

7-4-2004

## International Trade Indicators, 2003: Indonesia

Agus Brotosusilo

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



Part of the [International Law Commons](#)

---

### Recommended Citation

Brotosusilo, Agus (2004) "International Trade Indicators, 2003: Indonesia," *Indonesian Journal of International Law*: Vol. 1: No. 2, Article 5.

DOI: 10.17304/ijil.vol1.2.407

Available at: <https://scholarhub.ui.ac.id/ijil/vol1/iss2/5>

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.

## **International Trade Indicators, 2003: Indonesia\***

**Agus Brotosusilo\*\***

*Terobsesi oleh keinginan yang menggebu-gebu untuk terjun ke dalam sistem perekonomian liberal, (ironisnya) selama lebih dari tiga dasawarsa dibawah cengkeraman penguasa-penguasa otoriter, oleh pihak eksekutif dan legislatif di Indonesia dirumuskan kebijakan dan produk-produk hukum yang mengacu kepada liberalisasi di bidang perdagangan. Tindakan tersebut dilakukan dengan mengabaikan struktur dan budaya masyarakat Indonesia yang dari generasi ke generasi lebih diwarnai nilai spiritual daripada materiil. Pada saat di dalam masyarakat dibutuhkan transformasi hukum, oleh penguasa dipaksakan transplantasi hukum. Akibatnya timbul ketidakpastian hukum di negara ini karena terdapat jurang yang dalam antara peraturan perundang-undangan yang ada dengan sikap-tindak warga masyarakat yang mengacu pada sistem nilai yang bukan hanya berbeda, tetapi bahkan bertentangan dalam kehidupan sehari-hari. Kondisi inilah yang menjadi lahan subur bagi tumbuh dan berkembangnya praktek-praktek kolusi, korupsi dan nepotisme (KKN). KKN tidak terbatas dikalangan rezim penguasa dan sebagian elit pengusaha, tetapi merebak juga di lingkungan legislatif, yudikatif, dan terutama di kalangan aparat penegak hukum. Praktek-praktek ini telah menyeret dan masih menjerumuskan nasib bangsa Indonesia ke dalam malapetaka krisis multi-dimensi yang tiada bandingnya.*

### **I. Legal And Institutional Framework**

#### **A. General Environment for Trade**

Indonesia has in principle adopted a quite liberal foreign trade regime and taken a number of important steps to reduce protection.

---

\* This Article is based on a research conducted by Agus Brotosusilo, Riyatno, Yetty K. Dewi and Rudy, in August 2003. The research is a part of "Commercial Legal and Institutional Reform (CLIR) Assessment", funded by USAID.

\*\* Penulis adalah Staf pengajar Fakultas Hukum-UI dan Program Pascasarjana, Universitas Indonesia. Lulus dari Fakultas Hukum UI jurusan hukum internasional pada tahun 1982, kemudian yang bersangkutan menyelesaikan program pendidikan di

The country ratified The Agreement Establishing the World Trade Organization (WTO) in November 2, 1994 by the Law No. 7/1994. Up to date there is no import tariff exceeded Indonesia bound rates as stated on Indonesia Schedule of Commitment under WTO Agreements.<sup>1</sup> As of January 2002, 67.4 percent of Indonesia's tariff lines were assessed import duties ranging between zero and five percent. Indonesia's average outweighed tariff is 7.3 percent, compared to 20 percent in 1994, before the country membership in the WTO. Although there is a complain among several WTO members that Indonesia's applied tariff rates tend to be substantially lower than that it bound rates and the gap has widened since 1998 as a result of scheduled tariff cuts, this tendency shows Indonesia's seriousness to fulfil its commitment to trade liberalization in line with the WTO spirit.

The applied tariff on all food products are zero since 1999, except the rice imports are subject to a specific tariff of 430 rupiah per kilogram (approximately 30 percent at an exchange rate of US\$

---

*Department of Sociology, Brown University - USA selama tahun ajaran 1990/1991. Selain penulis modul untuk mata kuliah Hukum Bisnis pada Program MBA IPPM (1991) dan Program Magister Manajemen, Fakultas Pascasarjana UI (1992), Sdr. Agus Brotosusilo adalah Ketua Tim Peneliti Lapangan Penyusunan RUU Persaingan Usaha dan Perlindungan Konsumen (kerjasama Departemen Perdagangan RI dan Fakultas Hukum UI, 1992-1993), Ketua Tim Analisis Dampak Yuridis Ratifikasi Persetujuan Pembentukan Organisasi Perdagangan Dunia OPD/WTO (kerjasama Departemen Perdagangan RI dan Program Pascasarjana UI, 1994-1995), Ketua Tim Penyusunan RUU Perdagangan (kerjasama Departemen Perdagangan RI dan Lembaga Penelitian UI, 1996-1997), Ketua/Koordinator Tim Studi Banding Persaingan Usaha - Perlindungan Konsumen - Penanaman Modal Asing di Bidang Perdagangan dan Wajib Daftar Perusahaan (kerjasama Departemen Perdagangan RI dan Program Studi Ilmu Hukum Pascasarjana UI, 1998-1999), Ketua Tim Penyusunan RUU Lalu Lintas Barang dan Jasa (kerjasama Departemen Perindustrian dan Perdagangan RI dan Fakultas Hukum UI, 2001-2002) dan Ketua Tim Penyusunan RUU Perdagangan (kerjasama Departemen Perindustrian dan Perdagangan RI dan Fakultas Hukum UI, 2003). Beberapa buku karyanya adalah: *Sendi-sendi Hukum Perdata Internasional* (Penerbit Rajawali, 1983); *Ilmu Sosial Dasar* (Penerbit Universitas Terbuka, 1985); *Sistem Hukum Indonesia* (Penerbit Universitas Terbuka, 1986); *Kekuasaan dan Masyarakat* (Penerbit Rajawali, 1986); dan *Penulisan Hukum: Buku Pegangan Dosen* (Konsorsium Ilmu Hukum, 1994).*

<sup>1</sup> WTO Trade Policy Review of Indonesia: Replies to Questions Raised by Argentina, 27 and 30 June 2003, p.1.

