



# Indonesian Officials Better Equipped to Defend Against Unfair Trade Practices and Import Surges

Public and private sector participants at a three-day advanced workshop on WTO trade remedies improved their skills on highly technical and legal aspects of trade remedies, focusing on anti-dumping and safeguard measures.

## Background

In November 2016, the Directorate General of Foreign Trade of the Ministry of Trade of Indonesia submitted a request to the Canada-Indonesia Trade and Private Sector Assistance (TPSA) project for training and capacity building on trade remedies in the context of the World Trade Organization (WTO).

Indonesia is currently involved in several disputes on trade remedies both as complainant and respondent. Based on Canadian expertise and experience on trade remedies, the TPSA project suggested a two-part training program. The first part was an introductory workshop on WTO trade remedies that covered dumping and anti-dumping measures, subsidies and countervailing duties, safeguards, and Canadian national legislation and practices on trade remedies. This activity was delivered on March 20–22, 2017 and was reported on in a previous activity brief.

This activity brief reports on the second part of the training program—an advanced intensive training course on select topics, including general impact assessment of trade remedy measures, legal argument making, normal value and dumping margins calculations, and lessons learned from jurisprudence. The advanced training focused on actual trade remedy cases in which Indonesia or Canada are involved, either in the context of the



Alexandre Larouche-Maltais provides tips on crafting a legal argument for a WTO dispute.

WTO the *Special Import Measures Act* (for Canada). The advanced course also included trade remedy simulation exercises to give participants first-hand experience on trade remedy investigations and dispute settlements. This workshop was delivered on July 17–19, 2017, in Bogor.

## Activity Description

Twenty-three public and private officials (12 men and 11 women) participated in the workshop, which improved their skills on highly technical and legal aspects of WTO trade remedies, focusing on anti-dumping and safeguard measures. The workshop gave participants practical experience on how to build legal arguments and to present those arguments during oral pleadings before a moot WTO Panel comprised of trade remedy experts.



The workshop was divided into two parts. During the first part, international trade practitioners and experts delivered interactive presentations to better prepare participants for the second part of the workshop, focusing on practical and hands-on trade remedy case studies and simulation exercises.

## Part 1: Understanding the Concepts and Workings of the Trade Remedy Process

The opening session was delivered by Ibu Pradnyawati, Director of Trade Defense, Directorate General of Foreign Trade of the Ministry of Trade of Indonesia, who highlighted the key trade defense challenges and opportunities facing Indonesia. She described current cases involving the United States and Indonesia, and presented an update on recent developments of Indonesia's other trade-defense cases. She stressed the importance of private sector involvement in the trade remedy processes to ensure that the government has complete information and has the cooperation of the private sector regarding compliance with domestic and international trade rules.

Peter Clark, President of Grey, Clark, Shih and Associates in Ottawa, presented at the session "General Impact Assessment of Trade Remedy Measures." Using practical examples, he gave an overview of the Canadian public interest procedure and compared it with other approaches. He listed relevant factors taken into consideration by the Canadian International Trade Tribunal, including the state of competition in the domestic market and the impact on domestic producers of inputs.

Participants asked questions and discussed the differences between the Canadian and Indonesian trade remedy systems.

Alexandre Larouche-Maltais, TPSA senior trade and investment expert, provided several tips and advice on crafting a legal argument for a WTO dispute in the session "Building a Strong Case: How to Make Legal Arguments for Trade Defense." He suggested a four-step approach to building a strong trade remedy case: 1) know and identify the relevant facts, 2) research, research, and research, 3) brainstorm all possible arguments, and 4) play devil's advocate. He also outlined the basic legal elements, including the identification of which party has the burden of proof at the WTO dispute settlement body (DSB), and the cumulative requirements for imposing anti-dumping and safeguards measures. He strongly advised participants to use a "signposting" technique, in which the person arguing a case informs the audience up front about his or her position, main points, the direction the argument will take, and conclusions. The person also acknowledges possible weak points in his or her case and rebuts those points.

On day two, Mr. Clark lead the session "Do the Maths: How to Calculate Normal Value and Dumping Margins. He began with a review of key technical concepts related to the WTO Anti-Dumping Agreement, including the dumping margin, normal value adjustments, the export price, and fair comparison. He explained which injury factors need to be considered by investigating authorities and how to deal with a "particular market situation."

