Abstract
There has been an anxiety over the rise of the spirit of national interest on the existence of World Trade Organization. This spirit that has been reflected from domestic trade policy, to some extent, has undermined trade negotiation process under the WTO as shown by the failure of the Doha Round to conclude significant trade deals. Countries also started concluding bilateral and regional trade agreements instead of the WTO. This article aimed to analyze whether the rise of the spirit of national interest has threaten the existence of the WTO agreements, putting Indonesia as a case study. This article is a normative research, analyzing the dynamics development of the national interest under the WTO, especially Indonesia, and how the judicial body has responded the rise of this spirit in its decisions. This article argues that the spirit of national interest will not threaten the existence of WTO as this spirit has existed from the early establishment of the General Agreement on Tariffs and Trade in 1947 to the latest WTO negotiation. Moreover, the existence of the WTO judicial body will secure the existence of the WTO, especially because it has successfully controlled the overwhelming spirit of national interest of its members through its decisions.

Keywords: case study, Indonesia, international agreement, the spirit of national interest, WTO.

Kebangkitan Semangat Kepentingan Nasional dan Eksistensi Persetujuan World Trade Organization: Studi Kasus Indonesia

Abstrak
Telah timbul suatu kekhawatiran atas bangkitnya semangat kepentingan nasional terhadap eksistensi persetujuan WTO. Semangat ini yang tercermin dari kebijakan perdagangan domestik telah menghambat proses negosiasi perdagangan di bawah WTO sebagaimana ditunjukkan oleh kegagalan Putaran Doha dalam menyetujui kesepakatan perdagangan. Negara-negara juga mulai menyetujui kesepakatan perdagangan yang lebih bersifat bilateral dan regional. Artikel ini bertujuan untuk menganalisis apakah bangkitnya semangat kepentingan nasional telah mengancam eksistensi kesepakatan WTO, dengan menjadikan Indonesia sebagai studi kasus. Artikel ini adalah penelitian normatif, menganalisis perkembangan dinamika kepentingan nasional di bawah WTO, khususnya...
Indonesia, dan bagaimana badan judisial merespon bangkitnya semangat ini dalam keputusannya. Artikel ini berpendapat bahwa semangat kepentingan nasional tidak akan mengancam keberadaan WTO karena semangat ini telah ada sejak awal berdirinya GATT di 1947 sampai negosiasi WTO terakhir. Melalui keputusan-keputusan yang telah dihasilkan, keberadaan badan penyelesaian sengketa dalam WTO akan menjamin eksistensi WTO, terutama karena telah berhasil mengendalikan semangat kepentingan nasional dari anggota WTO.

Kata kunci: studi kasus, Indonesia, perjanjian internasional, semangat kepentingan nasional, WTO.

A. Background

The World Trade Organization (WTO) has existed since the last two decades. It has triggered the increase of international trade that subsequently lead to other significant benefits, such as providing more jobs in the short term, resulting 'substantive productivity gains', and supporting the Sustainable Development Goals (SDGs) especially in order to alleviate poverty and hunger. WTO is important to reach world peace and stability. When governments concluded agreements, it was not only to reach economic prosperity but also security. Moreover, WTO has provided more rules-oriented dispute settlement process and promised a fair solution, putting all members in the equal position.

Indonesia has been a member of the General Agreement on Tariffs and Trade (GATT) since 24 February 1950 and the WTO since 1 January 1995. Indonesia was involved in groups that promoted particular trade issues during the WTO negotiations. Almost in every negotiation, Indonesia committed to reduce its tariffs on trade. For example, in 2012, the Government issued Indonesian Custom Tariff Book that has resulted in a 10 percent reduction in the total number of MFN applied tariff lines.

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Since the last decade, the spirit of national interest may threaten the existence of WTO, looking at its failure to conclude significant trade deals. Specifically, the Doha Development Agenda (DDA) was declared 'dead'\(^8\) due to the harsh disagreement between developed countries and developing countries on issues relating to trade remedies and agriculture.\(^9\) Besides, there was also considerable debate against and between the EU and the USA relating to their agricultural subsidies for domestic industries.\(^10\) This failure became one of the reasons why WTO member states seem to prefer concluding bilateral and regional trade agreements.

