



## Position of Indonesia in WTO Reform

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### ABSTRACT

The issue of WTO reforms launched by the European Union and Canada in July 2018 is an, the issue of Most Favored Nation, the problem of overseeing the opportunity for developing countries to fight for their interests. This reform is expected to have a positive impact on the trade of developing countries. In addition, it is also expected to bring positive changes to the multilateral trading system and is expected to be able to accommodate the interests of developed and developing countries. This paper aims to analyze issues related to WTO reform, the effectiveness of WTO policies towards developing countries and formulate the position of developing countries in WTO reform. Several issues faced by developing countries that need to be fought for in WTO reform include: problems with market access and legal flexibility implementation, administration and operation of closed agreements, implementation of S and D provisions, public stockholding issues, problems special safeguard mechanism, problems with Appellate Body - WTO membership, and problem of digital commerce.

**Keywords:** International Trade, WTO, Interregional Trade

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## 1. INTRODUCTION

The WTO, which was previously the General Agreement on Tariffs and Trade (GATT), was considered to open a broad market opportunity because the GATT signatories agreed to reduce customs duties rates on most favored nations (MFN), apply strictly non-tariff rules such as unfair trade specifically in relation to safeguards, anti-dumping, and countervailing measures as well as fair trade measures safeguard. In addition, members also set transparent national policies and set clearer rules in the trade in agricultural products, the services sector, and intellectual property rights (Syadullah and Abdul, 2016).

The question is how does the WTO distribute its benefits between developed and developing countries? How GATT legalization into the WTO affects the distribution of benefits of dispute resolution between them. There are two arguments to answer this question, namely the capacity argument and the legalization argument.

According to the capacity argument, the legalized WTO continues to support developed countries in resolving their disputes, such as the GATT which are not ratified or ratified. On the other hand, according to the legalization argument, the legalized WTO benefits more developing countries than the GATT because it reduces the bargaining power impact on dispute resolution (Lee, 2015).

If we look at the use of dispute resolution mechanisms by member countries, the early years of the WTO and the entire GATT period support the argument for capacity, but the next WTO period does not support this argument. There is a significant increase in the participation of developing countries as complainants in resolving WTO disputes in the following period. Changes in the participation of dispute resolution by developed and developing countries negate the argument of capacity, but also raises the question of the legalization argument: Why the effects of international legalization took place prominently in the next WTO period, not in the early years of the WTO.

Beginning with the failure of the negotiation process in July 2008 in Geneva, there were two camps with very different opinions, namely developed countries led by the European Union, the United States (US), Canada and Japan, against the majority of developing countries represented by India, Brazil, China and South Africa. There are also disputes related to agricultural subsidies in the European Union and the US which are considered trade barriers.

Violations of WTO rules are detrimental to developing countries. The WTO which promotes free trade has rules that must be met by all member countries, but in practice, there are still difficulties for developing countries to pursue the ability of countries that are more advanced in implementing WTO policies. This has an impact on global inequality, developing countries are not able to compete with more advanced countries, ultimately leading to the problem of poverty as a detrimental effect of globalization.

The multilateral trading system is in crisis. Urgent action is needed to revitalize its central organ, the WTO. Such actions must come from its members in a bottom-up process and are based on a renewed multilateral dialogue about the use and impact of deviant trade policies in developed and developing countries. Dialogue is also needed to resolve conflicts related to the operation of the WTO dispute resolution mechanism.

The WTO reform issue has been raised by the European Union and Canada in July 2018. There are various reasons for the need for reform, namely the existence of cross-border trade deviations under the pretext of supporting national industries, many non-tariff policies have been implemented by various governments since 2009 (Hoekman, 2018), which have the potential to distort trade in the WTO trade policy review report (Hoekman, 2016).

There are three other important reasons regarding the WTO reform, namely: First, many WTO member countries continue to claim the status of “developing countries” as a result of the absence of universal classifications to progress or development status. Second, the WTO negotiation group stopped developing and thirdly, some countries had concerns with the WTO dispute resolution system, the main process for resolving trade conflicts between members (Caporan and Dylan, 2018).

Indonesia, as the coordinator of the G-33 Group, must be able to bridge the differences interests between Developed and Developing members to reach an agreement in finding a way out so that the Doha Development Agenda (DDA) can continue. For this reason, Indonesia together with developing countries must be able to formulate various inputs in reforming the WTO. For this reason, it is necessary to conduct research that aims to identify various matters related to WTO performance and the proposal to reform the WTO.

## 2. WTO REFORM AT A GLANCE

### 2.1. The Role of the WTO for Developing Countries

The aim of the WTO is to equalize trade conditions and create a more equitable trading environment for goods and services and free trade flows (Ayres, 2015). The reason is that the WTO has a very

clear mission and the rules and regulations issued apply equally to each member country. In addition, the WTO is responsible for implementing multilateral provisions on international trade and dispute resolution mechanisms, including: GATT that applies to trade in goods (trade in goods), General Agreement on Trade in Services that apply to trade in services, Agreement on trade-related aspects of intellectual property rights (TRIPs), and dispute settlement understanding.

