

Indonesia's Trade Policy: Adjusting the 2020 WTO's Trade Policy Review

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Abstrak

Studi ini menganalisis tinjauan Badan Tinjauan Kebijakan Perdagangan (TPRB) Indonesia pada tahun 2020, yang mengevaluasi kebijakan perdagangan Indonesia, terutama sektor pertanian, dan bagaimana kepatuhannya terhadap Perjanjian Organisasi Perdagangan Dunia (WTO) bermanfaat untuk Mekanisme Tinjauan Kebijakan Perdagangan (TPRM). Penelitian ini menggunakan metode normatif dengan mengumpulkan sumber hukum primer dan sekunder. Tinjauan TPRB 2020 menilai bahwa Indonesia telah menerapkan langkah-langkah pengamanan yang tidak transparan terkait produk pertaniannya dengan memberikan subsidi dan menerapkan pembatasan kuantitatif pada negara anggota WTO lainnya. Namun UU Cipta Kerja No 11 Tahun 2020 memberikan kesempatan yang sama bagi produk pangan impor secara proporsional dengan produk pertanian dan pangan dalam negeri. Pembahasan makalah ini berpendapat bahwa UU tersebut bertujuan untuk menyeimbangkan kepentingan nasional Indonesia dengan Perjanjian WTO dan tinjauan TPRB terhadap kebijakan perdagangan Indonesia, terutama di bidang pertanian. Artikel ini menyimpulkan bahwa pemerintah Indonesia telah mempertimbangkan peninjauan TPRB dengan itikad baik dengan menerapkan pengamanan yang transparan seperti memberikan kesempatan yang sama terhadap produk pertanian impor sejenis. Penulis merekomendasikan agar pemerintah Indonesia melakukan metode text-mining untuk secara khusus menentukan kebijakan perdagangannya dalam menghadapi ketidakpastian perdagangan internasional.

Kata Kunci: World Trade Organization (WTO), Trade Policy Review Body (TPRB), Agreement on Agriculture (AoA), kebijakan perdagangan Indonesia, kepentingan nasional.

Abstract

This study analyzed the Trade Policy Review Body (TPRB) Review of Indonesia in 2020, which evaluated Indonesia's trade policy, mainly the agricultural sector, and how its compliance with the World Trade Organization (WTO) Agreements is helpful for the TPRM. This study utilized the normative method by gathering primary and secondary legal sources. The 2020 TPRB Review perceived that Indonesia has applied untransparent safeguard measures concerning its agricultural products by providing subsidies and implementing quantitative restrictions on other WTO member states. However, the Indonesian Job Creation Law No. 11 of 2020 provides equal opportunities for imported food products proportionally with domestic agriculture and food products. This paper argued that the law aims to balance Indonesia's national interests with the WTO Agreements and the TPRB Review of Indonesia's trade policy, mainly in agriculture. This article concluded that the Indonesian government considered the TPRB Review in good faith by applying transparent safeguards, such as providing equal opportunities to similar imported agricultural products. It is recommended that the Indonesian government conduct a text-mining method to specifically determine its trade policy while dealing with international trade uncertainty.

Keywords: World Trade Organization (WTO), Trade Policy Review Body (TPRB), Agreement on Agriculture (AoA), Indonesia's trade policy, national interest.

INTRODUCTION

Trade practices in the agriculture sector have always been undivided with the conflict between protectionism and free trade mechanisms. It happened, for example, when New Zealand complained about Indonesia's import

licensing of horticultural products, animals, and animal products in case No. DS477, in the World Trade Organization (WTO) Dispute Settlement in May 2014. The Indonesian government's restriction on imported meat quotas to support local beef products has provoked

some countries, mainly New Zealand and followed by Australia, Brazil, Canada, China, the European Union, Japan, and the Republic of Thailand, to report their complaints to the WTO. Schefer (2010) argued that when a dispute is brought to the WTO's Dispute Settlement Body (DSB), the complainant state makes no profit or a lower profit than another state. This fact should also be viewed as the maintenance to balance the concessions between WTO members and ensure the fulfillment of obligations. In line with this, the International Trade Law (ITL), *in concreto*, the WTO Law with its rights and obligations, should be viewed as a role-playing game that its members should fully understand and exercise (European Commission, 2023). pattern (Badan Pusat Statistik, 2021). Hence, its annual population can be met by boosting chicken meat production. Accordingly, Indonesia can fulfill its domestic market demand for chicken meat (Kementan RI, 2017).

