

# QUO VADIS INTERNATIONAL TRADE: INDONESIAN DIPLOMACY STRATEGY REGARDING SETTLEMENT WTO WITH SOUTH KOREA

Muhammad Ridha Iswardhana<sup>1</sup>

<sup>1</sup>Faculty of Humanities, University of Technology of Yogyakarta  
Email: muhammad.ridha@staff.uty.ac.id

## ABSTRACT

The trade relation among countries does not necessarily benefit all members, in that case it so common for issue to arise that often turns to be dispute. Interestingly, the role of WTO somehow does not fulfill the gap, sometimes it is necessary to add additional mechanism to resolve the dispute. At the end the result can be obtained by the members. This research focuses on the diplomacy process between Indonesian and South Korea regarding the dumping issue on paper commodity. It should be noted that South Korea has not fully implemented the obligation after DSB Appellate Body's decision on 2005 and 2007. As for the research question, this research comes out with "what the strategy is imposed by Indonesian government to settle the dispute on paper dumping?". The Indonesian diplomacy for the South Korean Government to implement the final decision of the DSB Panel of WTO through the use of linkage strategy in the form of cross retaliation plan and putting ADD on all South Korean paper producers. At the end South Korean Government through KTC finally formally revoked the policy of the ADD which marked the great achievement and victory of Indonesia in the WTO mechanism.

**Keywords:** South Korea; dumping; trade diplomacy; linkage theory, retaliation

## ABSTRAK

*Hubungan dagang antar negara tidak selalu menguntungkan semua anggota, mengingat hal ini sangat umum muncul sehingga dapat menyebabkan terjadinya perselisihan. Menariknya, WTO justru menyebabkan kesenjangan yang diperlukan ditambahkan mekanisme tambahan untuk menyelesaikan perselisihan perdagangan tersebut. Pada akhirnya hasilnya tersebut dapat dihasilkan oleh negara-negara anggota. Penelitian ini berfokus pada proses diplomasi antara Indonesia dan Korea Selatan mengenai isu dumping pada komoditas kertas. Perlu dicatat bahwa Korea Selatan belum sepenuhnya menerapkan kewajiban tersebut setelah keputusan Banding Banding DSB WTO pada tahun 2005 dan 2007. Dalam pertanyaan penelitian, riset ini memiliki pertanyaan "Strategi apa yang dilakukan oleh Pemerintah Indonesia untuk menyelesaikan perselisihan tentang dumping kertas?". Diplomasi Indonesia untuk Pemerintah Korea Selatan untuk menerapkan keputusan akhir Panel DSB WTO melalui penggunaan strategi linkage dalam bentuk rencana retaliasi silang dan mengenakan Bea Masuk Anti-Dumping (BMAD) terhadap semua produsen kertas Korea Selatan. Pada akhirnya Pemerintah Korea Selatan melalui KTC akhirnya secara resmi mencabut kebijakan BMAD yang menandai pencapaian dan kemenangan besar Indonesia dalam mekanisme WTO.*

**Kata kunci:** korea selatan; dumping; diplomasi perdagangan; teori linkage; retaliasi

## Introduction

On 2002 South Korea imposed Anti-Dumping Duty (ADD) on the certain category of paper which is uncoated wood-free printing paper imported from Indonesia. South Korea assumes that Indonesia paper exporter companies which are PT. Indah Kiat Pulp &

Paper Tbk, PT. Pindo Deli Pulp & Mills, PT. Pabrik Kertas Tjiwi Kimia Tbk, and April Pine Paper Trading Pte Ltd are believed to do dumping practice. As the result of implementation ADD, Indonesian domestic industries suffer from material loss and the downfall of export revenue. In short, the

implementation of ADD turns to make the price of Indonesian paper on South Korea market to be more expensive.

As the case goes by, on 2005 the Appellate Body under Dispute Settlement Body (DSB) WTO decides that Indonesia is not proven with the charges of dumping practice and claims that South Korea is the party which violating the rules by applying ADD. The case continues on 2010 when Indonesian government is pleading WTO regarding retaliation since South Korea does not immediately comply with DSB Panel Body's decision on 2005 and 2007. As a response to that South Korea government suddenly agrees to cut the ADD on October 2010. Based on the brief overview of the case, it can be seen that South Korea government deliberately choose to not comply with WTO's decision on 2005 but then suddenly change its position on 2010.