For developing countries, through the WTO can avoid unilateral actions of developed countries. Besides that, it also opens up opportunities for export products of developing countries with trade liberalization promoted by the WTO; the existence of clear rules of the game in the practice of international trade; the existence of regulatory transparency; and different special treatment for developing countries.

The benefits of international trade for developing countries provided through the multilateral trade legal system can be seen from two perspectives. First, from the perspective of the exporter and second from the perspective of the importer. For exporters, in the trade of goods, almost all tariffs in developed countries and most tariffs in developing countries and economically transition countries will certainly not increase above their bound rates. The certainty that there will be no increase in tariffs will expand market access and there is a guarantee that market access will not be undermined by restrictions that are suddenly applied by the importing country.

The WTO also provides stability for exporters by requiring each member country to apply uniform provisions regarding borders. Member countries are also required to guarantee clear rules of the game regarding customs, such as rules regarding the inspection of goods or import permits. The existence of such uniformity is intended to create efficiency for exporters because it reduces the many differences in requirements treated by each country. For importers, who import raw or semi-finished materials for export, this rule also provides certainty for importers that they will receive goods on time and at competitive prices. Besides that, the existence of rules regarding binding tariffs made the importers also know clearly how much it would cost to import an item.

The WTO policy also accommodates the interests of developing countries through various provisions called special and differential treatment (S and D). S and D policies are special rights and privileges given by WTO to developing countries, and not given to developed countries. S and D policies for developing countries have actually been given before the Uruguay GATT round which began in 1986 (Fritz, 2005). This 8-year round of negotiations which ended in 1994 was a ratification of the “Marrakesh Agreement” on the Establishment of the WTO marking tidal changes in the S and D concept.

This policy is intended to facilitate the process of integration of developing countries (and also least developed countries (LDCs) into the multilateral trading system, and to help developing countries overcome the difficulties of implementing all WTO agreements. In addition, S and D shows that differences in the level of development

achieved by member countries require the existence of policy tools in achieving different economic growth and development.

The WTO classifies S and D provisions into six categories, namely: (1) provisions aimed at increasing opportunities for developing country trade, (2) provisions that require WTO member countries to protect developing country interests, (3) provisions that provide flexibility in commitment, action, and use of policy instruments, (4) provisions that provide a transition period, (5) provisions regarding technical assistance, and (6) special provisions for underdeveloped countries.

## 2.2. Some Key Issues in World Trade

Open rules-based multilateral trading systems play an important role in providing a supportive environment for companies to exploit international market opportunities, while at the same time rules of the game are needed to ensure that the government can provide public goods and services requested by the community.

The WTO is the only international body that specifically regulates the problem of trade between countries. The WTO multilateral system is regulated through an agreement that contains the basic rules of international trade as a result of negotiations that have been signed by member countries. The agreement is a contract between member countries that binds the government to comply with it in the implementation of its trade policies. Although signed by the government, the main motivation is to increase the company's access to foreign markets. The WTO also acts as a governance and conflict management mechanism. The main focus of WTO terms and processes is to increase transparency and predictability of applied trade policies, thereby reducing uncertainty for other traders and governments. Independent dispute resolution and must issue power from the equation.

The WTO agreement provides freedom for WTO members to use trade policy instruments. For example, the WTO allows actions taken against subsidies that hurt domestic industries. A key feature of WTO membership is that the government agrees to follow negotiated rules and procedures. Examples include encouraging the use of relevant international standards to achieve health, safety and related objectives. Trade defence instruments such as anti-dumping, measures to offset the effects of subsidies given to foreign suppliers of imported products and protection measures play an important role in helping the government manage the pressures that accompany globalization and technological change. All WTO members agree that certain types of foreign trade if they cause losses to domestic industries, can be temporarily opposed to importing tariffs. However, this is subject to following the special procedures set out in the WTO agreement that has been negotiated from time to time with the aim of preventing misuse of this instrument.

There are several issues that are in the interests of developing countries (Murshed, 2004), which include:

### 1. Tariff peaks and tariff escalation

There are high tariffs on certain products (peak tariffs) in developed markets which are feared to disrupt exports from developing countries. For example, the high tariffs imposed

on textile products, apparel, fish, processed fish products, and footwear or shoes, all of which are in the interests of developing countries. Some developed countries will only make a slight reduction in import duties. Thus, the potential of developing countries in trade between them is hampered by the fact that there are high import duties among developing countries themselves. Developing countries also experience the problem of "tariff escalation" where importing countries protect their manufacturing industries by setting low import duties on raw materials and import duties for high-finished or semi-finished goods.

### 2. Special and differential treatment (S and D)

Implementation of provisions regarding special and different treatment for developing countries (S and D) contained in various WTO agreements, in fact, is not easy to implement.

### 3. TRIPs and public health

The Doha IV ministerial conference specifically issued a declaration on TRIPs and public health which essentially instructed members to find solutions to problems faced by developing countries that did not have the ability to produce pharmaceuticals using Compulsory licenses (licenses to produce and sell drugs).

### 4. Preference erosion

Issues that are feared by developing countries are erosion/reduced preference or special treatment (special concessions tariffs provided by developed countries for imports from certain developing countries become less meaningful if the tariffs have been reduced because then the difference between normal tariffs and tariffs thinning special treatment).