Hence, implementing the WTO Agreements in a free trade scheme might conflict with the protectionism policy as it provides more attention to national interests than international commitment. Suherman (2014) defined protectionism as an ideology that upholds a state's national identity and develops its domestic industries. Meanwhile, S. Wijatno & A. Gunadi (2014) explained free trade as an ideology that tends to abolish both tariff barrier(s) and non-tariff barrier(s) within international trade mechanisms. In international trade, such conflicting viewpoints are balanced by a regime known as the ITL.

As a branch of public international law, the ITL is regulated by the WTO. Aprita & Adhitya (2020), by quoting Boosyen's opinion, argued that the ITL is a package of legal norms to regulate trade in goods and services and protect intellectual properties. Bossche & Zdouc (2022) also confirmed that WTO Law provides a mechanism to deliberate conflicts between the free trade ideology and the WTO members' interests. One of the basic rules of WTO Law is the *rule on balance between trade liberalization and other societal values and interests* (Bossche & Zdouc, 2022).

One of the balancing mechanisms adopted by the WTO Agreement negotiators is the Trade Policy Review Mechanism (TPRM) through its organ known as the

Trade Policy Review Body (TPRB). Following Annex 3A of the WTO Agreements, this permanent organ was established to achieve transparency within the WTO and provide every WTO member an understanding of the WTO Agreements (WTO, 2019). Sood (2018) explained that the idea of the WTO Agreement architects to establish the TPRM and TPRB as its body had existed in 1989 before the WTO Agreements were adopted in 1994. The TPRB has then conducted a periodic review of WTO members based on the procedures regulated under Annex 3 of the WTO Agreements (WTO, 2023).

As one of the WTO members, Indonesia was reviewed by the TPRB in 2020 (WTO, 2020b). Such a review raised a conflict between the free trade mechanism and the Indonesian protectionism policy, mainly on agricultural products. Therefore, this article explained how the Indonesian government balances its national interests and obligations to fulfill the multilateral agreement's legal norms promoting the free trade mechanism in this sector. This article also discussed anticipative measures through adopting trade policy in agricultural products to respond to the uncertain flow of the global supply chain.

This research utilized a normative method to elaborate on the issue by applying international treaties and Indonesia's domestic law on the agricultural sector. It is crucial to note that this article resulted from legal research as the normative method was applied by transposing the law in the book into a particular legal issue (Amiruddin & Asikin, 2018). To discuss the issue, this study employed primary and secondary legal sources. The primary legal source was retrieved from the legislative's repository and international organization website. Meanwhile, the secondary legal source was expert commentaries acquired from textbooks, articles, and media opinions.

This article is divided into three sections. The first section discusses Indonesia's trade policy in the agricultural sector. The second section talks about the trade policy that aligns with Indonesia's regulations. The final part provides a recommendation regarding the measurement that the Indonesian government might invoke to comply with the legal norms in the WTO

LITERATURE REVIEW

A BALANCED PERSPECTIVE BETWEEN FREE TRADE MECHANISMS AND PROTECTIONISM

P. Bossche & W. Zdouc (2022), in their book entitled "The Law and Policy of the World Trade Organization," specifically discussed two out of five basic rules of the WTO Law: Rules on the Balance Between Trade Liberalization and Institutional and Procedural Rules. Bossche and Zdouc explained that stipulations under Articles XII, XIX, and XXIV of the General Agreement on Tariffs and Trade (GATT) and the Agreement on Safeguards are a set of temporary measures to achieve a balance between the free trade mechanism avoiding any tariff and non-tariff barriers and the national interests manifested in protectionism policy (Bossche & Zdouc, 2022).

