

Measuring WTO Approaches in Resolving Palm Oil and Biofuel Trade Disputes from Indonesia

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ABSTRACT

Indonesia is the world's leading producer of palm oil, with significant exports to European Union member states. However, the EU has recently imposed stricter limitations on palm oil imports, particularly from Indonesia, through policies such as the Renewable Energy Directive (RED) and RED II. This article examines the measures imposed by the WTO to address this trade dispute. Using a doctrinal approach, the study collects data from primary legal sources, such as laws, regulations, and court decisions, as well as secondary sources, including journals and books. The findings reveal that Indonesia's request for negotiations with the EU was rejected, prompting the WTO to establish a panel. However, the panel's decision lacks legal force until the appeal process is concluded. The situation is further complicated by the Appellate Body's inability to function due to the United States' deliberate refusal to approve new appointments, leaving the dispute unresolved. Consequently, the WTO Dispute Settlement Body's ruling lacks legal certainty, raising the potential for a trade war between Indonesia and the EU. This research underscores the need for effective dispute resolution mechanisms within the WTO to address such critical trade issues.



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1.Introduction

Indonesia's economy has become significantly reliant on the palm oil sector, as it is both the world's leading producer and consumer of palm oil. Indonesia supplies at least 50% of the world's palm oil. In 2018, Indonesia produced approximately 40.6 million tonnes and exported 29.3 million tonnes of goods. As a result, Indonesia is ranked as the foremost global producer of palm oil, followed by Malaysia, Thailand, and Colombia.¹ The magnitude of the Indonesian palm oil sector has also played a crucial part in the employment of a substantial workforce which a total of 4.2 million individuals are

¹ Man Kee Lam and others, 'Malaysian Palm Oil: Surviving the Food versus Fuel Dispute for a Sustainable Future', *Renewable and Sustainable Energy Reviews*, 13.6 (2009), 1456–64 <https://doi.org/https://doi.org/10.1016/j.rser.2008.09.009>

employed in direct labour, while an additional 14.3 million individuals are employed in indirect labour.²

However, the European Union (EU) Parliamentary Resolution on Palm Oil and Deforestation of Rainforest, issued on 4 April 2017,³ have a significant impact on the Indonesian palm oil business.⁴ The implementation of this resolution poses a significant obstacle for Indonesian palm oil goods, particularly those intended for the EU market. According to statistical data, the EU is the second largest market for Indonesia's exports, accounting for 14.35% of the total market share. The largest export destination is India, which holds a market share of 25.37%.⁵ In 2016, the value of Indonesia's palm oil exports surpassed the value of its exports in other non-oil and gas industries. Given its strategic location, this matter is of great concern to all relevant stakeholders in Indonesia, as any disruption to the country's palm oil shipments to the EU would significantly harm the whole Indonesian economy. Hence, the matter of oil palm cultivation holds significant prominence in Indonesia's endeavours of economic diplomacy, encompassing the participation of all stakeholders.⁶

The European Parliament made changes to the draught Renewable Energy Directive (RED) in January 2018, which now includes a prohibition on the utilisation of palm oil biofuels in Europe beyond 2021.⁷ Malaysia and Indonesia vehemently opposed this action. These two nations dominate almost 90% of worldwide palm oil exports. According to the RED draught endorsed by European Parliament members, renewable energy will make up a minimum of 35% of the European Union's total energy consumption by 2030.⁸

The Parliament's RED strategy aims to completely eliminate biofuels derived from food crops by 2030. The European Union (EU) is at the forefront in endeavours to alleviate climate change. The EU revision of RED II encompasses an agreement that entails endeavours to diminish specific classifications of biofuels.⁹ The EU palm oil restriction was introduced through the issuance of a draught policy called Delegated Regulation

² Zhen Xin Phuang and others, 'The Dilemma in Energy Transition in Malaysia: A Comparative Life Cycle Assessment of Large Scale Solar and Biodiesel Production from Palm Oil', *Journal of Cleaner Production*, 350 (2022), 131475 <https://doi.org/https://doi.org/10.1016/j.jclepro.2022.131475>

³ Francis Declerck and others, 'Biofuel Policies and Their Ripple Effects: An Analysis of Vegetable Oil Price Dynamics and Global Consumer Responses', *Energy Economics*, 128 (2023), 107127 <https://doi.org/https://doi.org/10.1016/j.eneco.2023.107127>

⁴ Prihardi Kahar and others, 'An Integrated Biorefinery Strategy for the Utilization of Palm-Oil Wastes', *Bioresource Technology*, 344 (2022), 126266 <https://doi.org/https://doi.org/10.1016/j.biortech.2021.126266>

⁵ Lacour M Ayompe, M Schaafsma, and Benis N Egoh, 'Towards Sustainable Palm Oil Production: The Positive and Negative Impacts on Ecosystem Services and Human Wellbeing', *Journal of Cleaner Production*, 278 (2021), 123914 <https://doi.org/https://doi.org/10.1016/j.jclepro.2020.123914>

⁶ Helena Varkkey, Adam Tyson, and Shofwan Al Banna Choiruzzad, 'Palm Oil Intensification and Expansion in Indonesia and Malaysia: Environmental and Socio-Political Factors Influencing Policy', *Forest Policy and Economics*, 92 (2018), 148–59 <https://doi.org/https://doi.org/10.1016/j.forpol.2018.05.002>

⁷ The European Parliament, Directive (EU) 2018/2001 of the European Parliament and the Council of 11 December 2018 on the Promotion of the Use of Energy from Renewable Sources, 2018 https://joint-research-centre.ec.europa.eu/welcome-jec-website/reference-regulatory-framework/renewable-energy-recast-2030-red-ii_en [accessed 5 December 2023].

