August 2021

PREVENTING RETALIATION IN TRADE BY HARMONIZING THE MEASURES

Muhammad Putra Iqbal

International Law Departement, Syiah Kuala University, Banda Aceh, Indonesia.

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijil>

Part of the [Comparative and Foreign Law Commons](#), [Conflict of Laws Commons](#), [Cultural Heritage Law Commons](#), [Intellectual Property Law Commons](#), [International Humanitarian Law Commons](#), [International Law Commons](#), [International Trade Law Commons](#), [Law and Economics Commons](#), and the [Law of the Sea Commons](#)

Recommended Citation

Iqbal, Muhammad Putra (2021) "PREVENTING RETALIATION IN TRADE BY HARMONIZING THE MEASURES," *Indonesian Journal of International Law*: Vol. 7 : No. 2 , Article 2.

DOI: 10.17304/ijil.vol7.2.218

Available at: <https://scholarhub.ui.ac.id/ijil/vol7/iss2/2>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesian Journal of International Law by an authorized editor of UI Scholars Hub.

Preventing Retaliation in Trade by Harmonizing the Measures

Muhammad Putra Iqbal*

Sanitary and Phytosanitary Measures (SPS) Agreement as a globally-accepted legal document within the World Trade Organization (WTO) is very important in ensuring food traded across the boundaries is safe for consumers and also protecting animal and plant from diseases and pests. Therefore, SPS Agreement's role within the international trade is very crucial. This paper evaluates 'Indonesia-China candy case' that closely related to the implementation of the SPS Agreement. It is concluded that Indonesia as a member of WTO has declared and proven that Indonesia national regulations on food safety comply with that international standard. On the other hand, China should show its compliance with international standard, or in case it has other standard that considered better than international standard China obliges to proof it's scientifically better and accepted. This paper argues that harmonization as a core principle found in the SPS Agreement should be considered by all states in enacting their national regulation on food safety.

Keywords: SPS Measures, WTO, International Standard

I. Introduction

The Indonesian Government around 2007 has announced a ban for several brands of candy imported from China. The ban due to the candies as reported by *Balai Pengawasan Obat dan Makanan* or the Indonesian Food and Drugs Monitoring Agency (BPOM) and further will be mentioned as the Agency, found contaminated with toxic preservative formaldehyde. Furthermore, the Agency has found that eight brands of the imported candies from China contain of the hazardous materials. Therefore, the Agency decided to pull out these candies from the market.¹

* LLB (Unsyiah, Indonesia), LLM (Melbourne), Lecturer at International Law Department, Syiah Kuala University, Banda Aceh, Indonesia. This article is based on a research paper submitted towards fulfillment of the requirement the Master of Laws degree at the University of Melbourne. The author would like to thank Mr. Jurgen Kurtz for helpful comments and suggestions in finishing this research paper.

Formaldehyde as toxic preservative has bad effects for human health. The effects such as it could be irritating eye, skin and respiratory system. If it is inhaled it can produce narrowing of the bronchi and accumulating of fluid in the lungs. Moreover, formaldehyde solution or usually known as formalin can cause corrosive injury to the gastrointestinal tract, especially the pharynx, epiglottis, esophagus, and stomach. Moreover, the worst thing formaldehyde is a human carcinogen, means it can stimulate cancer.² In fact, Indonesian government has announced the prohibition of using formalin to preserve the foods. This prohibition is grounded by fact that there were several cases found in which small-local foods producers has used formalin to preserve their products. Thus, Indonesian consumers have really aware of the impacts of formalin. In the other hand, formaldehyde is not really being a public concern compared to formalin due to lack of knowledge of Indonesian consumers. However, both of these hazardous materials bring negative effects toward human health. Concerned with hazards that contain in the candies, the government then decided to release a ban of importing these candies into Indonesian territory.

Interestingly, after banning these candies the Agency then also found several cosmetic products that contain formalin, mercury, and rhodamin. Mercury and rhodamin are two dangerous chemical additives that as same as formaldehyde and formalin can bring bad effects for human health. Again, these 26 dangerous-cosmetic products including toothpaste mainly are imported from China and other countries such as Taiwan, South Korea, Thailand and Philippines. Having mentioned above the bad effects of formaldehyde, formalin, mercury and rhodamin for human health which is one of them can irritate skin and to some extent can stimulate cancer, the Agency then decided to pull out these products form market. The Agency action then was followed by banning importation by the government. On 7 of August 2007 the government officially has released a new banned list of imported-products from China.³

¹ Public Warned to be Wary on Toxic Candy, The Jakarta Post, (Jakarta), can be accessed through <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20070730.D14> , viewed on 20 August 2007.

² Medical Management Headlines for Formaldehyde, can be accessed through <http://www.atsdr.cdc.gov/mhmi/mmg111.html#bookmark02>, viewed on 20 August 2007.

³ Government extends Ban on Chinese Import, The Jakarta Post, (Jakarta), can be accessed through <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20070807.A05>, viewed on 20 August 2007.

However, the story is not as that simple, it is getting worst. Whether it is based on fact or not the China's authority (China's General Administration of Quality Supervision, Inspection and Quarantine) reported that in several products imported from Indonesia contain mercury and cadmium. Mercury publicly has been known has dangerous effects for human health. Meanwhile, cadmium is metals that can accumulate in water and soil from burning garbage, mining or other industrial process. Both materials have been known bring negative effects for human health. The China authority also reported the imported-Indonesian products had been found to contain nitrofurantoin and anti bacterial agent that could cause cancer in laboratory animals.⁴ Moreover, China authority reported that these dangerous materials were found in seafood products that imported from Indonesia. Consequently, the Chinese Government released an importation ban for Indonesian' seafood products.

Based on case described above, it is admitted or not 'trade war' perhaps can be said already existed between Indonesia and China. Both states have been known nowadays having good relation in international politic especially in the United Nations system. As a matter of reality both states nowadays usually supporting each other in the UN decision process. Nowadays China often is positioning itself as an 'old brother' of the developing countries including Indonesia. Moreover, considering China's economic development, including its huge market Indonesian government should view and decide actions to be taken for this case wisely.

As argue above, the ground of Indonesia actions were concerned with protecting the human health. This protection is done such as by establishing national provisions on food safety. Indonesian national provision on food safety basically follows the international standards that were enacted under the international organizations framework. And the standards that being used are the Codex Alimentarius.⁵ Therefore, it can be said Indonesia has followed the SPS Agreement provision on measuring the national health regulations in terms of standardization.