This research uses qualitative research method which is done deductively by using primary and secondary data. Primary data based on WTO decision, in the form of Request for Consultation and Panel Report on Korea - Anti-Dumping Duties on Imports of Certain Paper from Indonesia (Dispute No: DS312). While the secondary data used various sources that have links about this case, among others: literature study through literature books, journals, articles, and mass media so that it can compare and enrich the writings comprehensively. In data analysis techniques, the authors use data analysis based on primary and secondary data that already exist. By sorting the facts obtained then adapted to WTO theory and rules. Then explain how the causes, reasons, effects, and violations by South Korea against WTO rules.

During the negotiations, Indonesia tends to use trade diplomacy through the use of Linkage Strategy in order that South Korea implemented to the final decision of the WTO DSB Panel. The Indonesian linkage strategy is through the plan of the retaliation to the South Korean commodities and the implementation

of ADD to all of the country's paper exporters to Indonesia simultaneously.

In conducting negotiations, Indonesia has always insisted that South Korea immediately withdraw the imposition of ADD on Sinar Mas Group companies and consistently undertake a plan to request authorization of the WTO to run the retaliation. At the same time, the Indonesian government also firmly to impose ADD on all the South Korean paper companies with a large percentage, in order to give a strong message that Indonesia is serious about protecting its domestic interests.

The differences between this research and any researchers before are the authors explain clearly and coherently since the background of the problem to the completion of this case complete with analysis since Panel session of 2004, 2005, and 2010. Meanwhile, other research only discussed on Indonesia winning over South Korea in the dispute during the WTO DSB Panel in 2004, without further explaining what factors led to the case being won by Indonesia and completed in October 2010.

### **Trade Diplomacy Framework**

On her work, Susan Strange<sup>1</sup> states that dynamic changes of global world consequently implicate on the structural changes in each country. It also applies to economic matter, for example, a country that previously has been so protective turns to be more open with its economic system and fostering export. The changes on international system turn to be the trigger for a country to apply trade diplomacy as a response to the global economy but still at the same time still protecting its national economic interest. Trade diplomacy focuses on the diplomacy process among countries under the same trade organization in this case WTO.

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<sup>1</sup> Susan Strange, *States, Firms and Diplomacy. International Affairs*, pp. 1-15. London: Royal Institute of International Affairs. 1992.

Donna Lee<sup>2</sup> believes that trade diplomacy provides an understanding of the processes occurring within the WTO and the workings of the institutional environment in WTO negotiations, diplomatic strategy to equalize with developed countries. Trade diplomacy also allows domestic issues and changes in the structure of the political economy to be an important consideration because before negotiating at the international level, any country must accommodate and pay attention to their domestic needs. This illustrates how the complex and dynamic character of trade diplomacy is constantly changing along with the development of the international world.

Roy<sup>3</sup> also argued that the economy is an integral part of contemporary diplomacy as the economy can influence other policies, even as increasing interdependence between countries related to economy and trade causes the economy to become one of the main sectors. The current economy is not only used as a 'national target' but also as a standard of successful development of a country, it also requires the existence of diplomacy. In summary, a country can't achieve its economic interests optimally if it does not make political efforts through diplomacy with other countries or international organizations. The implementation of diplomacy can be done according to Roy in the form of trade diplomacy through negotiations at the WTO forum which allows any country to struggle for their interests and resolve disputes that occur in order to improve the economy and trade.

In trade diplomacy framework there are two important things that determine the success or failure of any country in running the framework. Two things are linkage strategy and bargaining position, the explanation is that

if negotiations between countries use settlement tactics with other things outside the negotiations, then, in the end, can improve the bargaining position of the country. The bargaining position then will determine the winning or loss of any country in the WTO negotiation forum. In the end, the implementation of trade diplomacy can make a developing country equal to other developed countries while still struggling for their domestic economic interests.

According to Brian Brow<sup>4</sup>, the linkage can be used as a strategy on dispute settlement by enhancing the trade-off position of the country, especially on the economic issue. The theory has two main objectives which are; a) creating the bigger possibility for parties to dispute to reach settlement and b) creating room for another country to actively participate on the issue. Linkage theory also provides the opportunity to change the asymmetrical map during the negotiation and inventing bigger room to achieve national interest. The linkage theory aims to give psychological pressure on the counterpart member that has been provocative then creates any disadvantages to another country. The implementation of this theory is hoped to gradually change the rival's mindset to follow certain nation interest.