Their writing implied that Bossche and Zdouc adopted the balancing concept based on the Appellate Body Opinion in *China – Raw Materials* stating that the WTO Agreements, as a whole, are to reflect the balance struck by WTO members between trade and non-trade-related concerns (Bossche & Zdouc, 2022). The WTO's Dispute Settlement Body (DSB) statement provides recommendations to WTO members in conflict due to a country's policy deemed contrary to the principles set out in the 1994 GATT, as the country protects its local products. In such a situation, the WTO's DSB pays attention to the balance between the international agreement contained in the GATT and its member countries' national interests.

Furthermore, Dematar (2019), in his article entitled "WTO's Trade Policy Review Mechanism (TPRM) and Indonesia's Compliance in Agriculture Sector," explained how the TPRM operates its evaluation through TPRB. TPRM is a medium for WTO members to evaluate their trade policies. This evaluation can be based on national interests manifested in the trade policies and other countries' objections to the particular trade policies. Dematar based his explanation on the TPRB Review on Indonesia, stating that agriculture, forestry, and fishing sectors contributed 14.7% of Indonesia's GDP in 2011, engaged an estimated 35.9% of the employed labor force, and employed more than 40 million people. Therefore, it is perceived that Indonesia's

trade policy in the agricultural sector is based on its domestic needs rather than on preserving its reputation.

Simbolon, Panjaitan, Panjaitan, and Rajagukguk (2022), in "Legal Analysis on Indonesia Food Import Policy Review through TPRM of the WTO to Prevent an International Trade Dispute," examined the dispute between Brazil and Indonesia in the WTO's DSB registered as case no. DS 484. The dispute was caused by Indonesia's quantitative restriction measures and undue delay measures on Brazil's chicken meat and chicken products (WTO, 2020a). The WTO's DSB recommendation then mentioned the urgency of Indonesia in applying its TPRM Review outcome in 2020 (Simbolon et al., 2022). Their article is relevant in illustrating the significant consequences of the WTO Agreements and how applying the TPRM Review provides solutions for the Indonesian government when there is a dispute in a more balanced perspective.

Furthermore, this article utilized the compliance and general consent theories to explain the Indonesian government's behavior toward international treaties while pursuing its national interests in protecting the agricultural sector. Moreover, the compliance theory offers a management model, promoting compliance through cooperation instead of coercion (Koh 1995). Similarly, Furculița (2021) confirmed that such compliance relies on the general intent of the state to comply with the treaty obligations based on three considerations: (1) the effectiveness of the compliance, rather than violating a rule; (2) the states' interests; and (3) the nature of a treaty in the form of legally binding. Dematar (2019) also affirmed that a state would only comply with a treaty's obligation if it provides its interests.

Concerning the general consent theory, Argent (2021) applied the Permanent Court of International Justice Opinion on the *Lotus Case* by stating that international law is created based on the general consent of states. One way to express this general consent is by adopting international treaties (Argent, 2021). This doctrine can be proven by understanding the formulation under Article 11 of the Vienna Convention on the Law of Treaties 1969, explaining that states can

consent to be bound by a treaty through the act of signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or any other means agreed by the consented states (United Nations, 2022). Such consent develops from the *pacta sunt servanda* principle, which is in line with Kelsen's opinion explained by Kammerhofer (2004), stating that it is a fundamental norm (*grundnorm*) of an international treaty. Diantha, Putra, and Landra (2017) further expressed that this theory is perceived as the antithesis of the notions where international law is based on the individual will of a particular state. Therefore, this principle should be perceived as an agreement that goes beyond the individual will or the unilateral act of a state.

RESEARCH METHOD

This research utilized a normative method by applying international treaties and Indonesia's domestic law related to the mentioned issues. Amiruddin & Asikin (2018) explained that a normative method is applied by transposing the law in the book into a particular legal issue. It is essential to note that this article resulted from legal research. Taekema (2018) expressed that such research describes a discussion of current affairs and recent cases leading to a situation where that scholar's work is cited in a judgment or parliamentary debate.