⁴ China Bans Indonesia Seafood in Move Jakarta calls apparent reaction to its own ban, can be accessed through <http://www.signonsandiego.com/news/world/20070804-0804-china-indonesia-seafoodban.html>, viewed on 21 August 2007.

⁵ Indonesian Government Report at FAO/WHO Global forum of Food Safety Regulators, Marrakech, Morocco, 28-30 January 2002.

Concerning about both states obligation, Indonesia and China have the same obligation which is to comply with the law of the WTO. As members of WTO, both states has obligation to fulfill the WTO provisions. Under the WTO system, there are two legal documents that have relation with health issues. The documents are the Sanitary and Phytosanitary Measures (SPS) Agreement and the Agreement on Technical Barriers to Trade (TBT Agreement). Pursuant to Article II (2) of the WTO Agreement, the SPS and TBT Agreement are integrated in the WTO system. Therefore, they have the same basic legal status as the General Agreement on Tariffs and Trade 1994 and they are co-equal sources of WTO law. Consequently, they are binding on all WTO members.⁶

The SPS Agreement generally aims to protect human, animal or plant life or health. Meanwhile the TBT Agreement itself generally also has purpose as same as SPS Agreement, however, the TBT Agreement more specifically deals with health and safety technical regulations in achieving that purpose.⁷ Therefore, SPS Agreement should be study further in order to analyze both states banning toward other state's products. This argument could be based on because the SPS Agreement is the ground to ban and reject a product from other countries on the reason of protecting health.

Under the SPS Agreement, Indonesia and China have rights to reject a good with reason to protect the human health. On the other hand, states also have obligation to base its action on a scientific principles and should be maintained with sufficient scientific evidence in case both states establishing their own standard.⁸ The SPS Agreement explicitly recognizes the right of governments including Indonesian and Chinese government to take measures to protect human, animal and plant health, as long as these measures are based on science.

SPS Agreement itself does not create specific SPS standards that governments must use. Rather, the SPS Agreement provides general rules for the governments to follow when these governments want to establish they own SPS

⁶ Gabrielle Marceau and Joel P. Trachman, *A Map of the World Trade Organization Law of Domestic Regulation of Goods*, in George A. Bermann and Petros C. Mavroidis (Eds), *Trade and Human Health and Safety*, (2006), Cambridge University Press, p. 13.

⁷ Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, 'The World Trade Organization', (2003), 1

st ed, Oxford, p. 486.

⁸ Art. 2 (2) of the SPS Agreement

measures.⁹ Furthermore, SPS Agreement focuses on facilitating the free trade. The facilitation function is done through liberalization and requires national treatment, transparency and non-discrimination while providing special and differential treatment for developing countries including Indonesia and China.¹⁰ As SPS Agreement requires states to harmonize their SPS measures,¹¹ it supposes as developing countries Indonesia and China both have same standard in implementing SPS measures. The lack of harmonization is believed as the causal factor of this case.

The purpose of this research paper is to study how the SPS Agreement can be implemented without creating problem such as retaliation in the free trade. Based on this aim, harmonization principle will be the first analysis in order to know whether both states and Indonesia especially, have implemented this principle properly. Moreover, the implementation of transparency, risk assessment and non-discrimination principle as the core of the WTO principles also will be analyzed, whether both states' actions satisfy the requirement or not. At the end, these three principles in SPS Agreement will be studied in order to resolve the recent conflict between Indonesia and China. Several cases with have relation to SPS Agreement which have been brought into WTO dispute panels will be analyzed as well in order to find facts that related to the this case. At the end, this paper will suggest decision that should be taken by Indonesian government in resolving this case.

II. Governments' Obligations Under The SPS Agreement

A. The Importance of Harmonization within the SPS Agreement Framework

The SPS Agreement encourages governments to establish national SPS measures consistent with international standards, guidelines and recommendations. This suggestion as can be found in Article 3 of the SPS Agreement 'Mem-

⁹ Jeffrey L. Dunoff, *Reflections on the Varietals Dispute, the SPS Agreement and WTO Dispute Resolution*, in George A. Bermann and Petros C. Mavroidis (Eds), *Trade and Human Health and Safety*, (2006), Cambridge University Press, p. 156.

¹⁰ Ibid.

¹¹ Art 3 of the SPS Agreement.

¹² Art. 3 (1) of the SPS Agreement.

¹³ *European Communities-Measures concerning Meat and Meat products (Hormones)*, WT/DS48/R.

¹⁴ Ibid.

bers shall base their sanitary or phytosanitary measures on international standards... where they exist, except as otherwise provided for in this Agreement'.¹² Meanwhile the object and purpose of Article 3 as stated by the Appellate Body in *EC-Hormones* is to promote the harmonization of national SPS measures.¹³ Furthermore, the Appellate Body in *EC-Hormones* decision argued that harmonization of SPS measures by the Members should be done on a basis as wide as possible. Meanwhile, Article 3 also recognizes and safeguards the right and duty of Members including Indonesia and China to protect the life and health of their people. At the end, the ultimate goal of the harmonization of SPS measures which is to prevent the use of such measures for arbitrary or unjustifiable discrimination between Members or as a disguised reaction on international trade can be reached.¹⁴

As argued in the introduction, WTO does not set standards that government must follow. This fact is different from TRIPs Agreement which sets out specific levels of intellectual property protection that government must provide.¹⁵ The SPS Agreement just functioning as the facilitator of free trade therefore, it does not develop standards for SPS measures.¹⁶

However, despite WTO does not set the standard, WTO has pointed out standards that should be referenced which are 'base the sanitary and phytosanitary measures on international standards, guidelines or recommendations'.¹⁷ And the reference standards that have been chosen were the Codex Alimentarius. This policy departs from most of the WTO's member governments participated in the development of the Codex Alimentarius that was developed under other international organizations such as Food and Agricultural Organization (FAO) and also World Health Organization (WHO). These standards are developed by leading scientists in the field and government experts on health protection and subject to international scrutiny and review.¹⁸

Because SPS Agreement suggests governments to follow the international standards that exist, uniformity in setting the national standards by the governments is important. Therefore, then FAO and WHO developed Joint Codex Alimentarius Commission in which has established the Codex Alimentarius in

¹⁵ Jeffrey L. Dunoff, above, p. 156.

¹⁶ World Trade Organization, Sanitary and Phytosanitary Measures, (1998), WTO, p. 7.

¹⁷ Article 3 (1) of the SPS Agreement.