### 5. Ability to adapt

Are developing countries able to take advantage of the changes caused by WTO agreements? Yes, if the economies of developing countries are able to respond to these changes. This depends on a combination of economic policies from efforts to improve the process of policy making and macroeconomic management, up to training and investment improvement programs.

## 2.3. WTO Reform Demands

The multilateral trading system and the WTO are currently under threat. This system was rocked by increasing protectionism and the imposition of non-tariff barriers and more specifically, at present, tariff barriers, especially by the largest trading countries - the US and China. Core negotiations, transparency and conflict resolution functions are contradicted, undermining the WTO's ability to fulfil its duties. WTO members failed to conclude the first round of multilateral trade negotiations launched under the auspices of the WTO in 2001, the DDA. They do not want to discuss new work programs such as support for agriculture and new things such as digital trade and other forms of industrial policy that are not captured by current rules (e.g., investment-related policies). Many WTO members do not comply with notification commitments, reducing transparency. Especially since 2016, the US has blocked new promises for the WTO Appeal Agency, which reflects dissatisfaction with the functioning of the dispute resolution mechanism. If it continues, the appeal system will die.

There are fears that the world trade system is not necessarily “fair,” so it needs to be reformed. Some of the underlying reasons are: First, there is a cross-border trade deviation under the pretext of supporting national industries (Hoekman, 2018). This creates a bargain within the WTO. The rules of the game were designed in the 1980s and did not follow a rapidly changing world economy where cross-border data flows, digital products, and technology reflected the digitization of production. Meanwhile, WTO member countries are less concerned about facing and overcoming this challenge.

Second, according to the WTO trade policy review reports (WTO, 2017), many non-tariff policies have been implemented by various governments since 2009 that have the potential to distort trade. Developing countries and the US have become the most productive users of trade policy instruments in the post - 2008 period. The motivation for the use of these policies varies but a common factor is to support domestic economic activities. This is not limited to steps that help national companies. The government can also try to attract foreign-owned companies to their territory. Foreign companies are more likely to have high productivity, better technology, and stronger innovation capacity than local companies. They also create demand for both skilled and unskilled workers, thus stimulating local work.

Other motivations that may be prevalent for many countries to impose trade-distorting policies - particularly trade recovery such as anti-dumping and countervailing (anti-subsidies) - are to manage import competition. The use of such actions MAST category is permitted by the WTO to respond to what has been mutually agreed upon (defined) to shape adverse unfair trade practices. About half of all trade measures imposed by the government since 2009 took the form of subsidies and support for exports through fiscal incentives of various types.

Third, since 2008, the true leaders of the G20 have repeatedly committed not to use protectionism and complete WTO negotiations as soon as possible. The weak global trade growth rate since 2010 implies that trade has not become a much-needed driver of economic dynamics. The G20 must pursue a more ambitious trade agenda and there is much that can be done by greater leadership by the G20 to revive the trading system. The first step is to commit to concrete actions that can be implemented by each government together and which are centered on reducing trade costs and increasing access to services for companies (Hoekman, 2016).

Fourth, trade policies affect trade in digital products and services. Cross-border digital transactions are growing rapidly and, in the future, will consist of an increase in the share of global production and trade. Many steps affect digital trade but are more policy-oriented which affects the production and trade of goods. There are many state policies that implement policies that hinder digital trade (Ferracane et al., 2018). Many related policies are only partially covered by the WTO agreement. These policies can have a negative impact on trade and call for multilateral cooperation to design efficient regulatory approaches that facilitate digital trade for consumer safety, data privacy and national security.

The failure of the multilateral trade negotiations held under the auspices of the WTO, the DDA, has serious consequences because it does not discipline the use of trade-distorting policies that have long been a WTO agenda - such as agricultural support export subsidies and tariff escalation. The failure of the Doha round has prevented WTO members from addressing new sources of policy tension and was involved in collaborative efforts to renew WTO regulations to reflect changes that have taken place in the global economy in 25 years since the WTO agreement was negotiated.

Fifth, difficulties in making progress in negotiating new agreements within the WTO encourage WTO members to negotiate preferential trade agreements (PTAs). The use of PTA reflects a great deal of motivation but the same element is the desire of participating countries to engage in deeper integration than they consider desirable or feasible in broader multilateral settings. Such an agreement complements the WTO - and the WTO makes explicit provisions for it - but the best is only a partial substitution for multilateral cooperation to improve global welfare regarding trade policy.

In one part of the proposal is to address systemic WTO issues such as dispute resolution, negotiation processes and the need for WTO rules on 21<sup>st</sup> century trade problems (e-commerce, investment facilitation, domestic service regulations, gender and discipline for fisheries subsidies and micro-enterprises) small and medium scale, among a number of other problems. Other proposals include the application of special cases and different treatments, and WTO rules on transparency.

In essence, the WTO as a multilateral trade organization has created unbalanced relations between developed and developing countries. WTO as the only international trade organization instead of creating a fair and balanced flow of global trade among its member countries. In contrast, in recent decades, globalization has been regarded by some as a new arena of competition between developed and developing countries. This is seen from the globalization that occurs in developing countries which continues to decline when compared to the globalization that occurs in developed countries. The inequality that occurred in globalization, especially international trade in the WTO, invited criticism from one of the transformationalist figures, Joseph E. Stiglitz. Seeing the reality of WTO injustice, Stiglitz then views to reform within the WTO to create a fair and friendly trade institution to the interests of developing countries (Stiglitz, 2004).