The spirit of national interest has been reflected from domestic trade policy. This policy can take different forms, including measures favoring domestic companies, the increase of tariff barriers, monopoly actions, and anti-immigration policies.\(^11\) For instance, some members of the EU increased trade barriers to cross-border mergers and acquisitions because of the fear of losing national pride and jobs in consequence of merger measures.\(^12\) In a recent case, the Trump administration employs anti-dumping measures to unilaterally condemn any countries or companies whose products are damaging domestic producers.\(^13\) Indonesia itself still employed several non-tariff barriers (NTBs), such as import licenses and export restrictions despite it has successfully reduced its tariffs.\(^14\)

Under the dispute settlement system under the WTO, some members have brought the case as opposed to other members’ measures in relation to the protection of national interest. On 25 January 2017, the United States (US) brought a case before the Dispute Settlement Body (DSB) over China's measure on providing discriminatory support only for domestic agricultural producers.\(^15\) Two days later (27 January 2017), Canada requested a consultation under the DSB, complaining China's subsidies to domestic producers of primary aluminum.\(^16\) Indonesia is also involving in the DSB process. On 29 April 2016, Brazil requested a consultation,

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\(^8\) Ibid, p. 27.
\(^10\) Ibid.
claiming Indonesia has conducted illegal measure in relation to the importation of Bovine Meat. ¹⁷ Meanwhile, on 15 July 2016, Indonesia requested a consultation, arguing that the US’s imposition of anti-dumping and countervailing measures on certain coated paper products from Indonesia has violated, among other things, the Agreement on Subsidies and Countervailing Measures (SCM) and Anti-dumping Agreement. ¹⁸

This article argues that the spirit of national interest will not threaten the existence of WTO as this spirit has been exist from the early establishment of the General Agreement on Tariffs and Trade in 1947 to the latest WTO negotiation. Moreover, the existence of dispute settlement system will secure the existence of the WTO, especially because it has successfully controlled the overwhelming spirit of national interest of its members through its decisions. This article starts by explaining the theory of comparative advantage, analyzing whether it has contributed to the common prosperity through international trade. This article then turns to describe how the dynamic development of the WTO has always been colored with the spirit of national interest. The explanation of the dispute settlement mechanism under the WTO shows how this system, to some extent, is still effective to distinguish the national interest and the political elite’s interest of its members. Next, this article explains the dynamic participation of Indonesia in the WTO, showing how the spirit of national interest has existed since the old order. Finally, this article explains how the judicial body under the WTO has responded Indonesia's measures that were imposed to protect its national interest.

B. Theoretical Framework

1. The Theory of Comparative Advantage behind the Establishment of the World Trade Organization

The theory of comparative advantage remains relevant for modern trade practices.¹⁹ This theory explains the reliance of trade agreements on trade liberalization as a means of reaching broader policy objectives.²⁰ The preamble of the WTO agreement identifies the reduction in barriers to trade as a means of achieving the goals of raising 'standards of living' and ensuring 'full employment'.²¹

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²⁰ Ibid.
In *The Wealth of Nations*, Adam Smith canvassed how international trade provides benefits by stating that: “If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage...”²²

David Ricardo then described the theory of ‘comparative advantage’ in his book *On the Principles of Political Economy and Taxation* in 1817.²³ Illustrating world economy only consist England and Portugal with only two goods, cloth and wine, were produced, he then stated that

“England may be so circumstanced, that to produce the cloth may require labour of 100 men for one year, and if she attempted to make wine, it might require the labour of 120 men for the same time. England would therefore find it her interest to import wine, and to purchase it by the exportation of cloth. To produce the wine in Portugal might require only the labour of 80 men for one year, and to produce the cloth in the same country might require the labour of 90 men for the same time. It would therefore be advantageous for her to export wine in exchange for cloth.”²⁴

Bearing in mind this theory, Heckscher and Ohlin elaborated what constituted comparative advantage. They revealed that the relative endowments of the factors of production, including land, labor, and capital, determined countries’ comparative advantage.²⁵ Countries exported products that utilized their plentiful and inexpensive factors of production as their ‘comparative advantage,’ and imported products that utilized their rarer and more expensive factors.²⁶ For example, Indonesia (in which labor and land are plentiful but capital is lacking) has a comparative advantage in producing coffee that require significant labor and land but little capital. According to the theory, Indonesia should therefore produce and export coffee while importing cars that require significant capital.