¹⁸ Ezzeddine Boutrif, 'The New Role of Codex Alimentarius in the Context of WTO/SPS Agreement', Food Control, (2003), Vol. 14, No. 81.

order to harmonize the international food standards such required by SPS Agreement.¹⁹ Joint Codex Alimentarius Commission consists of 165 member governments including Indonesia and China and responsible for implementing the Joint FAO/WHO Food Standards Programme. Meanwhile the objectives of the Programme are to protect the health of consumers, to ensure fair practices in the food trade, and to coordinate all food standards work.²⁰ Indonesia has declared clearly that Indonesia using the Codex Alimentarius as its reference in developing Indonesia's SPS measures.²¹

Regarding the Codex Alimentarius, basically it means food law or food code. A clear definition of Codex Alimentarius means 'a collection of food standards developed and presented in a unifies, codified manner, together with associated material such as codes of hygienic and good manufacturing practices (GMNs) and recognizes methods of analysis and sampling, general principles and guideline.'²² Codex Alimentarius was a result of the Programme works. As a matter of fact, one of the Programme's objectives which are to protect the health of the consumers basically is similar to the SPS Agreement's objective. Therefore, choosing the Codex to become the international standards to be followed by the governments is a right choice for the SPS Agreement.

Question then how the countries especially Indonesia and china implement the Codex Alimentarius into their national law. It supposes all states that using the Codex Alimentarius as the reference for their SPS measures should have the same standards. Because what they refer to is the same which is the Codex Alimentarius. In case a state for example China wants to enact its own SPS standard it is still allowed under the SPS Agreement.

However, although states are allowed to enact their own standards it should be noted that the Codex standards are not 'the lowest common denominator' standards.²³ It means the Codex Alimentarius are based on the input of leading scientists in the field and national experts on food safety. As argued before, the Codex Alimentarius Commission consists of experts and scholars from 165 state members. In another word, what they suggested to their governments

¹⁹ Ibid.

²⁰ Ibid.

²¹ Indonesian government report in FAO/WHO Global forum of Food Safety Regulators, above.

²² Ezzeddine Boutrif, above.

²³ World Trade Organization, above, p. 20.

possibly will be suggested and recommended to the Commission. Therefore, it will be a good choice if states choosing the Codex as they reference in setting their national standards. And this condition should also be followed by Indonesia and China.

Significantly, the Codex Alimentarius has narrowed down the differences in interpreting the data by providing a complete scientific process. Moreover, the Codex is believed also provides the base for removing the unjustified or arbitrary trade barriers based on claims of consumer health protection.²⁴ According to some food safety scholars, the Codex's approaches also more consistent with trends in modern food regulatory systems. Further, the Codex facilitates as well the harmonization of states' SPS measures such as required by the SPS Agreement.²⁵ Importantly, by its scientific methods the Codex Alimentarius has resolved one of the most controversial debates over the free trade. The debate was about the fear of the state members that free trade will force them to harmonize their national standards into tight international standards that are unaffordable for them.²⁶

As might been known, the principal consideration behind the development of any Codex's standards is to give guideline or other recommendation in order to protect the consumers. In this regard, Codex recommendations are similar to regulations promulgated under national laws.²⁷ We should note that states have differences in climates, existing pests or diseases, or food safety conditions. Indonesia and China for example, both states differs in condition therefore, both states could impose different SPS measures on food. However, again scientific evidence is needed to justify the different measures.

Perhaps, due to condition such mentioned above lead states to interpret data differently. In fact, differs in interpreting of the scientific data that available about consumers health protection can lead to differences in national legislation.²⁸ This argument perhaps leads the Indonesia-China recent case. Both states possibly differed in interpreting the scientific data in the Codex Alimentarius. To this end, as the result both states (Indonesia and China) probably have imple-

²⁴ Ezzeddine Boutrif, above.

²⁵ Ibid.

²⁶ David G. Victor, 'The Sanitary and Phytosanitary Agreement of the World Trade organization: An Assessment After Five Years', *Journal of International law and Politics*, (2000), Vol. 32.

²⁷ Ezzeddine Boutrif, above

mented different standards. Regarding the codex Alimentarius interpretation by both states, further research is needed to be able to find out whether both states have interpreted data differently or not.

However, whether both states have interpreted data from the Codex Alimentarius differently or not, to base the SPS measures with scientific evidence and harmonize their SPS standards is a must. In case both states find their SPS measures are different from the Codex Alimentarius standards, they should be able to justify their SPS standards are reliable under scientific principles. Otherwise, they should use the Codex Alimentarius for their standards in order to get harmonization in the free trade. By using the Codex Alimentarius as they reference it is fulfilled the requirement of Article 3 (2). The requirement that should be reached by Indonesia and China is to get conformity with the international standard. Achieving conformity with international standards then Indonesia and China SPS measures will be presumed consistent with the SPS and GATT.²⁹

B. The Importance of Risk Assessment and Transparent in Implementing SPS Standards

1. Risk Assessment

The SPS Agreement encourages the governments to become more transparent in implementing their SPS regulations. As the basic principle of SPS Agreement among other thing is SPS measures must be based on scientific evidence. Depart from this ground the SPS Agreement requires the governments to base their SPS measures also with an appropriate risk assessment. The risk assessment itself consists of the actual risk involved. Furthermore, if it is requested the governments should inform the factors they took into consideration, the assessment procedures they used and the level of tolerance they could accept in case risks are exist.³⁰

Concerning the case, as argued before Indonesia has requested its Agency to conduct the preliminary risk test toward the candies and also some cosmetic products from China. And the result from the preliminary test was the candies and the cosmetics positive consist of toxic such as formaldehyde and formalin.

²⁹ Ibid.

²⁹ Catherine Button, *the Power to Protect: Trade, Health and Uncertainty in the WTO*, (2004), Oxford and Portland, Oregon, p. 59.

³⁰ World Trade Organization, above, p. 8.

Question then did Indonesia risk test can be classified as appropriate risk assessment. In order to answer that question we should look at Article 5 of the SPS Agreement that regulate about the risk assessment.