⁸ Erik Meijaard and Douglas Sheil, 'Oil-Palm Plantations in the Context of Biodiversity Conservation', in *Encyclopedia of Biodiversity (Second Edition)*, ed. by Simon A Levin, Second Edition (Waltham: Academic Press, 2013), pp. 600–612 <https://doi.org/https://doi.org/10.1016/B978-0-12-384719-5.00340-3>

⁹ Annisa Joviani Astari and Jon C Lovett, 'Does the Rise of Transnational Governance "Hollow-out" the State? Discourse Analysis of the Mandatory Indonesian Sustainable Palm Oil Policy', *World Development*, 117 (2019), 1–12 <https://doi.org/https://doi.org/10.1016/j.worlddev.2018.12.012>

Supplementing Directive of the EU RED II by the European Commission on March 13, 2019. The European Commission approved Delegated Regulation No. C (2019) 2055 Final, which establishes criteria for assessing the risk of Indirect Land Use Change (ILUC) associated with biofuels, distinguishing between high and low ILUC risk.¹⁰ The European Commission will employ the ILUC criteria in the draught Delegated Regulation to classify high vegetable oil components as unsustainable and high-risk commodities. The European Commission determines the commitment to anti-discrimination action in preparing reports and delegated actions based on the most recent scientific knowledge.¹¹

In addition to vegetable oil, the European Union Council Parliamentary Resolution, which asserts that palm goods contribute to deforestation, human rights abuses, and lack of sustainability, demonstrates the support of European commercial entities. The reason for this is because Indonesian palm oil products are perceived as a menace to the survival of the olive oil industry. Sunflower seed-derived olive oil is highly popular and extensively manufactured throughout Europe.¹² Consequently, the introduction of palm oil products into Europe will lead to the gradual decline of the two prevailing forms of oil in the region.¹³ The import of palm oil from Indonesia poses additional challenges for the EU in this situation, in which the Europe's demand for oil is steadily rising, while the available land is severely limited, making it challenging to find viable substitutes for palm oil.

Indonesia's economic diplomacy endeavours to advocate for the export of palm oil derivative products at the most prominent level of the World Trade Organisation (WTO), known as the WTO Appellate Body (AB) forum.¹⁴ Indonesia expressed its disagreement with the ruling of the Dispute Settlement Body (DSB) panel in favour of the European Union over the applicability of Articles 2.3 and 2.4, as well as Articles 3.1 and 3.5 of the Anti-Dumping Agreement (ADA).¹⁵ Indonesia solely prevailed in allegations pertaining to article 6.7 of the Agreement on Anti-Dumping (ADA), which concerns the transparency of the inquiry report.¹⁶

Nevertheless, Indonesia emerged victorious in its second endeavour, as it successfully prevailed in the legal dispute against the European Union at the World Trade Organisation

¹⁰ Mohd Ali Hassan and others, 'Palm Oil Expansion in Malaysia and Its Countermeasures through Policy Window and Biorefinery Approach', *Environmental Science & Policy*, 153 (2024), 103671 <https://doi.org/https://doi.org/10.1016/j.envsci.2024.103671>

¹¹ Ishani Mukherjee and Benjamin K Sovacool, 'Palm Oil-Based Biofuels and Sustainability in Southeast Asia: A Review of Indonesia, Malaysia, and Thailand', *Renewable and Sustainable Energy Reviews*, 37 (2014), 1–12 <https://doi.org/https://doi.org/10.1016/j.rser.2014.05.001>

¹² Akbar Ramadhan and others, 'Eu-Indonesia Challenges In Responding To Palm Oil Sustainability', *Sociae Polites*, 22.2 (2021), pp. 141–48, <https://doi.org/10.33541/sp.v22i2.3482>

¹³ Astra Agro Lestari, 'EU Bans Palm Oil to Protect Its Own Oil Seeds, Local Producers Say Malaysia', Astra Agro Lestari, 2023 <https://www.astra-agro.co.id/en/2020/01/27/eu-bans-palm-oil-to-protect-its-own-oil-seeds-local-producers-say-malaysia/> [accessed 5 December 2023].

¹⁴ Vaughan Higgins and Carol Richards, 'Framing Sustainability: Alternative Standards Schemes for Sustainable Palm Oil and South-South Trade', *Journal of Rural Studies*, 65 (2019), 126–34 <https://doi.org/https://doi.org/10.1016/j.jrurstud.2018.11.001>

¹⁵ Petir Papilo and others, 'Palm Oil-Based Bioenergy Sustainability and Policy in Indonesia and Malaysia: A Systematic Review and Future Agendas', *Heliyon*, 8.10 (2022), e10919 <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e10919>

¹⁶ Irlan A Rum and others, 'Impact Assessment of the EU Import Ban on Indonesian Palm Oil: Using Environmental Extended Multi-Scale MRIO', *Science of The Total Environment*, 853 (2022), 158695 <https://doi.org/https://doi.org/10.1016/j.scitotenv.2022.158695>

(WTO) about the implementation of Anti-Dumping Import Duty on biodiesel products originating from Indonesia.¹⁷ Indonesia's claims against the EU were upheld in the final verdict of the DSB-WTO panel. Following this triumph, the availability of market entry for biodiesel is expanding, allowing for the resumption of biodiesel shipments to the European Union. In 2013, the BMAD (Biodiesel Mandate) was increased from 8.8 percent to 23.3 percent, resulting in a significant decline in Indonesia's biodiesel exports to Europe.¹⁸

In order to settle the conflict on BMAD biodiesel and the issue at the DSB-WTO, Indonesia opted to pursue legal recourse by means of the European Union courts. The EU is now facing seven significant lawsuits. In addition, Indonesia's defence was presented at the First Substantive Meeting (FSM) in March 2017, and this was followed by the Second Substantive Meeting four months later. Ultimately, the DSB-WTO panel has determined that the EU's inquiry into dumping was not in line with the regulations outlined in the WTO Anti-Dumping Agreement. This has negatively affected the importation of biodiesel from Indonesia. To be more precise, the European Union breached six provisions of the World Trade Organization's Anti-Dumping Agreement in the issue raised by Indonesia concerning the implementation of anti-dumping charges on biodiesel.¹⁹

The EU does not incorporate data provided by Indonesian exporters when determining production costs. Furthermore, the EU does not utilise data regarding expenses accrued in Indonesia as a means of establishing the standard value for calculating the threshold for dumping. The EU also imposes an excessively stringent profit threshold on the biodiesel sector in Indonesia.²⁰ Furthermore, the process of calculating the export duty for a certain Indonesian exporter is not in accordance with the regulations, and enforces a tax rate that exceeds the established threshold for dumping. Ultimately, the European Union lacks evidence to substantiate the claim that biodiesel imports from Indonesia negatively impact the price of biodiesel in the local market.²¹