And then, in the last few decades in international relations, it can be seen that bargaining position turns to be the vital factor. Bargaining position mainly talks that country may propose offer and feedback at the same time to another country. The approach is so called by *take-it-or-leave-it game*. The theory claims that a country might enjoy higher position compared to other countries by maximizing strategic dependency so that during the negotiation process that country will be dominated.

David A. Lake. (2009) claims that states are rational actors which selectively

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<sup>2</sup> Donna Lee dan Brian Hocking, Economic Diplomacy. *The International Studies Encyclopedia II*, 1216-1227. Birmingham: Departement of Political and International Studies. 2010.

<sup>3</sup> Roy S. L., *Diplomasi*. Jakarta: Raja Grafindo Persada. 1998.

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<sup>4</sup> Brian Bow, *The Politics of Linkage: Power, Interdependence, and Ideas in Canada-US Relations*. Toronto: UBC Press. 2009.

choose offers<sup>5</sup>. In this case, the various offers from a certain country can be used as the tool to suppress another country in order to achieve its national interest. On the dumping case between Indonesia – South Korea, it can be seen that Indonesia enjoys higher position during the negotiation since the WTO decides that Indonesian companies are not proven with the charges of dumping practice. Otherwise, South Korea turns to be in a weak position due to its loose and its responsibility to comply with WTO DSB's decision.

The relations with the disputes between South Korea and Indonesia's diplomacy, the author uses the analysis by using trade diplomacy as it relates to the theory of the study, which shows the WTO forum used by Indonesia is used to fight for maximum national economic interests. In addition, the Government of Indonesia also uses bilateral negotiation channels through the Ministry of Trade of the Republic of Indonesia with South Korea and the Indonesian paper companies. Diplomacy and trade negotiations were undertaken by Indonesia by advocating and various other processes to demonstrate Indonesia's position and emphasizing South Korea to comply with the DSB WTO's final decision since 2005.

There was a tendency for the Government of Indonesia to negotiate negotiations using the linkage approach through the use of other issues outside the dispute to put pressure on South Korea to comply with existing DSB WTO decisions. This is due to the multilateral structural failure of the WTO to ensure South Korea to comply with the final decision of the dispute, requiring an 'additional' approach bilaterally by the Government of Indonesia to lobby politics to achieve national interests. In addition, South Korea's protectionist act of unilaterally accusing Indonesian paper companies of dumping practices and inclined not to comply

with the final decision of the WTO DSB Panel is detrimental to Indonesian paper producers. Naturally, if the Government of Indonesia seeks to struggle for its domestic interests by using linkage strategy in the form of the use of other trade issues, in order to 'suppress' South Korea so as not too provocatively harm the interests of Indonesia, but to soften and immediately obey the existing DSB WTO decision.

Also, the Indonesian government has a larger bargaining position because Indonesia has sufficient data and proven valid in DSB WTO which is then added with linkage strategy that is run in order to pressure South Korea to immediately revoke the decision of imposition of ADD on the export of paper products of Indonesia. The consideration of retaliation measures against imported commodities originating from South Korea is also a major source of capital for Indonesia to comply with the decision of the DSB WTO Panel.

### Analysis<sup>6</sup>

The dispute between Indonesia – South Korea began on September 30<sup>th</sup> 2002 when a group of Korean papers companies file report to Korean Trade Commission (KTC). The Korea papers industries claim that Indonesian companies under Sinar Mas Group are suspected to do dumping practice on a certain type of paper which is uncoated wood-free printing paper. The Korean companies then bring the report to KTC to applying anti-dumping petition.

It is on November 3<sup>rd</sup> 2003 that KTC officially imposed various value of Anti-Dumping Duty (ADD) for the next three years starting from 2003 – 2006 on several Indonesian companies. KTC imposes 8,22% of ADD to Pabrik Kertas Tjiwi Kimia Tbk, PT. Pindo Deli Pulp & Mills, and PT. Indah Kiat

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<sup>5</sup> David A. Lake, *Two Cheers for Bargaining Theory* (pp. 07-51). New York: Cornell University Press. 2009.