Moreover, the risk assessment is designed to ensure the governments' responds to identified risk and not kind of unsubstantiated fears.³¹ Furthermore, the risk must be an ascertainable and is not a kind of uncertainty because uncertainty is not grouped as risk that should be assessed.³² Annex A has defined risk assessment as:

'The evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Member according to the sanitary or phytosanitary measures which might be applied, and of the associated potential biological and economic consequences; or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additive, contaminants, toxins or disease-causing organism in food, beverages or feedstuffs.'³³

The Appellate Body in its decision in *Australia-Salmon* case has explained further on definition of risk assessment. According to Guzman the definition given was the best definition of risk assessment.³⁴ Further, in *Australia-Salmon* decision it can be found two criterions that must be fulfilled by the Indonesian governments in conducting risk assessment. First is 'identifying the disease whose entry, establishment, or spread is being addresses as well as the biological and economic consequences of such entry, establishment, or spread'. And second is 'evaluating the likelihood of entry, establishment, or spread according to the SPS measures which might be applied'.³⁵

Moreover, formaldehyde and formalin by public health scholars have been recognized as a causing factor of several severe health problems. And as the worst they can cause cancer and result in death at the end.³⁶ This risk describes the fear that Indonesian government feel is not a kind of unsubstantiated fear, and finally it is an ascertainable risk. Further, the risk assessment that has been

³¹ Catherine Button, above, p. 64.

³² Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, above, p. 495.

³³ Para. 4 of Annex A.

³⁴ Andrew T. Guzman, 'Food Fears: Health and Safety at WTO', (2005), *Virginia Journal of International Law*, Vol. 45, No. 1.

³⁵ *Australia-Salmon* decision in Andrew T. Guzman, above.

³⁶ Medical Management Headlines for Formaldehyde, above.

done by the Agency described the requirements such as the Appellate Body decided in the *Australia-Salmon* case has been conducted.

Indonesia under Article 5 has obligation to ensure its SPS measures are based on assessment that appropriate to the circumstances, the risks toward human, animal and plant life or health. Importantly, the risk assessment that Indonesia implemented should be the risk assessment techniques that were developed under the framework of relevant international organizations.³⁷ Concerning the risk assessment techniques that were used by Indonesian government in assessing the risk, basically it does not differ from international organizations standards. The standards that were used as the reference were FAO and WHO standards. It can be known from its report to the FAO/WHO Global Forum of Food Safety Regulators in Marrakech in 2002.³⁸

It is clear as reported by Indonesian representative to the forum that Indonesia using the Codex Alimentarius as its reference. The Codex Alimentarius itself as a matter of fact as defined by Boutrif is 'a collection of food standards which is developed and presented in a unified, codified manner, together with associated material such as codes of hygienic and good manufacturing practice (GMPs); recognized methods of analyzing and sampling; general principles and guidelines.'³⁹ Furthermore, WHO Experts Panels and the Codex Committee under the Codex Alimentarius have evaluated the safety-in-use of pesticides and food additives in which all of these requirements were developed with scientific basis. Significantly, the panels have provided how to incorporate the risk assessment principle into the Codex Alimentarius.⁴⁰

Accordingly, by adopting the Codex Alimentarius standards in applying the risk assessment test Indonesia can be said has fulfilled its obligation. Regarding China risk assessment standard and method, it goes to China government responsibility to proof its assessment can be accepted by the SPS Agreement specifically and GATT/WTO generally.

³⁷ Article 5 (1) of the SPS Agreement.

³⁸ Indonesian government report in FAO/WHO Global forum of Food Safety Regulators, above.

³⁹ Ezzeddine Boutrif, above.

⁴⁰ Ibid.

2. Transparency

Governments especially Indonesia and China government in order to achieve transparency are required to notify other countries in case they enact a new or change their SPS requirements. This policy as a matter of fact can affect the free trade among countries. This obligation is stipulated in Article 7 of the SPS Agreement 'Members shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures'.⁴¹

Not only required to notify other countries, both governments also responsible for the prompt publication of their SPS regulations.⁴² Taking China as example, by publishing the new or the revised of the SPS regulation, it does not mean it directly affects or entry into force. The publication itself has timing that should be fulfilled before it can come into force and affect the exporters from other countries including Indonesia. The provision about this timing requirement such arranged in paragraph 2 of Annex B of the SPS Agreement. However, there is no specific time mentioned in the Annex B. Paragraph 2 just declared that 'Members shall allow a reasonable interval between the publication of a sanitary regulation and its entry into force'.⁴³

By did not provide the exact time, it can be said as the SPS Agreement especially and the WTO generally advise the government members to more involve in either bilateral or multilateral negotiation. On the other hand, according to Wilson by providing 'a reasonable interval time' between publication and the enactment of the new SPS regulations it allows other government members to react and also adjust the new regulation.⁴⁴ Possibly, by requiring providing 'a reasonable interval time' in case that new SPS regulations contradict with the international standards, other states can take actions. The possible action to be taken is by contesting that state to give evidence that the new regulations are having sufficient scientific science.

However, in this case according to Indonesian Fisheries Department spokesman there was no notification from Beijing regarding China's SPS regulations.⁴⁵ From this argument there are two possibilities we could predict. First China enacted new SPS regulations and second China did change its SPS regula-

⁴¹ Article 7 of the SPS Agreement.

⁴² Norbert L. W. Wilson, 'Clarifying the Alphabet Soup of the TBT and the SPS in the WTO', *Drake Journal of Agricultural Law*, (2003), Vol. 8.

⁴³ Para. 2 of Annex B of the SPS Agreement.

tions. However, as a matter of fact, China in case did one of the two as predicted above, it shows China has failed to fulfill its obligation under Article 7 which is giving notification to Indonesia.

As argued above, before Indonesian government released the candies ban China did not have any objection with Indonesian seafood products. It can be known from the total value of total seafood exports to China in 2006 was around US \$73.3 million.⁴⁶ In case China considered Indonesian seafood products have problem in which causing health problem or risk the human life, as a matter of right China has right to reject the seafood exports from Indonesia at that time. However, there was no rejection lodged by China. Furthermore, standard that was used by Indonesia for its seafood products has been approved by the European Union. It is marked by the significant rise of the number of Indonesian seafood products export into EU markets.⁴⁷ It is believed EU as most of the members are from the developed countries group are using and having good standard in health sector. Therefore, as a matter of question China rejection toward seafood from Indonesia was a kind of question whether China's standard is higher than EU's standard. To answer this question, further research is needed.

Further, as mandated by Annex B the governments should set up office that is called the enquiry points. This office has responsibility to respond enquiry from other countries about the new SPS regulations. On the other hand it also has responsibility to request information needed regarding new existing SPS regulations from other countries. The existences of the enquiry points and obligation to provide a reasonable interval of time in my understanding have a very close link. When governments enact new SPS regulations, the governments' agency that responsible for notifying other governments should notify other governments properly. Soon other governments that have concern with the new existing regulation particularly who have trade relation with that country will request further information regarding the new regulation. In case a government gives responsibility to notify other governments regarding the new regulation to the enquiry points office as well, it could be a kind of a mess. It is particularly

⁴⁴ Norbert L. W. Wilson, above.