According to Stiglitz the WTO has given birth to a free trade system, where the freedom of the state to open up markets is as wide as possible for the flow of goods and services. This means that this system is then required to contribute to poor countries in the form of increasing economic growth. But according to Stiglitz, free markets fail to create prosperity because of unfair international trade agreements. This injustice is seen from the policies of developed countries which are permitted to impose a tax on the goods of developing countries which are four times the amount of goods produced by industrialized developed countries. On the other hand, developing countries are forced to eliminate subsidies in order to help the birth of new industries, whereas advanced industrial

countries are actually allowed to continue subsidies in agriculture, resulting in falling prices of agricultural commodities and weakening living standards in developing countries (Stiglitz, 2007).

### 3. DISCUSSIONS

#### 3.1. Effectiveness of WTO Policy on Developing Countries

The WTO agreement has accommodated the interests of developing countries through various provisions called Special and Differential Treatment (S and D). In general, Special and differential treatment refers to special rights and privileges given by WTO to developing countries, and not given to developed countries. The loading of S and D provisions is intended to facilitate the process of integration of developing countries into the multilateral trading system and to help developing countries overcome difficulties in implementing all WTO agreements.

S and D provisions in the WTO agreement are based on the principle that trade liberalization is not a goal but a means to an end, namely growth and economic development of all member countries. In addition, the S and D provisions show recognition that differences in the level of development achieved by WTO member countries require the existence of policy tools in achieving different economic growth and development.

There are 145 S and D provisions scattered in various WTO agreements, 107 of which were adopted in the Uruguay Round, and 22 specifically for least-developed country members (WT/COMTD/W/77, 2000). The WTO Secretariat classifies the special and differential treatment provisions into six categories: (i) provisions aimed at increasing opportunities for developing country trade, (ii) provisions that require WTO member countries to protect the interests of developing countries, (iii) provisions that provide flexibility in commitments, actions, and use of policy instruments, (iv) provisions that provide a transition period, (v) provisions regarding technical assistance, and (vi) specific provisions for underdeveloped country.

Given the large and comprehensive S and D provisions, it is reasonable if developing countries have high expectations that the S and D provisions will help them as intended. In fact, not as expected. Since the issuance of S and D provisions in the WTO agreement to date, many doubts have been voiced mainly regarding their effectiveness in helping developing countries to participate in, and take significant benefits from, the multilateral trading system (Kessie, 2000).

The lack of implementation of WTO agreements, including S and D provisions has been a major factor in developing countries' concerns and complaints. This is often stated, both inside and outside the WTO. The Singapore Ministerial Declaration of 1996, for example, acknowledged that some members expressed dissatisfaction with certain aspects relating to the implementation of WTO agreements.

Developing countries' concerns about the effectiveness of implementing S and D provisions are not only due to the lack of

capacity of developing countries but also, especially by the legal character of the S and D provisions themselves which are generally not enforceable. "Developing countries have always insisted on the legal enforceability of these provisions (Kessie, 2000)." This is due, as stated by Indonesia because the S and D provisions are not operational and are not legally binding.

In addition to causing implementation difficulties in practice, the character of S and D provisions that do not have legally binding power can also have serious implications. S and D provisions cannot be effectively enforced in the dispute resolution process. Developing countries cannot refer to S and D provisions to force developed countries to implement certain provisions, and at the same time, they cannot defend their rights based on S and D provisions. As reflected in the Committee on Trade and Development (CTD) report, developing countries expressed their doubts about the effectiveness of enforcing S and D provisions and stated that there was no certainty at all that the S and D provisions could be enforced in the practice of dispute resolution (WT/COMTD/W/77, 2000).

Developing country concerns about the effectiveness of S and D provisions in dispute resolution have also been raised in relation to the method of interpretation applied by judges, both at the Panel and Appellate Body levels. In interpreting these provisions, judges tend to apply tighter interpretation methods. As stated by Egypt, for example, "developing countries have been witnessing a trend towards a static interpretation of S and D provisions (T/GC/W/109; WT/COMTD/W/49, 1998).

Although the issues relating to the S and D provisions have been raised and have become one point of the ministerial declaration and the ministerial decision, concrete solutions are still far from the expectations of developing countries. The ministerial declaration merely emphasizes the need for a review of existing S and D provisions, while the ministerial decision only instructs the CTD to study these provisions. The results of the study and concrete recommendations must have been reported to The general council (GC) in July 2002, as the main source for The Ministerial Meeting in Cancun, Mexico. After failing to meet the deadline, CTD gave a report to the GC twice on February 10, 2003. However, The Cancun Ministerial Meeting failed to reach consensus in all fields, including those concerning special and differential treatment.

After the failure of The Cancun meeting, WTO member countries succeeded in reaching an agreement at the Geneva Meeting in almost all the fields negotiated in Cancun. The results are included in The Doha Work Program Decision, which was adopted by The GC on August 1, 2004. However, the efforts of developing countries to reform the special and differential treatment provisions again failed, because the GC only instructed CTD in special sessions to as soon as possible complete the discussion of proposals or inputs, and report to GC with clear recommendations for a decision to be made in July 2005.

