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Analysis Of International Poultry Trade Dispute Between Indonesia And Brazil Under Gatt

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Abstract

GATT As the treaty is a soft law, there were many case of where states did not fully ratify the treaty which then leads to dispute. One of the most iconic cases is the poultry dispute between Indonesia and Brazil in regards of Poultry trade. The policy that is being disputed is known as the quantitative restrictions. The purpose of the paper is to analyze how is the dispute resolved, and what is the consequences of the dispute Both ideas will be explained further in the perspective of the international bodies that facilitate the dispute. This research uses normative legal research methods

Keywords: International Trade, Poultry Trade Dispute, GATT

Introduction

Ideally, a government serves the moral function to provide and delivers prosperity and welfare for its people. However, challenges arise as not every state could provide the necessities its people needed. Factors such as Technological development, Resources endowments, geographical condition and the demands of the people itself reforms and represent what the state economy needs, which needs to be taken in to note that, not everything is going to be provide-able by the state.

In line with the global economic growth, every state is given the opportunity to conduct economic action not limited to who or what is in the given state, but also what is beyond the territorial jurisdiction. Thus, today we are able to conduct trade and other commercial purposes internationally with states beyond our border. This will then results in the fulfillment of the people's need. This act to exchange capitals, goods, and services across the international borders are recognized as International Trade.

However, problem that was then faced is that each state has its own independence over the regulation in its own state. That is to say that each state has the liberty to regulate policies within them. This applies not only to autonomous policy and for governmental administration, but also includes its trade regulation. Thus, diversity of regulations was then met and later realize that a unification is an urgent necessities. This then leads to the rise of General Agreement on Tariffs and Trade (GATT) on October 1947.

GATT is what then become negotiation forum, and the regulation in terms of goods. Ever since it was agreed upon then, it has facilitated many rounds of negotiation. This then inspires the birth of what is then known as World Trade Organization (WTO). GATT then becomes the instrument and legal framework for WTO to execute International Trade for its members. Under that reasons, WTO has the vision to support the fulfillment of the GATT Goals, which are to raise the standards of living, Ensuring full employment and steady growth of real income and effective demand, developing full use of world resources, expansion of production and international Trade.

The existence of GATT regulates as soft law. This means, its role is as a guiding principles of international trade law. This means, every country that agreed upon and is a member of WTO has the obligation to apply GATT in its domestic law. The policy can only work when national legislatures and government agencies choose to comply with the principle. Consequences of not imposing the principles may result in economic or political sanction by GATT members. Indonesia ratifies UU no. 7 tahun 1994 as the validation of the Agreement on Agreement on Establishing the World Trade Organization. This means, Indonesia is obliged to obey agreements in WTO's Forum. The consequences are that Indonesian domestic law must be in line with the clause under the agreement of WTO. This means if disputes arises due to the non-presence of the points or application of trade under the General Agreement on Tariffs and Trade, Indonesia could be sued in to dispute.

In its application, it is then discovered that there is a dispute that occurs with Brazil in regards of poultry products. Brazil claims that its access towards the market was disclosed for years since 2009. Brazil as a complainant filed a complaint to Indonesia under the violation of Agreement on Sanitary and Phytosanitary Measures, Agreement on Technical Barriers to Trade, Agreement on Agriculture, the Agreement on import Licensing Procedures, and Agreement on Pre-shipment Inspection. This case is then referred in WTO's court with case number DS: 484, Indonesia –Measures concerning the importation of Chicken meats and Chicken Products.

This paper is intended to illustrate in the most comprehensive way how is the dispute resolved, and what is the consequences of the dispute. The author would also like to seek further what then becomes the legal reason on why the dispute was settled either way. Both ideas will be explained further in the perspective of the international bodies that facilitate the dispute, which in this case, the dispute was filed under WTO's Dispute Settlement Body, also to compare on whether the verdict made by the international bodies of DSB had or yet to represent the goals and the principles of the GATT

Literature Review

General Agreement on Tariffs and Trade (GATT) is known as the final act on Uruguay Trade Negotiation. The Agreement was made after the Second World War and was intended to regulate on the trade of goods. The utter motive on why the agreement was establish is to create a free trade environment, a fair and stable trade in international community. The agreement was signed by 23 countries on October 30, 1947.

Currently, the role of the Agreement is not only as a treaty, but also as a negotiation forum and has facilitated many disputes. It acts as the instrument and the legal framework of World Trade Organization.

GATT works under 5 core principles which are regulated under the agreement itself. The theory varies in each study. However, in overall the agreement has concluded regulation as follows:

- a. Most-Favored Nations, which is a principle of anti-discrimination between trading partners, it means all trading partners must be treated equally and not being biased towards certain partner. The form of discrimination includes but not limited on: Special Favor on custom duty rate,
- b. National Treatment Principle, which means treatment of imported and locally produced good, must be equal. It means, a product imported and locally produces must not have different rate of taxes and special favors on locally produced goods are prohibited.
- c. Prohibition on Quantitative Restrictions, this means that all form of export and import policies, such as quantitative quotas, licensing restrictions, or certain import and export procedure is prohibited.
- d. Protection through tariffs / tariffs concession, This means, what is being prevented here is the action of protectionism as what was being done by United States during the era of Political Isolationism
- e. Reciprocity. It means that trade policies that are applied needs to be beneficial towards all parties that are involved. This means, contracting parties has the obligation to uphold the rights and obligation of one another.