1 = Rp. 10.000), import duties on raw sugar are 20 percent and refined sugar 25 percent.<sup>2</sup> In sum, Indonesia has liberalized its trade regime by issuing periodic deregulation packages that have incrementally reduced overall tariff level, simplified the tariff structure, remove restrictions, and replaced non-tariff barrier with more transparent tariff. Indonesia committed to remove import surcharges on items bound in the Uruguay Round by the year 2005.

Indonesia also fully implemented the final stage of its commitments under the ASEAN Free Trade Agreement (AFTA), however, the country has expressed its reservations about the pace of liberalization within AFTA, which is much more liberal than WTO Agreements. As an illustration, on services sector in ASEAN there is a principle of "GATS Plus" which means the commitments under ASEAN should be more liberal than under the WTO. In general, Indonesia commitments under ASEAN Framework Agreements on Services (AFAS) consisting the widening and deepening of existing commitments under WTO.<sup>3</sup>

In January 1, 2002, Indonesia implemented the final phase of the ASEAN Free Trade Area (AFTA). Indonesia has reduced tariff for all products included in its original commitment (7,286 tariff lines) to five percent or less for product of at least 65 percent ASEAN origin. In addition, Indonesia has been joined the bilateral trade agreement with Japan (The Law No. 16/1962).

In 1999, Indonesia promulgated The Law No.5/1999 regarding the Prohibition of Monopoly Practices and Unfair Competition, however, there are complains among several Businessperson that unsatisfied by the performance of *Komisi Pengawas Persaingan Usaha/KPPU* (the Oversight Commission for the Business Competition), due to the lack of expertise among some of its

<sup>2</sup> In December 27, 2002, the Coordination Meeting of the Ministries on Economic Affairs decided to impose a specific tariff of 510 rupiah per kilogram of imported rice; however, up to date the decision has not implemented yet.

<sup>3</sup> WTO Trade Policy Review of Indonesia: Replies to Questions Raised by Argentina, 27 and 30 June 2003.

members. The lack of expertise among the member of KPPU was the result of the improper recruitment that more political-laden than expertise-base consideration.<sup>4</sup>

The Indonesia government continues to reduce the number of products subject to import restrictions and special requirement. 1412 tariff lines are now subject to import licensing, reduced from 261 tariff lines in 1994 and 1,112 in 1990. Alcoholic beverages, lubrications, and explosives, and certain dangerous chemicals compound continue to be subject to special import licensing regulations.

There is growing a concern among the businessperson regarding the enforcement of the trade laws since the promulgation of the Law No.22/1999 and the Law No.25/1999 on Decentralization and Regional Autonomy. On January 1, 2001, Indonesia began to implement a large-scale decentralization of authority and finances from the central government to the province and district level governments. Since many of the technical guidelines related to these decentralization and autonomy laws have not yet been drafted, some regions have attempted their own interpretation on these two laws, and have then drafted their own local regulations based on their interpretation.<sup>5</sup> It was not

---

<sup>4</sup> See "Research on Business Actors' Awareness on the Enforcement of the Competition Law and Awareness on the New Commission", an Executive Summary, pp. 52-53. The research conducted by USAID, Georgetown University, PEG, Partnership for Business Competition, and Pusat Studi Hukum & Kebijakan Indonesia, Jakarta, 2000.

<sup>5</sup> See Agus Brotosusilo: Rancangan Akademik Undang-undang Tentang Lalu Lintas Barang dan Jasa di Dalam Negeri (*Indonesian Domestic Trade in Goods and Services Law: An Academic Draft*). A Paper for Seminar on Domestic Trade in Goods and Services Law. Faculty of Law - University of Indonesia, in cooperation with the Ministry of Industry and Trade, Jakarta, March 1, 2002, p.4. Ryaas Rasyid, former Ministry of Internal Affairs and Local Autonomy, the drafter of the Law No.22/1999 and the Law No.25/1999 on Decentralization and Regional Autonomy is in opinion that the implementation of the Law No.22/1999 and the Law No.25/1999 on Decentralization and Regional Autonomy should be supported by hundreds of Government and Presidential Decree. He affirmed that for Government affairs only the local governments need more than 190 Presidential Decree for their guidance.

uncommon that the local regulations resulted in unnecessary trade barriers.<sup>6</sup>

In 1999, Indonesia enacted the Law No. 30/1999 on Arbitration that provides for non-discriminatory trade disputes resolution through international bodies or through local bodies in conformity with international law. Indonesia also adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Award, 1958 (The New York Convention) by Presidential Decree No. 34/1984.

Indonesia promulgated the free trade zones provisions by the Law No.3/1970. The Law followed by several Laws that specify free trade zones in a specific area, among others the Law No.10/1985, the Law No.36/2000, and the Law No.37/2000 that stated Sabang area and its port as a free trade zones.

Environmental requirement in Indonesian law has been imposed on imported product such as CFC material, pesticides, methyl bromide and hazardous waste disposal.<sup>7</sup>

Indonesian law clearly defines the Ministry of trade as an institution responsible for implementation of laws relating to trade. The law clearly defines the roles, responsibilities and operational procedures of each relevant institution. Indonesian law also requires that the institutions render decisions relating to the law based on published laws, regulations and standards, through written documentation clearly setting forth the basis for the decisions.

In 1995 the Government of Indonesia sign the Protocol to Amend the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) by the Presidential Decree No. 85/1995.

---

<sup>6</sup> USAID, Partnership for Economic Growth, and Departemen Perindustrian dan Perdagangan RI. *Domestic Trade, Decentralization and Globalization: conference Papers*. Jakarta, USAID, Partnership for Economic Growth in cooperation with Departemen Perindustrian dan Perdagangan RI, 2001.

<sup>7</sup> WTO Trade Policy Review of Indonesia: Replies to Questions Raised by Brazil, 27 and 30 June 2003, p.11.

## **B. Non-tariff Barriers**

Since 1997, Indonesia has dismantled many formal non-tariff barriers. In September 1998, the Indonesia Government sharply curtailed the role of the National Logistics Agency (BULOG), which had been the sole importer and distributor of major food commodities, such as wheat, sugar, rice, and soybeans. BULOG is now an independent body with the responsibility of maintaining stocks for distribution to military and low-income families and managing the country's rice stabilization program. BULOG is no longer entitled to use credit liquidity from the central bank.<sup>8</sup>

The remaining quantitative limits apply to wines and distilled spirits. The Government of Indonesia restricts import of alcoholic beverages to three-registered importer, including one state-owned enterprise. The import duty for the product is 170 percent, a 10 percent VAT and 35 percent luxury tax. These restrictions are imposing in order to protect the Indonesian people from moral hazards.