The theory comparative advantage, however, to some extent, conflicted with the theory of 'Justice as Fairness'. The theory of comparative advantage has neglected the fact that countries have uneven level of development so that free

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²⁴ Ibid.
trade should be interpreted as fair trade. Inspiring social contract theory, John Rawls explained the conception of justice that should not only benefit the most advantaged parties, but also the least advantaged parties/groups in society.²⁷ Rawls put emphasis on how a fairly distributed procedure took place in society.²⁸ Through the principle of Fair Equality of Opportunity and the Difference Principle, Rawls argued that a community cannot organize dissimilarities to exploit the share of the least advantaged whereas not permitting access to certain positions.²⁹

International leading scholars then pointed out how trade liberalization has not benefited yet the least advantaged parties. Muhammad Yunus, a Nobel Peace Prize winner, suggested that trade liberalization led to income inequality, pointing out that “ninety-four percent of the world income goes to 40 percent of the population while sixty percent of people live on only 6 percent of world income”.³⁰ Stiglitz warned that fast-moving trade liberalization without any “safety nets, with insufficient reciprocity and assistance on the part of developed countries, can contribute to an increase in poverty”.³¹ Likewise, Krugman and Obstfeld explained that free trade can only work “if all other markets are working properly”.³² If they are not, governmental intervention is required to mitigate the effects of market failures.³³

2. Recent Studies Explaining the Relationship between the National Interest and the Existence of the World Trade Organization

Some studies explained how the spirit of national interest is linked to the existence of the WTO. Regan (2006) stated that there always are two possibilities of the role of WTO as multilateral trade agreement whether it restricts deliberate exploitation of market power or it restricts the spirit of national interest in the forms of protectionism.³⁴ A study by Naoi (2009) examined that WTO members used WTO

³³ Ibid.
instead of bilateral or unilateral agreements to impose protective measures to protect local industries, employing WTO legal instruments, such as voluntary export restraints and subsidy.³⁵ Chang-fa Lo (2013) then explained how the spirit of national interest has been reflected when members take advantage from the vague concept of 'disguised restriction', 'arbitrary or unjustifiable discrimination' under the WTO by imposing protective trade measures.³⁶ Similarly, Cottier (2015) stated that protectionism and local content requirements have become the most popular policy instruments to protect national interest under trade agreements.³⁷

There have been studies showing the practice of WTO members to protect their national interest. Becker (2007) pointed out how the US and the EU have maintained their subsidies programs for domestic producers and employed export cartel exemptions.³⁸ Wu (2011) revealed that although China joined WTO in 2001, China has applied many protective and discriminatory trade measures.³⁹ Takeuchi (2013) even argued that this practice was not different than the period when China was negotiating for accession to the WTO.⁴⁰ Facchini (2010) then denoted how Latin American governments imposed import restrictions to control goods from particular countries, such as China and India.⁴¹

Although abovementioned studies have explained the relationship between national interest and the existence of the WTO, none of them specifically investigated that the national interest's spirit has been exist since the establishment of the GATT in 1947 and related to the existence of the WTO judicial body. Equally, some studies have put the practice of national interest from WTO members, but it has not yet examined or covered Indonesia.

C. The Dynamic Developments of the World Trade Organization and the Spirit of National Interest

1. Breton Woods and the Establishment of the General Agreement on Tariffs and Trade 1947

Having experienced the Second World War, countries realized the significance of international institutions in reducing the likelihood of another world war.\textsuperscript{42} The Geneva Conference in 1947 successfully issued a multilateral treaty that so called the GATT 1947.\textsuperscript{43} However, the Charter for the ITO was yet to be agreed.\textsuperscript{44} The Havana Charter of 1948 subsequently tried to embody the ITO to complement the Breton Woods system.\textsuperscript{45} The refusal of the US Congress to ratify this treaty then led to the failure of the ITO.\textsuperscript{46} This process reflected how the seed of national interest (USA Congress) had risen that subsequently colored every trade negotiations under the GATT and WTO.