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<sup>6</sup> Muhammad Ridha Iswardhana, *Analisis Diplomasi Indonesia Dalam Menyelesaikan Sengketa Perdagangan Dumping Barang WTO: Studi Kasus Sengketa Kertas* (pp. 1-67). Yogyakarta: Universitas Gadjah Mada. 2017.

Pulp & Paper Tbk. At the same time, KTC also imposes lower ADD which is 2,8% to April Pine Paper Trading Pte Ltd.

The direct implication of ADD can be seen on the material loss and decreased export value faced Indonesian papers companies. As for the fall of export value, for example, the drastic decreased can be seen on the following number; previously before the implementation of ADD Indonesia export value to South Korea reach into USD 150 million annually. The number falls significantly into USD 50 million annually right after the implementation of ADD.

As a respond to that Indonesian government brings the case to DSB under WTO. On October 28<sup>th</sup> 2005 the panel files report stating that Korean policy on anti-dumping is violating the rules of anti-dumping on WTO. The panel also concludes that South Korea must immediately erase anti-dumping policy immediately as what is governed by Reason-Able Period of Time / RPT or that soon will be ended in July 2006.<sup>7</sup>

Since South Korea government does not show positive gesture considering the result from DSB. Indonesia government then decides to bring the case for the second time to the panel. The panel does not change the result. On June 22<sup>nd</sup> 2007 the panel decides that Indonesia is winning over South Korea. The decision of the panel on June 22<sup>nd</sup> 2007 is legalized by the second report of the panel on October 22<sup>nd</sup> 2007. It is also during that period that Indonesia government claims that if South Korea government does not immediately erase ADD, Indonesia plans to choose retaliation as a settlement.<sup>8</sup>

On 2007, KTC still does not erase the ADD that actually should be erased earlier on

July 2006. Indonesia government then initiating negotiation mechanism by working together with related stakeholders. The Department of Foreign Trade under Ministry of Trade conducts a consultation with Legal Opinion Advisory Centre on WTO Law (ACWL) on Oct 31<sup>st</sup> – Nov 2<sup>nd</sup> 2008. The consultation is meant to measure the material loss as the foundation to plan retaliation. As a response to Indonesia's complaint, ACWL claims that Indonesia needs to include the recommendation from DSB WTO regarding the retaliation plan.<sup>9</sup>

Indonesian government argues that the retaliation cannot wait. The government plan to propose a compensation of material loses based on the material injury faced by Indonesian paper companies. Indonesia also warns South Korea that retaliation is fixed plan if the government still imposes ADD.<sup>10</sup> It should be noted that actually, Indonesian government does not want retaliation as the final step to settle the case since it will ruin the relation of two countries.

Interestingly, according to Ministry of Finance Regulation No. 26/PMK.011/2010, on February 1<sup>st</sup> 2010 Indonesian government also imposes ADD to various Korean papers companies. The value of ADD to Korea is also the highest among other countries which reach up to 59,64% whereas Indonesia only imposes 6-40% to other countries.<sup>11</sup> It can be seen that the policy conducted by Indonesia government is not a form of retaliation. Indonesia prefers to

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<sup>7</sup> World Trade Organization. *Report of the Panel: Korea — Anti-Dumping Duties On Imports Of Certain Paper From Indonesia (WT/DS312)*. Geneva: WTO. 2005.

<sup>8</sup> Joseph Frankel, *Contemporary International Theory and Behaviour of State*. (pp. 8). New York: Free Press. 1972.

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<sup>9</sup> Departemen Perdagangan. *Laporan Akuntabilitas Kinerja Departemen Perdagangan 2008* (pp. 86). Jakarta: Departemen Perdagangan. 2008.

<sup>10</sup> detik.com. *Kasus Dumping Kertas RI Siapkan Tindakan Balasan ke Korea*. Retrieved from <http://finance.detik.com/ekonomi-bisnis/844599/kasus-dumping-kertas-ri-siapkan-tindakan-balasan-ke-korea>.

<sup>11</sup> detik.com. *Menkeu Berlakukan Bea Masuk Anti Dumping Produk Kertas Impor*. Retrieved from <http://finance.detik.com/ekonomi-bisnis/1295410/menkeu-berlakukan-bea-masuk-anti-dumping-produk-kertas-imp>.

choose another strategy to suppress South Korea.