To elaborate on the discussion, primary and secondary legal sources were gathered. Amiruddin & Asikin (2018) defined a primary legal source as secondary data retrieved from the legislative's repository and international organization website. Meanwhile, the secondary legal source takes the form of expert commentaries acquired from textbooks, articles, and media opinions.

This article explained Indonesia's trade policy in the agricultural sector, affecting other WTO members. Such an explanation is necessary to avoid a vague understanding. Furthermore, the urgency of this explanation can also be construed by understanding that the WTO Agreements have become a treaty with an indirect effect. Argent (2021) stated that this type of effect is exhibited by the substance of a treaty that obliges its members to provide a national measure.

RESULTS AND ANALYSIS

THE 2020 INDONESIA'S TRADE POLICY REVIEW

The 2020 TPRB Review for Indonesia, in Paragraph 24 of the WT/TPR/S/401, notes that agriculture is essential to Indonesia's economy (WTO, 2020b). This sector contributed 13.3% to Indonesia's GDP in 2019. Therefore, Indonesia formulated the trade policy on export tariffs, import quotas, and trade licenses for the agricultural sector in 2013-2020 (WTO, 2020b). However, with this policy, Indonesia received complaints from several WTO members based on Articles 5.7, 10, 16.2, and 18 of Annex 1A of the WTO Agreements: Agreement on Agriculture (AoA).

Article 5.7 mainly regulates the obligations of every WTO member to operate its safeguards in agriculture products transparently (WTO, 2022b). Moreover, a safeguard mechanism is a government's measure to recover its industry(s) from a severe injury (Fahrizi, 2020). Such a mechanism is also applied to avoid the threat of massive import quantities in an absolute or relative meaning on similar or competing products. It is crucial to note that transparent measure(s) is regulated under Article X Paragraph 1 of the GATT. The stipulation states:

"Laws, regulations, judicial decisions, and administrative rulings of general application, made effective by any contracting party. Pertaining to the classification or the valuation of products for customs purposes, or rates duty, taxes or other charges, or requirements, restrictions, or prohibitions on imports or exports or the transfer of payment therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them." (WTO, 2022d).

Up to this point, Indonesia is one of the WTO members that could not provide its domestic legal products link on the WTO website. Therefore, this country has been quickly concerned as a WTO member that exercised its transparent measure(s) inappropriately. It has yet to invoke its safeguard policy transparently, making it accused of conducting prohibited export subsidies in agriculture product(s) mentioned in Article

10 Paragraph 1 of the AoA. The stipulation expresses that export subsidies not listed in Article 9 Paragraph 1 of the AoA should not be applied in conjunction with Article 10 Paragraph 1 and Article 9 Paragraph 1 of the AoA.

“(a) the provision by governments or their agencies of direct subsidies, including payments-in-kind; (b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market; (c) payments on the export of an agricultural product that is financed under governmental action; (d) the provision of subsidies to reduce the costs of marketing exports of agricultural products; (e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favorable than for domestic shipments; (f) subsidies on agricultural products contingent on their incorporation in exported products” (WTO, 2020a)

The Indonesian government applied subsidies for its agricultural products in the 2000s by expensing a budget of around 3.2% of its GDP (OECD, 2020). This particular action contradicts the AoA's Article 10. Since the measure is categorized as subsidies, it is also qualified as prohibited under Articles 3 and 4 of the Subsidies and Countervailing (SCM) Agreement (WTO, 2022c). However, Adolf & Suryawinata (2018) justified that export subsidy prohibitions have legal and factual natures related to export performance. They confirmed that such subsidies are legally prohibited due to their effect on other WTO members (Adolf & Suryawinata, 2018). Nonetheless, some countries, including Indonesia, have implemented the subsidy policy to protect their local products from being hit by and unable to compete with imported products.

Knowing that the TPRB addressed the Indonesian measures contrary to Article 16.2 of the AoA, it can be said that in invoking measure(s) or policy(s) related to agricultural product trading, Indonesia failed to report to the Committee on Agriculture. Such an obligation is also set in Article 18 of the AoA, which obliges every WTO member to report its modified measure(s) to the Committee on Agriculture (WTO, 2020b). Article 18

Paragraph 7 of the AoA also regulates every WTO member to consult annually with the Committee on Agriculture regarding the world trade in agricultural products (WTO, 2020b).