The Indonesia government continues to reduce the number of products subject to import restrictions and special requirement. 1412 tariff lines are now subject to import licensing, reduced from 261 tariff lines in 1994 and 1,112 in 1990. Alcoholic beverages, lubrications, and explosives, and certain dangerous chemicals compound continue to be subject to special import licensing regulations.

As a notable exception, though the Government of Indonesia does not impose an imports banning of chickens in the whole form however, the country continues to maintain a ban on imports of chicken parts, which the Directorate General of Livestock Service imposed in September 2000. Despite the efforts of several ministries to repeal the ban, the Ministry of Agriculture continues to insist that it is necessary to assure consumers that imports are *halal* (produced in accordance with Islamic practices).<sup>9</sup>

---

<sup>8</sup> US Foreign Trade Barriers, 2002: Indonesia, p. 187.

In the services sectors, even though there are relaxation of some restrictions, however, services trade barriers to entry continue to exist in many sectors, e.g.: legal services, distribution, financial-accounting and banking services, audio-visual, construction-architecture and engineering, and telecommunications services.

Standardization is not an instrument of non-tariff barrier to trade in Indonesia. Most of Indonesian standards are voluntary, and only several are mandatory. Most of the mandatory standardization has done into effect due to health, security, environment and safety reasons among others iron, helm, passenger car tyre, fertilizers, fortified flours, iodised salt, and sealed water drinking. As a comparison, not mention the Bio-terrorism Act of 2002 or the similar instrument of 2003 European Food Safety Legislation, traditionally in the USA standardization is utilizes as an instrument of non-tariff barrier to trade. In the country there are more than 2700 State and Municipal authorities require particular safety certifications for product sold or installed within their jurisdictions. The problem of excessive reliance on mandatory certification in the USA, contrary to the background of an international trend towards deregulation or the minimising of third party intervention in the regulatory process, experienced by the country due to the continued reliance on third party conformity assessment procedure for many industrial products.<sup>10</sup>

Since January 2001, Indonesia regulations required labels identifying food containing "Genetically Engineered" ingredients and "Irradiated" ingredients. However, as of January 2002, implementation is pending until the government determines a threshold-presence level. If the government chooses to enforce

---

<sup>9</sup> The US system of Halal certification was reviewed by an Indonesia team in 2000, but since then, Indonesia frequently experienced that the non-halal chicken parts have entered the local market. See: WTO Trade Policy Review of Indonesia: Replies to Questions Rose by USA, 27 and 30 June 2003.

<sup>10</sup> Report on United States Barriers to Trade and Investment, European Commission, Brussels, July 2001, p.19.



strictly the regulation, import of approximately \$210 million in soybeans and soybean meal would be affected.<sup>11</sup>

### **C. Trade Defence Instruments**

In 1995 Indonesia enacted the Anti-dumping and countervailing duty provisions by the Law No.10/1995. Indonesia Antidumping Committee (KADI) has conducted its investigation in accordance with Article VI-GATT 1994. Even though since 1996, KADI has initiated 44 cases but KADI has rejected 3 cases because of the application had not met the application requirements. Further only, 15 cases are imposed definite measure and 11 cases terminated.

The Government of Indonesia enacted the safeguard provisions by Presidential Decree number 84 dated 6 December 2003 regarding the Safeguard of the Domestic Industry Against the impact of Increased Imports. The safeguard provisions is supported by the Decree of Minister of Industry and Trade of the Republic of Indonesia No. 84/MPP/Kep/2/2003 dated 17 February 2003 establishing the Committee of Trade Remedy of Indonesia or Komite Pengamanan Perdagangan Indonesia (KPPI), and Decree of Minister of Industry and Trade of Indonesia No. 85/MPP/Kep/2/2003 dated 17 February 2003 laying down Procedures and Requirements of Application for Investigation with respect to Safeguarding Domestic Industry from an Increase Import. This supporting legislation lays down the institutional frameworks required.

## **II. Implementing Institutions**

### **A. Organization**

Traditionally, the institution responsible for implementation of laws relating to trade (on goods) is the Ministry of Industry and Trade. Since the WTO Agreements expands the scope of the trade,

---

<sup>11</sup> US Foreign Trade Barriers, 2002: Indonesia, p. 190.

not only limited to Agreement on Trade in Goods, but also covers: General Agreement on Trade in Services; Agreements on Trade-Related Intellectual Property Rights; and Agreement on Trade-Related Investment Measure, the membership of Indonesia in the WTO resulted in division of power among several ministries responsible for implementation of the WTO agreements. The Ministry of Justice is responsible for the implementation of Agreements on Trade-Related Intellectual Property Rights; The Ministry of Finance and Indonesian Central Bank are responsible for the implementation of General Agreement on Trade in Services; and State Ministry of Investment is responsible for the implementation of Agreement on Trade-Related Investment Measure. However, the Presidential Decree No.102/2001 clearly defines mandate to the Ministry of Industry and Trade as an institution responsible for implementation of laws relating to trade. The internal regulations and operating procedures are set forth in the Ministry of Trade Decree No.86/MPP/2001. The officials of the Ministry stated that the Ministry of Trade has a sufficient authority, mandate, funding, internal regulations, operating procedures, an active staff, and development program to carry out its mandate. In contrary, respondents from the Chamber of Commerce as well as Business Associations affirmed the opposite answers for sufficiency of funding, and an active staff and development program to carry out its mandate.

Despite the officials of the implementing institution affirmed the adoption of "customer-oriented" approach by the institution, however, the contrary answers between the implementing institution and most of business community reveal again regarding: the general consistency in understanding the implementing institutions role and functions among the government, and the end users.

Based on the Law No.22/1999 and the Law No.25/1999 on Decentralization and Regional Autonomy the roles and functions of the implementing institutions is sufficiently decentralized to enable users throughout the country to have reasonable access. In addition, the Ministry of Trade has an active, current web site, at least for the

purpose of monitoring and disseminating the dynamics of the daily price of major food commodities through out the country.