Indonesian Government's commitment to take part in the GATT is reflected in UU no.7 Tahun 1994 on the Establishing of the World Trade Organization (WTO). The regulation enacted the establishment of World Trade Organization. This means, the Indonesian Government is bind by the agreement that was previously made. Thus, its domestic law must be in line to GATT as one of the agreement.

Research Method

The conducted research will be done by qualitative method. The writer will conduct the method of in case approach and the statute approach in attempt to analyze the given problem with the positive law. The processing of the information will be from the legal material obtained from literature review to be analyzed. The primary and secondary legal material obtained that was achieved later would be classified and grouped in order to form a systematic drafting. This will then accumulate to create a Descriptive analysis. Descriptive analysis will be presenting the research result in a systematic overview towards the given case from the factual reports and issues.

Result and Discussion

Perspective of Complainant

The case describes a complained filed by Brazil (as complainant) for Indonesia (as defendant) on Dispute Settlement Body (DSU). The complaint was on a claim that Indonesian government fail to comply with its WTO obligations due to its trade-restrictive measure on Poultry Products. The case was being brought to Dispute Settlement Body due to imports of Chicken meats in Indonesia dropped to almost zero in 2006 and 2009. The complainant filed and started their consultation session by October 16th, 2014. The dispute proceeds and the complainant claimed that Indonesia has violated several regulations in regards to trade. Here are some given violations that occur:

1. Art. III: 4 of GATT 1994 which regulates about equal treatment on imports. The article describes that every imported product must be treated no less favorable than the locally produced goods accorded to like products of national origin in regards of laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.
2. Art. XI of GATT 1994 which regulates Quantitative Restrictions. This article regulates that there should be no restrictions other than duties, taxes or other charges may be maintained by the contracting party.
3. Claims that Indonesia has attempted to restrict Brazil from these following methods:
 - 1) General Prohibitions on Poultry Imports
 - 2) Import Restrictions on preserved Chicken meats
 - 3) Limitation on the usage of imported goods
 - 4) Strict Import licensing
 - 5) Unnecessary delay on sanitary requirement verification
 - 6) Limitation on imported product's transport
 - 7) Discriminative implementation on Halal labeling requirements
4. Brazil claims that due to the inconsistent implementation of the regulation, it has caused loss of profit throughout the years.

Defendant's Stance

In their defense, Indonesia made several claims. One of the reasons being is that they deny that there were attempt to do quantitative restrictions, especially to Brazil. Defendant claims they are ensuring the poultry products are safe, healthy, and halal. The attempt to ensure the health and safety of the product has caused termination on several procedures that the complainant opposes as mentioned above. The attempt to enforce this was under the article XX of the GATT 1994, which regulates about the general exceptions on when the process disputed on the restrictions are for several given reasons. These reasons are such as to protect public morals, human, animal or plant life (health).

Panel Findings

In regards to complainant reasoning based on article XI of GATT, the panel finds that there were non-inclusion of certain chicken products in the list of products eligible to be imported in to Indonesia. This then is considered by the panels as a legal ban. That is to say that, the complainant claim on how the defendant has violated the quantitative restriction is not valid as it is still in line with article XX of GATT in order to protect the health and safety measure of the products.

In regards of necessity testing, the panels based the weighing and balancing on all factors of the "necessity test" under Article XX (d). The goal is to secure compliance with laws that are not in line with the provision of GATT. It is later found that the measure was not justified and did not cease to exist by the virtue of the enactment of the third set of legal instruments and continues to apply in the same manner.

Legal Consequences

GATT serves as a legal agreement between the contracting parties. That means, each party that agrees to bind GATT, must comply with the regulation that was agreed previously in GATT. The Panel findings are to deter if the accusation of the complainant is valid or not. This later leads to how the claimed "necessity test" that was conducted by Indonesian government

is not in line with the legal instruments. This means, that there must be a review and adjustment on the given regulation to comply with what was regulated under GATT.

Conclusions

In regards to the Principles of GATT, the author conclude that the dispute settlement comply with the Principle of GATT. Here are the following reasons.

1. The international bodies did not discriminate between the complainant and the defendant, where the international bodies did weights and balances under the statements and legal reasoning from both parties. Therefore, the principle of most favored nation was upheld.
2. The decision made was in attempt to create an equal treatment between locally produced product and importer product. This shows that there are attempts to uphold the principle of National Treatment
3. The dispute was being weight under the issue of quantitative restrictions, where the international bodies later weigh and balance whether there are practices of quantitative restrictions. This shows that the body comply with the principle of Prohibition of Quantitative restrictions
4. The DSB attempt to find the best resolutions for both parties, which is then reflected by post findings agreement that was made. Thus, the Reciprocal principle was reflected

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