After losing its anti-dumping case, the EU proposed an initiative for a European Union resolution on palm oil and rainforest deforestation, which was finally passed in April 2017 with the majority votes of EU parliamentarians. The key point of the EU resolution is that the EU will ban the use of palm oil for biofuel production by 2020. The resolution has posed a significant challenge for the palm oil business in Indonesia. This resolution will also impede Indonesia's palm oil exports to the EU, as the EU is the second-largest recipient of palm oil. Moreover, the resolution regarding palm oil can be considered

¹⁷Indonesia Investment, 'WTO Rules in Favor of Indonesia on EU's Biodiesel Anti-Dumping Duties | Indonesia Investments', 2018 <https://www.indonesia-investments.com/news/news-columns/wto-rules-in-favor-of-indonesia-on-eu-s-biodiesel-anti-dumping-duties/item8549?> [accessed 30 May 2018].

¹⁸ OEC, 'Palm Oil in Indonesia', The Observatory of Economic Complexity, 2023 <https://oec.world/en> [accessed 5 December 2023].

¹⁹ Laura German and others, 'Sine Qua Nons of Sustainable Biofuels: Distilling Implications of under-Performance for National Biofuel Programs', *Energy Policy*, 108 (2017), 806–17 <https://doi.org/https://doi.org/10.1016/j.enpol.2017.04.013>

²⁰ Prisca Listiningrum and others, 'Juridical Analysis of Policy Concerning Oil Palm Estate Management in Indonesia', *Legality: Jurnal Ilmiah Hukum*, 29.1 (2021), 16–26 <https://doi.org/10.22219/ljih.v29i1.14376>

²¹ Arifin Ma'ruf, 'Application of Timber Legality Verification System (SVLK) Policy as Ecolabel Implementation in the Indonesian Timber Industry', *Journal of Human Rights, Culture and Legal System*, 1.2 (2021), 92–99 <https://doi.org/10.53955/jhcls.v1i2.10>

discriminatory and driven by political agendas, as evidenced by the unequal policies that have emerged as a result.²²

On the other hand, the vegetable oil originating from EU countries is also responsible for extensive deforestation, while it yields a relatively low production volume.²³ The relationship between oil palm and land usage is inversely proportional, meaning that as oil palm cultivation increases, the amount of land required decreases.²⁴ However, despite using less land, oil palm cultivation is able to achieve a higher production volume. It is evident that the EU's political and financial motivations arise from their inability to rival Indonesian palm oil. Consequently, Indonesia has implemented many measures to preserve the Indonesian palm oil sector. This is accomplished by fostering several forms of collaboration, both inside palm oil-producing nations and among European countries themselves. Regional and multilateral economic diplomacy proved effective, but, the resolution of the trade war was pursued through the WTO, ultimately resulting in Indonesia's victory. This diplomatic endeavour has effectively compelled the European Union to commence reassessing its ban on biofuel oils. This article examines the model for resolving Indonesia's palm oil dispute with the European Union through the existing WTO dispute settlement mechanism and looks at the various aspects that influence a decision, including the political, economic and market security interests of the disputing countries.

2. Research Method

This article employs a normative research methodology that focuses on study of documents.²⁵ The normative legal research involves analysing deductive conclusions derived from statements found in data sources such as library materials (e.g., journals, books, documents) or secondary data as its sources (e.g., laws, legal theory, court decisions, expert opinions, regulations, legal theories) that are relevant to the topics discussed in this paper.²⁶ The utilised approaches encompass statutory, conceptual, and analytical methodologies. This study uses a prescriptive-analytical approach, where qualitative research methods are used to synthesise data, facilitate discussion, and draw conclusions.

3. Results and Discussion

3.1. The European Union Allegations on Indonesian Palm Oil

²² Utkarsh K Mishra and Abhishek Negi, 'Should Trade Remedies Be Eliminated from WTO : A Response to Tania Voon', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 194–200 <https://doi.org/https://doi.org/10.53955/jhcls.v1i3.20>

²³ Rilus A. Kinseng and others, 'Unraveling Disputes between Indonesia and the European Union on Indonesian Palm Oil: From Environmental Issues to National Dignity', *Sustainability: Science, Practice and Policy*, 19.1 (2023), p. 2152626, <https://doi.org/10.1080/15487733.2022.2152626>

²⁴ Chairul Fahmi, 'The Dutch Colonial Economic's Policy on Natives Land Property of Indonesia', *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah (PJKIHDs)*, 5.2 (2020), p. 105, <https://doi.org/10.22373/petita.v5i2.99>

²⁵ Nita Triana, Ade Tuti Turistiati, and Lincoln James Faikar Monk, 'Alternative Dispute Resolution in Marine Pollution: Advancing Ecological Justice through the Polluter Pays Principle', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 7.1 (2024), 89–107 <https://doi.org/10.24090/volksgeist.v7i1.10047>

²⁶ Abdul Matin Bin Salman and Eko Asmanto, 'Islamic Environmental Stewardship: A Sociological Approach to Hadith and Legal Frameworks for Ecological Responsibility', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 7.2 (2024), 361–78 <https://doi.org/10.24090/volksgeist.v7i2.12205>

The European Parliament has endorsed a proposal to prohibit the utilisation of palm oil as the primary feedstock for biodiesel by the year 2020.²⁷ In the past, namely on April 23, 2009, the EU established a comprehensive policy called the RED to govern the production and promotion of energy derived from renewable sources throughout the European Union.²⁸ The EU's implementation of RED is an initial measure aimed at globally reducing carbon emissions, demonstrating the European Union's dedication to the Kyoto Protocol.²⁹ Under the RED, member countries of the EU are obligated to guarantee that a minimum of ten percent of the transportation fuels they produce is derived from renewable sources, thereby promoting environmental friendliness. The EU also undertakes this measure to ensure that such transportation is manufactured in a sustainable and ecologically sound manner. In addition to its aim of environmental preservation and global emissions reduction, the establishment of RED by the EU is seen as a novel measure to safeguard its own biofuel products from competition, given that the European Union is currently the primary producer of biodiesel. The EU has consistently been a leader in the development and implementation of environmentally sustainable renewable energy sources.³⁰