## **B. Operations**

The implementing institution, through Indonesia representative in the WTO, actively monitor level of compliance with terms of WTO accession requirement and other trade agreement. The institution also actively pursues increased compliance with trade agreements. The Ministry of trade also maintains active contacts with counterpart organizations in other countries to ensure compliance with international standards.

Most of business community stated that the implementing institution does not distribute (or make available for a nominal fee) copies of all procedures, relevant laws, government regulations, fee schedules and other information governing trade and related activities.

In Indonesia there are a separate or special unit that specifically responsible for interpretation and enforcement of defensive instrument and implementation and coordination of customs policy and administration. Indonesia Antidumping Committee (KADI) has conducted its investigation in accordance with Article VI-GATT 1994. Even though since 1996, KADI has initiated 44 cases but KADI has rejected 3 cases because of the application had not met the application requirements. Further only, 15 cases are imposed definite measure and 11 cases terminated.

The business community affirmed that Indonesia has no a special unit established mechanism to provide protection for private sector enterprises from unfair trade practices through enforcement of defensive instruments. The country also has no a special unit enforces the laws in a non-discretionary, non-discriminatory, consistent and transparent manner even when decisions will result in a negative impact on domestic enterprises. The private sector business does not generally consider the special unit to provide satisfactory protection from unfair trade practices.

Most of business community stated that the implementing institution does not provide import and export licenses transparently in accordance with published standard. The community also affirmed that to obtain import and export licenses are not free of bribes or other inappropriate rent-seeking behavior.

Despite the Indonesian law clearly stated that the institution that should be oversees and ensures proper application of custom and tariffs by the Custom Services is Ministry of Finance, however, most of business community felt that in fact there is no institution able to oversees and ensures proper application of custom and tariffs by the Custom Services.

### **III. Supporting Institutions**

#### **A. Government entities**

Custom office as the supporting institution in international trade has clearly defined mandate to implement the trade laws (Act No. 10 Year 1995 on Custom). The office not only has sufficient professional and administrative staffing to carry out its mandate, but also it has sufficient authority and support to carry out its mandate, including clear policy statements and support from the government. The office has detailed internal regulations and operating procedures and an active staff training and development program utilizing appropriate training materials, guidebooks or procedural manuals to improve staff competency and service. But some customs officers affirmed that the office does not have sufficient funding through state budget, fees collected, or a combination of both to maintain its equipment and services.

The custom service interprets and applies custom laws uniformly throughout the territory. It is provided at general explanation of the Act No. 10 Year 1995 on Custom. The office has implemented a risk profiling system in which less than 50% of shipments are inspected and proceeding delay for overland shipments through land border posts averages less than 2 hours. The customs office main operations have been computerized and

networked. It applies a "customer-oriented" approach to fulfilling its mandate but the staffs don't have international inspection certificates.

Among the government, the Custom Service and end users, there is general consistency in understanding the Custom Service's role and functions. The Custom Service has an active, current web site, including contact information, trade legislation and policy papers, and other relevant materials.

## **B. Courts**

Most of business community affirmed that the Courts and other relevant administrative bodies in adjudicate disputes involving foreign investor neither without regard to the nationality or residence of the litigant, nor in accordance with clear, published laws, regulations, and standard. The community also confirmed that the Court does not consistently adjudicate appeals from administrative decisions in a transparent, impartial manner. They also concluded that the Court does not make decisions regarding trade issues independently, since it is not uncommon that inappropriate political pressure or non-judicial considerations determines the decisions.

A pervasive lack of transparency and widespread corruption are significant problems for company doing business in Indonesia. Many of the new laws passed since late 1997 have established new institutions and agencies to respond to popular demands to deal with corrupt, collusive, and nepotistic practices. Law No.28/1999 established stiffer penalties for corruption and an independent commission to investigate and audit the wealth of senior government officials. Law No.31/1999 established an Anti-Corruption Commission. The press has reported a number of high profile corruption cases from the last 4 (four) Presidential Administrations; however, to date, few individuals have been prosecuted and of those, even fewer convicted. In sum, the

Judiciary System is often arbitrarily.<sup>12</sup> In most of the international trade dispute cases, the courts still look at the nationality of the parties and influenced by the 'non-judicial' factors.

### **C. Professional Association**

There are no specialized groups of lawyers' association dedicated to trade law issues except the Indonesian Capital Market Lawyer Association. Professional associations doesn't regularly hold meetings, seminars, or other events to examine constraints to and opportunities for improved implementation of trade laws. Because there are no specialized groups of lawyers' associations that concern to the trade law issues. Lawyers generally do not examine trade law issues and promote better understanding of market-oriented trade policy since there are no many lawyers who really understand about the international trade issues.

Professional associations have specialized sections or committees that seek to monitor and improve the legal framework. Some of the lawyers associations have committees that seek to monitor and improve the legal framework, but not many. They do not regularly provide input or otherwise lobby for market-oriented solutions to the existing trade regime this is because most of the associations are busy taking care of its internal political intrigue.

Economist's association does not have specialized groups dedicated of trade law issues, they does not hold regularly meetings, seminars, or other events to examine constraints to and opportunities for improved implementation of trade laws. Economists examine trade law issues and promote better understanding of market-oriented trade policy. Only a small number of economists specialized in international trade.

---

<sup>12</sup> US Foreign Trade Barriers, 2002: Indonesia, p. 196.

#### **D. Specialized Services**

Inspection services are provided on a reasonable cost basis to importers and exporters, however, they are not yet internationally accredited, but the inspection services is using international standard when they do the inspection and certification.

Sufficient facilities are maintained at land border posts to conduct on-site health, safety, and environmental, etc, inspections. There is also a well-developed industry of freight forwarders and customs brokers in the country.

Importer and exporters are generally not satisfied with the quantity, quality, and cost of bond warehouses and warehouse service. While the price is not reasonable, the safety in warehouses is questioned, and the services are not professional. When goods belong to Importer and exporter in warehouses lost, warehouses deny to responsible for the lost, that's why the importer and exporter are not satisfied with the quality of services.

Government provide trade forms (customs document, bills of lading, certification), which are printed and readily available locally, or when they use freight forwarders services, freight forwarders will provide trade forms for exporters and importers.

Experienced local consultants and service providers are available to assist with trade mission, marketing and other trade promotion activities. There is well-developed industry of freight forwarders and customs broker.

