
**THE ENGAGEMENT OF INDONESIA
AND TAIWAN IN THE WORLD TRADE ORGANIZATION: HISTORICAL AND POLITICAL
PERSPECTIVE**

Angel Tng¹, Liu Yin Ruei², Rina S. Shahrullah³, Dao Gia Phuc⁴, Rahmi Ayunda⁵

¹Department of Law, Universitas Internasional Batam, Indonesia (1951010.angel@uib.ac.id)

²Department of Law, University of Economics and Law, Vietnam

³Department of Law, Universitas Internasional Batam, Indonesia

⁴Department of Law, University of Economics and Law, Vietnam

⁵Department of Law, Universitas Internasional Batam, Indonesia

Submitted: 10/07/2021 Revised: 10/09/2021 Accepted: 30/09/2021

ABSTRACT

Due to “One China Policy” in contrast to other international members like Indonesia, has encountered more difficulties in gaining the seat in the World Trade Organization. The aim of this study is to make comparison on the engagement of Indonesia and Taiwan in WTO. This study utilizes the normative legal research to make comparison between Indonesia and Taiwan. It begins by presenting overview of Indonesia and Taiwan’s history of the process and difficulties in being admitted into WTO. Taiwan took many years to find its way to become a member of WTO, and has been a member since January 1, 2002 as the 144th member. This Study explores the special situation that only Taiwan has in regards to other international communities. It will also analyze and compare Taiwan’s and Indonesia’s engagement in the World Trade Organization in terms of historical and political perspectives. Indonesia has a smoother transition in entering the WTO; however, Taiwan has had to confront more difficulties, in which this study will delve further.

Keywords: Engagement, World Trade Organization, Historical, Political

INTRODUCTION

The world's attention to international activities is increasing; it can be seen from the growing flow of circulation of goods, services, capital, and international work force. International trade first developed in Europe which later developed in Asia and Africa. As a result of because of the existence of trade relations between developed countries and developing countries require international regulations and which help stop actions that would hinder trade and provide a sense of security and certainty to traders in relation to national regulations that apply to international trade on goods and services.

Based on mutual dependence, countries come together later in international trade moves to form a trade and tariff agreement or the so-called General Agreement on Tariffs and Trade (GATT). The ideas for establishing a multilateral trade organization has been initiated with the approval of the General Agreement on Tariffs and Trade (GATT) in 1947, as the beginning of the plan to form the International Trade Organization (ITO), which is one of the 3 (three) frameworks Bretton Woods Institution. The other two organizations are International Monetary Fund (IMF) and International Bank for Reconstruction and Development (IBRD) which is often known as the World Bank. The discourse about the world trade organization became a new beginning of the evolution of a non-existent previous global trade regime. There are at least two advantages that can be taken from the existence of international trade cooperation so that liberalization trade can be executed. First, mutual negotiation would be profitable since will support the achievement of more free trades. Second, the negotiated agreement will help the government avoiding a trade war which can be detrimental(1).

GATT formed on the 30th October 1947 and the entry into force of GATT on January 1st 1948, the formation of the GATT was intended as a subsidiary agreement subject to and dependent on the world trade organization. The establishment of GATT as a trade agreement on general and the elimination of tariff barriers which reciprocally representing a global trade agreement. World Trade Organization was born replacing GATT on January 1st 1995 as world trade organization. Now the GATT Secretariat serves as the World Trade Organization secretariat, also the World Trade Organization as an international organization more qualifies as an international organization and is broader than on GATT. WTO is now the only one international body that specifically regulates trade issues between countries. According to World Trade Organization official website, now there are 164 countries that are the members of WTO since 2016. Although both Indonesia and Taiwan are members of WTO, the criteria and the time of their entrance into WTO are very much different. This study will make a comparison on the engagement of Indonesia and Taiwan in WTO in historical and political perspectives

METHODS

This study utilizes the normative legal research. Normative Legal Research is a legal research that is done by researching library materials or secondary data. This study will use secondary data that is made public from primary legal material that is binding legal materials in the form of law, secondary legal material which is legal materials that provide an explanation of primary legal materials obtained from the literature study in the form of literatures related to research problems and tertiary legal material that provide instructions and explanations of primary legal materials and secondary legal materials related to this research include: published journals, newspapers, internet, legal dictionary. Due to COVID-19, where people are restricted to stay home, the research data will be collected via internet only and analyzed by using qualitative approach.