Mr. Clark then moved on to discuss select WTO trade remedy cases. After explaining the facts and important elements of each case, he identified the key jurisprudential learnings and their potential impact on future cases. He also explained how legal provisions of WTO multilateral agreements have been interpreted by the DSB. For example, the concept of "sales in the ordinary course of trade" has been clarified in the U.S. *Hot-Rolled Steel* case; the Appellate Body understood the term as sales made "under conditions and practices that, for a reasonable period prior to the date of sale of the subject merchandise, have been normal for



Peter Clark reviews key technical concepts related to the WTO Anti-Dumping Agreement.



sales of the foreign like product." He ensured that participants understood the importance of finding the proper interpretation of these concepts before presenting any legal arguments.

Erry Bundjamin, a founding partner at Bundjamin & Partners law firm in Jakarta, then shared his experiences with Indonesian trade remedy cases. He focused on the current issue of cost adjustment and profit determination in the EU's imposition of anti-dumping duty on the import of biodiesel from Indonesia. Mr. Bundjamin also covered the concept of the single economy in the EU *Fatty Alcohols (Indonesia)* case. He concluded his presentation by proposing recommendations for Indonesia's future trade remedy regulation reforms.

## Part 2: Moot WTO Dispute Hearings

In the second half of the advanced training workshop the group of participants was divided into four teams, with each participant acting assigned a role: coordinator, researcher, or counsel. Each team represented a fictional country either as the Applicant or the Respondent in one of the two cases brought before a simulated hearing of the WTO dispute settlement system.

"This advanced training provided in-depth theories and cases, and has significantly enriched our knowledge on trade remedies. I have never experienced a real trade remedies panel, so the moot WTO panel was very helpful. It gave me a better idea on how trade remedy principles are applied in actual cases and showed what may happen during the panel sessions. It was fun and challenging; participants got into their roles of complainants and respondents and worked together with our team to win our case. It was one of the best training experiences I have had. From the private sector's perspective (especially those dealing with trading), this is a must-have training."

—JESSICA CALLISTA  
Indonesian Chamber of Commerce and Industry (Kadin)



Counsels representing "Fabrikistan" at the WTO trade remedy moot court prepare their arguments on the *Safeguard Measures on Women's Apparel* case.

The first case—*Anti-Dumping Measures on Cod Fish Fillets*—involved the country of Islandia as the Applicant and the country of Cavana as the Respondent. Islandia is a developing country that is seeking to get rid of Cavana's anti-dumping duties against cod fish fillet imports. According to Cavana, those extra duties are necessary to protect the Cavanan fishing industry from unfair trade practices of Islandian exporters.

The second case involved the countries of Fashionistan and Fashionistan in the *Safeguard Measures on Women's Apparel* case. Fabrikistan, as Applicant, was requesting the WTO DSB to declare the Respondent's safeguards measures on women apparel inconsistent with WTO agreements. For Fashionistan, safeguard duties have become necessary to shield its domestic industry against a surge of imports and to give an adjustment period to recover from difficult times.

The workshop participants had only 24 hours to build their legal arguments, research WTO jurisprudence, prepare pleadings and present oral argument before a moot WTO Panel on the behalf of their countries. The moot WTO Panel was comprised of Peter Clark, as Chairman, Erry Bundjamin, and Alexandre Larouche-Maltais.

The TPSA moot court was officially opened on day three with the dispute settlement proceedings in the cod fish fillets case. The counsels of Islandia and Cavana presented their arguments and answered



questions from the panel for 25 minutes each. Each counsel then had the opportunity to respond to his or her opponent's arguments and additional questions from the panel. The same agenda was followed for the women's apparel case, where the counsels of Fabrikistan and Fashionistan presented their oral arguments and were offered the opportunity to respond to their opponents' arguments during rebuttal and counter-rebuttal.

The final session of the training was dedicated to a roundtable discussion on how Indonesia can benefit from trade defense. Facilitated by Wenguo Cai, TPSA international trade expert, allowed moot panelists to provide comments to participants who acted as counsels.