Nevertheless, it acknowledges that the EU ranks as the second-largest consumer of oil and gas globally, trailing only behind the United States. The Delegated Regulation, which complements the EU RED II, outlines a plan to discontinue the utilisation of palm oil as a biofuel inside the EU by 2030.³¹ The process of reducing the use of palm oil will commence in 2024, but Indonesia has expressed its opposition to the European Union's decision to halt palm oil export-import activities. Whereas, the EU argues that the policy restricts market entry for palm oil and palm oil-based biofuels, negatively impacting the export of Indonesian palm oil goods.³²

The EU deems palm oil (CPO) to have a significant detrimental effect on the environment and poses a threat to the biodiversity of forest ecosystems. As previously stated, palm oil (CPO) is the most ecologically sustainable vegetable oil when compared to rapeseed and sun seed oils.³³ Despite implementing a policy to halt palm oil exports, the European Union persistently promotes the cultivation of rapeseed and sunflower seeds for the manufacture of vegetable oil used in biodiesel. It may be stated that the EU strategy coincides with the utilisation and manufacturing of alternative vegetable oils as a

²⁷ Mustafa Balat, 'Potential Alternatives to Edible Oils for Biodiesel Production – A Review of Current Work', *Energy Conversion and Management*, 52.2 (2011), 1479–92 <https://doi.org/https://doi.org/10.1016/j.enconman.2010.10.011>

²⁸ Chun Sheng Goh and others, 'Identifying Key Factors for Mobilising Under-Utilised Low Carbon Land Resources: A Case Study on Kalimantan', *Land Use Policy*, 70 (2018), 198–211 <https://doi.org/https://doi.org/10.1016/j.landusepol.2017.10.016>

²⁹ Britannica Dictionary, 'Kyoto Protocol | History, Provisions, & Facts |', 2020 <https://www.britannica.com/event/Kyoto-Protocol> [accessed 5 December 2023].

³⁰ Joss Lyons-White and others, 'Understanding Zero Deforestation and the High Carbon Stock Approach in a Highly Forested Tropical Country', *Land Use Policy*, 112 (2022), 105770 <https://doi.org/https://doi.org/10.1016/j.landusepol.2021.105770>

³¹ T A Z de Souza and others, 'Biodiesel in South American Countries: A Review on Policies, Stages of Development and Imminent Competition with Hydrotreated Vegetable Oil', *Renewable and Sustainable Energy Reviews*, 153 (2022), 111755 <https://doi.org/https://doi.org/10.1016/j.rser.2021.111755>

³² Claudia Azevedo-Ramos and Rayssa Yuki Murakami Lima, 'Brazil's Mixed Reactions to the EU Deforestation-Free Regulation: Balancing Compliance Costs and the Urgency of Deforestation Action', *One Earth*, 7.11 (2024), 1917–22 <https://doi.org/https://doi.org/10.1016/j.oneear.2024.10.014>

³³ Nabanita Ghosh and others, 'Ethical Issues Pertaining to Sustainable Biodiesel Synthesis over Trans/Esterification Process', *Sustainable Chemistry and Pharmacy*, 33 (2023), 101123 <https://doi.org/https://doi.org/10.1016/j.scp.2023.101123>

replacement for CPO. This serves to strengthen the notion that the EU policy lacks a solid basis and is arbitrary in nature.³⁴

Furthermore, Indonesian palm oil farmers and entrepreneurs have undertaken efforts to enhance the production process of oil palm cultivation in order to safeguard the market share of palm oil sales, particularly in the European and US markets, by adhering to the desired standards set by the European market. The Indonesian government has created the Indonesia Sustainable Palm Oil System (ISPO) to demonstrate its commitment to enhancing the quality of local palm oil.³⁵ Indonesia's commitment to enhancing its domestic palm oil production is shown in the significant reduction in forest devastation caused by oil palm cultivation. Previously, the annual destruction reached 2 million hectares, but in 2018, it decreased to only 400 thousand hectares, and it is expected to be even lower in 2020. Indonesia's commitment to this matter is evident. The enhancement of palm oil production is not just a theoretical discussion, but it has been implemented in practise, and the outcomes have been verified by justified parties.³⁶

The EU also charges of dumping over the export of Indonesian biodiesel goods, and Indonesia acted by sending a formal letter of concern to the EU commission. The government lodged a formal objection letter with the EU in response to the EU's decision to apply an anti-dumping charge ranging from 2.8% to 9.6% on biodiesel imported from Indonesia. The EU has accused Indonesia of engaging in unfair trade practises by selling biodiesel at a lower price than what is produced within the EU. This price difference is attributed to the availability of inexpensive raw materials, specifically palm oil, in Indonesia.³⁷

The subsequent course of action is awaiting the decision of the European Union about the continuation of the anti-dumping policy. The European Union imposes an anti-dumping import duty tariff that is required to be paid for a duration of six months, with the possibility of extension for up to five years.³⁸ Multiple enterprises, including Molinos Rio de la Plata SA, Aceitera General Deheza SA, and Pelita Agung Agrindustri, are obligated to pay an anti-dumping import tax of 104.92 euros or approximately Rp.1.3 million per

³⁴ Seyed Mojib Zahraee, Nirajan Shiwakoti, and Peter Stasinopoulos, 'Agricultural Biomass Supply Chain Resilience: COVID-19 Outbreak vs. Sustainability Compliance, Technological Change, Uncertainties, and Policies', *Cleaner Logistics and Supply Chain*, 4 (2022), 100049 <https://doi.org/https://doi.org/10.1016/j.clscn.2022.100049>

³⁵ Dina Harsono, M. Achmad Chozin, and Anas M. Fauzi, 'Analysis on Indonesian Sustainable Palm Oil (ISPO): A Qualitative Assessment the Success Factors for ISPO', *Jurnal Manajemen & Agribisnis*, 9.2 (2012), pp. 39–48, <https://doi.org/10.17358/jma.9.2.39-48>