RESULTS And DISCUSSION

World Trade Organization and General Agreement on Tariffs and Trade

Decisions in the WTO are generally made by consensus of all members. The highest body is the Ministerial Conference, which is held approximately every two years. The General Council manages the affairs of the organization outside of the ministerial meeting. Both institutions are made up of all members. Special subsidiary bodies (board of directors, committees, subcommittees), also composed of all members, are responsible for managing and supervising the implementation of the various WTO agreements by members(2).

More specifically, the main activities of the WTO are(2):

1. Negotiate the reduction or elimination of trade barriers (import tariffs, other trade barriers) and agree on rules for international trade practices (for example, anti-dumping, subsidies, product standards, etc.)
2. Manage and supervise the application of the WTO's agreed rules on trade in goods, services and trade-related intellectual property rights
3. Supervise and review the trade policies of our members, and ensure the transparency of regional and bilateral trade agreements
4. Between our members Dispute resolution on the interpretation and application of the agreement

5. Strengthening the capacity of government officials from developing countries in international trade affairs
6. Assistance to approximately 30 countries that have not yet joined the organization
7. Conducting economic research and collecting and disseminating trade data to support other important activities of the WTO
8. Explain and educate the public about the WTO and its mission and activities.

Since WTO is the predecessor of GATT and the organization still uses GATT, its principle are also passed down. The basic principles that form the basis of GATT as a system based on a series of an integral thought or concept. The components of the basic principles of GATT, of course, are also embedded in the text General Agreement as the main legal source of GATT(3). For describe the GATT principles it is not only in an abstract way but also with the flexibility of implementation needed for GATT to work for real. The fundamental and guiding principle of the WTO remains the search for open borders. Those principles as follows:

1. Most-Favoured Nation Principle

The main principle on which GATT is based is the principle of non-discrimination which in the GATT is known as the principle of Most-favored-nation or MFN. In summary, MFN is the principle that binds international trade between GATT members that must be done in a non-discriminatory manner. Therefore, the basic principle is that the concessions granted to a trading partner country should also apply to all countries. A country should not be treated better or worse than other countries, thus then all countries are placed on an equal footing, and all the state must take part in enjoying the opportunities that have been achieved in the liberalization of international trade and the same obligation(3).

2. National Treatment Principle

The other side of the concept of non-discrimination is the principle of national treatment, which prohibits discrimination between foreign products and domestic products. National treatment is considered one of the cornerstones of the WTO. Of particular relevance for our purpose here is Article III.4 of the GATT 1994, which requires national treatment for all laws, regulations and requirements affecting domestic sales, promised sales, purchase, transportation, distribution. or the use of imported goods,(4) that is, after imported goods enter the domestic market, the processing of imported goods will not be less than domestic results after passing through the customs area and paying the entry.

3. Transparency Principle

The two-part transparency requirement is also the cornerstone of the WTO. The first part is the obligation of WTO members to announce or disclose all relevant regulations prior to their implementation, the requirements for fair management of such regulations, and the right to review decisions made under these regulations. The second part is to require members to notify the WTO and other members of government actions. Article X of the GATT 1994, Article 3 of the GATS and Article 63 of the TRIPS Agreement stipulate the principle of transparency. Many other WTO agreements in Annex 1A contain provisions on transparency. This principle is the basis of a rules-oriented foreign trade policy, and it is also the basis for maintaining the stability and predictability of members' trade regulations(5).