The failure of ITO did not make an absence of international trade law because the GATT 1947 gradually became a legal framework.\textsuperscript{47} Due to the high spirit of national interest, the first four negotiations did not make any significant progress in reducing tariff on a multilateral ground.\textsuperscript{48} The Kennedy Round of the 1960s, then necessarily reduced an average tariff to be 35 percent among the participants.\textsuperscript{49} By the 1980s, trade in agriculture and trade in services became major concerns of the GATT 1947 contracting parties.\textsuperscript{50} Due to the overwhelming spirit of national interest (protectionism), agricultural sectors declined to a tiny portion, damaging many agricultural leading exporters.\textsuperscript{51}

2. The Uruguay Round and the Establishment of the World Trade Organization

The Uruguay Round at Punta del Este, Uruguay in 1986 was the last trade negotiation under the framework of GATT 1947 that eventually concluded in


\textsuperscript{43} The General Agreement on Tariffs and Trade, opened for signature 30 October 1947, 55 UNTS 187, entered into force 1 January 1948 (GATT 1947).

\textsuperscript{44} Mitsuo Matsushita (et.al), The World Trade Organisation, Oxford: Oxford University Press, 2015, p. 2.


\textsuperscript{47} Mitsuo Matsushita (et.al), Op.cit., p. 3.

\textsuperscript{48} Ibid.


\textsuperscript{51} Ibid.
Marrakesh, Morocco, in April 1994. The outcome of the Uruguay Round was commendable as it considerably expanded the scope and content of trade rules, governing the international trading system. Firstly, the Uruguay Round successfully established the WTO as a new international organization on trade equipped by various treaty-based, institutional articles including 'Members' instead of 'Contracting Parties'. Moreover, the establishment of the dispute settlement system, comprising ad hoc Panels and a standing Appellate Body, provided more judicial than political character for resolving any disputes, especially because it has more enforceable sanctions and compliance mechanisms than GATT 1947.

The appealing approach of the Uruguay Round was the implementation of 'single undertaking' system wherein all participants who intended to be members of the WTO were required to accept the WTO agreement and associated legal instruments, such as General Agreement on Trade in Services (GATS) and Annexes, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). This approach seemed to curb the overwhelming spirit of national interest from its member states because they were not allowed to choose particular agreements under WTO that suited to them and disobey agreements that contradicted with their national interests.

3. The Doha Development Agenda
After Uruguay Round, as the highest-level body of the WTO, Ministerial Conference held a meeting no less often than every two years. In Doha (2001), members started the Doha Round that so-called the DDA, reflecting one of the main objectives to promote issues relating to trade and development. Following the interest of developing countries, members intended to strengthen Special and Differential Treatment (SDT) in order to make it right on target. Specifically, members agreed to strengthen the 'enabling clause', allowing developed countries

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53 Ibid.
54 Article I of the WTO Agreement 1995.
57 Matthias Herdegen, Loc.cit.
58 Article II of the WTO Agreement 1995. See also Rafael Leal-Arcas, “Proliferation of Regional Trade Agreements: Complementing or Supplanting Multilateralism?”, Chicago Journal of International Law, Vol. 11, No. 2, 2011, p. 597.
to provide more favorable treatment and non-reciprocal differential treatment to developing countries.⁶²

After long and winding negotiation process, DDA failed to conclude significant outcome,⁶³ wherein Pascal Lamy, the Director-General of the WTO eventually declared in 2011 that the DDA was ‘dead’.⁶⁴ The main caused was the disagreement between developed countries (The USA, EU, and Japan) and developing countries (Brazil, China, India, and South Africa) on issues relating to trade remedies, agriculture, NTBs, and services.⁶⁵ There was also substantial debate against and between the EU and the USA relating to their agricultural subsidies program.⁶⁶

The failure of the WTO to achieve significant agreement would change its future. Major trading parties, such as the USA and the EU, have initiated some Preferential Trade Agreements (PTAs) both regionally and bilaterally as alternative forum to pursue trade liberalization and trade integration instead of the WTO.⁶⁷ Equally important, the WTO would likely function to administer, to monitor, and to enforce existing trade agreements rather than a forum to yield new trade commitments.⁶⁸


The existence of Dispute Settlement Body (DSB) and Appellate Body (AB) of WTO is important to avoid members in employing the national interest concern as a means of justifying any violation of WTO agreement. Some experts have positively assessed the existing dispute settlement mechanism under the WTO.⁶⁹ Unlike the GATT, the DSB has successfully introduced the precise time limits throughout the dispute settlement process.⁷⁰ Lockhart and Voon presumed that appellate review in the WTO was working well, and experts remarked on the effectiveness and efficiency of appellate review that have contributed to the development of international trade law.⁷¹ Similarly, Guzman and Pauwelyn stated that the dispute settlement process was one of the most remarkable and successful aspects of the WTO.⁷²