The compliance theory also justifies why Indonesia has yet to fully apply its multilateral obligations under the AoA. Dematar (2019) concluded that a state would only comply with an international treaty if it intends to do so. Koh (1995) also noted that a state would obey international obligations due to the balance of costs and benefits caused by certain compliance. Conversely, a state would violate international obligations if they do not provide more benefits. Moreover, the principle of “consent to be bound” by a treaty, as noted in Article 20 Paragraph 5 of the Vienna Convention on the Law of Treaties (VCLT) 1969 (United Nations, 2022), generates the states' compliance. However, national economic interests might lead to non-compliance behaviors.

Regarding non-compliance toward treaty obligations, Koh (1995) confirmed the behavior as the state's inability to conduct such a compliance manner. The 2020 TPRB Review on Indonesia indicated that this country had been involved in non-compliance behavior, causing several trade disputes in the DSB due to its quantitative restriction measures. Table 2.4 of WT/TPR/S/401 describes such disputes.

The table indicates that Indonesia was complained by New Zealand in the DSB registered under DS 477 and by the US in the DSB registered under DS 478 (WTO, 2017). Those complaints were addressed due to Indonesia's halal standard entailing measures, such as quantitative restrictions toward their exported horticultural products (WTO, 2017). Brazil also complained about Indonesian measures, causing its export of chicken meat and chicken products to be rejected from entering Indonesia's territory. The dispute was registered under DS 484 (WTO, 2020a).

During the DS 477 and DS 478 simultaneous examinations, the WTO panel reported that the Indonesian government's measure was inconsistent with Article XI.1 of the GATT regarding the prohibition of quantitative restriction on December 22nd, 2016. On the same date, the panel also rejected Indonesia's

Table 1. Complaints against Indonesia from January 2013 to July 2020

Dispute	Raised by/ Against	Request for Consultation	Panel Establishment/ Panel Report Circulated	Current Status	Document Series
Import of Horticultural Products, Animals and Animal Products	New Zealand/ Indonesia	08/05/2014	20/05/2015/ 22/12/2016	Report(s) adopted with recommendation to bring measure(s) into conformity on November 22 nd , 2017	DS477
Import of Horticultural Products, Animals and Animals	United States/ Indonesia	08/05/2014	08/10/2015 22/12/2016	Authorization to retaliate was requested (including Article 22.6 arbitration) on August 15 th , 2018	DS 478
Measures Concerning the Import of Chicken Meat and Chicken Products	Brazil/ Indonesia	16/10/2014	03/12/2015/ 17/10/2017	Compliance proceedings ongoing on June 24 th , 2019	DS 484

Note. Data adapted from WTO's Trade Policy Review of Indonesia (2020)

justification under Article XX of the GATT, regulating the exceptions of public morals due to its lack of demonstration in this subject matter. Indonesia, therefore, filed an appeal on February 17th, 2017 (WTO, 2017).

As the panel stated that Indonesia had invoked quantitative restrictions, the Appellate Body expressed its opinion similarly. Indonesia was ordered to implement the ruling under a reasonable period. The agreement between Indonesia, the US, and New Zealand regarding the period was adopted on June 14th, 2018. On January

17th, 2019, Indonesia reported to the DSB that it had implemented the Appellate Body's decision by issuing Minister of Agriculture Regulation No. 24 of 2018 on June 6th, 2018, and Minister of Trade Regulation No. 64 of 2018 on May 31st, 2018. Indonesia also issued measures specifically related to import licenses, including the Minister of Agriculture Regulation No. 23 of 2018 and Minister of Trade Regulation No. 65 of 2018, which came into force on May 24th, 2018, and May 31st, 2018. Those regulations were reported to the Committee of Import Licensing on August 15th, 2018 (WTO, 2020b).