³⁶ Steven Lim and Keat Teong Lee, 'Implementation of Biofuels in Malaysian Transportation Sector towards Sustainable Development: A Case Study of International Cooperation between Malaysia and Japan', *Renewable and Sustainable Energy Reviews*, 16.4 (2012), 1790–1800 <https://doi.org/https://doi.org/10.1016/j.rser.2012.01.010>

³⁷ Romain Pirard, Pablo Pacheco, and Claudia Romero, 'The Role of Hybrid Governance in Supporting Deforestation-Free Trade', *Ecological Economics*, 210 (2023), 107867 <https://doi.org/https://doi.org/10.1016/j.ecolecon.2023.107867>

³⁸ Nazia Mintz-Habib, 'Malaysian Biofuels Industry Experience: A Socio-Political Analysis of the Commercial Environment', *Energy Policy*, 56 (2013), 88–100 <https://doi.org/https://doi.org/10.1016/j.enpol.2012.08.069>

metric tonne.³⁹ This represents a rise of approximately 10.6%. An anti-dumping duty is an additional import tariff imposed on a product that is being sold below its regular price in either the exporting or importing country.⁴⁰ It serves as a counter penalty. International institutions impose penalties on countries that violate trade laws regarding price disparities between the original price of a product and the price at which it is exported or imported.⁴¹ The penalty in question is a tax imposed on the violating country. The primary emphasis is on biodiesel derived from Indonesian-owned resources such as palm oil, soybean oil, sunflower, or other materials.⁴² To address allegations of dumping made by the European Union, it is advisable to familiarise oneself with the anti-dumping regulations of the accusing country, gather empirical evidence, and seek guidance from legal advisors specialising in the subject of anti-dumping.⁴³

This endeavour aims to prevent the EU from imposing penalties on Indonesia in the absence of concrete and unambiguous proof obtained first hand. Hence, to prevent this practise, the Indonesian government established an institution known as KADI (Indonesian Anti-Dumping Commission) in accordance with Article VI of the GATT. The primary goals of this institution are to actively contribute towards achieving a just and non-discriminatory global trade system. The purpose of implementing protective measures is to ensure the profitability of Indonesian producers and safeguard them against the influx of dumped or subsidised goods from exporting countries. These measures aim to counteract dishonest trading practises that can potentially undermine the domestic importing industry.⁴⁴

Indeed, in 2006, the prevailing legal frameworks that served as benchmarks for accusing and defending against dumping practises and the enforcement of import tariffs were still governmental rules. If this situation persisted, it had the potential to impede or undermine the growth of domestic industry. In 2012, the EU implemented anti-dumping taxes on Indonesia as a result of the atypical value of imported goods. Currently, Indonesian biodiesel products derived from palm oil are approximately US\$180 per tonne less expensive than biodiesel generated by European companies using soybean oil. Anti-dumping measures are frequently employed as a means of safeguarding domestic industry. This is due to its high level of adaptability and little level of risk, making it the most preferable method for conducting international trade. Furthermore, it is important to note that the WTO provides a legal foundation for this practise. Specifically, the emphasis on anti-dumping measures is aimed at promoting fair trade. These measures have been regulated in the Anti-Dumping Agreement and the Agreement on the Implementation of Article VI of GATT 1994. Thus, it is desirable that Indonesia ceases its involvement in dumping practises to avoid allegations of violations from various countries, particularly the

³⁹ Yana Sylvana and others, 'The Role of the WTO in Mediate Dispute Palm Oil Between Indonesia and the European Union', *International Journal of Social Science and Religion (IJSSR)*, 1.3 (2020), pp. 233–50, <https://doi.org/10.53639/ijssr.v1i3.16>

⁴⁰ Sylvana and others.

⁴¹ Chairul Fahmi, Rahmi Putri Febrani, and others, 'The Role of Local Government in Maintaining Coffee Prices Volatility in Gayo Highland of Indonesia', *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah (PJKIHdS)*, 8 (2023), p. 40
<https://heinonline.org/HOL/Page?handle=hein.journals/petita8&id=48&div=&collection=>

⁴² Tandra and others.

⁴³ Aggarwal.

⁴⁴ Tiago dos S. Gonçalves and others, 'Challenges for Energy Guidelines in Crop-Based Liquid Biofuels Development in Brazil', *Next Sustainability*, 2 (2023), 100002
<https://doi.org/https://doi.org/10.1016/j.nxsust.2023.100002>

European Union regarding its biodiesel products. This will prevent the imposition of sanctions in the form of extra import tariffs, which would subsequently decrease government revenue and harm the domestic market by selling comparable goods below the standard price of imported products.⁴⁵

Anti-dumping measures are often used to protect domestic industry, as they are a flexible and low-risk instrument in international trade, and the WTO requires a sound legal basis, with anti-dumping measures in particular being used to ensure fair trade. This requirement is set out in the Anti-Dumping Agreement and the Agreement on the Implementation of Article VI of GATT 1994. It is desirable that Indonesia ceases its dumping practices to avoid being accused of violations by other countries, particularly the European Union, regarding its biodiesel products. This will prevent the imposition of sanctions in the form of additional import duties, which would reduce government revenue and damage the domestic market by selling similar goods below the normal price of imported products.^{46v}

On 10 June, Indonesia formally notified the WTO Secretariat and initiated a request for consultations with the EU over anti-dumping measures imposed on imports of biodiesel into the EU. Indonesia is challenging certain provisions of the November 2009 Regulations on Anti-Dumping Measures on Imports from Non-EU Countries. These provisions relate to the determination of normal values in anti-dumping investigations. In addition, Indonesia is challenging the anti-dumping duties imposed on imports of biodiesel, including those originating in Indonesia, which were subject to temporary duties in May 2013 and definitive duties in November 2013. Indonesia claims that these measures are inconsistent with the EU's obligations under the Anti-Dumping Agreement.⁴⁷