#### **E. Trade and Special Interest Groups**

Local financial institutions offer trade finance to domestic importers and exporters on reasonable terms through the letter of credit facility that commonly used by business communities in international trade. Local insurance agencies provide insurance on imports and exports at reasonable commercial rates in accordance with international standards. Every general insurance company in Indonesia provides the Marine Cargo Insurance. This type of

insurance will cover risks of the goods imported to or exported from Indonesia. Most of the Indonesian insurance companies have been using and regulating its business practices in accordance to the International Insurance Standard governed by the London market at Llyod's, England.

#### **IV. Trade Liberalization**

##### **A. Demand for Improved Laws**

###### **1. Government**

The market for trade liberalization is relatively strong in Indonesia. Indonesia not only has liberalized its trade regime, but also taken a number of important steps to reduce protection. In conjunction with IMF stabilization program, the government has issued reform decrees that stipulate the reduction of taxes, tariffs and quantitative restrictions on exports and imports. There are several high level Government officials that recognize the importance of trade and investment.

Foreign governments actively seek to include the country in bilateral (e.g. Japan) or multilateral trade agreements (e.g. ASEAN Free Trade Area/AFTA), or seek to enforce liberalization provisions of existing agreements.

###### **2. Private Sector**

Professional associations (lawyers and economists) in general support trade liberalization. However, the associations do not regularly provide input or lobby for market-oriented solutions to the existing trade regime. This is because most of associations are busy to take care of their internal political intrigues.

Some of the lawyer associations have committees that seek to monitor and improve the legal framework. Economist's association (*Ikatan Sarjana Ekonomi Indonesia*), however, does not have



specialized or committees that seek to monitor and improve the legal framework.

Economist's association (*Ikatan Sarjana Ekonomi Indonesia*) stated that there are only a small number of economists who are concerned/understand about international trade. When they speak about international trade issues, they do not represent the association, but themselves. The association do not regularly provide input or lobby for market-oriented solutions to the existing trade regime.

Despite most of business community perceive that they are well represented by trade and special interest groups, however, their aspiration is often not accommodated by government, neither in trade policy-making nor in trade negotiation (WTO, APEC and AFTA).

Trade and special interest groups do not have specialized or committees that seek to monitor and improve the legal framework. These groups do not regularly provide input or lobby for market-oriented solutions to the existing trade regime.

Importers and exporters are not actively lobby for improved tariff structures, since they feel that it is useless. But through their associations, importers and exporters lobby for improved tariff structures even this effort seems to be unsuccessful.

!

## **B. Supply of Improved Laws**

### **1. Government**

As mentioned above, the Indonesian Government has committed to trade liberalization. Consequently, the government has created an environment generally supportive of liberalized trade, such as lowering tariffs and reduce non-tariff trade barriers.

The government provides copies of laws, regulations, instructions, application forms and similar subsidiary instruments readily available to the business community or other end user. But, the community stated that there is no one-stop information-centre

publicly accessible where anybody can look for regulations issued by the government. Only one respondent said that he knew the Ministry of Forestry has 'commentary section' in its website. This section is meant to gather opinions from anybody especially its end-users.

The government providing the business community with meaningful notice of and opportunity to comment on draft laws or legislative amendments affecting trade. It is also providing the business community with meaningful notice of and opportunity to comment on draft implementing regulations. Regarding formal mechanisms for soliciting input from the business and professional community for formulating and amending trade policy, there are still complaints from some business community that the government does not represent their interests when it creates regulations with respect to their sectors.

## **2. Private Sectors**

The business and professional communities perceive the legal and regulatory environment generally to be confusing, especially because there are many regional regulations, which sometimes overlap with the previous-centralized regulations applied. There is also regulations-inconsistency (contradictory) not only in making the regulations but also in interpreting them within the ministries. The communities are in opinion that major laws and regulations not only tend to be difficult to predict, but also lack of consistency in interpretation and enforcement. In addition, major laws and regulations tend to be lack of transparency for end users.

Most of the business and professional communities perceived the law and regulations issued by the government to be relatively not really precise in that they can be generally read and understood by a business person (or end user), and provide adequate indication of what is required there under. Most of the communities perceived that the law and regulations issued by the government to be relatively not complete in that they address the main needs of the

business community and do not contain significant gaps. Since many of the regulations are not in detail, it is not uncommon that it creates many interpretations.

Most of the business and professional communities perceived that the law and regulations issued by the government to be relatively not responsive to their needs as reflected in “favourable” (pro-business) policy measure. The communities generally feel that they do not have a meaningful role to play in shaping policy reform in area of trade. This phenomenon is reflected in the fact that they already tried to give some inputs to the government in shaping policy reform especially in trade area, however, up to date there is not much improvement as a result of this effort.

The business and professional communities generally feel that the state is not really effectively meeting basic needs for legal reform in the area of trade because most of the legal reform seems as the result of the pressure given by the International society, such as IMF, and World Bank.

### **C. Demand for Effective Implementing Institutions**

#### **1. Government**

Both business community as well as officials of implementing institutions affirmed that one or more high level government officials with responsibility for implementation champion the cause of more efficient and effective provision of services by the implementing institution.

Several business community and some officials of implementing institutions affirmed that a formal mechanism for reviewing the performance and effectiveness of the implementing institutions on a regular basis does not exist. In fact, the performance and effectiveness of the implementing institutions has been reviewed on a regular basis (every 4 years) in the Trade Policy Review Mechanism of the WTO. The last Indonesia Trade Policy Review by the WTO was conducted at 27 and 30 June,

2003.

The business community and officials of implementing institutions confirmed that several international lending institutions (e.g.: UNDP, ADB, World Bank) and donor agencies (e.g.: USAID, CIDA) have instituted assistance programs with the government to upgrade and improve the implementing institution.

## **2. Private Sector**

Most of business community stated that they do not understand and agrees with the service mandate of the implementing institution. The officials of the implementing institutions stated that the business community regularly uses the services of the implementing institutions. But in contrary, some of business community confirmed that they are barely uses the services of the implementing institutions.

Professional associations, trade organizations and special interest groups that favor liberalized trade actively pressure the implementing institution more actively than protectionist groups to apply the laws in a manner favoring their positions. In addition, the business community stated that in service areas where the implementing institutions are weak, the private sectors offers competing or replacement services to fill the gap.