Meanwhile, during DS 484 examination, on November 22nd, 2017, the panel report stated that Indonesia should adjust its measure based on the WTO Agreements (WTO, 2020a). However, due to the absence of Brazilian and Indonesian consensus, both parties decided to adopt a second panel during the following period until June 13th, 2019 (Simbolon et al., 2022). The second panel adopted its report on November 10th, 2020. However, due to the absence of consensus between both parties, Indonesia appealed on December 22nd, 2020, to the Appellate Body (Simbolon et al., 2022).

The Plurilateral of the WTO and the Geneva Graduate Institute considered that the Appellate Body has been in a vacuum due to US complaints during President Obama's and President Trump's administrations. However, Indonesia is not a member of the Multi-Party Interim Arbitration (Geneva Graduate Institute, 2023). Therefore, the DS 484 has become one of the ongoing disputes in this world trade regime and cannot be settled. Of this issue, the TRPB Review consisted of legal substances of Indonesia's non-compliance and concluded that Indonesia has not fulfilled the WTO's high expectations and obligations. From the TPRM report, the naming and shaming scheme applied by this permanent organ could impose a chilling effect on a WTO member, including Indonesia, mainly if the reviewed member discovers that the expense of such action is more significant downside than the advantages.

As Dematar (2019) confirmed, a state would only comply with its treaty obligations if they align with its interests. By continuing to provide subsidies to the agricultural sector, the Indonesian government took the risk of violating the international treaty and regulations, especially the GATT. The Indonesian government also had to deal with some countries objecting to the subsidies provided to local farmers and ranchers. Nevertheless, the national interests contained in the government's policy to protect local agricultural products forced the government persists in providing subsidies.

INDONESIA'S TRADE POLICY IN THE AGRICULTURAL SECTOR: BETWEEN NATIONAL INTERESTS AND OBLIGATIONS UNDER THE WTO AGREEMENTS

One of the domestic legal products being the primary attention of the TPRB is Law No. 7 of 2014 regarding Indonesia's Trade Law, particularly Article 50 (Ministry of Finance, 2022a). This law authorizes the Indonesian government to prohibit the import or export of goods for the sake of national interests for some reasons, including to protect (1) national security or the public interests, social, cultural, and societal morals; (2) intellectual property rights; and (3) the health and safety of humans, animals, fish, plants, and the environmental. As confirmed in the 2020 TPRB Review, Paragraph 3.2.3.1 WT/TPR/S/401, Indonesia's Trade Law has attributed an authority to invoke an export prohibition on its agricultural products (WTO, 2020b).

Furthermore, Article 38 of Indonesia's Trade Law states that the Indonesian government should exercise its power to control its export and import activities by invoking measures in licenses, standards, prohibitions, and quantitative restrictions (Ministry of Finance, 2022a). Finally, Article 67 of Indonesia's Trade Law provides the authority to invoke safeguard measures (Ministry of Finance, 2022). This stipulation signifies that under its Minister of Trade, Indonesia has the right to invoke measures to prevent massive importation and defend itself from other states' protests (Ministry of Finance, 2022). As also stated by Indonesia's Ministry of Agriculture, on the one hand, trade liberalization enhances the quality of Indonesian products. Nevertheless, on the other hand, the Indonesian government also needs to take some actions to protect domestic agricultural products from the invasion of similar imported products. Such action is vital to assist the local farmers, ranchers, and entrepreneurs to survive in the domestic and international trade competitions and simultaneously escalate their welfare as one of Indonesia's interests (Ministry of Agriculture, 2020).

Applying Law No. 11 of 2020 regarding Job Creation Law, the Indonesian government has put efforts into balancing the legal matters concerning its national

interests and the free trade obligations under the WTO Agreements. Articles 15 and 36 of Indonesia's Food Law, amended under Article 64 of Job Creation Law, explain such a compromise. Article 15 explains that once Indonesia's domestic food needs have been fulfilled, the following foods can be exported to the international market. Article 36 states that food import can also be conducted to fulfill Indonesia's domestic needs. With these articles, the Indonesian government has provided opportunities for local farmers, ranchers, and entrepreneurs to sell agricultural products being the Indonesian people's needs. However, at the same time, the Indonesian government has also provided opportunities for international entrepreneurs to market similar products in the domestic market.