The resolution of WTO disputes can be achieved through two methods: (i) mutual agreement between the parties, especially during the bilateral consultation phase; and (ii) through legal proceedings, which involve the implementation of consecutive panel and Appellate Body reports. These reports become binding on the parties once they are adopted by the Dispute Settlement Body (DSB). Regarding this matter, the WTO dispute settlement process consists of three primary stages: (i) discussions between the parties involved; (ii) legal proceedings before a panel or appellate body; and (iii) execution of the ruling, which may involve retaliatory actions if the losing party does not comply with the decision. The Dispute Settlement Body (DSB), which represents the General Counsel (GC), is responsible for resolving disputes. Only the DSB has the authority to form a panel of experts to investigate matters. The DSB has the authority to either accept or reject the decision made by the panel or the decision made at the appellate level. The DSB oversees

⁴⁵ Rosamond L Naylor and Matthew M Higgins, 'The Political Economy of Biodiesel in an Era of Low Oil Prices', *Renewable and Sustainable Energy Reviews*, 77 (2017), 695–705 <https://doi.org/https://doi.org/10.1016/j.rser.2017.04.026>

⁴⁶ João H C Wancura and others, 'Motivations to Produce Biofuels from Rice Bran: An Overview Involving a Recent Panorama', *Industrial Crops and Products*, 203 (2023), 117170 <https://doi.org/https://doi.org/10.1016/j.indcrop.2023.117170>

⁴⁷ Prantika Das and Haripriya Gundimeda, 'Is Biofuel Expansion in Developing Countries Reasonable? A Review of Empirical Evidence of Food and Land Use Impacts', *Journal of Cleaner Production*, 372 (2022), 133501 <https://doi.org/https://doi.org/10.1016/j.jclepro.2022.133501>

the execution of decisions and recommendations and possesses the competence to legitimise retaliatory measures in the event that a country fails to adhere to a decision.⁴⁸

3.2. *The WTO Dispute Settlement System*

The WTO is an international organisation that oversees and governs global trade. It is established based on a set of agreements that are negotiated and agreed upon by several countries worldwide and subsequently approved by their respective parliaments. The primary objective of these WTO accords is to facilitate the operations of producers, exporters, and importers engaged in international trade in products and services.⁴⁹ Organisations established after 1995 aim to safeguard and support the interests of developing nations by offering various benefits and preferences outlined in the General Agreement on Tariffs and Trade (GATT) of 1947 and its 1994 update. These agreements recognise the importance of allowing developing countries to enhance their participation in global trade. Hence, industrialised nations do not insist on reciprocity in their agreements with developing nations and prioritise the removal of trade barriers that specifically affect the interests of developing nations.⁵⁰

The ongoing trade conflict between the European Union and Indonesia has been escalating in recent times. On January 17, 2018, the European Parliament conducted a poll to determine the utilisation of palm oil in biodiesel products. A resolution was reached to enhance energy efficiency by a maximum of 35 percent by the year 2030.⁵¹ The WTO has a dedicated council known as the Dispute Settlement Body (DSB) to handle disputes. The body in question plays a crucial role in upholding and incorporating the policies of the GATT and WTO agreements. The GATT and the WTO Agreement Creating the World Trade Organisation. Conflicts or disputes at the WTO are resolved by peaceful methods, specifically through the incorporation of the Dispute Settlement Body into the special rules of the WTO, known as the Dispute Settlement Understanding of the WTO Agreement (DSU).⁵²

The WTO dispute settlement mechanism typically consists – but not least - of three primary phases: consultations, panels, and the Appellate Body. The Dispute Settlement Understanding (DSU) acknowledges the varying situations among its members, such as the distinctions between developing and underdeveloped nations, while settling trade disputes. Articles 3.12, 4.10, 8.10, 12.10, and 12.11 of the DSU outline specific measures designed for the benefit of developing countries⁵³. The consultation process is the first stage of

⁴⁸ Syaifuddin Yana and others, 'Biomass Waste as a Renewable Energy in Developing Bio-Based Economies in Indonesia: A Review', *Renewable and Sustainable Energy Reviews*, 160 (2022), 112268 <https://doi.org/https://doi.org/10.1016/j.rser.2022.112268>

⁴⁹ Muhammad Alif K Sahide and Lukas Giessen, 'The Fragmented Land Use Administration in Indonesia – Analysing Bureaucratic Responsibilities Influencing Tropical Rainforest Transformation Systems', *Land Use Policy*, 43 (2015), 96–110 <https://doi.org/https://doi.org/10.1016/j.landusepol.2014.11.005>

⁵⁰ Mairon G. Bastos Lima, 'Just Transition towards a Bioeconomy: Four Dimensions in Brazil, India and Indonesia', *Forest Policy and Economics*, 136 January (2022), 102684 <https://doi.org/10.1016/j.forpol.2021.102684>

⁵¹ PalmOilToday, "Is the EU Phasing-out Palm Oil-Based Biofuels? The European Parliament Continues Its Discriminatory Path", Palm Oil Today, 2018 <http://palmoiltoday.net/is-the-eu-phasing-out-palm-oil-based-biofuels-the-european-parliament-continues-its-discriminatory-path/> [accessed 11 June 2018].

⁵² Munir Maniruzzaman, *Reforming the WTO Dispute Settlement System: A Rethink of the Third Party Right of Access to Panel and Appeal Processes from Developing Countries' Perspectives* (Routledge, 2010).