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⁶⁴ Ibid, p. 27.
⁶⁶ Ibid.
⁷⁰ Ibid.
Some WTO judicial decisions have responded countries' measures that were imposed in relation to the promotion or protection of national interest. In *Japan – Leather II (US)*, Japan obliged importers of certain types of leather to receive import licenses and to obey with import quotas in order to protect the jobs of a certain minority group that is the Dowa People. Japan argued that the Dowa people were in the least advantaged situation both economically and socially because of unfair treatment based on a traditional class system. However, the panel invalidated Japan's measure as it had nullified or impaired benefits to other members, that is the US. Furthermore, in *Japan – Alcoholic Beverages II*, Japan imposed a lower tax on its traditional drinks compared to cognac, whisky, and white spirits, arguing that Japanese consumers culturally put *shochu* as different from those alcohol drinks and consumed it in different ways and settings. The Panel and Appellate Body then banned this measure because it fell within the meaning of 'internal taxation' so that it is contradicted with GATT Article III:2.

In *China – Audiovisual*, China through its state-owned firms, screen publications, such as audio and video products including CDs, DVDs, books and newspapers. China reasoned that its measures was important as an preventive measure for reaffirming that those products did not have any pornography that inconsistent with cultural and societal value in China. Both the Panel and the Appellate Body decided this measure as illegal as it led to unfair conducts where China obliged the business of importing publications must be functioned by an exclusively State-owned firms, and omitted foreign firms from being permitted as publication importers so that this measure was not fall within the scope of general exception under GATT Article XX.

In the future, the supremacy of the WTO judicial body's decision that controlled the overwhelming spirit of national interest will secure the existence of the WTO. Nevertheless, the primary role of the WTO will be more focused on supervising and upholding the existing trade agreements instead of concluding new trade deals.

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74 Japan-Leather II Panel Report [15], [17]–[18].
75 Japan-Leather II Panel Report [21]–[22].
76 Japan-Leather II Panel Report [44].
79 Japan – Taxes on Alcoholic Beverages AB Report [32].
81 China-Audiovisual Panel Report [4.113-4.120].
82 China-Audiovisual Panel Report [4.113-4.120].
D. The Dynamic Participation of Indonesia in the World Trade Organization and the Spirit of National Interest

1. Old Order (1945-1966)

In the early period of its participation, Indonesia made only a few trade commitments to other contracting parties. In the Kennedy Round (in 1964 and in 1967), through its statement of offers, Indonesia agreed to reduce import restrictions only on cloves and raw jute. According to supplementary offers in 1966, Indonesia then committed to reduce tariffs on the importation of raw materials, and semi-finished goods.

The considerations of the statement of offers could explain why Indonesia made a few commitments during the Kennedy Round, especially related to the national interest at that time. The government of Indonesia stated that any trade commitments would be carried out, according to the economic and social development in Indonesia. The government indicated that the predominant factor restricting the importation of foreign goods was the limited availability of foreign exchange. Furthermore, the government had undertaken tariff reform to encourage and protect domestic industries. Further, Indonesia only agreed to the elimination or reduction of tariff and non-tariff barriers imposed upon export products of interest of Indonesia.

The trade policy in Sukarno's administration could explain why Indonesia was not really active and made a few commitments in every trade negotiations. First, Indonesia was an exporter of primary products, such as oil and rubber so that market access was not Indonesia's interest. Next, the government still wanted to impose high tariff on import because trade taxes were the primary source of government income. A controversial policy (that was called “Benteng”) was

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87 Ibid.
88 Ibid.
91 Douglas H Brooks and Guntur Sugiyarto, “Can the Poor Benefit from the Doha Agenda? the Case of Indonesia”,
enacted in April 1950 by giving a special treatment through soft and cheap credit to 'native' Indonesia while importing goods from overseas. The goal of this measure was to assist Indonesian amid the existence of the Dutch and the Chinese that dominated export and import process in Indonesia.


The first participation of Indonesia under this order was the Tokyo Round from 1973 to 1979. During this round, Indonesia played a limited role. The only publicly available document explaining the contribution of Indonesia in this Round was a list of tariff concessions as a result of the bilateral negotiation between Indonesia and the USA. In that document, Indonesia agreed to reduce tariffs on meat (frozen turkeys), fresh fruits (grapes), vegetable protein, and aircraft parts.