In addition to amending the Food Law, the Job Creation Law has amended Indonesia's Farmer Protection Law under Article 32 (Ministry of Finance, 2022). Article 15 of the amended law states that the Indonesian government should prioritize domestic agricultural products to fulfill domestic needs. In conjunction with Article 15, Article 30 expresses that an imported agricultural product is equivalent to a domestic one. Such an equivalent can be seen in the abolishment of Article 101, providing a penal sanction to food importers conducting their import when the domestic right of food is fulfilled (Ministry of Finance, 2022).

The TPRB has recognized the compromise by knowing the content of Paragraph 2.3.2 of the WT/TPR/S/401 (WTO, 2020b). TPRB stated that the Job Creation Law had consolidated the rule of law in Indonesia and effectively contributed to the rule-based approach recognized as the general practice between WTO members (WTO, 2020b). Therefore, despite upholding its sovereignty to protect domestic needs and national interests, Indonesia remains acting according to the WTO's general will.

As Indonesia has balanced its regulations in the agricultural sector, such action is in line with the general consent theory. This notion is reasonable since the WTO Agreements were adopted based on the collective will of its architects, including Indonesia. Therefore, the WTO should be viewed by Indonesia as an entity with a higher

authority in a trade matter. Guan (2020) stated that as an international organization, the WTO has at least legislative, executive, and judicial power based on the *pacta sunt servanda* principle. Applying this concept proves the structure of the WTO, whereas the ministerial conference has a legislative function to discuss an aspired international agreement and actualize it as a treaty. Meanwhile, the general council has an executive function in conducting the WTO's administrative tasks; finally, the DSB has a dispute settlement (WTO, 2022e).

General consent theory has relevance in international law as it is conducted through the consent of states to invoke its measures under the validity of its will *vis-à-vis* another state as it is formulated under their adopted treaty. The act or omission of deviance from the rights and obligations outlined in that treaty will only cause a complaint from the opposing party in that treaty or the invocation of sanction by another state. This study can be viewed as applying the theory and explaining the naming and shaming process conducted by the TPRM and the complaints addressed to Indonesia in the cases previously explained.

Indonesia's agriculture policy from 2013 to 2020 (before the latest periodic TPRB Review) not only upheld protectionism but also performed difficulties in adjusting to the free trade principles. However, the Indonesian government prevailed in overcoming the conflict between protectionism and liberalization principles by restructuring its national law under the legal substance of the Job Creation Law. Such a policy aligns with Paragraph 3 of the WTO Agreement Preamble *inter alia* expressing that the WTO aims to create reciprocal and mutually advantageous trade by reducing tariffs and other trade barriers and eliminating discriminatory treatment in international trade (WTO, 2022e). It also aligns with Indonesia's national interests under Article 33 Paragraph 4 of the Indonesian Constitution. It states that the national economy is organized based on economic democracy with principles of togetherness, efficiency with justice, sustainability, environmental awareness, and independence, as well as by caring balance of progress and unity national economy.

THE APPLICATION OF THE TPRB REVIEW TO ADJUST THE UNCERTAINTY OF FREE TRADE

In explaining the existence of TPRB, Kuenzel (2019) asserted that the TPRB Review could not be qualified as a product that effectively contributes to the reviewed member. The Annex 3A of the WTO Agreements confirms it by stipulating that:

“The purpose of the Trade Policy Review Mechanism (TPRM) is to contribute to improved adherence by all members to rules, disciplines, and commitments made under the Multilateral Trade Agreements... It is not intended to serve as a basis for the enforcement of specific obligations under the agreements or dispute settlement procedures or to impose new policy commitments on Members.” (WTO, 2019).

Therefore, this article confirmed that the TPRM, through its TPRB, could not enforce specific obligations of the WTO Agreements to a reviewed member; in this case, the AoA's obligations to Indonesia. In other words, the TPRB Review of Indonesia's trade policy is not enforceable to the Indonesian government, particularly regarding its agricultural products. However, despite its non-binding nature, Indonesia has considered the 2020 TPRB Review to adjust its trade policy for its agriculture products with international agreements. As explained earlier, the Indonesian government tried to balance its national interests and free trade obligations by invoking Law No. 11 of 2020 regarding the Job Creation Law.