⁴⁵ Government extents ban on China import, can be accessed through <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20070807.A05>, viewed on 2 Oct 2007.

⁴⁶ Ibid.

⁴⁷ Ibid.

when the office cannot manage between its duty to release notification on one hand and providing information requested by other countries properly on the other hand.

As the enquiry points functions as the SPS regulation information centre, China should provide sufficient relevant documents about its new SPS regulation in case China really enacted new regulation. By preparing sufficient relevant documents needed China can answer all questions from Indonesian government concerning its SPS regulation. Not only question from the Indonesian government China but also questions from other countries. In case Indonesia views the new SPS regulations have deviation from international standards or regulations that created in the absence of international standards, enquiries should also submitted to the enquiries points.⁴⁸

III. Preventing Retaliation and Solving The Case

A. Implementing the SPS Agreement Properly

Some scholars argued that the rejections of liberalize the international trade under the WTO framework among other things was based on arguments that free trade can endanger food, safety and environment standards, and ultimately can influence public health. The notion of this argument due to it was believed that the free trade can ignore the national law. In this perception the national laws were believed can protect the availability, safety, and food standards. At the end, these national laws capability was believed can protect people from health problems.⁴⁹ Depart from this thought the GATT/WTO negotiators then studied this argument and tried to resolve the problems.

Sanitary and phytosanitary measures by their vary nature may result in restriction on trade. They have connection with health connection in which the protection of health is an essential and vitally important national prerogative. Therefore, when formulating the free trade under the GATT framework the negotiators viewed the use of health basis simply should not limit the trade liberalization. GATT then recognized these challenges by providing some constraints on the ability of the Contracting Parties to cite health as a justification for limiting trade. At the end, GATT then provided in Article XX that nothing in

⁴⁸ Norbert L. W. Wilson, above.

⁴⁹ Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, above, p. 486.

the Agreement was to be construed so as to prevent the Contracting Parties taking measures 'necessary to protect human, animal or plant life or health'. Importantly, those measures were not applied so as to constitute a means of arbitrarily or unjustifiable discrimination or disguised restriction on international trade.⁵⁰

Despite GATT has constrained the use of health ground by countries in restricting the free trade, in 1973 when the Tokyo Round was initiated this problem still appeared. It is clear that non-tariff barriers including health regulation required further attention to be solved. To some extent GATT has been seen fail to control the exploitation of health and other regulations as non-tariff barriers. According to Christoforou as can be found in Button, the reason for this due to GATT's dispute resolution system was weak and also because the disciplines on health regulations were under-developed.⁵¹

In the Uruguay Round, as free trade still negotiated the negotiators were faced with a number of challenges. One of the challenges was how to reform the dispute resolution system in order to resolve the problem such as argued above. Another important challenge faced by the negotiators in the Uruguay Round was how to develop a set of disciplines to control the proliferation of health-based non-tariff barriers.⁵² Finally the negotiators then came with an answer that science can be a good answer to resolve the problem. In their proposal they argued only scientifically justified health regulation would be regarded as justified. This proposal moreover, was viewed as a very simple but concealed a host of difficulties that have reduced the WTO's credibility and legitimacy in the years since 1995.⁵³

Answering countries' concern on health issues as well as solving the problem where health issues have been used by countries to restrict the free trade, WTO then designed a policy that can be said as a fair policy for everyone. The policy tried to balance between the national right to take actions to protect citizens' health and the WTO efforts to limit the health regulations toward the free trade. This policy has resulted two important agreements which are SPS and TBT Agreement. The Agreements basically were designed in order to balance the two issues as argued above.

⁵⁰ Catherine Button, above, p. 2.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

Under the WTO framework SPS Agreement as argued above is a document that had been stipulated to deal with health issues. According to Guzman the SPS Agreement establishes that the WTO members may adopt SPS measures as long as the measures satisfy four conditions. And these conditions have been stipulated in the SPS Agreement.⁵⁴ If we look at the SPS Agreement we can find these conditions in Article 2 of the Agreement including first 'applied only to the extent necessary to protect human, animal or plant life or health'⁵⁵. Second it should be based on scientific evidence.⁵⁶ Third 'the measures do not arbitrarily or unjustifiably discriminate between members where identical or similar conditions prevail'.⁵⁷ And fourth the measures do not constitute a disguised restriction on international trade.⁵⁸

Based on the SPS agreements Indonesia basically permitted to conduct importation banning with ground of protecting human health. In the other hand, in case China allegation for Indonesian seafood products can be proved, China also permitted to ban those products. As SPS Agreement has regulated SPS Agreement applies in order to give protection for human or animal life or health within the member states territories from risks that can be caused by additives, contaminants, toxins or disease-causing organism in foods, beverages or feedstuffs.⁵⁹

However, it should be noted that the rejection of an imported product from a state member should be based on scientific evidence. Otherwise, under the SPS Agreement the rejection will be considered as a kind of 'unfair trade practice' within the WTO framework. Furthermore, a state that is rejecting an import from other states should also consider other WTO basic principles. The principles are non-discrimination related to national treatment and most favored-nation, necessity and proportionality, appropriate level of scientific basis, and harmonization.⁶⁰

To some extent the principles above relate to each other. Within the SPS Agreement itself these principles specifically have been reenacted. These principles that first introduced in the GATT contribute to the achievement of fair

⁵⁴ Andrew T. Guzman, above.

⁵⁵ Art. 2 (1) of the SPS Agreement

⁵⁶ Ibid, Art. 2 (2)

⁵⁷ Ibid, Art. 2 (3)

⁵⁸ Ibid.

⁵⁹ Article 1 (a) of Annex A of the SPS Agreement.

⁶⁰ Gabrielle Marceau and Joel P. Trachman, above.

trade under the WTO framework especially related to health sector. National treatment principle for instance, members are prohibited from imposing a measure favoring its own products while they discriminate products of other members in fact the products are categorized as 'like product'.⁶¹ Meanwhile under most favored-nation principle, member is prohibited from imposing a measure which favors a product of another member in discrimination of product of third members, again the implementation of this principle stressing the 'like product' principle.⁶²

Therefore, states particularly Indonesia and China in implementing their SPS measures should take into account the principles above. It is believed that when a state engage in restricting an import of foods for food safety reason from a particular state, possibly it can create tension between those states; particularly when the actions imposed did not have strong legal basis and also without sufficient evidence. However, by referencing their action based on the provision under GATT and its legal documents including SPS Agreement, the tension without a doubt can be reduced and could be solved. Concerning preventing retaliation, it is believed it will be no other ways except implementing the SPS Agreement comprehensively. It is meant that the principles within the SPS Agreement such as harmonization and based the action on scientific evidence is a must to be able to resolve the problem.