⁵³ Setyo Utomo, 'Indonesia's Interests in the World Trade Organization and the Appellate Body Impasse: Questioning the Existence of Special and Differential Treatment', *Yuridika*, 38.1 (2023), pp. 17–36, <https://doi.org/10.20473/ydk.v38i1.38933>

dispute settlement for palm oil under the WTO Dispute Settlement Understanding. It is based on Article 4.11 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), and the Government of Indonesia hereby informs the European Union, Malaysia, and the Dispute Settlement Body (DSB) of its intention to participate in the consultations requested by Malaysia in a communication circulated to WTO Members on 19 January 2021.⁵⁴

The consultation between Indonesia and the EU was also attended by numerous other countries, including Ecuador, Guatemala, Honduras, India, Japan, Malaysia, Norway, Russia, Singapore, South Korea, Thailand, Turkey, and the US. Earlier, the aforementioned countries submitted applications to participate in the consultation. Later, the European Union informed the Dispute Settlement Body (DSB) that it had been requested by these countries to participate in the consultation. The aforementioned countries are major producers and exporters of crude palm oil (CPO) to the European Union (EU) and also engage in significant biodiesel commerce with the EU, indicating their enormous economic interests.⁵⁵

The consultation procedure is the first step for a country initiating a claim at the WTO and is typically part of trade diplomacy. As the DSU lacks a defined mechanism for consultations, parties are free to establish their own systems for discussions. The WTO does not participate in this process since its role is not central here. On December 9, 2019, Indonesia formally initiated discussions with the European Union, raising concerns about EU regulations on palm oil and biofuels derived from Indonesian oil palm crops. Indonesia claimed these measures violated various provisions of the TBT Agreement, including Article 2.1, which ensures non-discriminatory treatment of imported products. Indonesia argued that the EU's ban on palm oil was discriminatory, as similar products like sunflower and rapeseed oil were permitted.⁵⁶

Under Article 2.2 of the TBT Agreement, technical regulations must not unnecessarily impede trade or be more restrictive than required to achieve legitimate objectives, such as environmental protection or consumer safety. Members must consider potential risks and evaluate scientific knowledge when assessing trade-restrictive measures. The necessity test balances these factors, as seen in cases like *Korea—Beef*, evolving from a least-trade-restrictive approach to proportionality. Thus, WTO panels critically assess whether measures are indispensable or simply contribute to stated objectives.⁵⁷

⁵⁴ World Trade Organization, 'European Union And Certain Member States – Certain Measures Concerning Palm Oil And Oil Palm Crop-Based Biofuels - Request to Join Consultation' (World Trade Organization, 2021) <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/600-4.pdf&Open=True>

⁵⁵ Tiemen Rhebergen and others, 'Closing Yield Gaps in Oil Palm Production Systems in Ghana through Best Management Practices', *European Journal of Agronomy*, 115 (2020), 126011 <https://doi.org/https://doi.org/10.1016/j.eja.2020.126011>

⁵⁶ R A Cramb, 'Palmed Off: Incentive Problems with Joint-Venture Schemes for Oil Palm Development on Customary Land', *World Development*, 43 (2013), 84–99 <https://doi.org/https://doi.org/10.1016/j.worlddev.2012.10.015>

⁵⁷ S K Loh and others, 'First Report on Malaysia's Experiences and Development in Biogas Capture and Utilization from Palm Oil Mill Effluent under the Economic Transformation Programme: Current and Future Perspectives', *Renewable and Sustainable Energy Reviews*, 74 (2017), 1257–74 <https://doi.org/https://doi.org/10.1016/j.rser.2017.02.066>

The Indonesian argued that the European Union breached Article I GATT 1994, namely the principle of the most favoured nation, by indirectly singling out crude palm oil in its policy criteria. The European Union exports soybean oil from the United States, Paraguay, and Brazil. This oil has a significant risk factor for indirect land use change (ILUC), which is not explicitly addressed in the European Union's policy. Consequently, this policy discriminates against nations that produce crude palm oil. In contrast, the EU asserts that the restrictions do not violate its WTO responsibilities. The EU has argued that the adopted regulations are appropriate as they align with the EU's legitimate policy goals of mitigating climate change, protecting the environment, maintaining biodiversity, and guaranteeing energy security and sustainability.⁵⁸

Following unsuccessful consultations, Indonesia requested the establishment of a WTO panel in its crude palm oil (CPO) dispute with the European Union. Despite the EU's refusal, a panel will be automatically formed. Negotiations failed after the EU rejected Indonesia's proposal, with Indonesia's initial request denied at a dispute resolution conference on June 29. Indonesia argued the EU's measures unfairly discriminated against palm oil and violated WTO agreements on products, subsidies, and technical barriers to trade. While confident in its position, the EU expressed willingness to pursue interim agreements under Article 25 of the WTO's Dispute Settlement Understanding for future appeal reviews.⁵⁹

The dispute settlement body (DSB) of the World Trade Organisation (WTO) has approved Indonesia's second request to establish a panel to investigate the European Union's palm policy regarding biofuels. Indonesia's initial proposal was rejected during the DSB meeting on June 29th, but was subsequently approved at the end of July 2023. Panels are quasi-judicial entities that function as tribunals and are responsible for resolving disputes amongst Members as the initial step in the adjudication process. Typically, they consist of three experts, but in rare cases, they may consist of five experts, who are chosen on a temporary basis. The European Union expressed its assurance in achieving a favourable outcome in the disagreement and expressed its willingness to engage in discussions over mutually beneficial temporary measures to uphold the appeals procedure. The WTO is currently facing a lack of operational appellate body, which is causing complications in the arbitration procedure. The group will be given a timeframe of six to nine months to produce its findings. The United States, Malaysia, Norway, Turkey, Singapore, Thailand, Russia, Japan, Korea, India, Honduras, Guatemala, Costa Rica, Colombia, China, Canada, Brazil, and Argentina have asserted their third-party rights to join in the proceedings.⁶⁰

The WTO does not have a permanent panel; instead, a distinct panel is formed for each dispute. Panellists must be highly qualified and impartial, as outlined in Articles 8.1 and 8.2 of the DSU. Eligible individuals include those with experience in panels, GATT 1947,

⁵⁸ K T Tan and others, 'Palm Oil: Addressing Issues and towards Sustainable Development', *Renewable and Sustainable Energy Reviews*, 13.2 (2009), 420–27 <https://doi.org/https://doi.org/10.1016/j.rser.2007.10.001>

⁵⁹ Luli Pesqueira and Pieter Glasbergen, 'Playing the Politics of Scale: Oxfam's Intervention in the Roundtable on Sustainable Palm Oil', *Geoforum*, 45 (2013), 296–304 <https://doi.org/https://doi.org/10.1016/j.geoforum.2012.11.017>