## **D. Supply of Effective Implementing Institutions**

### **1. Government**

The officials of implementing institution stated that the institution actively utilize an internal plan. The officials affirm that the implementing institution provides a written basis for all decisions made based on existing, published law. They also confirmed that the implementing institution makes all regulations, forms, applications and other important documents and information's available to the end users. In contrary, Most of business community affirmed the opposite answer.

Despite the officials of implementing institution not only conformed that the institution actively utilizes a system of accountability, but they also affirmed that the institution actively utilize a feedback mechanism, however, most of business community affirmed the opposite answer.

## **2. Private Sectors**

The business community confirmed that the provision of services and execution of functions is not satisfactory because the implementing institution supplies services are not transparent. In contrary, the business community confirmed that the provision of services and execution of functions is satisfactory because the implementing institution supplies services are non-discretionary.

The business community confirmed that the provision of services and execution of functions is not satisfactory because the implementing institution supplies services are discriminatory. The community also confirmed that the provision of services and execution of functions is not satisfactory because the implementing institution supplies services are at unreasonable price.

The end-users of the implementing institution fell that they do not have adequate opportunities to provide feedback to the institution on its performance. The general business and professional communities consider decisions made by the implementing institution to be unpredictable. The general communities consider decisions made by the implementing institution to be not appropriate under existing law. Not only they are considering decisions made by the implementing institution to be not understandable, but also the general business and professional communities consider decisions made by the implementing institution to be not supportive of liberalized trade.

Persons of the private sector stated that they do not create supporting institutions as needed to provide services required for effective trade and a trade environment in the area of professional associations. The persons stated that they do not create supporting

institutions as needed to provide services required for effective trade and a trade environment in the area of specialized services. They also stated that they do not create supporting institutions as needed to provide services required for effective trade and a trade environment in the area of trade and special interest group.

The business community generally considers the supporting institutions for subject matter area to be not adequate in facilitating or supporting the implementation of the framework law in terms of number of institutions. The community considers the supporting institutions for subject matter area to be not adequate in facilitating or supporting the implementation of the framework law in terms of quality of institutions. There is no sufficient mass of private sector associations supports free-market trade principles to counterbalance protectionist groups.

The role of the Indonesian business community in the trade law reform is really ambiguous. Despite byword they always emphasize the demand for legal reform in order to improve the business climate, however, most of the national top level businesspersons reject the challenge to join in the legal reform struggle, even if just participate as a respondent to the research on the related field.

Since the structure of Indonesian economic has been characterized by conglomeration and highly corrupt, collusive, and nepotistic practices, joint into the legal reform does not seem as the best choice for the opportunistic businesspersons. The more highly the level of corrupt, collusive, and nepotistic business climate, the easier for the opportunistic rent seeking businesspersons to get the profit in the shortest time. Up to date, more than last three decades Indonesian economic strongly influenced by the habit of the corrupt, collusive, and nepotistic action. Among the action, the most destructive practice is the collusion between the high rankings of the government officers with the top level of the businesspersons. This collusion practice has been lead into to the catastrophic multi-dimensional crisis in the country.

## V. Conclusion

Formally, the essential elements of Indonesian international trade law regime are in conformity with emerging global standards. Not only the legal and institutional framework, but also the top national level government officials are also strongly supporting the trade liberalization trend. But substantially, the trade liberalization tendency has been confronted a serious impediments arise not only from the excess of local autonomy, but also from Indonesian legal culture that contrary to Western legal culture which inspire the WTO rules as well as most of international trade conventions. The contradiction between Western legal culture and Indonesian legal culture can be traced on the antinomies values as follow.

Arminianism that raised the spectre of individual ability and free will bring the Western legal culture stick to individualism value,<sup>13</sup> in the contrary research by Soepomo (the drafter of Indonesian Constitution of 1945) validated the opinion that the Indonesian legal culture cling to communalism value. The Western legal culture adhere to materialism value, in contrast, Brenner's' research on Modernization in Solo (Central Java) confirmed the common knowledge that the Indonesian legal culture more appreciate spiritualism value.<sup>14</sup> Socinianism that extinguished the conception of authority as derived from transcendence and revelation direct Western legal culture attaches to rationalism value,<sup>15</sup> but Indonesian legal culture holds to romanticism value. While the liberal Western legal culture gives priority to freedom, the Indonesian legal culture preference is order.

In sum, the most crucial problem in the area of international trade law in Indonesia is how to bridge a gap between the Western

---

<sup>13</sup> See P. Schaff: *The Creeds of Christendom*, pp.545-49 (1919). See also, P. DeJong ed.: *Crisis in the Reformed Churches* pp. 207-09(1968).

<sup>14</sup> See Suzanne April Brenner: *The Domestication of Desire, Women, Wealth and Modernity in Java*. Princeton University Press, 1998.

<sup>15</sup> See H. McLachlan: *Socinianism in Seventeenth Century England* (1951).

legal culture and the Indonesian legal culture. This effort can be attained by harmonizing each pair of antinomy values not only into the Indonesian legal and institutional framework, but also into the legal practice in the country.

### **Bibliography:**

- Agus Brotosusilo, *Penulisan Hukum (Legal Writing)*. Jakarta: Departemen Pendidikan dan Kebudayaan - Konsorsium Ilmu Hukum (Ministry of Education and Culture - Consortium for Legal Science), 1994.
- \_\_\_\_\_, *Masyarakat dan Kekuasaan (Society and Power)*. Jakarta: Rajawali Press, 1986.
- \_\_\_\_\_, *Ilmu Sosial Dasar (Basic Social Sciences)*. Jakarta: Penerbit Universitas Terbuka (Open University Press), 1985.
- \_\_\_\_\_, *Sendi-sendi Hukum Perdata Internasional (Principles of Private International Law)*. Jakarta: Rajawali Press, 1982.
- \_\_\_\_\_, Rancangan Akademik Undang-undang Tentang Lalu Lintas Barang dan Jasa (Indonesian Domestic Trade in Goods and Services Law: An Academic Draft). A Paper for Seminar on Domestic Trade in Goods and Services Law. Faculty of Law - University of Indonesia, in cooperation with the Ministry of Industry and Trade, Jakarta, March 1, 2002.
- \_\_\_\_\_, Anti Dumping: Hukum dan Praktek di Indonesia (Anti-Dumping: Law and Practices in Indonesia). A Paper for Seminar on Anti-Dumping Law. Sociology Department, Faculty of Politic and Social Sciences - University of Indonesia, Jakarta, November, 2001.
- \_\_\_\_\_, Permasalahan Hukum Dalam Undang-undang No.5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat (Legal Problems on Anti-monopoly and Competition Act, of 1999). A paper for Seminar on Trade Law and Policy, conducted by The Faculty of Law, Student Council - University of Indonesia, Depok: 29 April 1999.
- \_\_\_\_\_, Food-Related Indonesian Consumer Protection Law: A course material for Master of Science International Training Program, South East Asia Ministry of Education Organization/SEAMEO TROPICAL MEDICINE Regional Center for Community Nutrition, University of Indonesia, Jakarta, 1999.