B. Implementation of Non-Discrimination Principle

States have obligation to not discriminate products from other states by using their national law. It is clear that discrimination between products and between situations is prohibited. States were used to protect their domestic products by discriminating other states products. As a matter of fact, since the establishment of GATT/WTO, GATT in Article III has declared that protectionism is prohibited.⁶³ Meanwhile, regarding the national health and safety measures the GATT specifically regulated under Article III:4. Basically this paragraph is stressing the importance of recognizing 'like products' when they tend to impose a policy that possibly will be against national treatment principle.

⁶¹ Mitsuo Matshushita, 'Food Safety Issues under WTO Agreements', (2005), MJIEL, Vol. 2, No. 2.

⁶² Ibid.

⁶³ Gabrielle Marceau and Joel P. Trachman, above.

Concern with Indonesia-China recent case, both states should give same standard for products whether national products or imported products. Due to national treatment obligation Indonesia and China cannot differentiate treatment for 'like products'. In order to analyze whether or not both states' national regulations do discrimination toward the national and imported products there are two kind of analysis should be done.⁶⁴ First, was there any violation toward Article III:4 regarding national treatment in recent case. Second, in case there was violation toward this article, we should figure out whether the violation is accepted under general exception framework such regulated under Article XX (b).⁶⁵

In practice, the concern over the negative impacts of formalin and its similar additive preservative in Indonesia has become a public concern. The government is really concern about preventing the citizens from health problems that caused by formalin. Due to formalin as stated above can cause severe health problems in which it is believed under Indonesian' ability to handle. Together with other reasons, therefore Indonesian governments along with the recognition of hazard that causing by formalin as declared by WHO has enacted national law that bans the use of formalin for food preservation. The regulation covers all products whether national or imported products.

Regarding the Indonesian government's ban over candies from China, does the ban violate the national treatment principle is the basic question to determine whether Indonesia discriminates other states products including candies form China. As a matter of fact Indonesian government has banned the use of formalin for preserving the food including candies. There in no doubt that candies in all over the world are the same. Candies produced in Indonesia and China although using different flavor still they will be recognized as candies. Depart from this argument clear Indonesia did not do discrimination toward the 'like products'.

The ban is not only for imported products but also national products. From this fact, it is clear that Indonesia in this case does not impose discrimination in its markets. National treatment principle toward the 'like product' also is recognized by Indonesia national health regulations. It means the imported products should comply with the national standard that has been stipulated by Indonesian government in order to be allowed to get into Indonesian markets. By

⁶⁴ Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, above, p. 490.

⁶⁵ Ibid.

using the same standard for both products, Indonesia has proved that Indonesia has treated both products fairly and competition issues especially unfair competition was one of the main concerns of the Indonesian government. Consequently, Indonesian government's ban toward the candies cannot be classified as a kind of protectionism by did not give equal competition for both products.

To this end, national treatment is recognized as a promise given by the governments to treat the imported products equal to domestic products in one side. And on the other side national treatment for some scholars is believed as a sanction.⁶⁶ This argument comes on a basis that national treatment was used by the governments to protect their domestic products. Since the GATT has started to prohibit the protectionism by implementing national treatment by governments, some scholars have viewed national treatment negatively as a sanction. However, with the spirit of the GATT/WTO which is to enhance the international free trade, the governments then have been given an obligation to provide equality among the products. This obligation has been stated in *Japan-Taxes on Alcoholic Beverages* which is one of case in WTO dispute settlement system especially that deals with the implementation of SPS Agreement. The Appellate Body in its decision on *Japan-Taxes on Alcoholic Beverages* clearly stated that 'the broad and fundamental purpose of Article III is to avoid protectionism and Article III obliges the governments to provide equality of competitive conditions for imported products in relation to domestic products.'⁶⁷

On the other side China government also has obligation under Article III of GATT to not discriminate Indonesia sea food products. China should give same treatment toward seafood from Indonesia as same as treatment that it gives to its national seafood products. Otherwise China could be seen as implementing discrimination in its trade practice. Unfortunately, in this case due to the limitation in data about China's practice in health regulation especially seafood it is difficult to determine whether China conducting discrimination in trade practice or not. Therefore, further research especially field research will be needed in order to answer this question.

Meanwhile, SPS Agreement as the *lex speciale* within the WTO jurisdic-

⁶⁶ George A. Bermann and Petros C. Mavroidis, *Trade and Human Health and Safety*, (2006), Cambridge University Press, p. 3.

⁶⁷ *Japan-Taxes on Alcoholic Beverages*, WT/DS11/AB/R, Report of the Appellate Body, 4 October 1996.

tion that specifically deals with health issues also is restating the importance of non-discrimination principle. Two provisions of the SPS Agreement concern with discrimination directly and to some extent should be understood as the expansion of Article XX of the GATT.⁶⁸ First is Article 2.3 and second in Article 5.5. Indonesia and China shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate where identical or similar conditions prevail.⁶⁹ In relation to this under Article 5 (5) Indonesia and China are restricted from doing arbitrary or unjustifiable distinctions between different situations if that distinctions result in a discrimination within the free trade.⁷⁰

C. Bilateral Negotiation to Resolve the Conflict

On 11 September 2007 Indonesia and China has agreed to resolve the recent conflict by signing a memorandum of understanding (MoU). The MoU on mechanism to guarantee food safety has been chosen by both states as the best method to end the banning conflict. The MoU itself will be signed up by trade minister from both states on occasion of an ASEAN-Chinese Ministerial Meeting in Naning, China at the end of 2007. Moreover, under the MoU both states have agreed to promote cooperation in trade practice as well as exchanging information, technology, and experts meeting.⁷¹ Decision choosing to end the conflict by bilateral negotiation through the establishment of a MoU is believed by both states as the best way to solve the problem.

It seems both states has agreed to have bilateral negotiation first to solve the case and avoided to solve the case using WTO dispute settlement system. Within the WTO dispute settlement system itself this case is possible to be solved. If Indonesia or China considers bringing the dispute to the WTO, it is allowed and possible to happen. The basis of this possibility due to the fact that in case Indonesia considering China's SPS measures especially related to sea-food products affecting the International trade including Indonesia, then Indonesia can bring the case into WTO's Dispute Settlement Body.⁷² Basically ques-

⁶⁸ Gabrielle Marceau and Joel P. Trachman, above.