These failures were mainly due to the wide gap between the interests of developed and developing countries, and between developing countries themselves. This gap is very difficult to

get close. Therefore, this research is expected to recommend reforms that accommodate the balance of interests of developed and developing countries and among developing countries themselves. Without a satisfactory solution, it is very difficult to expect developing countries to fully integrate into the WTO system and, in turn, the sustainability of the WTO itself is really at stake.

In general, the implementation of S and D provisions in the practice of WTO member countries is not effective. This can be seen from some indications that market access of Developing Countries to markets of developed countries is always hampered, the trade interests of developing countries are not protected, the transition period is not adequate, there is no flexibility for developing countries to implement WTO provisions, and technical assistance from developed countries is not adequate.

### 3.2. Position of Indonesia

The WTO has the aim of overcoming the problem of inter-state trade and facilitating negotiations by providing a permanent negotiation forum after the end of the GATT era. WTO efforts to overcome the problem of world trade and create world trade fair and profitable for all members, in fact, did not materialize. The existence of the WTO does not fully provide benefits and represent the interests of all members because the rules and regulations contained in the WTO actually provide losses to member countries, especially developing countries.

The rules of free trade at the WTO are basically unfair and discriminatory, such as inequality that occurs in the case of agricultural commodity trade (Stiglitz, 2002). This is based on the provisions of an agricultural agreement which mostly harm developing countries with the rules of limiting subsidies and tariffs. The fundamental thing about the inequality is made clear by the attitude of developed countries led by the US of America in urging developing countries to open their markets with demands to abolish barriers to tariff and non-tariff trade, abolish domestic subsidies and export subsidies in developing countries. While developed countries still maintain a protectionist attitude in protecting the market and its farmers. In addition, the weak bargaining position of developing countries at the Ministerial Conference (before the Doha Round) caused every world trade decision to be in the domination of developed countries.

Approximately two-thirds of around 160 WTO members are developing countries. They play an active role in the WTO. Developing countries increasingly play a role in the global economy, thus viewing trade as a vital tool in development efforts (Rena, 2012). The problem is that a large number of developing country members does not provide more strength for developing countries to influence negotiations that are still dominated by developed countries. Although the organization is operated in the form of one country one vote, and decisions are made by consensus, in reality, negotiations and decision-making processes are far more complex and vulnerable to the influence of economic power. One measure of the bargaining power of a consensus within the WTO is determined by a combination of population, wealth and trade volume (especially through high per capita GDP and import volume). Based on the determination of the bargaining

power, it can be ascertained that developed countries such as the US and EU have a dominant role in decision making (Jones, 2009).

Classification in the WTO into several groups such as developed countries, developing countries, less developed countries, and net food-importing developing countries has an impact on the differences in position and strength of the state in each decision-making negotiation. Countries that have great power tend to have greater opportunities to influence and master the decision-making process. So that with the existence of domination, the loss borne by some members, because the issue decided does not fully provide benefits to other member countries. Developing countries do not just stay quiet in every negotiation, but the tug of interest that occurs in the WTO actually impacts on the obscurity and slow decision making. This can be seen from the slow process of resolving agreements in agriculture as contained in the agreement on agriculture.

Research on the new role of developing countries in the economy and global governance has been carried out. The new role is usually measured by increasing economic and military capacity and their political aspirations in global governance (Srivastava, 2004). Increasing economic capacity in developing countries is usually categorized in the category of emerging markets. The existence of emerging markets is able to change the composition of the distribution of power in WTO negotiations. With the emergence of emerging markets, the WTO decision which was previously dominated by bipolar forces (the US and the European Union) began to change towards multipolar. This can be seen since the Ministerial Conference in Cancun. A number of major decisions require approval from several countries including Brazil and India. Changes in the composition of forces are also determined by the increasing participation of middle and small countries by trying to influence the process through ideas and building coalitions (Cottier, 2009).

The issue of WTO reform that was launched by the European Union and Canada in July 2018 is an opportunity for developing countries to fight for their interests. This reform is expected to have a positive impact on the trade of developing countries. In addition, it is also expected to bring positive changes to the multilateral trading system and is expected to be able to accommodate the interests of developing countries. For this reason, reform proposals from developing countries must get extra attention. They must benefit from as much flexibility as possible, and members (developed countries) must make extra efforts to reduce barriers to imports from developing countries.

Developing countries are very open to the ideas of reform and modernization of the WTO in carrying out their functions. Reforms are expected to be able to accommodate the interests of developing countries and will ultimately bring positive changes to the multilateral trade system. Indonesia's involvement and position in WTO reform are not only based on national interests in order to encourage economic growth and poverty alleviation, but also as a G33 coordinator must also fight for the interests of members.

In order to fight for the interests of developing countries so that they are accommodated in WTO reform, critical issues need to

be analyzed, so that reforms can produce realistic policies. Not all issues faced by developing countries are analyzed, but there are choices or priorities for issues that need to be identified. Some issues faced by developing countries include:

#### 1. Market access

The problem of market access and legal flexibility must be fought for in WTO reform (Sampson and Bradnee, 2008). As we know, the purpose of the DDA is to improve the system so that the WTO is more efficient. However, to create and maintain the system collectively there is a common view that market access to trade in services, agricultural and non-agricultural goods is in the interests of each country. For this reason, there is a need for legal flexibility for each country to determine and implement its own national priorities.