On May 18<sup>th</sup> 2010 and June 22<sup>nd</sup> 2010 Indonesia state that government will take another legal system process to DSB WTO if South Korea still imposing ADD. Indonesia argues that it is not fair for Indonesian companies since the ADD has been imposed since 2003. Finally, on October 21<sup>st</sup> 2010 KTC erase ADD to five Indonesia companies under Sinar Mas Group. The KTC decision is followed up with the policy release on October 30<sup>th</sup> 2010 that officially dismisses the ADD to all Indonesian papers commodity.<sup>12</sup> In this research, author uses five subs heading of discussion based on the result of this research.

- a. **Indonesian Diplomacy**
- b. **Linkage Issues: The Government of Indonesia's Retaliation Implementation Plan**
- c. **Bargaining Indonesia's Position**
- d. **Changes in South Korea's Attitude**
- e. **Opportunities of Developing Countries in WTO**

a. **Indonesian Diplomacy**

In line with trade diplomacy that provides an understanding of the processes in WTO negotiations used by developing countries to make equalization to the developed countries, and it must accommodate the national interest. The flexibility of international trade has led to disputes among WTO member states that can be resolved through the DSB WTO mechanism. In addition, the application of trade diplomacy through the WTO forum can not only solve the dispute, but also can improve the economy and trade of each party of the dispute countries. This is also done by Indonesia by struggling for the settlement of this dumping paper dispute case so that South Korea can immediately comply with the decision of DSB WTO Panel and Indonesia's

paper export is not interrupted by South Korea's unilateral ADD imposition.

In the dispute on dumping papers, Indonesia chooses to elaborate several strategies and work hand by hand by including various actors. At first, Indonesia bring the case to WTO since trade organization has the authority to settle down with any dispute among the members but then since WTO cannot force South Korea to comply with the result Indonesia then chooses another strategy. In order to settle the case, Indonesia conducts several bilateral meetings with Korean official representative. In addition, Indonesia also keeps correspondence with ACWL to give additional enforcement to South Korea. The combination of several strategies reflects Indonesia persistence on the case and at the same time also showing that as developing countries Indonesia's position is equal with developed countries like South Korea.

The role of Indonesian Ministry of Trade plays an important role in the settlement of this case. The ministry is not only covering paper companies but more broadly representing Indonesia's interest on WTO. In addition, the Department of Foreign Trade under Ministry of Trade also conducts series of diplomacy with South Korea through correspondence, informal meeting, and also the role of Trade attaché and Ambassador abroad. Also, There are several actors involved in the settlement of this case from the Ministry of Commerce, including: *Tim Nasional Perundingan Perdagangan Internasional* (PPI), *Direktorat Jenderal Kerjasama Perdagangan Luar Negeri* (currently *Direktorat Jenderal Perundingan Perdagangan Internasional*), Indonesian Ambassador to WTO, and Indonesian Trade Attaché in Vienna.

In this case, Indonesia makes use retaliation and ADD issues to force South Korea in order to comply with DSB result, Indonesia is willing to accept the material loses faced by domestic paper industries as a sacrifice to make South Korea comply with DSB result. As for the imposing of ADD, it is reflected as the serious gesture of Indonesia

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<sup>12</sup> Okezone.com. *Korsel Sepakat Hentikan Bea Masuk Anti Dumping Kertas RI*. Retrieved from <http://economy.okezone.com/read/2010/11/08/320/391032/korsel-sepakat-hentikan-bea-masuk-anti-dumping-kertas-ri>.

government to protect its national interest. In solving this paper dumping dispute case the Government of Indonesia uses a mix of efforts and actors. Initially, Indonesia brought this issue within the scope of WTO negotiations to be resolved fairly in accordance with the WTO rules and the right of Indonesia as a member country, but the WTO failed to ensure South Korea's compliance with the DSB Panel's recommendations.

As a result, Indonesia uses a bilateral approach by lobbying through a series of meetings and consultations with South Korea. Diplomacy by the Government of Indonesia is also conducted by conducting correspondence or consultation with ACWL in order to put pressure on the South Korean side. Not only relying on state actors, Indonesian paper companies also have a role to follow the process of re-investigation conducted by KTC and voiced their opinion to the Government of Indonesia for this case to be completed soon. Various diplomatic efforts illustrate the seriousness of Indonesia and the unity of all existing stakeholders as South Korea's slow response and show as a developing country, Indonesia also has an equal and strong position. As for the bargaining position, Indonesia's position can be higher than South Korea in this case.