The substance of the WTO Agreements can be interpreted subjectively. However, there are some notes that the Indonesian government should consider. To begin, Indonesia should apply its safeguards on its agricultural products transparently. Such a manner would facilitate Indonesia's national interests since safeguarding is permitted under Article 5 of the Safeguard Agreement under a condition that such measure is applied under the reasonable period set in Article 7 (four years and can be extended into a maximum of eight years) (WTO, 2022b). In addition, Indonesia should reduce its export subsidy on its agricultural production since this measure is only allocated to high-income agricultural product enterprises while not utilizing some of their inferior farmers (OECD,

2020). Furthermore, Indonesia should report its agricultural product trade policy to the Agriculture Committee. Even though such action may or may not threaten its national interests, promoting transparency within the WTO remains essential. Lastly, although it may cause a nullification or impairment, which may lead Indonesia to be a respondent state in the DSB, Indonesia should persistently apply its food standards to its health protection and public moral standards. Considering the TPRB Review, Indonesia has performed an effort to apply the WTO Agreements in good faith.

Moreover, Lee (2021) asserted that the TPRB Review could be examined by a group of experts within Indonesian executive(s). The text mining method could be conducted with due diligence toward documents with much writing. Such a method is applicable by extracting keywords to acquire useful information from an unstructured text (Lee et al., 2021). Lee (2021) utilized the text-mining method in analyzing the TPRB Review on South Korea. His analysis unveiled that the share of agriculture, forestry, and fisheries in South Korea's total employment continuously decreased from 17.9% in 1990 to 8.1% in 2004 to 3.9% in 2018. However, the share of rice in those three sectors rose from 14.3% to 16% during the same period. This method generated a table from the review of South Korea's measures complained about by the other WTO members as provided by the TPRM—such a table processed data by ranking them from the most complained measure to the least complained one.

By transposing this method, the Indonesian Minister of Trade could understand in which rank its trade policy in agriculture is located. This method might help the decision makers to determine the urgency of invoking specific measures according to Indonesia's national interests or the obligations set under the WTO Agreements. Such a method may only be possible if Indonesia considers the entire TPRM Review. Although the TPRB has no authority to impose sanctions, its review remains essential to comply.

Table 2. The TPRB Review for South Korea

Year/Rank	I	II	III	IV	V
2016	Out-of-quota rates	In-quota tariff	State-owned enterprises	Tariff-rate quota	Tariff quota system
2012	Out-of-quota rates	State-owned enterprises	State-trading entities	Unfair trade practices	Intellectual property rights
2008	Out-of-quota rates	Non-ad valorem duties	State-trading entities	Differentiated pricing system	Intellectual property rights
2004	Transparent market-driven economy	State-trading enterprises	Non-performing loans	Anti-dumping provisions	Value-added rule
2000	Shelf-life requirements	Resisted protectionist pressures	State-owned enterprises	Intellectual property rights	Non-tariff barriers
1996	Balance-of-payment grounds	State-trading entities	Intellectual property rights	In-quota imports	Import diversification program

Note. Data adapted from Lee (2021)

CONCLUSION

This article concluded that the Indonesian government has put its efforts into adjusting its trade policy in domestic legal, mainly by invoking the Job Creation Law with the WTO Agreements. This notion is supported as Indonesia had previously applied untransparent safeguards by providing export subsidies on agricultural products, not reporting the agriculture trade policy, and employing import quotas following national standards. However, with its naming and shaming nature, the 2020 TPRB Review should not be perceived as a song of desperation for Indonesia as a member of the WTO. By considering the recommendation, Indonesia could simultaneously comply with the WTO Agreements and gain its national interests. Moreover, by considering such inputs and conducting text mining, Indonesia could determine whether to act in compliance due to the

existing capacity to do so or not to comply due to an equilibrium between Indonesia's needs and its free trade obligations. At the very least, by implementing the Job Creation Law No. 11 of 2020, Indonesia could acquire advantages by applying its trade policy and compliance with international agreements through the WTO.

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