Regarding the DDA, the Doha Ministerial Conference in 2001 mandated member states to hold a round of negotiations with the aim of establishing a multilateral trade order with a development dimension. This trade system will provide opportunities for developing countries and LDCs to be able to utilize international trade as a source of funding for development. The main issues discussed include agricultural issues, market access for non-agricultural products, trade in services, and rules.

In its development, the issue of agriculture, especially related to the reduction of domestic subsidies and tariffs for agricultural products, is an issue that will determine the course of the negotiation process. For Indonesia and most developing countries, agricultural issues are closely related to socio-economic problems (including food security, livelihood security and rural development).

Indonesia's involvement and position in the DDA negotiation process is based on national interests in order to encourage economic growth and poverty alleviation. In this connection, to strengthen the negotiating position Indonesia joined several coalitions. The coalitions include G-33, G-20, NAMA-11, which have more or less the same interests. Indonesia is actively involved in these groups in formulating joint positions that prioritize the achievement of the development objectives of the DDA. Indonesia is also always actively involved in issues of primary interest to Indonesia, such as development, intellectual property, the environment, and the formation of WTO rules governing multilateral trade.

Indonesia has an interest in continuing to actively encourage the WTO's commitment to continue the Doha negotiations. Indonesia is open to new ways to complete negotiations while continuing to prioritize the principle of single undertaking and prioritizing development for developing countries and LDCs.

#### 2. The Principle of the MFN

To create a fair and fair international trade system, the principle of non-discrimination requires equal treatment for WTO member countries that conduct trade activities. The same treatment for each country is known as the MFN principle. The MFN principle is the main and most important principle in the GATT, wherein in certain conditions or conditions the provisions allow for the exception of MFN principles. However, a number of developing countries expressed concern over the decline in attention to

MFN. The impact of this reduction in attention is recognized in small aggregates. To some extent, improvements in the scope and operation of existing preference schemes, including simpler administration and original rules, can help offset some losses.

Indonesia as a country that is driving exports is very concerned with the results of the Uruguay Round. Industrial growth requires access to enter broad global markets. The Uruguay round not only means the opening of the world market, but also the opening of the domestic market. This means that the Indonesian market will be more easily penetrated by imported goods with tariff provisions that must be lowered in the long run. Non-tariff barriers such as import restrictions and import quotas must be removed or reduced.

The agreement of the MFN principle in the globalization of trade resulted in the Indonesian government must be very careful and careful in dealing with it. Indonesia must be able to take advantage of all the advantages it has to be able to compete with other countries in order to improve its bargaining position related to the existence of free competition. To anticipate the negative impact of the MFN principle, it requires the government's role in accordance with Indonesia's developing conditions and requires adjustments in the implementation of the MFN principle.

#### 3. Decision making at the WTO

Member states make behavioural principles for the management of international trade and solve problems related to the conduct of trade negotiations. Some developing countries, which constitute the majority of WTO members, are very dissatisfied with the practice of decision-making in the WTO because they regard it as a selective and exclusive decision-making system and produce asymmetric agreements (Sutherland et al., 2001).

The formal decision-making process in the WTO is basically democratic. This shows the recognition of the principle of equality of sovereignty and the right to self-determination for collective decision making. However, in practice, there is a conflict between the principle of equality of sovereignty and reality. Legal equality is almost cancelled by existing politics and inequality among nation-states. Informal oligarchs win over democracy in decision making at the WTO (Evans, 2003). The ordinary majority is excluded from the decision making the process. Agreements are negotiated between a small group of countries in a way that is not transparent and then imposed on other members. All this is done in the name of building consensus.

The formal decision making process in the WTO is basically democratic. This shows the recognition of the principle of equal sovereignty and the right to self-determination for collective decision making. However, in practice there is a conflict between the principle of equality of sovereignty and reality. Equality of law is almost nullified by existing politics and inequality among nation-states. According to Evans (2003) informal oligarchies win over democracy in decision making at the WTO. The majority are usually ruled out from the decision making process. Agreements are negotiated among a small group of countries in a non-transparent manner and then imposed on other members. All this is done in the name of building consensus.

In practice, consensus always takes precedence and decisions are rarely taken by voting. According to Pauwelyn (2005) there is concern that the large number of WTO members will hamper efforts to establish new policies. Rejection from one member alone can thwart efforts to reach consensus even though the proposed policy is supported by many members, so that the consensus system is deemed able to cripple the decision making process at the WTO.

#### 4. Implementation of S and D provisions

S and D provisions have not been effectively implemented and enforced by WTO member countries in resolving disputes under the WTO umbrella. These provisions are needed in order to accommodate the development interests of developing countries. However, these provisions can help developing countries only if they can be effectively implemented and enforced. Although there are many complaints about S and D provisions, developing countries believe that effective implementation and law enforcement of these provisions will spur economic development, reduce poverty, and help the integration of developing countries into the multilateral trading system in full.