⁶⁰ Frederico Brandão, Fabio de Castro, and Célia Futeima, 'Between Structural Change and Local Agency in the Palm Oil Sector: Interactions, Heterogeneities and Landscape Transformations in the Brazilian Amazon', *Journal of Rural Studies*, 71 (2019), 156–68 <https://doi.org/https://doi.org/10.1016/j.jrurstud.2018.09.007>

covered agreements, academia, or senior trade policy roles. The WTO Secretariat maintains a list of potential panellists, updated with suggestions from Members and approved by the DSB. Inclusion on this list is not mandatory for selection. Panellists act autonomously in a personal capacity (Article 8.9), with no consistent staff presence across ad hoc panels.⁶¹

The panel assigned to a particular dispute is responsible for examining the factual and legal elements of the case. It must then present a report to the Dispute Settlement Body (DSB) stating its findings on whether the complainant's claims are valid and if the measures or acts being disputed are inconsistent with the rules of the WTO. If the panel determines that the claims are valid and that a Member of the WTO has violated its responsibilities, it provides a proposal for the respondent to adopt, as outlined in Articles 11 and 19 of the DSU. Conversely, in August 2023, the European Union launched an inquiry into biodiesel originating from Indonesia, suspecting that it circumvented customs levies or import fees in the area by transiting through China and the UK. The investigation was initiated in response to a formal request made by the European Biodiesel Board, a consortium representing biodiesel manufacturers throughout Europe.⁶²

Under Article 11 of the DSU, panels assist the Dispute Settlement Body (DSB) by conducting impartial evaluations of disputes, including assessing facts and their alignment with applicable agreements, and making determinations to aid the DSB in issuing recommendations or rulings. Panels also consult regularly with disputing parties to explore mutually agreeable solutions. Established in 1995 under Article 17 of the DSU, the Appellate Body comprises seven members who review appeals from panel reports. It can affirm, modify, or reverse panel findings, and its reports are adopted by the DSB unless all Members unanimously decide against their adoption.⁶³

In November 2017, the US suspended the Appellate Body (AB) selection process, citing systemic issues, including delays in appeals, extended judges' terms, unnecessary advisory opinions, and treating reports as binding precedents. It opposed the reappointment of Van den Bossche and Shree Servansing, reducing the AB to three members by 2019. The US argued that reforms were needed before proceeding, sparking controversy among WTO members. South Korea criticized the US for using reappointments to influence decisions, while Brazil, China, and India warned that the impasse undermines the AB's integrity and pressures judges to align rulings with US preferences.⁶⁴

Without a functional Appellate Body, the dispute settlement mechanism of the WTO, which is widely respected, may come to a complete stop. According to the provisions of the Dispute Settlement Understanding (DSU), countries that are successful in a case at the

⁶¹ Fumi Harahap, Semida Silveira, and Dilip Khatiwada, 'Land Allocation to Meet Sectoral Goals in Indonesia—An Analysis of Policy Coherence', *Land Use Policy*, 61 (2017), 451–65 <https://doi.org/https://doi.org/10.1016/j.landusepol.2016.11.033>

⁶² Meijaard and Sheil.

⁶³ Patrick Lamers and others, 'International Bioenergy Trade—A Review of Past Developments in the Liquid Biofuel Market', *Renewable and Sustainable Energy Reviews*, 15.6 (2011), 2655–76 <https://doi.org/https://doi.org/10.1016/j.rser.2011.01.022>

⁶⁴ Shasha Teng, Kok Wei Khong, and Norbani Che Ha, 'Palm Oil and Its Environmental Impacts: A Big Data Analytics Study', *Journal of Cleaner Production*, 274 (2020), 122901 <https://doi.org/https://doi.org/10.1016/j.jclepro.2020.122901>

panel level are not permitted to claim the benefits of that triumph while an appeal is still being considered.⁶⁵ Consequently, if Indonesia or the EU loses a dispute, it can delay any decision by appealing to the Appellate Body, aware that the necessary minimum of three members to hear their appeal is not available. It is difficult to understand why countries would be willing to endure an indefinite wait for their appeal to be resolved. Instead, most are likely to take matters into their own hands by resorting to unilateral retaliation, which will only provoke additional retaliation from the country that initiated the appeal. According to Alan Wolff, the Deputy Director General of the WTO, the United States' obstruction of the appointment of new members to the Appellate Body poses a risk of transforming each individual trade dispute into a "trade war".⁶⁶

4. Conclusion

To summarize, the World Trade Organisation (WTO) has been instrumental in protecting trade rights in developing nations, such as Indonesia, by means of its Dispute Settlement Body (DSB). These organizations have created a system of equity and oversight in commerce by establishing a legal framework. Indonesia initiated legal action with the World Trade Organization (WTO) in response to the European Union's imposition of trade restrictions on Indonesian palm oil under its RED and RED II policies. The legal proceedings began with an initial consultation session as the first step in resolving the disagreement. Nevertheless, the European Union dismissed multiple justifications put forth by the Indonesian side. As a result, Indonesia formally sought the creation of a panel to the World Trade Organization (WTO). In November 2023, the WTO granted approval for the establishment of this panel, which aims to resolve the ongoing conflict about palm oil between Indonesia and the European Union (EU). However, it is important to note that the panel's judgment is not conclusive, as the involved parties still have the option to lodge an appeal. The decision rendered by the Panel does not have legal force on the parties until the appeal process has been finalized. Nevertheless, in the event that the appeal body is unable to achieve the required number of members due to a deliberate refusal by the United States, the ruling of the WTO dispute body lacks legal definiteness, which might potentially result in a trade conflict between Indonesia and the European Union.

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⁶⁵ Oliver Pye, 'Commodifying Sustainability: Development, Nature and Politics in the Palm Oil Industry', *World Development*, 121 (2019), 218–28 <https://doi.org/https://doi.org/10.1016/j.worlddev.2018.02.014>

⁶⁶ Kelechi E Anyaocha and Dr. Lulu Zhang, 'Transition from Fossil-Fuel to Renewable-Energy-Based Smallholder Bioeconomy: Techno-Economic Analyses of Two Oil Palm Production Systems', *Chemical Engineering Journal Advances*, 10 (2022), 100270 <https://doi.org/https://doi.org/10.1016/j.ceja.2022.100270>

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