According to WTO website, the accession process for WTO is passed on from GATT practice. Through the establishment of a working group of WTO members, they negotiate via bilateral, plurilateral and multilateral ways, to become a member of WTO. By the so called “Member-driven” process, the WTO Secretariat will complete the ratification procedures in order to allow new applicants to become full member of WTO. The accession process can be seen below(6): Decisions in the WTO are generally made by consensus of all members. The highest body is the Ministerial Conference, which is held approximately every two years. The General Council manages the affairs of the organization outside of the ministerial meeting. Both institutions are made up of all members. Special subsidiary bodies (board of directors, committees, subcommittees), also composed of all members, are responsible for managing and supervising the implementation of the various WTO agreements by members(2).

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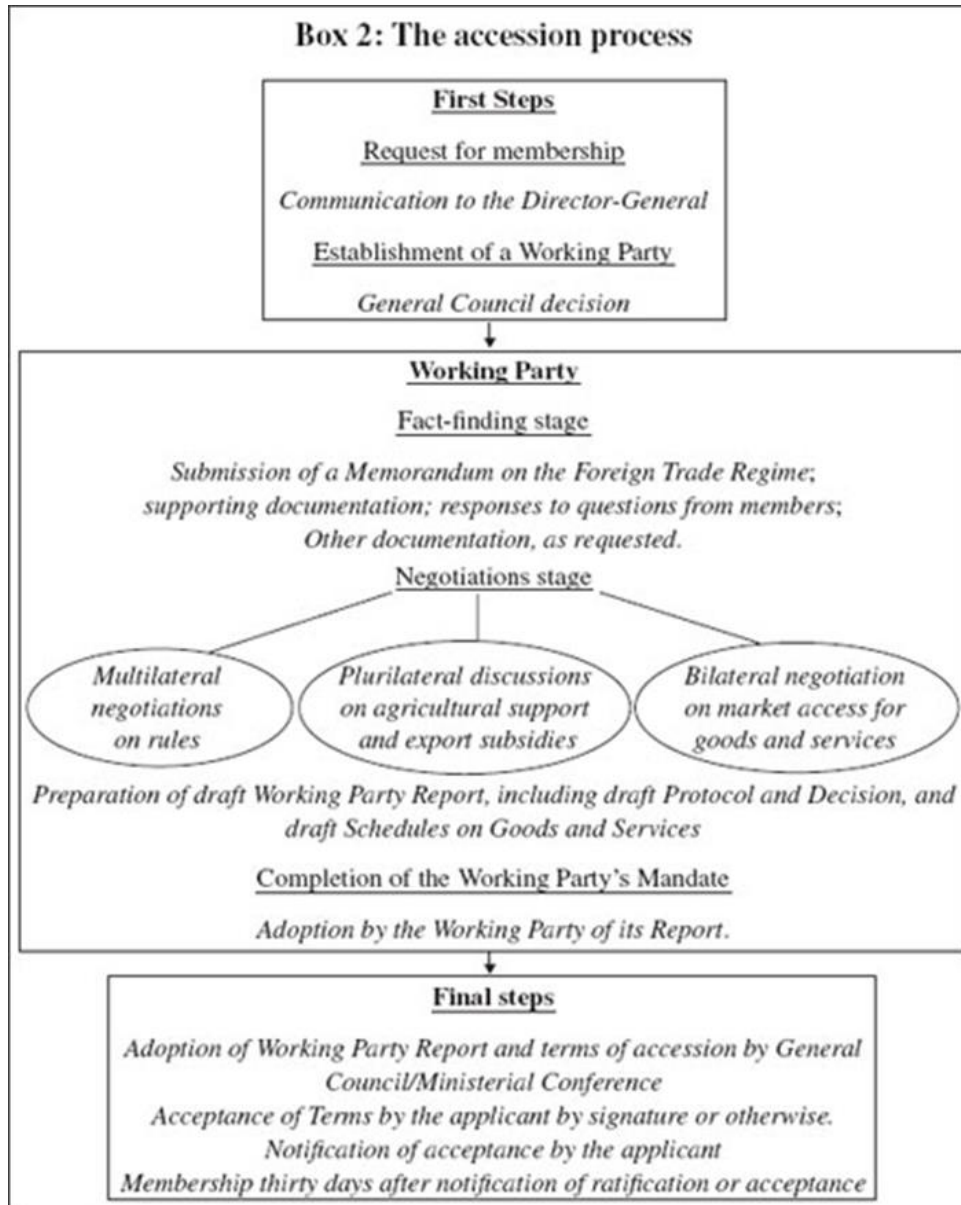
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can be seen below(6):