Since the inclusion of S and D provisions in the WTO agreement to date, many doubts have been voiced especially regarding its effectiveness in helping developing countries to participate in, and take significant advantage of, the multilateral trade system (Kessie, 2000). As reflected in the 2004 CTD report, the participation of developing countries in world trade (exports and imports) of goods, only ranged from 20% to 30%, while the contribution of underdeveloped countries actually declined. Lately, import growth rates exceed exports. These facts reinforce the perception of the marginalization of developing countries in the multilateral trading system.

The effectiveness of implementing S and D provisions is very unlikely without the support of developed countries. For this reason developing countries need to fight for developed countries to reduce, even eliminate, protectionist policies. They must stop: the establishment of trade barriers, both tariff and non-tariff; ignoring the interests of developing countries; and aggressiveness in carrying out lawsuits against developing countries. Indonesia needs to fight for the provisions of S and D to adopt the interests of developing countries, it should be made case by case, while for countries in the LDC group can be fully implemented.

#### 5. Public stock holding issues

The public stock holding is a type of policy instrument used by the Government to organize, stock and distribute food whenever needed Hingmire and Paresh (2017). While the Minimum Support Price is one of the public stock holding instruments. There are fears of developing countries about the absence of a permanent legal solution for the general purchase and distribution of food grains at reasonable prices.

The main interest that Indonesia must fight for as the G33 coordinator in the WTO forum is related to agriculture and food security as well as the interests of farmers. Especially in the success of public stock holding proposals for food security proposed by G-33 countries. The public stock holding is expected to meet the

country's domestic needs by the country before the country decides to open the country's import faucets. The public stock holding aims to gain space for the government in providing support for infrastructure development for farmers and helping poor farmers.

The main interests that developing countries must fight for in the WTO forum are related to agriculture and food security as well as the interests of farmers. Particularly in the success of public stock holding proposals for food security submitted by the G-33 countries. Public stock holding is expected to meet the domestic needs of a country by the country itself before the country decides to open import taps for the country. Public stock holding aims to gain space for the government to provide infrastructure development support for farmers and help poor farmers.

The Bali Package Agreement is a historical achievement. Since the establishment of the WTO in 1995, only this time the WTO has been able to formulate a new agreement, the Trade Facilitation Agreement. This agreement aims to facilitate the flow of goods into and out of countries between ports by reforming the existing mechanism for the release and entry of goods. A smooth outflow of goods at ports will certainly be able to support the Indonesian government's efforts to improve economic competitiveness and expand market access for Indonesian export products abroad.

In addition, the Bali Package also includes agreement on flexibility in the issue of public stockholding for food security. This will provide flexibility for developing countries to provide subsidies for the availability of cheap food for the poor, without worrying about being sued in the WTO Dispute Settlement Body forum

#### 6. Special safeguard mechanism

In a series of agricultural commission meetings, a proposal was issued regarding Special Products and Special Protection mechanisms given to developing countries to make their trade policies that can protect agricultural products that are sensitive to turmoil and related to problems of food security, rural development and poverty alleviation.

The proposal on the special safeguard mechanism has been accommodated in the draft text of Harbinson's capital as part of efforts to provide flexibility for developing countries in regulating their trade policies for agricultural products that are sensitive to price fluctuations and strongly related to issues of food security, rural development, and poverty alleviation. The problem is that the draft of Harbinson's modality cannot be agreed upon by all WTO member countries because it still cannot solve the problem of the injustice of multilateral trade.

#### 7. Problems with Appellate Body-WTO membership

WTO reform is very necessary in order to be able to respond to the development and needs of its members. Therefore it needs to be encouraged so that the Appellate Body-WTO membership is immediately filled to re-function the trade Dispute Settlement Mechanism (DSM) that occurs between WTO member countries. This DSM WTO is the only international body that can and has the right to handle the settlement of trade disputes from WTO member countries. For this reason, the WTO must prioritize the

resolution of existing problems, such as agricultural subsidies by developed countries and the settlement of Illegal, Unreported and Unregulated Fishing.

Based on the report of the GC meeting held on July 24 and 25, 2019, in order to find a solution to the completion of the election blockade the Appellate Body members had a deadlock. US is still reluctant to get involved in substantive discussions to resolve the Appellate Body problem even though almost all members have urged the US to be involved in resolving this issue.

Indonesia continues to strive for the WTO to continue to pay attention to developing countries, in reforming their organizations. For this reason, Indonesia supports filling the vacancy of Appellate Body members as soon as possible because to solve one appeals case, three Appellate Body members are needed, so that it is feared that the Appellate Body will be paralyzed if it is not filled immediately.

#### 8. Strengthening the WTO to promote development and inclusivity (WT/GC/W/778)

In the preamble of the Marrakesh Agreement stipulates that the WTO recognizes that international trade is to “improve living standards.” More importantly, he acknowledged that “there is a need for positive efforts designed to ensure that developing countries, and especially the least developed among them, get a share in the growth of international trade commensurate with their economic development needs.”

In recent months, several members have suggested various reforms in the WTO including a series of new regulations, even though the existing mandate of the DDA remains unaddressed. “WTO reform” does not mean accepting inherited injustices or new proposals that will exacerbate imbalances. Indonesia believes that WTO reform must be carried out inclusively and holistically.