Some reasons in relation to national interest could explain why Indonesia maintained its passive role during the Tokyo Round. In the first decade, similar to old order, new order seemed to apply protectionism. Because of its position as oil exporter, the rise of oil price provided massive gain so that the government considered the multilateral trade negotiation was not necessary for boosting Indonesian economy. Besides, the Government needed to restrict foreign trade through high tariffs and a multitude of NTBs in order to protect domestic industries. Suharto also increased import quotas, benefitting his cronies that commonly owned and dominated local companies in Indonesia.

Indonesia was more active in the Uruguay Round due to the rise of manufactured and processed goods in Indonesia. Indonesia was involved in some groups that discussed some specific issues that suited to the Indonesia's interest at that time. First, Indonesia joined in a coalition that so-called 'The Cairns Group', consisting of 19 developed and developing agricultural exporting countries. This

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93 Ibid.
95 Ibid.
98 Dan Marks, Zandenn and Jan Luiten Van, An Economic History of Indonesia, Oxford: Taylor and Francis, 2013, p. 171.
101 Ibid.
group had main goals to reform global agricultural trade by promoting free trade in agriculture and omitting the export subsidy that resulted agricultural crisis in the late 1980s.¹⁰²

3. Reformation Order (1998-now)

The first participation of Indonesia under this order was the Doha Round. In this round, Indonesia participated in groups that promoted particular trade issues that also benefitted Indonesia’s interest. Indonesia continued its participation in the Cairns Group.¹⁰³ This group kept promoting the significance of substantial reductions in trade-distorting domestic support and the removal of export subsidies.¹⁰⁴ Indonesia also joined G-20, developing countries coalition to propose reforms of agriculture in developed countries with some flexibility for developing countries.¹⁰⁵ Indonesia then chaired G-33 and became the host of G-33 meeting.¹⁰⁶

As its participation under the WTO, Indonesia continued to reduce its tariff. While in 1995 the average tariff rate was 15.6 percent, the average tariff rate had decreased to 7.2 percent in 2003.¹⁰⁷ In 2004, a tariff harmonization program was announced, providing a tariff reduction schedule between 2004 and 2010.¹⁰⁸ According to this schedule, 94 percent of tariff lines would have rates at or below 10 percent by 2010.¹⁰⁹ In 2012, the Government issued Indonesian Custom Tariff Book (BTKI), following the World Custom Organization HS2012 nomenclature and the AHTN.¹¹⁰ This policy has resulted in a 10 percent reduction in the total number of MFN applied tariff lines.¹¹¹ Specifically, the simple average MFN applied rate was 7.8 percent, including ad valorem equivalent duties.¹¹² However, Indonesia still applied import licensing system to secure national interest in relation to health protection, ecological environment, security, and public moral. Other purposes of this measure is to reach socio-economic objectives, such as improving national competitiveness and avoiding smuggling actions.¹¹³

¹⁰² Ibid.
¹⁰³ Ibid.
¹⁰⁴ Ibid.
¹⁰⁶ OECD, Globalisation and Emerging Economies: Brazil, ..., Loc. cit.
¹⁰⁹ Ibid.
¹¹¹ Ibid.
¹¹² Ibid.
Since the last six years, there have been some indications how the spirit of national interest has risen. Firstly, in 2011, a group of non-governmental organization (NGO) brought a complaint to the Constitutional Court of Indonesia, claiming that the Law Number 38 of 2008 on the Ratification of Charter of the Association of Southeast Asian Nations had contradicted to the constitution of Indonesia. The ratification would endanger the economic rights of Indonesian and it was suspected as the new colonialism and imperialism. The constitutional court, through the decision No. 33/PUU-IX/2011 finally refused the NGO’s entire claim.¹¹⁴

In 2014, the government enacted Law Number 3 of 2014 on Industry (Law on Industry). The spirit of national interest is reflected in some articles. Article 31 mentions that, in order to improve value added to natural resources, the government will encourage domestic processing productions.¹¹⁵ In the same way, Article 32 states that the government may restrict the export of natural resources in order to enhance the value added of domestic industry.¹¹⁶ The government then enacted the Law Number 7 of 2014 on Trade. The controversial issue can be found in Article 85 by stating that, subject to approval of House of Representatives, the government may reconsider and cancel international trade agreements' approval based on the concern of national interest.¹¹⁷ The law, however, did not further elucidate what the meaning of cancellation, and what constitute a national interest. This law may contradict with the provision on the termination in the Vienna Convention on the Law of Treaties of 1969.¹¹⁸