Indonesia's Engagement in World Trade Organization

International activities in the economic field are characterized by cooperation between countries through international business cooperation, and international business cooperation is supervised by international institutions that perform their functions to promote economic activities. International trade policy is part of a

country's development, implemented by observing developments that other countries are believed to be able to influence or be useful to the national economy. An international organization is an organization formed through a treaty, and its members are composed of the United States to agree to an international treaty(7).

Indonesia is one of the founding countries of the WTO and passed Law No. 7/1994 to approve the establishment of the WTO. The establishment of the WTO was approved as one of the results of the Uruguay Round of multilateral trade negotiations. As you all know, this negotiation follows the single compromise principle. As a member of the WTO, Indonesia must accept and implement all the agreements reached in the Uruguay Round. One of the treaties produced in the Uruguay Round is a technical barrier to trade or TBT. The World Trade Organization (WTO) is the only organization that specializes in regulating trade issues between countries. The WTO's multilateral trading system is regulated by an agreement that contains the basic rules of international trade generated by member states through a negotiation process. The agreement is an agreement between member states, requiring member governments to comply with them when implementing trade policies. As a member of the WTO, Indonesia is also bound by various agreements such as the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Property Rights (TRIPS). Agreement on Trade-Related Investment Measures (TRIM)(7).

Indonesia has been a member of the World Trade Organization since it joined the GATT on February 24, 1950. As a commitment to the General Agreement on Tariffs and Trade and the World Trade Organization, Indonesia has accepted the 2005 Protocol to amend the TRIPS Agreement accepted on October 20, 2011, and the Protocol to the Agreement on Trade Facilitation accepted on December 5, 2017. Government procurement, information technology agreements and participation in joint initiatives, including the Development Committee and Investment Promotion and Electronic Commerce, and participated in many regional or global negotiating groups, such as Asian developing members, ASEAN, APEC, Cairns Group, etc(7).

The new era of international trade characterized by the application of WTO principles is more extensive than GATT 1994. The impact of the conclusion of multilateral agreements such as TRIPS and GATS has greatly affected the member states. For developed countries, the application of WTO principles provides very profitable new opportunities, while for developing countries, it is motivated by various challenges, which require a certain amount of time to enjoy the process(8).

Although the vision of the objective of the WTO agreement is to benefit member states, in fact, it is difficult for member states such as developing countries that are not yet ready to achieve it. The required responsibilities and capacities that developing countries, including Indonesia, must fulfill cannot be implemented, although some countries in the ASEAN region are very cautious in accepting opportunities and managing strategies in the process of achieving the objectives of the WTO(8).

The purpose of establishing the WTO is to promote trade between countries, which started in many countries that have experienced trade barriers. These obstacles can be detected in many areas that must be protected. For example, by injecting subsidies into the government's legal policies as the implementation of development

policies, the implementation of this approach contradicts the general principles of Articles 1 and 3 and some specific principles such as Article 6 of the WTO. Harm the importing country's subsidies, or dumping(9).

But, developing countries has given exception in the implementation of Article I and Article III under the fairness principle. This principle was the results of agreements reached by countries in the world, are stated in Final Act in the year 1964, relating to rights and obligations in the world economy including rights and obligations to obtain reciprocal benefits fairly(9).

WTO law provides rules for bridging trade liberalization with values and other social interests. These rules exist in the form of a very broad exception to the discipline foundation of the WTO. These exceptions allow WTO members in certain circumstances to adopt and maintain the rules and measures of use protect the values and other very important social interests important, even if the rules or actions are against with the substantive discipline contained in the 1994 GATT. The exceptions can be grouped into several types include(9):

1. Exceptions to Article 20 of the GATT 1994

The most important exception in bridging trade liberalization with values and interests other social exceptions are the general exceptions listed in Article 20 of the GATT 1994. In determining whether an actions that should not be consistent with the rules in the GATT can be justified under Article 20 GATT 1994.