⁶⁹ Article 2 (3) of the SPS Agreement

⁷⁰ See Article 5 (5) of the SPS Agreement

⁷¹ China and Indonesia Agree to End Rift in Trade over Food Safety, Asean Affairs, can be accessed through <http://www.aseanaffairs.com/store/1772737/page/983799>, viewed 14 October 2007.

tion about risk assessment will be asked to be examined by Indonesian government toward China SPS measures. On the other hand, China also can bring Indonesia to WTO's Dispute Settlement Body and also can use risk assessment as the ground for complaining. This ground would be used in case China considering Indonesia's ban toward the candies did not based on an appropriate risk assessment.

Regarding the issue of which party bears the burden to proof, it is believed has become very prominent issue in SPS dispute. According to Kennedy 'the burden of proof of a violation of the SPS Agreement rests with the complaining WTO member'.⁷³ It means in case Indonesia brings China's SPS measures to be examined then Indonesia needs to provide evident that China SPS measures is against the SPS Agreement. And taking as an example, the grounds for its action are the SPS measures implemented without appropriate risk assessment and without sufficient scientific evidence.

Meanwhile, more clear explanation on burden of proof was given by Pauwelyn. According to Pauwelyn the party in an SPS dispute asserting a fact, claim or defense bears the burden to prove it.⁷⁴ This explanation is in line with the Appellate Body decision on *United States-Wool Shirts and Blouses from India* (WT/DS33/AB/R) 23 May 1997. In its decision the Appellate Body decided:

'the party who assert a fact, whether the claimant or the respondent is responsible for providing proof thereof. Also it is a generally-accepted canon of evidence in civil law, common law and in fact most jurisdiction that the burden of proof rests upon the party, whether the complaining or defending, who assert the affirmative of a particular claim or defense'.⁷⁵

As a note, by the end of 1999, WTO had resolved three SPS trade disputes. The cases were *EC-Beef Hormones*, *Australia-Salmon*, and *Japan-Food Quarantines*.⁷⁶ In the following years several cases also has been resolved within the WTO dispute settlement system especially by the Appellate

⁷² Joost Pauwelyn,

'The WTO Agreement on Sanitary and Phytosanitary (SPS) Measures as Applied in the First Three SPS Dispute', *Journal of International Economic Law*, (1999), Oxford University Press.

⁷³ Kevin C. Kennedy, 'Resolving International Sanitary and Phytosanitary Disputes in the WTO: Lessons and Future Directions', *Food and Drug Law Journal*, (2000), Vol. 55.

⁷⁴ Joost Pauwelyn, above.

⁷⁵ Ibid.

Body. And the cases were *EC-Asbestos*, *Korea-Beef*, and *Mexico-Soft Drinks*. From these cases we could assume that the dispute system within the WTO framework has worked and effectively affected the free trade.

However, both states have decided to sign a MoU and build bilateral cooperation in the future. This decision is one of dispute method suggested within the Dispute Settlement Understanding (DSU) and known as mutually agreed solution through bilateral negotiation. Therefore, a mutually agreed solution then is classified as a formal part of dispute settlement within the WTO framework and not as an alternative dispute settlement as well.⁷⁷ The provision about mutually agreed solutions itself can be found in Article 3 (7) of DSU Agreement.

Despite Indonesia and China decided to settle the dispute through mutually agreed solutions, both states still have obligation to comply with the WTO provisions. Solutions that mutually accepted by Indonesia and China must also be consistent with the WTO Agreement and must not nullify or impair benefits accruing under the agreement to any other WTO's members.⁷⁸

Bilateral consultations which are required at the beginning of any dispute are intended to provide a setting where Indonesia and China in this case can start attempts to settle the case within a mutually agreed solution method. And sometimes, the involvement of a person or a third party which has no relation to the parties can help the parties to find mutually agreed solution.⁷⁹ However, it seems Indonesia and China in this bilateral negotiation do not show attempt to use a mediator for resolving the conflict. Both states go to the negotiation with their own confident and with good faith that the previous good relation between the states will encourage them to solve the problem bilaterally.

IV. Conclusion and Suggestion

A. Conclusion

From this research, we could say Indonesia so far in this case has shown

⁷⁶ Kevin C. Kennedy, above.

⁷⁷ Dispute Settlement without recourse to Panels and the Appellate Body, can be accessed through http://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c8s1p1_e.htm, viewed on 13 October 2007.

⁷⁸ See Article 3 (5) of the DSU Agreement.

⁷⁹ Mutually Agreed Solution, can accesses through http://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c8s1p2_e.htm, viewed on 13 October 2007.

that it compliances with the SPS Agreement. Indonesia has declared that in referencing its SPS measures Indonesia choosing the Codex Alimentarius and choosing to not enact its own standards. As consequence from this policy Indonesia should comply and follow the Codex Alimentarius provisions related to SPS measures. In this case, Indonesia has shown that appropriate actions have been done before releasing the importation ban toward the candies. The ultimate action in releasing the ban has been finished which is by conducting risk assessment toward the candies. Importantly, Indonesia national law also bans the use of formalin for food preservative. Consequently, Indonesia proving that there is no discrimination in its trade practice and there is no protectionism toward the domestic products. This argument comes on a basis that the national regulations also cover the domestic products not only for the imported products.

On the other hand, due to the limitation of data regarding China's practice in SPS measures, this paper cannot determine whether China strongly violate the SPS Agreement or not. Therefore, further research is needed in order to be able to analyze China practice. However, from the early discussion it was found that harmonization must be done. Furthermore, China should be more transparent in implementing its SPS measures.

The importance of harmonization as a fact that harmonization can prevent from states doing retaliation in free trade. By harmonizing the SPS measures, the WTO members in rejecting a product based on health reason should follow the international standards. By harmonization as well states will do risk assessment appropriately and it will be accepted by other WTO members.

B. Suggestions

After choosing to end the conflict through mutually agreed solution, several things from the analysis in this paper will be proposed especially to the Indonesian government to be negotiated with its counterparts. First is the need of harmonization. Indonesia should require China to discuss its standards in stipulating China's SPS measures. Whether China using the Codex Alimentarius as same as Indonesia as the reference or not is the key question. In case China also using the Codex Alimentarius as its reference it means assistance from International Organization which involve with the Codex Alimentarius is needed. The assistances are needed to help Indonesia and China in interpreting data

before applying into their national SPS measures. Otherwise, in case China does not use the Codex Alimentarius as its reference, it means Indonesia should request China to give evidence that China national SPS measures are based on scientific evidence and can be examined scientifically.