#### **b. Linkage Issues: The Government of Indonesia's Retaliation Implementation Plan**

Reflecting on the losses of this case, the Government of Indonesia as a member of the WTO has the right to retaliate to other countries with the permission of the DSB WTO. This retaliation is an attempt by the plaintiff country to be harmed by the defendant country if it does not comply with the recommendation of the DSB Panel of WTO and as a way to obtain compensation if no agreement is reached in compensation in accordance with WTO rules. The efforts made by the Government of Indonesia before deciding on retaliation are by giving statements to South Korea on the

possibility of retaliation as at the time of the bilateral meeting on December 10, 2007.

In addition, when Indonesia consulted with ACWL on 31 October-02 November 2008, the agency recommended Indonesia previously had to calculate the number of losses suffered by Indonesia due to South Korea's ADD policy as a basis for retaliation of the country. In line with ACWL's suggestion, the Ambassador of the Republic of Indonesia to WTO also briefly submitted a request for retaliation rights against South Korea in the DSB WTO Session on 08 January 2008. Although the Minister of Trade of the Republic of Indonesia on February 25 2008 issued its objection if Indonesia in a short time carry out retaliation because it can threaten Indonesia's credibility in the international world and the limited human resources, but did not minimize the desire of Indonesia on 06 March 2010 and 22 June 2010 to increase this case to the WTO DSB Appeal Apparatus followed a request for authorization of retaliation from the WTO.

Then, in a meeting between the *Dirjen Kerjasama Perdagangan Luar Negeri Kementerian Perdagangan* with the South Korean Ambassador to Indonesia on October 03, 2010 states that Indonesia can retaliate not only on the same commodities of paper but also another imported commodities from South Korea that were valued at Indonesia's losses due to ADD to Indonesian paper export commodities.

#### **c. Bargaining Indonesia's Position**

In further examination of the negotiations undertaken by Indonesia and South Korea during the settlement of the dispute, the case can be given due to the bargaining position, mainly from the Indonesian side. The existence of a strong bargaining position allows a country to make offers and demands simultaneously, while other countries can accept or reject (take-it-or-leave-it game). This can happen because, in bargaining, it allows for a higher position of a country than any other country by using strategic dependency, which causes in negotiation negotiations a state actor can have a more

dominant bargaining position. The high bargaining position depends on the level of credibility of the threat and the existing situation so as to limit the choice of others who can force to agree on the agreement. In realizing a strong bargaining position, it is also necessary to pay attention to the interests of international actors and interests from within the country itself and to support the unity of domestic interest is important to do first. This is because if a country cannot unite domestic demands into one vote, it can undermine the bargaining position of a country negotiator in international negotiations.

In relation to Indonesia's bargaining position which tends to be higher than that of South Korea in this case, according to the analysis of Indonesian authors have at least three leverage or strength that can be used as an effort making Indonesia much needed by South Korea in the settlement of this paper dumping dispute, among others:

*First*, Indonesia wins two times on DSB Panel decision. The first is on 2005 and 2007. The winning moment is used as an enforcement to make South Korea comply with DSB decision on 2005 and 2007. In 2005, the WTO DSB Panel ruled that South Korea's anti-dumping policy has been violated and not in line with the Anti-Dumping WTO provisions and indirectly won Indonesia in this case. The decision of the DSB Panel of WTO also mandates South Korea to immediately implement the DSB WTO recommendation by revoking anti-dumping policy against various Indonesian paper companies in a timely and rational (Reason-Able Period Of Time / RPT) period or at the latest eight months after the issuance of the decision Or ending in July 2006. Subsequently, Indonesia again won this dispute in the 2007 DSB WTO Panel Session, which emphasized South Korea's reluctance not to immediately revoke and eliminate ADD policies against several Indonesian paper producers. Both triumphs indicate the magnitude of the Indonesian Government's attention to this dumping dispute case in order to protect its national interests and show the international community that Indonesia as a

developing country also has equal rights and bargaining power over the developed world. Furthermore, these two consecutive wins also became a major capital for Indonesia in 'pressuring' South Korea in order to comply with the recommendations of the 2005 and 2007 DSB WTO Panel decisions.