The moot court component of the training was valuable for the participants. While significantly more demanding than traditional training (they had to build all legal arguments based on WTO jurisprudence in a short period and answer questions from panelists on the spot), the approach ensured that participants not only understand the concepts and workings of the WTO trade remedy process but, more importantly, could put it into practice. This practical experience will help Indonesia better prepare in future trade remedy and trade defense cases.

### Key Takeaways/Conclusions

- Participants became familiar with the concept of the general impact assessment of trade remedy measures—anti-dumping measures, countervailing measures, and safeguard measures. Which measure is used may depend on domestic regulations. Best practices can be identified by comparing national approaches in Canada, Indonesia, and New Zealand. Previous investigations in Canada show that the public interest (the impact on consumers, other domestic producers, and domestic buyers of inputs) must be taken into consideration, as well as other key factors such as the impact on competition, technology developments, or even employment in remote areas.
- Indonesian officials improved their legal research skills, especially for WTO DSB jurisprudence. They were introduced to new online research tools, such as the “WTO

Analytical Index” and “WorldTradeLaw.net” that will help them find caselaw information. Participants autonomously conducted legal research to support their claims and arguments in the moot court and demonstrated a high level of understanding relevant to WTO DSB jurisprudence and knowledge on how to use it for dispute settlement.

- Participants gained expertise on normal value and dumping margins calculations in the context of dumping investigations and anti-dumping disputes. While most participants were already familiar with the formula for calculating the dumping margin, the workshop exposed them to the method of how to adjust normal value and to comply with fair comparison requirements. They also became familiar with the “constructed cost methodology” and the concept of “particular market situation” with the South-East-Asian context.
- Public- and private-sector participants increased their capacities in trade remedy and trade defense dispute settlement. As most workshop participants had never been directly involved in a trade dispute settlement at the WTO, the moot court activity allowed them to become more aware of how to prepare for building a strong case before the DSB and understand the importance of involving the private sector in trade remedy investigations in order to collect as much information as possible.

### Participant Feedback

All participants reported that their skills and knowledge improved as a result of the workshop on trade remedies. Fifty-one per cent said that their new level of confidence in applying the knowledge was “excellent” or “very good,” another 35 per cent said “good,” and 4 per cent said “fair.”

Seventy-seven per cent said they would use the knowledge from the training “very frequently,” or “frequently” in their work, while 18 per cent said “occasionally” and 5 per cent said “rarely.”

The participants reported high overall satisfaction with the training. Fifty-seven per cent gave a satisfaction rating of “excellent,” 39 per cent said “very good,” and 4 per cent gave a “good” rating.



Participants celebrate a successful workshop.

## About the TPSA Project

TPSA is a five-year C\$12-million project funded by the Government of Canada through Global Affairs Canada. The project is executed by The Conference Board of Canada, and the primary implementation partner is the Directorate General for National Export Development, Ministry of Trade.

TPSA is designed to provide training, research, and technical assistance to Indonesian government agencies, the private sector—particularly small and medium-sized enterprises (SMEs)—academics, and civil society organizations on trade-related information, trade policy analysis, regulatory reforms, and trade and investment promotion by Canadian, Indonesian, and other experts from public and private organizations.

The overall objective of TPSA is to support higher sustainable economic growth and reduce poverty in Indonesia through increased trade and trade-enabling investment between Indonesia and Canada. TPSA is intended to increase sustainable and gender-responsive trade and investment opportunities, particularly for Indonesian SMEs, and to increase the use of trade and investment analysis by Indonesian stakeholders for expanded trade and investment partnerships between Indonesia and Canada.

The expected immediate outcomes of TPSA are:

- improved trade and investment information flows between Indonesia and Canada, particularly for the private sector, SMEs, and women entrepreneurs, including trade-related environmental risks and opportunities;
- enhanced private sector business links between Indonesia and Canada, particularly for SMEs;
- strengthened analytical skills and knowledge of Indonesian stakeholders on how to increase trade and investment between Indonesia and Canada;
- improved understanding of regulatory rules and best practices for trade and investment.

For further information, please contact the Project Office in Jakarta, Indonesia:

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