2. Exceptions to Article 14 GATS

Based on Article 14 of the GATS General Agreement on Trade in Services, WTO members can justify what they should do not GATS compliant.

3. Exceptions for Economic Development

Exception of economic development was created to help the State growing. Almost all agreements in the WTO regulate regarding special and different treatment for developing country members to facilitate them to enter the system world trade to promote economic development.

4. Exceptions in Economic Emergencies

Emergency Protection is a security measure to the domestic industry when there is a surge situation imports that cause or threaten to cause serious losses. In general, actions this is contrary to Article 2 and Article 11 of the GATT 1994. However, it can still be justified under article 19 GATT 1994 if it can meet all the requirements that contained in the article, the purpose of an action trade safeguards is to provide freedom to domestic industry and to provide time for the domestic industry to adapt to new market conditions. As set out in Article XIX of the GATT 1994, trade security measures can only be applied if three conditions have been met

Taiwan's Engagement in World Trade Organization

Before going into Taiwan Engagement in any international organization, one needs to better understand its dilemma and unique situation. The formal name for Taiwan is Republic of China. Many have confused it with People's Republic of China, or China. Many years, China has claimed the "One China" policy, in which according to BBC news on February 10th, 2017, the "One China" policy is the "diplomatic acknowledgement of China's position that there is only one Chinese government. Under the policy, ...recognizes and has formal ties with

China rather than the island of Taiwan, which China sees as a breakaway province to be reunified with the mainland one day.”(10) Many countries and international organizations, in accordance to international law and international custom, have either recognize or abide to this policy, which greatly hindered Taiwan in many ways(11–14).

For other countries, when they decide to enter an international organization, they only need to comply with the entrance regulations, then automatically be accepted under its own name; however, under the China issue mentioned above, along with the fact that the international community accepted and recognized that policy, Taiwan’s special political status, despite of claiming sovereignty, has not been allowed to enter many international organizations; or were it to be accepted, cannot enter under the name “Taiwan”, for it was not being recognized as a “State” but as an “unrecognized state” or an “entity sui generis”(15). Therefore, when Taiwan was to be accepted into an international organization, there would also be the politically controversial issue of nomenclature to be considered(16).

Despite of the fact that Taiwan has not been recognized as a sovereign state, Taiwan has striven to be admitted in over 30 international organizations, i.e. APEC, ADB, EG, etc... mostly under the name “Chinese Taipei” or “Taipei China”. This study will go about describing the historical process in Taiwan’s entrance into WTO. WTO was considered to be a replacement of GATT, where 125 nations were members, which Taiwan has not taken part, signed agreements. The agreements signed have now become a 90% code of conduct for international trade. Taiwan’s engagement in WTO has to begin with its interaction with GATT. Some studies have shown that Taiwan was one of the 23 founding members of the GATT ; however, due to political reasons and China issue, it was in and out of GATT as either observer or member from 1947(17).

One of the main principles of the GATT was trading without discrimination, which was continuously carried out or uphold in WTO. Therefore, in 1990, Taiwan tried to rejoin GATT under Article XXXIII under the name of “Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu”(18) . Of Course throughout the times that Taiwan tried to enter GATT, the China issue was always raised along with the question of whether it is eligible to make the application(19).

After GATT transformed to WTO, the GATT XXXIII article along with Article XII of WTO Agreement, with the aim of avoiding the sensitive China issues, has allowed Taiwan, though took over a decade, to be admitted into WTO under the name, ”Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Abbreviated as Chinese Taipei)”, which was the same name used when applying for GATT(20,21) . The WTO Article XII states that “any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto”.