- \_\_\_\_\_, Rancangan Undang-undang Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat: Suatu Kajian Yuridis (A Legal Analysis on Draft of Anti-monopoly and Competition Act) A paper for Seminar on Trade Law and Policy, conducted by The Faculty of Law, Notary Public Student Council - University of Indonesia, Depok: 5 December 1999.
- \_\_\_\_\_, Pokok-pokok Rancangan Akademik Undang-undang Tentang Perdagangan (The Principles of Indonesian Trade Law: An Academic Draft). A Paper for Seminar on Trade Law, conducted by University of Indonesia Research Foundation (LPUI) in cooperation with the Ministry of Industry and Trade, Hotel Kartika Chandra, Jakarta, July 10, 1997.
- \_\_\_\_\_, Peran Hukum Nasional dan Budaya Hukum Indonesia Dalam Kontrak Internasional di Era Globalisasi (The Role of Indonesian National Law and Legal Culture on International Contract in the Globalization Era). A Paper presented in the Seminar on Contract Law in the Globalization Era, conducted by: Ministry of Justice - National Board for Law Development (Badan Pembinaan Hukum Nasional - Departemen Kehakiman RI), Hotel Indonesia, Jakarta: March 6, 1997.
- \_\_\_\_\_, Sistem Ekonomi Indonesia (Indonesian Economic System). A Paper for Course-material on Indonesia Sociology, Faculty of Law - University of Indonesia, Depok, March 1997.
- \_\_\_\_\_, Falsafah Pengaturan di Bidang Perdagangan (Trade Law Legal Philosophy). A Background-paper for Panel Discussion on Trade Law, conducted by University of Indonesia Research Foundation (LPUI) in cooperation with the Ministry of Industry and Trade, Hotel Kartika Chandra, Jakarta, February 20-28, 1997.
- \_\_\_\_\_, Analisis Ekonomi Terhadap Penyelesaian Sengketa Menurut WTO (Economic Analysis of WTO Dispute Settlement Mechanism). A Paper presented in the Seminar on Economic Analysis of Law in the Globalization Era, conducted by Ministry of Justice - National Board for Law Development (Badan Pembinaan Hukum Nasional - Departemen Kehakiman RI), Hotel Indonesia, Jakarta: 10-11 Desember 1996.
- \_\_\_\_\_, Kondisi Sistem Hukum Perlindungan Konsumen di Indonesia (Consumers Protection Law in Indonesia). A Paper for Workshop on Consumers Protection Law, University of Indonesia Research Foundation (LPUI) in cooperation with the Ministry of Industry and Trade, Hotel Le Meridien, Jakarta, October 16, 1996.
- \_\_\_\_\_, Landasan Yuridis, Cakrawala Sosiologis dan Pertimbangan Ekonomis Ratifikasi Pembentukan Organisasi Perdagangan Dunia/WTO oleh

- Indonesia (Legal Base, Sociological Point of View, and Economical Considerations of *Agreement Establishing the World Trade Organization* Ratification by Republic of Indonesia). An Article in "Majalah Hukum dan Pembangunan (*Law and Development Journal*), Vol. 4/XXVI, 1996.
- \_\_\_\_\_, Legal, Economical, and Sociological Impacts of *Agreement Establishing the World Trade Organization* Ratification by Republic of Indonesia. A paper for Seminar on Legal, Economical, and Sociological Impacts of *Agreement Establishing the World Trade Organization*, The Graduate Program - University of Indonesia, September 6, 1995.
- \_\_\_\_\_, "Ketentuan Anti Dumping: Pedang Bermata Ganda Dalam Pencegahan Praktek Bisnis Curang (Anti-Dumping Law: Double Edge Sword for the Control of Restrictive Business Practices). An Article in "Majalah Hukum dan Pembangunan (*Law and Development Journal*), Vol. 2/XXIV, April 1994.
- \_\_\_\_\_, "Prinsip 'Strict Liability': Jalan Tol Kearah Unifikasi Internasional Hukum Tentang Perlindungan Konsumen." (Strict Liability Principle: A Short Cut Toward International Unification of Consumer Protection Law). Paper for 'All Indonesian Law School-Faculty Member Continuing Legal Education', Gajah Mada University, Yogyakarta, August 11, 1993.
- \_\_\_\_\_, "GATT: Uruguay Round dan Kepentingan Indonesia (GATT: Indonesian Interest in Uruguay Round). An Article in "Majalah Hukum dan Pembangunan (*Law and Development Journal*), Vol. 6/XXII, December 1992.
- \_\_\_\_\_, "Social Change in Segara Anakan." A Paper presented at the "Technical Workshop on Integrated Tropical Coastal Area Management." National University Singapore, October 1988.
- \_\_\_\_\_, "Public Officials Attitude Pertaining to Coastal Resources Management Plan." Paper presented at a USAID 'Workshop on Marine Sciences.' Semarang, February 1988.
- \_\_\_\_\_, Rancangan Undang-undang Tentang Perdagangan (The Draft of Trade Law). A Paper for Seminar on Trade Law. Faculty of Law - University of Indonesia, in cooperation with the Ministry of Industry and Trade, Jakarta, July, 2003.
- \_\_\_\_\_, *et al.*, Studi Banding Tentang Hukum Persaingan Usaha (A Comparative Study on Competition Law: report on library and field research in several states in North America, Australia, European Union, and Asian region). A paper for Seminar on Trade Law and Policy,