*Secondly*, South Korea does not have a strong database and information to prove that Indonesia is dumping, but South Korea must immediately comply with the DSB WTO decision because biases of existing decisions are detrimental to Indonesia's domestic interests. This is due to KTC parties who use more pricing data from importers in their country and based on reports from petitioning companies. While data derived from the Indonesian side and the five companies Sinar Mas Group tend to be used only as secondary data only, but the data is the main data from the manufacturer. The KTC database caused a difference and miscalculation in calculating the price, making the impression that the Indonesian paper companies had committed dumping practices to the detriment of South Korea. Proven in both DSB WTO Panel Sessions 2005 and 2007, the KTC representing South Korea is considered to have made a mistake in calculating and making decisions regarding the imposition of ADD on Indonesia. The unilateral use of KTC databases and unilateral information may undermine the credibility and trust of the institution, both within South Korea and other countries. KTC certainly cannot continuously maintain the use of invalid data, because this institution not only faces cases from Indonesia alone but also from all countries in the world. On the other hand, Indonesia has a more accurate and proven database and information base in both DSB WTO Panel Sessions can be leveraged in the settlement of this dispute for Indonesia, as there is no longer any reason for KTC to impose ADD on Sinar Mas Group companies and immediately revoke Policy. At this time, Indonesia argues that South Korea does not have any concrete and valid data to justify its argument that Indonesia is positively do



dumping practice. Whereas, Indonesia is able to show relevant and concrete data that Indonesian industries under Sinar Mas Group do not do dumping practice.

*Third*, according to the statistic during 2004-2010 Indonesia is able to maintain its position as the third pulp paper exporter to South Korea after the United States (USD 424 million) and Canada (USD 397 million). Also, Indonesia supplies about 10-16% of South Korea demand on paper. The magnitude of Indonesia's paper export to the fulfillment of South Korean needs can occur because the Indonesian paper industry has the availability of resources, labor, and processing technology is good enough, causing the production cost of paper and pulp from Indonesia is still relatively cheap when compared with countries Scandinavian or other Asian. In addition, the price of Indonesian paper exported to South Korea is also not much different from that of exports in China, between USD 0.43 / ton and USD 0.45 / ton. This shows that although the selling price of Indonesian paper is relatively cheap, but not too big difference between one country with other countries export paper destination. The policy of imposition of BMAD by South Korea on Sinar Mas Group companies is detrimental to Indonesia, but the decrease of fulfillment requirement up to 80% of the amount normally purchased from Indonesia every year, is of course, detrimental to the South Korean paper industry. Consequently, the country's paper industry must meet its needs for paper and pulp raw materials from other countries, which of course has prices above Indonesia. As a result, The imposed of ADD is clearly give disadvantages to Indonesia but consequently, South Korea must fulfill the national demand by looking up to another supplier with a more expensive price.

#### **d. Changes in South Korea's Attitude**

South Korea's case and compliance resolution process tend to take a long time since 2003-2010 involving various actors to the WTO mechanism, but the diplomacy negotiation of the

dumping dispute settlement between Indonesia and South Korea can be marked by compliance from South Korea. Although previously South Korea tended not to give a satisfactory response related to a series of correspondence and diplomatic meetings conducted by the Government of Indonesia in mid-2007-2010, there appears to be a change of attitude from the country.

During the negotiation, The Government of Indonesia uses the linkage approach through the use of other issues outside the dispute to place emphasis on South Korea. Indonesia also has a better bargaining position because they have proven valid data in the DSB WTO with the possibility implementation of retaliation policy to the South Korea which are better bargaining power for Indonesia to make sure South Korea immediately implemented the decision of DSB WTO Panel.

The South Korean government had insisted if the issued ADD policy is right. However, after Indonesia consulted with the WTO ACWL, it appears that South Korea is beginning to slightly "soften" as indicated by the Sunset Review initiation to further assess the ADD policy towards Sinar Mas Group. Sunset Review is quite important considering the implementation of ADD to various Indonesian paper companies should be completed in May 2010 and the phases are the order to eliminate the ADD imposition policy. Furthermore, after the Government of Indonesia imposed the ADD on all South Korean paper exporters with very high margins, followed by a statement requesting authorization of retaliation by the Government of Indonesia in the DSB WTO Meeting in May 2010, the South Koreans became less provocative as in the years previous. Subsequently, on October 30, 2010, the South Korean Government decided to revoke and eliminate the imposition of ADD against Sinar Mas Group.