4. Indonesia’s National Interest and the World Trade Organization Judicial Body’s Decision

Under the WTO, Indonesia has involved in some WTO cases both as a complainant and a respondent. Some important cases, especially related to national interest issue are hereby explained. In Indonesia – Certain Measures Affecting the Automobile Industry in 1996, The European Union (EU), Japan, and the USA brought a complaint to Indonesia over National Car Programs.¹¹⁹ They alleged that the exemption from customs duties and luxury taxes on imports of 'national vehicles' and components thereof, were in violation of Indonesia’s obligations under Articles I and III of GATT 1994, and Article 2 of the Agreement on Trade-Related Investment

¹¹⁴ The Decision No. 33/PUU-IX/2011 of the Constitutional Court of Indonesia.
¹¹⁵ Article 31 of Law Number 3 Year 2014 on Industry (Law on Industry).
¹¹⁶ Article 32 of Law on Industry.
¹¹⁷ Article 85 of Law Number 7 Year 2014 on Trade (Law on Trade).
Measures (TRIMs).¹²⁰ The Panel then ruled that Indonesia violated those agreements.¹²¹ The national car program was an example of how Indonesia had employed national interest concern to violate the WTO agreement. However, this interest was not actually the national interest, but rather the political or family elite’s interest by looking at the parties who were involved in this program. In particular, one of the president’s children was the leader of the company that was granted a permit to import ‘national car’ from Korea without having an obligation to pay what has been said at that time as the compulsory 35 percent lavish tax on cars.¹²²

In 2012, in *US — Clove Cigarettes*, defending its national interest, Indonesia brought a case, complaining the US’s prohibition on clove cigarettes from Indonesia while allowing the production and sale of the local cigarettes.¹²³ The appellate body then confirmed this complaint, arguing the prohibition was the violation of national treatment principle under Technical Barriers to Trade (TBT) agreement.¹²⁴ In 2014, in *Indonesia — Importation of Horticultural Products, Animals and Animal Products*, Indonesia imposed import licensing requirement for horticultural products and animals and animal products in order to secure food safety and ‘halal’ requirements.¹²⁵ New Zealand and the US brought a case, alleging that Indonesia conducted quantitative import restrictions that was illegal under the GATT 1994, and violated the Agreement on Agriculture.¹²⁶ The panel then ruled that Indonesia’s measures were illegal and must be promptly revoked.¹²⁷ Nevertheless, on 17 February 2017, Indonesia decided to appeal to the Appellate Body and this case is still underway.

In the future, Indonesia can still employ domestic trade policy in order to protect its national interest. From old order to reform order and in every trade negotiation forum, Indonesia has issued multifarious trade-restrictive measures for protecting Indonesia’s interest. WTO has acknowledged the need of Indonesia as a developing country that should not be forced to comply with all WTO agreements. However, Indonesia should be more cautious for imposing measures and not to be overly restrictive or protective. It will prevent other WTO members to bring a case before the WTO judicial body.

¹²⁶ *Ibid.,* p. 278.
E. Conclusion

There has been an anxiety over the rise of the spirit of national interest on the existence of WTO. This spirit that has been reflected from domestic trade policy, to some extent, has undermined trade negotiation process under the WTO as shown by the failure of the Doha Round to conclude significant trade deals. Countries also started concluding bilateral and regional trade agreements instead of the WTO. This article shows that there has been the spirit of national interest in the dynamic development of the WTO from the establishment of GATT 1947 to the latest trade negotiation rounds under the WTO. This spirit also colored the dynamic participation of Indonesia from old order to reformation order. This fact, therefore, will not threaten the existence of the WTO as it has experienced with this situation since the GATT 1947 was concluded. Moreover, the existence of the WTO judicial body will secure the existence of the WTO, especially because it has successfully controlled the overwhelming spirit of national interest of its members, including Indonesia through its decisions. In the future, the existence of the WTO will likely be more focused on controlling and enforcing the existing trade agreements rather than concluding new trade commitments due to the rise of bilateral and regional trade agreements.

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