- conducted by The Graduate Program - University of Indonesia, in cooperation with the Ministry of Trade and Industry, 1998.
- \_\_\_\_\_ *et al.*, Studi Banding Tentang Perdagangan Jasa-jasa (A Comparative Study on Trade in Services Law): report on library and field research in several states in North America, Australia, European Union, and Asian region). A paper for Seminar on Trade Law and Policy, conducted by The Graduate Program - University of Indonesia, in cooperation with the Ministry of Trade and Industry, 1998.
- \_\_\_\_\_ *et al.*, Studi Banding Tentang Perlindungan Konsumen (A Comparative Study on Consumer Protection Law and Policy: report on library and field research in several states in North America, Australia, European Union, South America and Asian region). A paper for Seminar on Trade Law and Policy, conducted by The Graduate Program - University of Indonesia, in cooperation with the Ministry of Trade and Industry, 1998.
- \_\_\_\_\_ *et al.*, Studi Tentang Penanaman Modal Asing di bidang Perdagangan (Study on Foreign Investment Law and Policy in Trade Sector). A paper for Seminar on Trade Law and Policy, conducted by The Graduate Program - University of Indonesia, in cooperation with the Ministry of Trade and Industry, 1998.
- \_\_\_\_\_ *et al.*, "A Study on Socio-legal and Institutional Aspects of Coastal Resources Management in Segara Anakan." Paper presented at the "Technical Workshop on Integrated Tropical Coastal Area Management." National University Singapore, October 1988.
- Applebaum, Harvey M. "The Interface of the Trade laws and the Antitrust Laws." *George Mason Law Review*, Vol. 6, Spring 1998, No. 3.
- Baker, Jonathan B. "Vertical Restraints with Horizontal Consequences: Competitive Effects of "Most-Favoured-Customer" Clauses." *Antitrust Law Journal*, Vol. 64, Issue. 3, 1996.
- Barringer, William H. "Competition Policy and Cross Border Dispute Resolution: Lessons Learned From the U. S.-Japan Film Dispute." *George Mason Law Review*, Vol. 6, Spring 1998, No. 3.
- Bhagwati, J. N.. *Protectionism*. MIT Press, 1998.
- Cate, Fred H. "Comment: Law in Cyberspace." *Howard Law Journal*, Vol. 39, Winter 1996, Issues 2.
- Cohen Joel M. and Arthur J. Burke. "An Overview of the Antitrust Analysis of Suppression of Technology." *Antitrust Law Journal*, Vol. 66, Issue 2, 1998.

- Dixon, Paul Rand and Charles E. Mueller. "Competition: The Moral Justification for Capitalism." *Antitrust Law & Economics Review*, Vol. 27, No. 1, 1996.
- Dolmans, Maurits. "Restrictions on Innovation: An EU Antitrust Approach." *Antitrust Law Journal*, Vol. 66, Issue 2, 1998.
- Fakultas Hukum Universitas Indonesia, Dalam Rangka Kerjasama Dengan Departemen Perindustrian dan Perdagangan RI: "Naskah Akademik Rancangan Undang-undang Tentang Lalu Lintas Barang dan Jasa di Dalam Negeri", Jakarta, 2001.
- Hunsucker G. M. "The European Database Directive: Regional Stepping Stone to an International Model?" *Fordham Intellectual Property, Media & Entertainment Law Journal*, Vol. VII, No. 2, Spring 1997.
- Irwin, D.A. *Against the Tide: An Intellectual history of Free Trade*. Princeton University Press. 1996.
- James, William E. and Oleksandr Movshuk, "International Economic Integration and Competitiveness: An Analysis of Market Share in Manufacturing Industries in Japan, Korea, Taiwan and the United States," ICSEAD Working Paper Series, Vol. 2000-04, May, Kitakyushu, Japan, 2000.
- Kennedy, Charles H. "Comment: Is the Internet a New Legal Frontier?" *Howard Law Journal*, Vol. 39, Winter 1996, Issue 2.
- Krueger, Anne, O. *et.al.* *Trade and Employment in Developing Countries*. The University of Chicago Press. Chicago, 1981.
- Mubyarto, Ideologi Pancasila dalam Kehidupan Ekonomi dan Bisnis, Makalah: Seminar "Seberapa Jauh Kebutuhan Indonesia akan Pengaturan tentang Persaingan yang Sehat", November 1991.
- Mueller, Charles E. "Antitrust Without Democracy? from Competition, to Prosperity, and Lastly to Political Freedom?" *Antitrust Law & Economics Review*, Vol. 27, No. 4, 1996.
- Nader, Ralph. "FTC Approval on Boeing - McDonnell Douglas Merger: the 'Collapse of Antitrust Enforcement'" *Antitrust Law & Economics Review*, Vol. 27, No. 4, 1996.
- Ray, David and Gary Goodpaster "Policies and Institutions to Ensure Free Internal Trade Under Decentralization", paper presented at the PEG/USAID Conference on Domestic Trade, Decentralization, and Globalization, Jakarta, Indonesia, April, 2001.
- Rose, Susan - Ackerman\*. "The Role of the World Bank in Controlling Corruption." *Law & Policy in International Business*, Vol. 29, 1997.

- USAID, Georgetown University, PEG, Partnership for Business Competition, and Pusat Studi Hukum & Kebijakan Indonesia. "Research on Business Actors' Awareness on the Enforcement of the Competition Law and Awareness on the New Commission", an Executive Summary, pp. 52-53. The research conducted by USAID, Georgetown University, PEG, Partnership for Business Competition, and Pusat Studi Hukum & Kebijakan Indonesia, Jakarta, 2000.
- USAID, Partnership for Economic Growth, and Departemen Perindustrian dan Perdagangan RI. *Domestic Trade, Decentralization and Globalization: conference Papers*. Jakarta, USAID, Partnership for Economic Growth in cooperation with Departemen Perindustrian dan Perdagangan RI, 2001.
- US Government Printing Office/GPO. *US Foreign Trade Barriers*, 2002. Washington DC., GPO Press, 2003.
- Winarno Yudho dan Agus Brotosusilo, *Sistem Hukum Indonesia*, Jakarta: Penerbit Universitas Terbuka, 1986.
- WTO Secretariat, *WTO Trade Policy Review of Indonesia. Replies to Questions*, 27 and 30 June 2003.