Second suggestion is about the appropriate risk assessment. Indonesia should request China to discuss its risk assessment toward Indonesian's seafood products. What standard did China use to do risk assessment and result in releasing ban for Indonesian's seafood products? As claimed by Indonesia, the seafood products from Indonesia can be accepted by European Union markets. And the total export of seafood products into EU markets getting higher nowadays compare to previous. Indonesia has announced that Indonesia is using the Codex Alimentarius for its reference and complies with all the standards resulted from it. Subsequently, it can be said by the approval from the EU council showing that the seafood products are safe and do not contain with hazardous material that can cause health problem. Otherwise, in case the seafood products contain dangerous material such as complained by China, as a matter of sure the EU council will reject seafood products from Indonesia.

Therefore, China should be able to show its risk assessment method that has been used to examine Indonesian's seafood products. Whether the risk assessment method that has been chosen in line with international organization standard that has been referenced by the SPS Agreement or not. In case so, it means again harmonization should be done. Otherwise, in case China enacted its own risk assessment standard, it should give evidence to Indonesia especially and other WTO members generally that the risk assessment method scientifically is appropriate.

The third suggestion is requesting China to be more transparent in the implementation of its national SPS regulations. As argued before there are two possibility that causing the conflict. First China did enact its SPS regulations but did not notify Indonesia about the new regulations and second China did change its SPS regulations but did not notify Indonesia. In case so, Indonesia should request China to fulfill its obligation under Article 7 to notify Indonesia in circumstances such mentioned above. Importantly, the reasonable interval of time should be provided before the new or change regulation applies. Therefore, China cannot automatically reject the seafood and by giving the reasonable interval of time will give change to Indonesian producers to follow the standard.

The fourth suggestion is regarding the implementation of non-discrimination principle especially related to national treatment. Indonesian government should request China to show China is not imposing protectionism in its trade practice. In relation to this China should be requested to show that the hazardous material that China accused exist in the seafood products also prohibited within China's national regulations. This step is important in order to be able to justify China does not conduct discrimination practice. The domestic and imported products should be treated with the same treatment.

Bibliography

Journals/Books/Reports

Bermann A. George and Mavroidis C. Petros, *Trade and Human Health and Safety*, (2006), Cambridge University Press.

Boutrif, Ezzeddine, 'The New Role of Codex Alimentarius in the Context of WTO/SPS Agreement', *Food Control*, (2003), Vol. 14, No. 81.

Button, Catherine, *the Power to Protect: Trade, Health and Uncertainty in the WTO*, (2004), Oxford and Portland, Oregon, p. 59.

Dunoff L. Jeffrey, *Reflections on the Varietals Dispute, the SPS Agreement and WTO Dispute Resolution*, in George A. Bermann and Petros C. Mavroidis (Eds), *Trade and Human Health and Safety*, (2006), Cambridge University Press.

Guzman T. Andrew, 'Food Fears: Health and Safety at WTO', (2005), *Virginia Journal of International Law*, Vol. 45, No. 1.

Indonesian government report in FAO/WHO Global forum of Food Safety Regulators, Marrakech, Morocco, 28-30 January 2002.

Kennedy C. Kevin, 'Resolving International Sanitary and Phytosanitary Disputes in the WTO: Lessons and Future Directions', *Food and Drug Law Journal*, (2000), Vol. 55.

Marceau, Gabrielle and Trachman P. Joel, *A Map of the World Trade Organization Law of Domestic Regulation of Goods*, in George A. Bermann and Petros C. Mavroidis (Eds), *Trade and Human Health and Safety*, (2006), Cambridge University Press.

Matsushita, Mitsuo, 'Food Safety Issues under WTO Agreements', (2005), *MJIEL*, Vol. 2, No. 2.

Matsushita, Mitsuo, Schoenbaum J. Thomas and Mavroidis C. Petros, 'The World Trade Organization', (2003), 1st ed, Oxford.

Pauwelyn, Joost, 'The WTO Agreement on Sanitary and Phytosanitary (SPS) Measures as Applied in the First Three SPS Dispute', *Journal of International Economic Law*, (1999), Oxford University Press.

Victor G. David, 'The Sanitary and Phytosanitary Agreement of the World Trade Organization: An Assessment After Five Years', *Journal of International Law and Politics*, (2000), Vol. 32.

Wilson L. W. Norbert, 'Clarifying the Alphabet Soup of the TBT and the SPS in the WTO', *Drake Journal of Agricultural Law*, (2003), Vol. 8.

World Trade Organization, *Sanitary and Phytosanitary Measures*, (1998), WTO.

International legislations

Dispute Settlement Understanding (DSU) Agreement

Sanitary and Phytosanitary Measures (SPS) Agreement

Annex A of the SPS Agreement

Annex B of the SPS Agreement

Cases

European Communities-Measures concerning Meat and Meat products (Hormones), WT/DS48/R.

Japan-Taxes on Alcoholic Beverages, WT/DS11/AB/R, Report of the Appellate Body, 4 October 1996.

Other Sources

China Bans Indonesia Seafood in Move Jakarta calls apparent reaction to its own ban, can be accessed through <http://www.signonsandiego.com/news/world/20070804-0804-china-indonesia-seafoodban.html>, viewed on 21 August 2007.

China and Indonesia Agree to End Rift in Trade over Food Safety, *Asean Affairs*, can be accessed through <http://www.aseanaffairs.com/store/1772737/page/983799>, viewed 14 October 2007.

Dispute Settlement without recourse to Panels and the Appellate Body, can be accessed through http://www.wto.org/english/tratop_e/dispu_e/dispute_settlement_cbt_e/c8s1p1_e.htm, viewed on 13 October 2007.

Government extends Ban on Chinese Import, *The Jakarta Post*, (Jakarta), can be accessed through <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20070807.A05>, viewed on 20 August 2007.

Medical Management Headlines for Formaldehyde, can be accessed through <http://www.atsdr.cdc.gov/mhmi/mmg111.html#bookmark02>, viewed on 20 August 2007.

Mutually Agreed Solution, can accesses through http://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c8s1p2_e.htm, viewed on 13 October

Public Warned to be Wary on Toxic Candy, *The Jakarta Post*, (Jakarta), can be accessed through <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20070730.D14>, viewed on 20 August 2007.