#### 9. An inclusive approach for transparency and notification requirements in the WTO (JOB/GC/2018)

Transparency is an important issue in the operation and monitoring functions of the WTO. The issue of compliance with notification obligations is debated. Developing countries often struggle to comply with heavy obligations, while in many cases, developed countries do not comply with their notification requirements or do so selectively. JOB/GC/2018 discusses the extent of transparency issues in the WTO and shows the selective logging efforts of members of developed countries in the transparency discussion.

Based on the conditions above, sponsored by Argentina, Australia, Costa Rica, Taipei China, European Union, Japan, New Zealand, and Canada, proposed proposals to increase Member compliance with the notification requirements of various WTO agreements at the November 2017. CTG meeting. Proposal this is an effort to overcome gaps in notification and transparency and put the WTO on the path to a more successful and sustainable future.

The proposal received a lot of support from developing countries and LDCs. While Indonesia holds the view that WTO reform should be carried out inclusively and holistically, by

accommodating the interests of developing countries, especially in resolving the imbalance of the rights and obligations of members created in the Uruguay round.

#### 10. The problem of digital commerce

The WTO has not yet intensively paid attention to digital commerce through e-commerce services. Although this issue has been discussed in the working group at the WTO, there is no certainty whether the e-commerce trade will be regulated by the WTO or not. There is no agreement on the basic substance about e-commerce, whether it concerns the trade in goods, services, application platforms, or other forms. However, many parties including discussions in the body of the WTO have questioned various taxes, consumer protection rights, and regulations relating to e-commerce.

According to the WTO report the total value of e-commerce in 2016 reached \$27.7 trillion, of which nearly \$24 trillion was a business-to-business transaction. While Indonesia is a market with attractive e-commerce growth from year to year. Over the past 4 years, e-commerce in Indonesia has increased by 500%. Google’s latest research, Indonesia’s digital economy in 2018 reached US \$27 billion or around Rp391 trillion. This figure makes Indonesia’s digital economy transactions ranked first for the Southeast Asian region with a contribution of 49%. Census data from the Central Statistics Agency (BPS) also mentioned, the Indonesian e-commerce industry in the last 10 years increased by 17% with a total number of e-commerce businesses reaching 26.2 million units. In the future, e-commerce in Indonesia is expected to experience very rapid growth in line with the growing number of entrepreneurs and micro, small and medium enterprises (MSMEs).

For this reason, Indonesia needs to raise the issue of digital commerce to encourage businesses, including MSMEs to suppress predatory practices. The WTO needs to set rules regarding the development of e-commerce. The current WTO rules are not suitable for the needs of the 21<sup>st</sup> century. E-commerce trading is a flexible business trade. E-commerce can cut international trade channels. For this reason, it is necessary to encourage the WTO to regulate consumer protection and import duties for e-commerce businesses that occur directly between countries.

## 4. CONCLUSIONS AND RECOMMENDATIONS

WTO policies are less effective for developing countries, at least this is reflected in the lack of implementation of WTO agreements, including S and D provisions that have become a major factor in developing countries’ concerns and complaints. The concerns of developing countries are not only caused by the inadequacy of developing countries, but also, especially by the legal character of the S and D provisions themselves which generally cannot be enforced, and the character of S and D provisions that do not have legally binding power can also have serious implications. Developing countries’ efforts to reform S and D provisions have failed due to the wide gap between the interests of developed and developing countries, and between developing countries themselves. This gap is very difficult to get close.

The implementation of S and D provisions in the practice of WTO member countries is not effective. This can be seen from some indications that access to emerging markets to developed countries markets is always hampered, developing countries' trade interests are not protected, the transition period is not adequate, there is no flexibility for developing countries to implement WTO provisions, and technical assistance developed countries are not adequate.

Developing countries are very open to the ideas of reform and modernization of the WTO in carrying out their functions. Reforms are expected to be able to accommodate the interests of developing countries and will ultimately bring positive changes to the multilateral trade system. In order to fight for the interests of developing countries so that they are accommodated in WTO reforms, it needs to be prioritized on critical issues faced, so that reforms can produce realistic policies. Not all issues faced by developing countries are analyzed, but there are choices or priorities for issues that need to be identified. Some issues faced by developing countries include market access issues and legal flexibility, the MFN problem, the problem of overseeing the implementation, administration and operation of closed agreements, implementation of S and D provisions, public stockholding issues, and special safeguard mechanisms.

The WTO reform has implications for its member countries, including Indonesia. For this reason, from the side of the Government, particularly in terms of fiscal policy, the Fiscal Policy Agency recommends adjustments to several regulations to align with WTO reform. Some problems related to digital commerce issues include technology infrastructure gaps, data privacy, information exchange standards, and data ownership, consumer protection issues in doing transactions in digital business, and problems that can harm digital business entrepreneurs and harm the country. For this reason, it is necessary to prepare a regulatory product to regulate or neutralize problems arising from this digital business. Meanwhile, in relation to the issue of public stock holding, to improve food security in the fisheries and agriculture sectors, reduce dependence on imported basic needs for rice and wheat consumption, it is necessary to develop food and nutritional diversification in addition to rice and wheat with local food sources. Therefore it must be supported by adequate fiscal policies in the form of tax incentives, to other convenience policies so that local food products can compete in the global environment.

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