



ACWL delivers Training Program on WTO Law and Dispute Settlement for Indonesian Government Officials in Yogyakarta

More than 70 Indonesian government officials were equipped with increased knowledge and skills on WTO law and dispute settlement in order to better defend Indonesia's interests at the WTO and other trade forums in the future.

Background

Indonesia is a founding member of the World Trade Organization (WTO) and an active participant in WTO dispute settlement proceedings. Since 1995, Indonesia has been a complainant in 11 disputes, a respondent in 14 disputes, and a third party in 37 disputes. In the early years of the WTO, Indonesia was more often a complainant. In recent years, however, Indonesia has more frequently been a respondent, as more disputes have been brought against it.

These trade disputes have touched on many sensitive issues that require a solid understanding of WTO rules and requirements by Indonesian policy-makers and careful management by the Government of Indonesia (GoI). The disputes have involved several WTO agreements, including the General Agreement on Tariffs and Trade (GATT) 1994, the Agreement on Agriculture (AoA), the Import Licensing Agreement (ILA), the Technical Barriers to Trade (TBT) Agreement, and the Sanitary and Phytosanitary Measures (SPS) Agreement. Indonesia also has policy interests in the management of trade disputes relating to the General Agreement on Trade in Services (GATS), the Trade-Related Investment Measures (TRIMs) Agreement, the Subsidies and Countervailing Measures (SCM) Agreement, and other WTO trade agreements.



Participants at the training program on WTO law and dispute settlement.

The GoI is aware of the importance of building its trade-related capacity, particularly in the areas of WTO law and trade dispute settlement. More importantly, all relevant ministries/agencies involved in drafting national laws and regulations on international trade and investment should be properly trained on WTO rules and principles, so that Indonesia's laws and regulations are consistent with them and cannot later be challenged by other WTO members. Therefore, the GoI approached the Advisory Centre on WTO Law (ACWL) in Geneva to train Indonesian government officials on WTO law and dispute settlement.



At the request of the Indonesian Ministry of Trade (MoT) and the Indonesian Mission to the WTO in Geneva, the Canada–Indonesia Trade and Private Sector Assistance (TPSA) project was pleased to support the ACWL lawyers during the training program, which took place in Yogyakarta from March 26 to 29, 2019.

Activity Description

The overall objective of the ACWL training program in Yogyakarta was to train Indonesian officials on WTO law and dispute settlement to help them better understand WTO rules and regulations and defend Indonesia's interests within the trade dispute mechanism.

Three ACWL experts travelled from Geneva to Yogyakarta to deliver the four-day training program:

- Cherise Valles, Deputy Director
- Vitaliy Pogoretsky, Counsel
- Tatiana Yanguas Acosta, Counsel

More than 70 Indonesian participants from the MoT, Ministry of Industry, Ministry of Fishery and Marine Affairs, Ministry of Foreign Affairs, Coordinating Ministry of Economic Affairs, other government ministries and agencies, and a few private sector trade lawyers and university law professors attended this intensive training workshop. The program was intended to equip Indonesian government officials with increased knowledge and skills on WTO law and selected trade dispute cases, particularly those involving Indonesia

either as complainant or as defendant in the WTO litigation process.

The training program was divided into 22 sessions/modules. It combined lectures with case studies and practical exercises that were effective in helping participants understand WTO rules and the complicated legal procedures of the dispute settlement mechanism.

"The ACWL training held in collaboration between TPSA project, WTO, and Ministry of Trade has really provided me great benefits, especially on insights into dispute resolution in DSB-WTO. The training material provided was systematic and comprehensive in explaining the process of the lawsuit, the trial, and results in accordance with the existing rules. I hope there will be a continuous training series to deepen my understanding. Thank you to the committee, resource persons and the Government of Canada for facilitating this training."

—HELENA J PURBA
Researcher, Ministry of Agriculture

Moga Simatupang, Secretary of the Directorate General of International Trade Negotiations of the MoT, offered opening remarks on Day 1. He provided background on Indonesia's WTO and FTA negotiations and trade disputes with other countries, emphasized the importance of Indonesian government officials' knowledge and skills in managing trade disputes, and welcomed the opportunity to learn from the ACWL experts.