Because the membership requirement for WTO does not strictly apply on “Statehood”, the eligibility for membership includes “separate customs territory possessing full autonomy in the conduct of its external commercial relations and the other matters”, it interprets Taiwan, despite of China’s protest, as “a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial

relations and of the other matters provided for” under the GATT, allowing Taiwan the entitlement of making the application without sponsorship of PRC. Finally, Taiwan was then accepted on January 1st, 2002 as the 144th member of WTO, which is important for Taiwan economically and politically.

The Differences and Similarities of Indonesia and Taiwan

In terms of engagement in the WTO for both Indonesia and Taiwan, there are many differences in terms of the regulation utilized in entrance requirement, time of being admitted, and the levels of difficulty in joining the WTO. Unlike Indonesia that was admitted into GATT on 24th February, 1950, and was then automatically become one of the founders of WTO; Taiwan, on the other hand, had to be constantly constrained by the China issue, that it had to find its way in and out of GATT as observer and then struggle with China over a decade in order to be a member of WTO in 2002.

This long term dealing with the China issue and the problem of nomenclature is something that Indonesia does not have to encounter. Because Indonesia was already a member of GATT and was recognized as a “State” by the international community; therefore, it can enter GATT without any sponsorship from other countries, that it was immediately and automatically transacted its seat to WTO with ease and had become one of the founders of WTO.

Taiwan, on the other hand, due to the China issue, had to enter WTO under GATT Article XXXIII and WTO Article XII, where it was recognized as “separate customs territory possessing full autonomy in the conduct of its external commercial relations”, instead of a “State” like Indonesia. Even when WTO utilized GATT Article XXXIII and WTO Article XII, there was always the “One China” policy to deal with time to time, Taiwan was finally allowed to join WTO and be admitted under the name:” Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Abbreviated as Chinese Taipei)”, without the sponsorship of China.

Though there were not much similarities between Indonesia and Taiwan historically and politically; but they have both become members of WTO. Taiwan was admitted under the name of Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu in January 1st, 2002 as the 144th member of WTO. Chinese Taipei has also joined member of groups in the negotiations same with Indonesia such as APEC which is an inter-governmental forum for 21 member economies in the Pacific Rim that promotes free trade throughout the Asia-Pacific region. Same as Indonesia, Chinese Taipei has also accepted multilateral instruments such as 2005 Protocol Amending the TRIPS Agreement and 2014 Protocol concerning the Trade Facilitation Agreement. The relationship between Indonesia and Taiwan is only a cooperative relationship of trade and economy. Even though Indonesia and Taiwan have no relationship in diplomatic relations, but by looking at the development of investment and trade between both countries, Taiwan can be seen as one of the important partners for Indonesia in the context of economic cooperation. Indonesia has always adhered to the principle of One China Policy or policy of one China. That is de jure Indonesia only has a relationship diplomatic relations with the People's Republic of China (PRC). Indonesia does not recognize Taiwan as a sovereign and independent country from China. Both countries recognize themselves as the People's Republic of China, so that China issued the policy as a form of reunification. Even though, Indonesia still acknowledges Chinese Taipei as a member of WTO without the sponsorship of PRC with their own autonomy(22).

CONCLUSION

By entering GATT and WTO for the international community is a mean of increasing international activities that can benefit their members in terms of economic prosperity. With the same goal of developing economic opportunity and growth, Indonesia and Taiwan joined the international organization. In terms of joining any international organization, the “Statehood” recognition in the international arena is quite an important factor, for we can see that Indonesia, being the recognized as a “State” by the international community had it at a great advantage, which allowed it a much smoother, faster, and hindrance free way to gain accession to GATT and WTO. While Taiwan, despite of claiming sovereignty, was under the “One China” policy influence and was recognized as an “entity sui generis”, which took Taiwan longer time and had to face more difficulty in entering WTO than Indonesia. Being able to enter WTO for Taiwan does not only mean being able to do fair trade with other countries, but it also is a significant breakthrough in allowing the international community to delve more deeply into the China issue. Allowing Taiwan to enter an international organization without China’s sponsorship, which somehow allowed Taiwan to break free of China. Moreover, it sets a precedent for future application in allowing Taiwan to enter other organizations that accepts members of “separate states”

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