In this case, South Korea does not have any other reason to continue the imposition of BMAD on Indonesian paper companies, since it was not initially supported by valid and strong data, which was further demonstrated by defeats

in the 2005 and 2007 DSB WTO Panel Session. South Korea also continues to get a statement from Indonesia that will carry out cross-retaliation, giving 'emphasis' to the country to immediately revoke the policy of ADD. At the same time, all of the South Korean paper exporter company earns ADD in the highest value from Indonesian Government, providing effective "Shock Therapy" against South Korea. This is because the value of ADD which reaches 59.64% and done suddenly, can awaken and give an idea of how the losses gained as long as it is suffered by Indonesia materially.

#### **e. Opportunities of Developing Countries in WTO**

As Developing country need to actively participate under WTO whether on dispute settlement process or the negotiation. The experience from WTO will make developing country easier to protecting its national interest which often used by developed countries to create the dispute. This case can be a lesson and experience for developing countries, when dealing with developed countries should not necessarily 'follow' just at the wishes of developed countries but can explore further things that can strengthen the position of developing countries.

If developing countries trying to avoid and rarely use the WTO forum primarily in dispute resolution, it can lose the opportunities and experience in international organization and get reported from the developed countries. In addition, this condition can certainly reduce the bargaining position of developing countries in the international arena. Whereas the dispute resolution mechanism through WTO provides greater opportunities and advantages than using only bilateral diplomacy channels. This is because bilateral diplomacy often has the influence and pressure of political things as well as other interests of the developed countries in dispute resolution.

The global trade gives equal advantages to develop and developing countries. In this case developing country is no longer dependence on the developed country since

developing country is able to build networking with another developing country. Developing countries can strengthen partnerships with fellow developing countries. This could be one of the efforts of developing countries to raise awareness and struggle over an issue that is important for developing countries in the WTO. In addition, this partnership can improve relations and trade between developing countries, along with the world economic recession.

Also, developing country position on WTO will be strengthened with concrete and valid data as the basis to argue with developed country's claim. This valid data can be one of the key points in conducting any diplomacy, particularly in dispute resolution within the WTO. This can improve the bargaining position of developing countries because it can show that developing countries are fighting for their interests seriously. In addition, valid data can also be a consideration for developing country governments in making every policy.

Furthermore, when facing developed countries, developing countries also need to be more careful and make an inventory every opportunity that can be used to struggling for their interests. Developing country needs to clearly point out the loophole that can be used to against developed country. The position of developing country with its rapid development of economic sector turns to be the advantage to lift up developing country position during the negotiation.

Subsequently, developing countries will resolve trade disputes through WTO forums, may utilize academic channels through apprenticeship programs for young lawyers, such as those offered by The WTO Appellate Body Secretariat and Legal Affairs Division and the Advisory Center on WTO Law (ACWL) in Geneva. The ACWL provide facilitation that indirectly enhances human expertise for example on international trade law. In this case, private sector is also able to work together with government to reduce the cost of dispute settlement. Developing countries can also train

junior lawyer from private law firms to avoid always involving government representatives. This effort is quite important, considering that if you have to hire a foreign lawyer in Geneva, Switzerland would certainly cost a lot for developing countries. This can alleviate the cost of settling disputes within the WTO.

## Conclusion

Indonesia's strategy on the case can be seen on the trade diplomacy with South Korea as a way to make South Korean government comply with the recommendation from WTO. Indonesia makes use linkage issue and series of negotiation. As for the linkage issue, Indonesia proposes linkage issue by applying cross ADD scheme on paper commodity from South Korea. Indonesia chooses to this mechanism as the respond of its disappointment over South Korea.

It can be seen that Indonesia successfully implement the strategy since Indonesia's position on the case is higher than South Korea. It also needs to be considered that South Korea is projected to have the bigger material loss on its trade equilibrium than imposing ADD to Indonesia companies. The situation then changes South Korea's position by dismissing the ADD policy.

South Korea is proven to violate the anti-dumping regulation under WTO, the government then erases the ADD to papers commodity from Indonesia on October 30<sup>th</sup> 2010. The decision of KTC turns to be the winning mark for Indonesia since, after the result, Indonesia papers industry will not get any material loss. Even the settlement process takes pretty long time; the case turns to be momentum for Indonesia.

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