Wenguo Cai, Director of International Programs for The Conference Board of Canada, echoed the importance of trade-related capacity-building for Indonesian government officials, particularly in the areas of WTO law and trade dispute settlement. In addition, he provided background information about the TPSA project and expressed his strong support for the ACWL training program.

Cherise Valles, Deputy Director of the ACWL, noted that Indonesia is an important member of that organization. Since Indonesia joined the ACWL



Left to right: Wenguo Cai, Vitaliy Pogoretsky, Moga Simatupang, Cherise Valles, and Tatiana Yanguas Acosta.



Moga Simatupang, Secretary of the Directorate General of International Trade Negotiations of the MoT, opens the training program.

in 2004, its experts have provided 85 legal opinions to Indonesia and offered legal assistance in six WTO dispute cases. ACWL experts also conduct training activities for Indonesian officials in Geneva.

The balance of Day 1 focused primarily on an introduction to WTO rules, principles, structure, exceptions, and the Dispute Settlement Understanding (DSU). The issues discussed include most-favored-nation (Article I), national treatment (Article III), prohibition of quantitative restrictions (Article XI), and schedules of concessions (Article II). The ACWL experts explained in detail the general exceptions (Article XX) and security exceptions (Article XIX). These are fundamental principles and exceptions of the GATT/WTO. The ACWL team used many WTO cases to illustrate those principles and exceptions. They explained the dispute settlement mechanism, consultations, panel, and appellate body proceedings. Practical exercises that asked participants to apply hypothetical cases to the GATT/WTO principles and exceptions helped enhance their understanding of the information presented during these sessions.

Day 2 was devoted to Indonesia's goods and services schedules, focusing on the possibilities of modification and rectification of goods and services schedules. It also covered the TRIMs Agreement and the ILA. These schedules and agreements are highly relevant to Indonesia, and the experts used Indonesian cases to explain the obligations in goods and services schedules, emphasizing

that Indonesian government officials should pay special attention to WTO law and dispute settlement. Following the lectures, participants were divided into groups and asked to respond to 18 questions regarding the TRIMs and the ILA, to help them develop a better understanding of the two agreements.

"I congratulate and thank the Government of Canada and the TPSA project for the successful implementation of the training with ACWL. From this training, I better understand how to formulate national policies oriented to our national interests that relate to trade while remaining within the WTO agreement."

—ANGGA HANDIAN PUTRA
Head of Dispute Settlement Section, Ministry of Trade

Day 3 focused on two technical agreements of the WTO, the SPS Agreement and the TBT Agreement. The SPS Agreement emphasizes risk assessment and scientific evidence required for the application of SPS measures. Such measures should not be applied in a discriminatory manner, nor should they be more trade-restrictive than required. Three aspects of the TBT Agreement were explained in detail: the standards, technical regulations, and conformity assessment procedures. The ACWL experts used many cases to illustrate these technical trade agreements, which play an important role in WTO trade dispute settlement. A group discussion of four technical questions supported participants' learning about SPS- and TBT-related issues, particularly those involving Indonesia.

Day 4 covered two other important WTO agreements: the Subsidies and Countervailing Measures Agreement (SCM) and the Agreement on Agriculture (AoA). In connection with the SCM, ACWL experts focused on the concepts of financial contribution, benefit of subsidies, and actionable and non-actionable subsidies, and showed participants how to calculate subsidization margins and countervailing duty rates. They further explained the three pillars of the AoA: export competition, market access, and domestic support. In addition, in connection



ACWL experts conduct the training.

with the AoA, the experts gave detailed explanations on agricultural subsidies and how the green, blue, and development boxes could be further explored to support the agricultural sector. They indicated that there is some flexibility for developing countries in both the SCM and the AoA, if Indonesia wants to maintain some “policy space.”¹ Indonesian officials must give more thought to their draft laws and regulations and overall objectives to ensure they are consistent with Indonesia’s obligations and commitments under the WTO agreements before they are published and implemented. Otherwise, they could be challenged by other WTO members using the dispute settlement mechanism.

