anti-Dumping Import Duties imposed after an investigation by the Indonesian Anti-Dumping Committee (KADI) can be carried out in the form of (1) based on a

request, domestic producers of similar goods and/or associations of domestic producers of similar goods (representing the domestic industry) may submit a written application to KADI to investigate in the context of imposition. (2) based on the initiative of KADI, an investigation based on the initiative of KADI can be carried out if KADI has sufficient initial evidence regarding the existence of dumping goods, losses to the domestic industry, and a causal relationship between dumping goods and domestic industry losses.

It is also important to note that the GATT also applies the basic principles stated in the General Text Agreement. The basic principles referred to in the GATT are Most Favored Nation or the principle of non-discrimination. Although the MFN principle is the main principle in GATT, GATT also provides exceptions to this principle under certain conditions. The principle of MFN is regulated in paragraph 4 of the opening of the Marrakesh Agreement Establishing the World Trade Organization which reads: Being desirous, of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international trade relations.

The economic justification for anti-dumping is the adverse impact of strategic dumping, whereby exporters maintain domestic competition and thus can sell their domestic competition at a higher selling price than they sell domestically. This dumping can be a problem if the industry has high research and development costs or large economies of scale. Producers in products can enjoy going out of business because they are to produce the same economy by selling in several markets (including exporters' home markets). In this case, anti-dumping duties can be an effective solution if they prevent the dumping strategy and prevent the exercise of monopoly power

The imposition of anti-dumping measures consistent with the ADA is an investigation-dependent process. Investigation of suspected dumping products begins after a written application by or on behalf of the domestic industry is received. In certain circumstances, an investigation may be carried out ex officio by the authorities of the importing country. In the case of the imposition of BMAD, sufficient evidence regarding dumping, losses, and causal relationships must be established as the basis for initiation. After the affirmative findings of dumping, losses, and causation, the investigation authority can apply anti-dumping measures to the dumping products.

The imposition of Anti-Dumping Duties is almost unfounded and hurts countries that implement anti-dumping measures more generally. It was noted that the presence or absence of legal capacity for WTO members is a fundamental factor influencing anti-dumping decisions. In doing so, the DSB panel articulated a new standard for anti-dumping disputes that simultaneously reduces the amount of legal capacity required to challenge anti-dumping duties and reflects WTO fraud against all anti-dumping measures. This standard will be a form of stricter supervision for anti-dumping cases that reach the panel stage. By explicitly assuming that anti-dumping measures are inconsistent with the core principles of the WTO, a lack of legal capacity will be required to oppose anti-dumping duties, which in turn will lead to almost all anti-dumping duties being challenged. In handling international trade anti-dumping disputes, the appellate body has the task of interpreting and implementing multilateral agreements which are collectively known as closed agreements of the World Trade Organization. This approach to this task is a function of general international law on how treaties are interpreted as is WTO law. Appeals bodies can be distinguished based on an analysis of how the appeals body practically expresses its interpretation of the treaties contained in the WTO and requires an investigation of whether the AB differs from other international courts and tribunals. Principles of interpretation by the appellate body have been partly codified in the Vienna Convention on the (VCLT) Vienna Convention on the Law of Treaties.

2.4. The Effectiveness of WTO Dispute Resolution Mechanism

Talk about effectiveness then talk about the duration of the dispute resolution time. It becomes a big question if, in reality, the WTO dispute resolution aims to punish, this can be seen in the sanction aspect of the WTO dispute

If there is the ineffectiveness of regulations, it is necessary for people's Consultative Assembly the rules or the legal system to make new regulations if necessary. But in reality, changing the rules or making new rules is a complicated problem to solve and will even take a very long time.

One of the benchmarks for effective or not dispute resolution is the duration of time. In the WTO panel process, the average time used is 10 months excluding the time in translating the report. WTO panel dispute resolution is a settlement process with the right time frame, meaning that there is no deliberate extension of time, this can be seen based on the description of the settlement.

3. CONCLUSION

Based on the description above, a conclusion can be drawn that dumping is an exceptional practice carried out fraudulently. In this case, the dumping practice can cause economic and social losses. This can be overcome with Anti-Dumping Duties, but Anti-Dumping Duties are often imposed baselessly as a result of which the accused party has to pay a fee to pay the Import Duties.

In resolving anti-dumping disputes, it can be done in two ways:

1. By Non-Judicial Channel:
   Dispute resolution through non-judicial channels is a dispute resolution carried out through a political-diplomatic process in a more flexible form, dispute resolution can be resolved by the disputing parties themselves without the involvement of other parties, namely through a negotiation process. Settlement of disputes with non-judicial channels include:

a. Negotiation and Consultation: the negotiation process in a flexible form is one of the most important aspects of the activities of the GATT and WTO systems. In practice, negotiation is a forum that functions all the time. Consultation in the context of the dispute resolution process has a formal meaning because it is explicitly contained in Article XXII of the GATT agreement although in its implementation the consultation process can take the form of an informal process and is not visible to other parties.
b. Good Offices: Good office is a non-judicial dispute resolution with the assistance of a neutral third party. The third-party who conducts good offices activities act as a party that encourages the disputing parties to take concrete steps towards a peaceful settlement but is not involved in the negotiation process.
c. Mediation: in the context of the international dispute resolution process through mediation, a third party may participate in the negotiation process to resolve the dispute, but the decision-making regarding dispute resolution rests with the disputing party.
d. Conciliation: in the case of conciliation, the third party is a party who is requested to be a commission of persons who participates in explaining facts related to the dispute and compiling a report containing proposals regarding settlements that are considered acceptable even though the proposal is not binding.

2. With Judicial Route:
   Settlement of disputes in a legal form and directly involving third parties can be in the form of arbitration or the form of judicial settlement, in this way the results of the dispute resolution process adopted by a third party are determined by a third party, and are increasing in effect. Thus, this route is juridical, the dispute resolution chosen using arbitration or using judicial settlement is a judicial route which is a tribunal.

Dispute resolution with the WTO forum can be in the form of tribunals and non-judicial. Non-judicial dispute resolution can be in the form of consultation and negotiation, good offices, mediation, and conciliation, while with the judicial route, dispute resolution is in a more formal form and directly involves third parties. For cases raised, dispute resolution uses arbitration, so that it is a tribunal dispute resolution, and the decision is final and binding.

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