Key Takeaways and Conclusions

- It is crucial to understand the rules and exceptions that WTO members, including Indonesia, have negotiated and agreed upon as the cornerstone of the multilateral trading system. GoI officials must ensure that Indonesian laws and regulations are consistent with WTO rules and principles. It is equally important to understand the WTO exceptions in order to make use of them to advance Indonesia’s negotiating positions and defend its interests.
- As a developing country, Indonesia should make use of the WTO’s flexibility to retain some policy space in a WTO-consistent manner. Indonesia and other developing countries can negotiate fewer obligations and take more time to implement certain commitments, according to WTO rules. As a result, Indonesia could have some policy space in the trade liberalization process. However, those concessions and

transitional arrangements (so-called “WTO flexibility” for developing members) should be consistent with WTO rules and agreements. Indonesian officials should be aware of those flexibilities and of the impact of applying them to Indonesia.

- All relevant government ministries/agencies involved in preparing national laws and regulations should be aware of WTO rules and principles to ensure consistency with WTO rules. This will remove any possibility for other WTO members to challenge Indonesian laws and regulations.
- Trade competitiveness will be the key for Indonesia to expand its export potential in the world marketplace. Indonesia could consider temporary measures to protect its enterprises from foreign competition, as long as these measures are WTO-consistent and negotiated with other trading partners. However, Indonesian businesses should compete in the global marketplace. More competitive enterprises will win greater market share, while protectionist measures may act as barriers to prevent Indonesian enterprises from competing in the world market.
- Indonesia has become increasingly involved in disputes with its trading partners. It is important for Indonesian government officials and private sector business associations to regularly monitor WTO dispute settlement proceedings and actively participate in trade dispute proceedings at the WTO and other trade forums. This requires Indonesian government officials to understand WTO rules and regulations and dispute settlement procedures. Indonesian government officials should also work closely with private sector companies to defend Indonesia’s trade interests, either as a complainant or as a defendant.
- Indonesian government officials and private sector representatives should continue strengthening their trade-related capacities, particularly in the areas of WTO law and dispute settlement. Indonesia should be prepared for more disputes with trading partners, given that Indonesia is an active participant of the WTO system and has some pending WTO dispute cases with other members. As a result, both government agencies and private sector groups



Participants during the Q&A session.

should explore more trade-related technical assistance opportunities (similar to those provided by ACWL and TPSA) to continue trade-related capacity-building in Indonesia.

Participant Feedback

All participants reported that their skills and knowledge had improved as a result of the workshop. Fifty-seven per cent said that their new level of confidence in applying the knowledge was excellent or very good, another 29 per cent said good, and 14 per cent said fair. Seventy-five per cent said they would use the knowledge gleaned from the training very frequently or frequently in their work, while 25 per cent said occasionally. The participants reported high overall satisfaction with the training: Twenty per cent gave a satisfaction rating of excellent, 71 per cent said very good, and 9 per cent gave it a good rating.

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 infor-

mation, 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:

Mr. Gregory A. Elms, Field Director

Canada-Indonesia Trade and Private Sector Assistance (TPSA) Project

Canada Centre, World Trade Centre 5, 15th Floor
Jl. Jend. Sudirman Kav 29-31 Jakarta 12190, Indonesia

Phone: +62-21-5296-0376, or 5296-0389

Fax: +62-21-5296-0385

E-mail: greg@tpsaproject.com

ENDNOTE

¹ The term "policy space" refers to the scope for pursuing domestic policies, especially in the areas of trade, investment, and industrial development, within the confines of international rules and commitments. Sheila Page, *Policy Space: Are WTO Rules Preventing Development?* Briefing Paper #14 (London: Overseas Development Institute, January 2007), accessed May 1, 2019, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/106.pdf>.